HEALTH AND DISABILITY SERVICES (COMPLAINTS) AMENDMENT BILL 2021

Committee

Resumed from 21 September. The Deputy Chair of Committees (Hon Peter Foster) in the chair; Hon Samantha Rowe (Parliamentary Secretary) in charge of the bill.

Clause 1: Short title —

Progress was reported after the clause had been partly considered.

Hon SAMANTHA ROWE: I would like to provide answers to questions that were asked in the chamber in the last sitting. Hon Martin Aldridge asked how much the implementation of a communication strategy will cost. I advise that the estimated cost of a communication strategy is $45 000.

A request was made by both Hon Martin Aldridge and Hon Nick Goiran to table the *Consultation report on the national code of conduct for health care workers in Western Australia*, which was prepared by the Health and Disability Services Complaints Office in June 2018. I confirm that I can table that consultation paper, but I note that appendix B at page 45 of the report has been redacted because it contains information that could identify a person or persons by name or association with an entity who contributed to the consultation. I also direct members' attention to page 9, which contains a summary of the types of organisations that contributed to the report. I table that document.

[See paper 1699.]

Hon SAMANTHA ROWE: The last question asked in the last sitting before we rose was asked by Hon Nick Goiran and I did not start to give an answer because of time constraints. I will now provide a comprehensive answer to his question. In accordance with section 150 of the Health Practitioner Regulation National Law (WA) Act 2010, the Health and Disability Services Complaints Office is required to consult with the Australian Health Practitioner Regulation Agency about complaints that concern registered health practitioners. HADSCO has an existing relationship with AHPRA for the referral of matters that concern registered health practitioners. The complaints that are referred to AHPRA are high-risk issues relating to the clinical care and competence of registered practitioners. They include significant post-operative or clinical procedure complications, including death and disability; delayed or incorrect diagnosis resulting in significant complications or death; and medication and/or vaccination errors. Currently, if a complaint is received by HADSCO concerning a registered nurse who also provided reiki services, the matter would be raised with AHPRA in accordance with the national law. Depending on the facts and circumstances of the complaint, it may be referred to AHPRA to be retained by HADSCO for resolution, which would be the case if the complaint concerned the provision of reiki services. The process for consulting with AHPRA about complaints that concern registered practitioners, including those who provide services unrelated to the registration, will continue following implementation of the national code. HADSCO can attempt to settle such a complaint by alternative dispute resolution if the provider and the complainant agree to participate. Alternatively, the matter may be investigated and a recommendation for remedial action made to the provider. However, there is currently no power for the director to prevent healthcare workers who present a serious risk to the life, health, safety or welfare of a person or the public from continuing to practise. Under clause 4 of the bill, the definition of "health care worker" is —

> … an individual who provides a health service (whether or not the individual is a registered provider) …

This will ensure the application of the national code to those registered practitioners who are providing health services unrelated to their registration. This includes the example of a registered nurse who provides reiki services. Under clause 28 of the bill, a prohibition order may be issued following an investigation into a possible contravention of the code of conduct applying to a health worker. Following the investigation, a healthcare worker may be prohibited from providing any health service or a health service specified in the order. If a situation arises whereby a healthcare worker who is also a registered practitioner is issued a prohibition order, the order will prevent them from providing a specific health service—for example, reiki services. The Australian Health Practitioner Regulation Agency will be notified of the result of the investigation in accordance with section 150(5) of the national law new section 68A in the Health and Disability Services (Complaints) Amendment Bill.

Any action upon the conduct of the healthcare worker in their capacity as a registered practitioner is under the jurisdiction of AHPRA and the relevant national board. The national code addresses the regulatory gap that is specific to health services provided by unregistered practitioners. An investigation under the national code will concern only the conduct that has occurred in the provision of unregistered health services. In other jurisdictions, prohibition orders are typically issued against healthcare workers who do not hold the registration under the National Registration and Accreditation Scheme.

Hon MARTIN ALDRIDGE: I thank the parliamentary secretary for taking those matters on notice during the break. I am yet to receive a copy of the tabled document but I look forward to giving it some consideration in due course. I will start on the issue of the education and information program—or strategy. I think the parliamentary secretary

referred to it as a communication strategy. I quote the uncorrected *Hansard* of Wednesday, 21 September, when the parliamentary secretary said —

> There will be a mail-out to key stakeholders; information will be provided on the website —

I assume that is a reference to the HADSCO website. The parliamentary secretary continued —

> … there will be webinars with professional associations as well as education and training bodies …

The parliamentary secretary then went on to say that "a lot of these people will come out of university, so they will be informed", and there will be newspaper advertisements.

At that point I expressed some concern that, given that this scheme will be, in effect, a negative licensing scheme, communicating with those who are likely to be captured as people who provide a health service under the bill will not be such an easy task. I wonder when this communication strategy will commence and how it will focus on the broad dissemination of information to the general community. Keep in mind that this is not just about educating those who provide a health service, but also about educating those who will access a health service about their new rights to make a complaint in the terms that are provided for under this bill. It is actually about educating the general community about what this reform will achieve, whether a person is a health service provider or a health service consumer. The parliamentary secretary will not be able to buy too many newspaper ads with $45 000, so I wonder whether she could provide some more detail around the general education piece that will occur, and when it will occur.

Hon SAMANTHA ROWE: I am advised that the communication strategy will considers three specific groups of stakeholders: organisations that will have a role in the implementation of the national code; organisations and individuals that will be directly impacted by the national code coming into effect, which includes healthcare workers and their professional associations; and users of health services and consumer advocacy organisations. Targeted messages have been developed for each of the aforementioned stakeholder groups.

The strategy outlines a phased approach to raising awareness about the national code. The initial phase, which is currently underway, is focused on strengthening relationships with other regulatory agencies that will have a role in the administration of the national code, such as the Western Australia Police Force, Consumer Protection, the Department of Health, the State Administrative Tribunal, the Australian Health Practitioner Regulation Agency and health complaints entities in other states. The second phase will be centred on media publicity following the passage of the amendment bill through Parliament. The third phase will be focused on raising awareness among healthcare workers, professional associations, education and training organisations, and the general public. This will be the focus for the Health and Disability Services Complaints Office over the remainder of 2022 and early 2023. The final phase will see awareness of the national code continuing to increase as investigations are completed and prohibition orders are issued.

Phased approaches to raising the profile of the national code have been used in other jurisdictions. A variety of methods or channels will be used to reach different stakeholder groups. The following approaches to raising awareness about the national code are incorporated into the communication strategy. They include media releases and interviews, and the provision of information and materials such as information sheets, brochures and posters. They will also be on the HADSCO website and communicated directly to stakeholders. They also include webinars, as I mentioned to the member previously, and presentations to organisations that can inform a large number of healthcare workers such as professional associations, consumer advocacy groups and education and training organisations. They also include media advertising to reach specific stakeholder groups—for example, newspaper advertisements to raise awareness among the general public and advertisements in industry newsletters to raise awareness among healthcare workers, including those in regional and remote Western Australia.

Hon MARTIN ALDRIDGE: I thank the parliamentary secretary for that response. I take it from those remarks that the time frame for the strategy is the remainder of 2022, noting that is slowly escaping us, and early 2023. The parliamentary secretary made at least two references to the fact that further detail is outlined in the strategy. I therefore assume that the strategy is a formal document. Is the parliamentary secretary in a position to table the strategy in committee today?

Hon SAMANTHA ROWE: It is an internal document.

Hon MARTIN ALDRIDGE: That may well be the case; however, that does not prevent the Legislative Council from requesting it. If it is, indeed, an internal document that the parliamentary secretary is refusing to provide, I remind her of the provisions of the Financial Management Act and the need to notify the Auditor General of that refusal. Is there a reason why that document would not be available to the Parliament, even though it is an internal document?

Hon SAMANTHA ROWE: We can certainly take that on notice and ask the minister whether that document can be tabled.

Hon NICK GOIRAN: I thank the parliamentary secretary for earlier tabling the *Consultation report on the national code of conduct for health care workers in Western Australia*. This matter was taken on notice almost three weeks ago, on 21 September. I make a passing observation at this point for not just the parliamentary secretary but others

who might have a general interest in the efficient running of legislation in the Legislative Council. If I am not mistaken, Hon Martin Aldridge asked the minister for this document in the lead-in to the debate on this bill more than three weeks ago. We now have this document that was requested by the opposition but, at the time, for reasons unknown to the opposition, the minister or people associated with the minister declined to provide that information to the honourable member and to the opposition, which was a rather bewildering decision at the time. We have had to spend time on clause 1 extracting this information from the government. It is almost three weeks after that request that the document has finally made its way to the Legislative Council because, of course, there was no good reason why it could not be provided, albeit I accept that there has been a redaction at the end of this document for the reasons the parliamentary secretary described earlier, and I take no issue with that. I mention in passing to those who might have an interest in the efficient passage of legislation that this is not the way to do that. We have now wasted time on clause 1 getting this document, when Hon Martin Aldridge had asked for it behind the chair out of session more than a month ago. I hasten to add that these comments are not directed to the parliamentary secretary, who is here in a representative capacity, but are primarily directed at others who might have a passing interest in the speedy passage of this bill. Adding to this dilemma and to that sequence of events, the Legislative Council did not sit for at least a fortnight and the government sat on this document and has only now provided it to members. I do not know whether some government members are speed readers, but the minister cannot expect members to get across 45 pages of a discussion paper on the floor of the Parliament while we are debating clause 1. I hope that those people who are involved in the preparation and passage of this bill will take on board that unsolicited advice in the conduct of future bills under the health portfolio.

With those introductory unsolicited remarks and observations being made, I ask the parliamentary secretary to turn to page 11 of the *Consultation report on the national code of conduct for health care workers in Western Australia*, which is now tabled paper 1699 in this house. The parliamentary secretary will note that the end of that report deals with the consultation on question 1, which was whether the definition of a health service in the act should be amended to reflect the definition of a health service in the COAG final report. The parliamentary secretary will see that the very final point made at page 11 is that if the definition adopted is different from that recommended in the COAG final report, it should be clear what those differences are and what those differences mean in practice for healthcare workers and their employees. Can the parliamentary secretary confirm that the definition in the bill is identical to that recommended in the COAG report?

Hon SAMANTHA ROWE: No, it is not quite the same. Some parts of the COAG definition were captured within our definition, but it was felt that the existing definition was already fit for purpose.

Hon NICK GOIRAN: In accordance with stakeholder communication and engagement, if, as the parliamentary secretary has indicated, it is different, it should be clear what the differences are. What are those differences?

Hon SAMANTHA ROWE: The key changes to the definition of "health service" that will be made by this bill include the following. The word "injury" will be incorporated into the definition at section 3(1)(a), as healthcare workers often provide health services that are intended to treat an injury. For example, a massage therapist may provide treatment for a sporting or workplace injury. Clause 4(2)(b) will insert proposed section 3(1)(ba) to include the prescribing or dispensing of a drug or medicinal preparation as a health service. Naturopaths are an example, as they may dispense substances such as herbal preparations, remedies or nutritional supplements. Clause 4(2)(b) will also insert proposed section 3(1)(bb) so that "prescribing or dispensing an aid for therapeutic use" will come under the definition of "health service". This includes a naturopath dispensing an aid for the preparation and administration of a medicinal substance or a prosthetics technician dispensing a medical device.

Clause 4(2)(c) will insert "surgical or related service" under "health service"; for example, surgical procedures performed by a body modification artist.

Clause 4(2)(e) will insert paragraph (ga), which refers to an ancillary service or a service that affects persons receiving other health services; for example, services that support the delivery of health services such as practice managers, medical record staff, catering staff and laundry staff.

Hon NICK GOIRAN: The parliamentary secretary quoted clause 4(2), which will amend the definition of "health service". Were each of those parts—for example, the insertion of "injury" or "prescribing or dispensing a drug" and "surgical or related service"—recommended in the Council of Australian Governments final report, which had the support of 35 out of the 43 submitters?

Hon SAMANTHA ROWE: Yes, they were.

Hon NICK GOIRAN: Will those elements included at clause 4(2) be introduced because of the definition that was recommended in the COAG final report?

Hon SAMANTHA ROWE: Ultimately, yes.

Hon NICK GOIRAN: Those things will be introduced because of what was recommended by the COAG final report. As I understand it, a group of matters was recommended but has not been included. Perhaps the parliamentary secretary can confirm that first.

Hon SAMANTHA ROWE: I am advised that the definition that we are adopting is fit for purpose in Western Australia. Parts of the national code have been incorporated, but the language is obviously not exactly the same. It could not be said that the definition is the same, but for the most part it has been captured.

Hon NICK GOIRAN: Is the parliamentary secretary saying that the substance of the definition is consistent, whilst appreciating that it is not identical? I am hearing from her that it is not identical, and I accept that. What she is saying could be interpreted as it being significantly the same but that there are some perhaps minor jurisdictional matters to do with terminology. If that is the case, might the parliamentary secretary be able to provide an example of what we are using in Western Australia—some other term is used nationally and interstate—and why it is not identical?

Hon SAMANTHA ROWE: I think what the member is looking for is the fact that we can capture voluntary assisted dying in our definition, but the national code does not. Is that what the member is looking for?

Hon NICK GOIRAN: Is the particular element that the parliamentary secretary has referred to, which is certainly not something that I would describe as health care, but fair minds might disagree on that, the only element of the definition recommended in the COAG report that we are deviating from?

Hon SAMANTHA ROWE: The short answer is no.

Hon NICK GOIRAN: I need to take the parliamentary secretary to page 11 of the document that she tabled earlier and remind her and those assisting her of the stakeholder communication and engagement that the government undertook. This report, which was prepared by the Health and Disability Services Complaints Office in June 2018, ends on this point —

> If the definition adopted is different to that recommended in the COAG Final Report, —

I think we have established that it is different —

> it should be clear what those differences are, and what the differences mean in practice for health care workers and their employers.

I must say that, at present, it is not clear what those differences are. I am trying to establish what those differences are and what that will mean in practice for healthcare workers and their employers.

Hon SAMANTHA ROWE: I am going to try to answer the honourable member's question. I have three examples, I suppose, of what is in our definition but is not in the national code. One is voluntary assisted dying, which I mentioned. The other is medical or epidemiological research.

Hon Nick Goiran: By way of interjection, in terms of the definition of "health service" in the act, voluntary assisted dying is referred to in paragraph (b)(ii) and medical research is referred to in paragraph (d).

Hon SAMANTHA ROWE: Yes. It is referred to in paragraph (d) and the ambulance service is referred to in paragraph (e). If it is helpful to the honourable member, I can table the different definitions, as in the national code definitions.

Hon Nick Goiran: That's all right.

Hon SAMANTHA ROWE: Okay.

Hon NICK GOIRAN: I thank the parliamentary secretary for that clarification. Therefore, they are three additions to the definition in our legislation in Western Australia that are not used at a national level.

Hon SAMANTHA ROWE: Sorry, member. They are existing parts of our definition; they are not new parts to our definition.

Hon NICK GOIRAN: To be clear, I appreciate that this bill will not insert those three provisions. I understand that. In each of those cases that has been the case for some period; for example, the addition of voluntary dying can only have been included since we had the infamous debate in 2019. I can tell the parliamentary secretary that it is almost exactly three years to the day, because the debate started on 15 October—a day I will not forget in a hurry.

Those three elements the parliamentary secretary read in already exist as parts of the definition of a "health service". This bill will not change that, and I accept that. My point is that once this bill passes, we will have a new, we might say improved, definition of a "health service" at section 3 of the act. We are trying to ascertain the extent to which that definition differs from that recommended by COAG in its final report. I understand, so far, that those three elements that the parliamentary secretary read out—VAD, medical research and the ambulance service—might be in the legislation already, but they differ from the definition in the COAG report. We in Western Australia have had that for some time and "we"—I use the term very loosely—think it is important that it be retained. Are there any elements in the COAG definition that we have decided not to incorporate?

Hon SAMANTHA ROWE: I am advised that it is not that they were not included but it was felt that they were already covered within the existing definition.

Hon NICK GOIRAN: That is helpful. If we think of this definition as a net, we are trying to capture all the elements of what might be considered a health service in Western Australia. We are making sure that our net that defines a health service is no less of a net than what is being used interstate, and we are confident, notwithstanding some terminology difference and so on and so forth, that our net will capture every element of a health service being used elsewhere in the nation.

Hon SAMANTHA ROWE: Yes, that is correct.

Hon MARTIN ALDRIDGE: I want to ask some questions that flow on from the definition of a "health service" and about which recommendation 2 concerns itself.

Hon Samantha Rowe: Honourable member, does this cover a particular clause?

Hon MARTIN ALDRIDGE: I am referring to the consultation paper and question 2, in regard to the exclusions and inclusions under the national code. This area flows from the definition that the honourable member before me was pursuing. In the short time that I have had to cast my eyes through this 45-page document, I have seen that this is probably where the widespread support evaporated in the context of the consultation. The government said that this bill has widespread support, but I am not quite sure how. Perhaps the initiative may well have, because consultation occurred prior to the bill. These questions were not necessarily settled. They are now settled in the policy of the bill, including who is included or excluded as a health service provider. As we see at question 2, there was quite considerable division amongst the respondents about the exclusions or inclusions under the national code. The question asked was —

> *Are there any specific health services that should be considered for exclusion or inclusion under the National Code?*

The report at figure 3 states that 16 respondents said yes, 17 said no and nine did not respond to the question specifically. When we look at the summary of information that then follows, we see that across the submissions a number of professions were suggested for inclusion under the national code. This is perhaps where some of my confusion is coming from because a laundry list is always trotted out about the types of professions that should be captured, and no two lists are the same. The explanatory memorandum is different from some of the comments in the second reading. We now have a list of eight dot points that suggests the inclusion of people from volunteers and hypnotherapists to personal trainers. It was not readily apparent to me whether personal trainers would be captured by this bill. I will put that question to the parliamentary secretary in a moment. This is, of course, just a consultation report in which these professions were suggested for inclusion. My first question is: are all those responses and suggested inclusions—there is a list of eight occupations or eight categories of workers—captured within the bill and therefore subject to the national code?

Hon SAMANTHA ROWE: The first thing to note is that there is no set list. It was deliberately kept broad because it is intended to capture anyone who is not registered but who is offering health services. It could be one of those professions, if they are doing that, but it could be open to a whole raft of different people.

Hon MARTIN ALDRIDGE: I appreciate that they would not necessarily be defined and named in the legislation for the very good reason, as the parliamentary secretary has said, that health service delivery evolves over time and there could be new categories of health service next year that we did not envisage this year. But let us just say for a moment that this bill has now passed and is law and the education training package has been rolled out. Let us say that I am a personal trainer—clearly, I am not—and I ring up the director of the Health and Disability Services Complaints Office and say, "Director, am I captured by the national code of conduct and therefore subject to complaints by you?" These are the sorts of questions that are clearly going to need to be answered. I appreciate that the parliamentary secretary is not able to use a crystal ball and forecast what health services will look like in 12 months or 12 years, but we have named some in the explanatory memorandum, and I think that some were named in the second reading speech. That list may not be exhaustive, but, for example, are personal trainers providing a health service on the basis of the construction of this bill?

Hon SAMANTHA ROWE: It is always going to depend on the facts and the circumstances, but, potentially, if that personal trainer is treating some physical injury or disorder, or providing a preventive health program, they could possibly be captured.

Hon MARTIN ALDRIDGE: I appreciate that it turns entirely on the service that is being provided by the person rather than the title they have or purport to have, but the definition is very general in nature. For example, section 3(1)(c) of the existing act refers to "a preventive health care programme". One would think that that is pretty broad and all encompassing. One would not necessarily need to be treating a specific injury or ailment in order to fall within the terms of the health service definition contained in the Health and Disability Services (Complaints) Act as it currently stands. But I take the parliamentary secretary's point that it will indeed turn on the facts of the individual complaint and what is alleged to have occurred, and particularly the services related to the complaint in question. In this section a number of matters are outlined that have been suggested, so these are obviously —

Hon Samantha Rowe: Are you still on the consultation paper, member?

Hon MARTIN ALDRIDGE: Yes, sorry, I am referring to question 2. These are responses to the question; it is hard to know whether they are from one person or 10 people as they are generalised. One suggested exclusion under the national code was individuals working exclusively under direction from a supervisor—for example, a student on practicum. There was also a suggestion to exclude public authorities that are covered by the Corruption, Crime and Misconduct Act. I have some difficulty with that suggestion, because I am not quite sure the Corruption and Crime Commissioner would investigate complaints of the nature that HADSCO considers in its jurisdiction, or even that they would reach priority status. I think the answer to the second suggestion is that they would not be excluded, but I would like the parliamentary secretary's advice on the first suggestion and whether somebody who is delivering a health service under the direction of somebody else—for example, a student—would be captured by the bill before us.

Hon SAMANTHA ROWE: I am advised, yes, and that this is consistent across all the jurisdictions.

Hon MARTIN ALDRIDGE: Another issue was raised about whether the definition will capture privately employed support workers. It is not immediately clear to me—it says here that this may need to be clearly identified in the definition of "health service"—what an example of that would be. Perhaps it would be someone in palliative care who wants to die at home and engages a health service privately and they enter the into a direct employer–employee arrangement. It appears that there was some concern from at least one submitter that this type of employment arrangement would need to be clarified whereby, effectively, the health service provider is an employee of the person receiving the care. Does that matter need to be clarified or would those circumstances be captured by the definition and provisions of the bill?

Hon SAMANTHA ROWE: My advice is that if they are providing a health service, they will be captured.

Hon MARTIN ALDRIDGE: Is that regardless of their employment arrangement or even whether or not they are paid?

Hon Samantha Rowe: Correct.

Hon MARTIN ALDRIDGE: On that point, I mentioned volunteers earlier. I note the conversation the parliamentary secretary had with Hon Nick Goiran about how the definition in this bill deviates from the proposed definition in the COAG agreement. It is interesting that when we look at section 3 of the act—I think clause 4 proposes to amend section 3—we can see a disclaimer at the very end of the definition of "health service" that says "but does not include an excluded service". An excluded service is defined—we are not changing that—and means a health service that is provided without remuneration in a rescue or emergency situation. Given that the issue of volunteers was raised in the final consultation report that was tabled moments ago, I would be interested to know whether the parliamentary secretary can provide me with some comfort that an "excluded service" will mean a health service that is provided without remuneration. That is the first test—without remuneration. The second test is that the service is provided in a rescue or emergency situation. A few circumstances come immediately to mind. One is obviously the provision of services by volunteer ambulance officers. They deliver a service without remuneration, more often than not, I would think, in a rescue or emergency situation. Those terms are not defined, so they have a common literal meaning. Would a volunteer ambulance officer be excluded from the provisions of this bill because they provide an excluded service?

Hon SAMANTHA ROWE: Honourable member, I am advised that they would be excluded if it were a rescue or emergency situation.

Hon MARTIN ALDRIDGE: Will the parliamentary secretary assist me in assuring the many volunteers who serve in our state's ambulance service that when and on what occasions they will be captured under this legislation turns on whether they are delivering a service in the context of a rescue or emergency? For example, our volunteer ambulance officers are often called to local football matches, and they are on standby should something happen. If they have to provide some treatment, it may be fairly minor in nature, to a player or even a spectator for that matter, how would the director—remember, the director will be making these decisions—satisfy herself or himself that the service was provided in an emergency or rescue situation?

Hon SAMANTHA ROWE: Honourable member, I am advised that if they are acting in a rescue or emergency situation and they are acting professionally, there is not going to be an issue. But if they are not acting in a professional manner, they will be captured under the amended act.

Hon MARTIN ALDRIDGE: I am not sure whether I heard that right. Of course, I accept the parliamentary secretary's point that a person has nothing to fear if they act professionally, with good conduct and deliver good health services; they are not likely to attract a complaint. But this service provision turns on two things: whether they are remunerated and whether they are delivering the service in a rescue or emergency situation. Let me give the parliamentary secretary this example, based on what she has just said. If a person is doing completely the wrong thing as a health service provider, as a volunteer ambulance officer, which is the example that we are using at the moment,

and they are acting without remuneration in an emergency situation, a complaint cannot be made against them. That would be my reading of this bill and how it comes together with the existing act because the person will be an excluded service provider. Therefore, if someone is the type of person that the parliamentary secretary just described as somebody engaging in misconduct—I think it was referred to as that—will a complaint not be able to be held against them?

Hon SAMANTHA ROWE: Honourable member, to be clear, the advice that I am given is that if they are a volunteer in an emergency or rescue situation, it does not apply to them.

Hon MARTIN ALDRIDGE: I agree with that. I probably have concerns about the fact that rescue or emergency situations are not defined beyond those four words, so there will be some interpretation as to what constitutes an emergency and what does not. We could probably go through a long list of examples. I gave the parliamentary secretary the example of an ambulance officer at a football match treating a minor injury to a spectator or player. That probably does not fall within my definition, at least, of a rescue or emergency situation; therefore, there may be occasions on which they are either captured or not captured.

I want to ask about the first part of the test, being whether someone is remunerated. This could mean different things to different people. Obviously it may mean, generally, that someone receives a salary or compensation for services provided. Does that extend to someone who is receiving remuneration for costs incurred in their volunteer activities? I refer to someone who perhaps is remunerated as a volunteer to cover their travel expenses or for a meal allowance. They may not necessarily be paid an hourly rate as a volunteer ambulance officer, just some of the costs associated with volunteering, and I just mentioned two: travel and meal expenses. Would the director consider those to be remuneration, notwithstanding that they do not receive an hourly salary in ordinary employment circumstances?

Hon SAMANTHA ROWE: I am advised that if it is not clear to the director whether it falls under remuneration, they will need to take legal advice, as they do now. Just to be clear: this part of the bill is already part of the existing legislation; it is not a new amendment.

Hon NICK GOIRAN: One of the questions that was asked with respect to the consultation report was whether those consulted would agree that anyone should be able to put in a complaint, or whether it should be a narrow group of people who are able to complain. At page 14 of the consultation report that the parliamentary secretary tabled earlier, it is indicated that one of the legislative provisions that needs to be considered when finalising this matter is consequential amendments, including to the Mental Health Act 2014. We are at clause 1, the short title of the bill, but when we get to clause 3 and, indeed, to the long title of the bill, we see that there does not appear to be any intention to make any consequential amendments to any other acts. Can the parliamentary secretary confirm for the benefit of the chamber that the government has considered this point and has determined that no consequential amendments are needed?

Hon SAMANTHA ROWE: I am advised no. Consequential amendments will not be needed because the national code currently comes in through the Health and Disability Services (Complaints) Act, so that was considered in the drafting of the current bill.

Hon NICK GOIRAN: I am looking at the blue bill. Is that because of section 3A?

Hon SAMANTHA ROWE: I am advised that section 3A is an existing provision; it is not new. In its drafting of the bill, Parliamentary Counsel's Office obviously decided that the amendments were not necessary.

Hon NICK GOIRAN: To rephrase the question, in the Health and Disability Services Complaints Office's consultation report, it drew to our attention that some consequential amendments may be needed. One example HADSCO gives is the Mental Health Act 2014. I was just clarifying whether the government had considered that and whether there was any necessity to make consequential amendments. The response that came back was that, no, there is no need to make any consequential amendments because it is already captured under the existing Health and Disability Services (Complaints) Act 1995. I understood that to mean that that is because of this existing section 3A, which says that we are to read the HADSCO act along with the Disability Services Act 1993, part 6, and the Mental Health Act 2014, part 19, divisions 3 and 4, and that those involved in the preparation of this have given that due consideration and said that divisions 3 and 4 of part 19 of the Mental Health Act 2014 are sufficient as they currently are, and there is no need to make consequential amendments. I am just seeking clarification that that is the case.

Hon SAMANTHA ROWE: Honourable member, I am advised that, yes, it was considered and the decision was made that it was not necessary.

Hon NICK GOIRAN: As a practical example, the consultation paper then draws the following to our attention —

> The ability for anyone to make a complaint is supported —

I will get to that in a moment because that is another part of the paper. It goes on to say —

> … however where the complaint is about a mental health service, the complainant should not be required to try and resolve a complaint with the service provider in the first instance.

Is that the case under our existing scheme? We are not making any changes when it comes to mental health and we are not making any consequential amendments. Is it the case that if somebody makes a complaint about a mental health service currently in Western Australia, they are not required to try to resolve a complaint with the service provider in the first instance?

Hon SAMANTHA ROWE: I am advised that it is a discretionary provision, so it depends on the situation. It could also depend on whether trauma has been involved. In that case, the complainant would not be asked to resolve the complaint in person with the service provider.

Hon NICK GOIRAN: At the present time, it is discretionary. That is presumably something that the authors of the report picked up on as part of the consultation process, hence they concluded —

> The ability for anyone to make a complaint is supported, however where the complaint is about a mental health service, the complainant should not be required to try and resolve a complaint with the service provider in the first instance.

In other words, clearly a decision has been made not to go down the path of changing it from discretionary to prohibited or excluded. What is the explanation for that? Why are we leaving it as a discretionary matter when it has been identified in the consultation as something that should be expressly excluded as part of the process?

Hon SAMANTHA ROWE: I suppose there are two things with the consultation paper. Suggestions have been made and they have been considered, but not all suggestions were acted on. This particular suggestion was considered unnecessary, given the existing provisions. There was the feeling that there was no requirement to accept that suggestion.

Hon NICK GOIRAN: Do we know how many submitters raised this as a point of concern? The submitters raised this issue for consideration when finalising the policy for implementation. I am reading into it that multiple submitters mentioned it and that it was of sufficient concern that the authors of the report felt it necessary that it be expressly listed. I compare and contrast that with something that I read earlier in the document. It mentioned there were 43 submissions overall, but one of the submissions was excluded from the analysis because it apparently provided minimal information. Evidently, that tells me that the authors of this report have considered things on their merits and in terms of their weight. I read into this that multiple submitters have drawn to the attention of government that it is important that when complaining about a mental health service, that a complainant not be required to resolve a complaint with the service provider in the first instance. Do we have any indication of how many people raised this as a concern?

Hon SAMANTHA ROWE: I am advised that we do not have a breakdown of how many submitters made that suggestion. However, it is felt that nearly everything that was raised is in this consultation report, so it is not necessarily the case that multiple submitters felt this way and that is why it is in there.

Hon NICK GOIRAN: Has this point been expressly put to the Mental Health Commissioner; and, if so, what has been the response?

Hon SAMANTHA ROWE: It has not been put to the Mental Health Commissioner.

Hon NICK GOIRAN: We have a situation in which this bill has gone through a consultation process, which was led by the Health and Disability Services Complaints Office. It prepared a report some four years ago in June 2018. Buried in this report at page 14 is a reference to the potential need to make consequential amendments to the Mental Health Act 2014. The bill before us does not make any consequential amendments to the Mental Health Act. Today, we were told by the government that it has considered this matter, yet we find out now, at half past three on 11 October 2022, that no-one has asked the Mental Health Commissioner. The authors of this report have expressly drawn to the attention of government a concern that a person who has a complaint about a mental health service should not—not may not—be required to try to resolve the complaint with the service provider in the first instance. It does not take Einstein to work out why someone might be concerned about that when it comes to a mental health service and a mental health complaint. The government has said, "No, we've decided not to do that. We're going to leave it as a discretionary matter. We're not going to mandate it" yet there has been no consultation with the Mental Health Commissioner. It begs the question: why not? Why was there consultation with supposedly 43 stakeholders about this matter but when something specific to mental health is raised, "We don't want to talk to the Mental Health Commissioner about that." The shields and silos in government have been put up: "We don't want to talk to each other. Lock the Mental Health Commissioner in his office. Lock the door and make sure we don't find out what the Mental Health Commissioner may have to say about this." I cannot understand why, parliamentary secretary. It is not clear to me; why is that so important to HADSCO? Is HADSCO driving this? Is it HADSCO that is saying, "We absolutely want to make sure that this is a discretionary matter. We don't want to be told how these matters are to be addressed"? At the moment, the situation will remain unchanged. I take it, then, that if a person

has a complaint about a mental health service, they will make a complaint to HADSCO, which will then consider, as a discretionary matter, whether it will require that person to resolve the complaint with the service provider. At this particular point, does HADSCO have policies, procedures or guidelines that specifically deal with mental health complaints about how it would exercise that discretion?

Hon SAMANTHA ROWE: We have to get a bit more information for that question so we will just park that for the moment and come back to it.

Hon NICK GOIRAN: I thank the parliamentary secretary for taking that on notice; that is appreciated.

I will segue to the other pertinent act that one might consider needs amendment. Again, I will direct the parliamentary secretary to section 3A of the blue bill, the Health and Disability Services (Complaints) Act 1995. We see that apart from the specific mention of the Mental Health Act 2014, which we have discussed, there is also reference to part 6 of the Disability Services Act 1993. Is it the position of the government that no consequential amendments are needed to the Disability Services Act?

Hon SAMANTHA ROWE: I am advised that is correct.

Hon NICK GOIRAN: It seems to me that the Health and Disability Services (Complaints) Act 1995, and part 6 of the Disability Services Act 1993 are currently under active review by the government. I believe a statutory review of those two matters is currently underway. Can the parliamentary secretary confirm that that is indeed the case; and, if so, when the review commenced?

Hon SAMANTHA ROWE: I am advised that it is in the very early stages of the process. HADSCO is looking to appoint a consultant to commence the review.

Hon NICK GOIRAN: Okay. It is in the early stages and HADSCO is looking for a consultant, presumably, to undertake the review. I note at page 354 of the budget papers that some $318 000 has been allocated towards this and, indeed, $134 000 is budgeted for the next financial year. There is $318 000 for this year and $134 000 for next year. It is quite an expensive review so whoever is successful in obtaining this consultancy has a big job ahead of them.

When is it expected to be finalised and to what extent will it have an impact on the matters currently before us?

Hon SAMANTHA ROWE: I am advised that it will be finalised in 2024. With regard to the other part of the member's question, the review could potentially pick up the early implementation of the current bill before us.

Hon NICK GOIRAN: I guess that is perhaps one of the benefits.

Hon SAMANTHA ROWE: Sorry, member, but I might need to clarify my answer. No; the answer I have given is correct.

Hon NICK GOIRAN: I am pleased to say that we are back on track. The parliamentary secretary indicated that the statutory review is in its very early stages, HADSCO is looking for a consultant, and the review is expected to be completed sometime in 2024. I guess one of the benefits is that the reviewer will be able to pick up on some of the matters that we are addressing and intending to pass today.

Having dealt with those elements, I refer to question 3, which asked stakeholders whether they agree with the proposed approach of permitting anyone to make a complaint about a breach of the national code by a healthcare worker. I note that a reasonable proportion of individuals—nine—were opposed to that approach. A number of reasons are set out at page 14. One of them is that there will be an inconsistency between who can complain regarding registered and unregistered healthcare workers. Can the parliamentary secretary clarify that? It seems to me that this bill does not pick up on that concern. Perhaps we will start on that point. Once this bill passes, will it be the case that anyone will be able to make a complaint about a breach?

Hon Samantha Rowe: Of the national code?

Hon NICK GOIRAN: Yes.

Hon SAMANTHA ROWE: Yes.

Hon NICK GOIRAN: Will that be as a result of a direct amendment made via this bill, or is that an existing provision?

Hon SAMANTHA ROWE: It will be as a result of an amendment.

Hon NICK GOIRAN: In other words, the concerns of those nine people have been considered by government, but it has chosen a different path? One of those concerns is that there will be an inconsistency between who can complain regarding registered and unregistered healthcare workers. Why would we want to have an inconsistency between who can complain regarding registered and unregistered healthcare workers, which is something that the government is proposing to introduce at this time?

Hon SAMANTHA ROWE: I am advised that all jurisdictions allow anyone to make a complaint of a breach of the national code by unregistered people.

Hon NICK GOIRAN: That is no doubt the case, which is why the question was: does the government agree with the proposed approach of permitting anyone to make a complaint about a breach of the national code by a healthcare worker? Why is it then that nine of the submitters expressed a concern that this will create an inconsistency about who can complain regarding registered and unregistered healthcare workers? Does the government agree that there will be such an inconsistency as a result of this bill?

Hon SAMANTHA ROWE: I am advised that the member is right; we will not be changing the existing provision that relates to registered providers. The legislation will just implement the national code, so there will be inconsistencies.

Hon NICK GOIRAN: Having established that, the question is: Why would we want that? Why would we want any person to be able to make a complaint about an unregistered healthcare worker, accepting that one of the reasons we would want that is that it is what the other jurisdictions are doing? As I understand it, everywhere in Australia, anyone can put in a complaint against an unregistered healthcare worker, but in Western Australia we seem to be retaining a preference that only some people can put in a complaint about a registered healthcare worker. It seems peculiar. It was peculiar enough for at least nine submitters to say, "We don't agree with this; it's going to create an inconsistency." The government agrees there is an inconsistency. It would assist the chamber if we could understand why the government is comfortable with that inconsistency.

Hon SAMANTHA ROWE: We recognise that there is an inconsistency, but we are implementing the national code. I do not think I can take that any further for the member.

Hon MARTIN ALDRIDGE: I have a couple of questions about the grounds for making a complaint under this amended regime. I draw the parliamentary secretary's attention to page 16 of the *Consultation report on the national code of conduct for health care workers in Western Australia*, which addresses the question, "Do you agree with the proposed amendments to the grounds for making a complaint?" This, fortunately, was one of the areas in which we perhaps would say that there was widespread support for the question before survey respondents, with 28 agreeing and three not agreeing. A number of references in the section under "Legislative provisions" make reference to consequential amendments being required, particularly about what matters can be complained about. The Mental Health Act 2014 is given as an example. I listened to the previous exchange with Hon Nick Goiran, who also raised perhaps not unrelated matters about the same piece of legislation. The report says —

> Recommended additions to the grounds for making a complaint: the provider has not complied with the Charter of Mental Health Care Principles as defined in Schedule 1 of the *Mental Health Act 2014*.

On my reading of this bill, we will not amend the Mental Health Act 2014; therefore, we will not make it a code breach by providing a reference to the Charter of Mental Health Care Principles. I am wondering whether the parliamentary secretary can explain the government's decision to not accept the view that was put forward. In respect of the consequential amendments, I am particularly interested in what matters can be complained about in specific reference to the Mental Health Act 2014. Until this point, I had not been focused on the Mental Health Act because I did not have this consultation report, but there is clearly some intersection between HADSCO and the Mental Health Act with respect to conduct and care. I want to try to understand in this case what we will be doing versus what appears to have been some suggestion of what we should do.

Hon SAMANTHA ROWE: I am advised that the suggestions that have been mentioned in the consultation paper are not considered necessary to implement the national code, which is what this legislation will do. It will implement the national code and bring us into line with all other jurisdictions, so those suggestions are not considered necessary at this time.

Hon MARTIN ALDRIDGE: The government is still alive to the issues that have been raised about the Mental Health Act, but the matters have not been considered as part of this bill because they do not give effect to the nationally agreed position.

I did not follow it completely, but I heard an exchange previously with Hon Nick Goiran around a statutory review. Is that with regard to HADSCO?

Hon Nick Goiran: Yes.

Hon MARTIN ALDRIDGE: That is with regard to the Health and Disability Services Complaints Office. Will considering the issues that have been raised be within the scope of that statutory review? We have only the limited number of words on this page. We do not have the detailed submissions; nor do we know who the submitters were because that information appears to be redacted at page 45. Clearly, some concern has been expressed and obviously it was sufficiently important enough to have it listed, in this case, as the first dot point under "Legislative provisions", which says that consequential amendments across relevant legislation will be required. My earlier question was about the Charter of Mental Health Care Principles. Again, I have not left this chamber, as the parliamentary secretary

has not, since this report was tabled, so I have not been able to check, but I assume that this charter exists in connection with the Mental Health Act. If somebody is providing a healthcare service pursuant to the Mental Health Act 2014 and they breach the Charter of Mental Health Care Principles, that may not be a matter that is reportable under this HADSCO regime; is that correct?

Hon SAMANTHA ROWE: I am advised that under section 320(2)(f) of the Mental Health Act, if a person fails to comply with the Charter of Mental Health Care Principles, it is already grounds for complaint to HADSCO, so there was no reason to implement that suggestion.

Hon MARTIN ALDRIDGE: Unfortunately, I do not have the Mental Health Act available to me. Section 320(2)(f) of the Mental Health Act provides for a breach of the charter. I am struggling to understand why HADSCO would have jurisdiction over a complaint by function of section 320(2)(f) of the Mental Health Act. Surely there must be something within the Health and Disability Services (Complaints) Act that gives the director jurisdiction rather than the other way around. I will obviously turn my mind to that when we are not sitting in this place, but if that is the case, the question that follows is: why would it be given weight by HADSCO in the final consultation report? I assume that the matters that are summarised are not an exhaustive list of the 38 submissions; they are ones that have been given weight. Somebody has been selective in identifying ones that have common themes or are matters of significance. I would have thought that if that were the case and it is a non-issue, why would it be listed as a legislative provision for which consideration should be given?

I do not know whether the parliamentary secretary can respond further, but, at this point in time, her response has been that a breach of the Charter of Mental Health Care Principles will be a matter in itself that can be referred to the director under this scheme.

Hon SAMANTHA ROWE: That is correct. I am not sure that I can take it any further.

Hon NICK GOIRAN: Does the Health and Disability Services Complaints Office currently have powers to self-initiate investigations?

Hon SAMANTHA ROWE: No, it does not.

Hon NICK GOIRAN: Will HADSCO have those powers once this bill passes?

Hon SAMANTHA ROWE: I am advised that under proposed section 44A, the director could conduct a director-initiated investigation when a healthcare worker has failed to comply with a code of conduct that applies to the healthcare worker or an offence has been committed under proposed section 52G, which is an interim prohibition order; proposed section 52N, which is a prohibition order; or proposed section 52Q(2), which is an interstate order.

Hon NICK GOIRAN: It looks like the parliamentary secretary is taking us to clause 25, which seems to insert in the legislation for the first time the ability for HADSCO to self-initiate an investigation. Will that be for only breaches of the code or will it cover the field for matters under HADSCO's jurisdiction?

Hon SAMANTHA ROWE: It will cover just the breach of the national code.

Hon NICK GOIRAN: At page 21 of the consultation report that the parliamentary secretary provided to us, one of the legislative provisions regarding question 6 was a suggestion that the own-motion powers be expanded to all other services under HADSCO's jurisdiction. Evidently, the government decided not to proceed with that suggestion. What is the basis for that decision?

Hon SAMANTHA ROWE: It is because we are implementing just the national code.

Hon NICK GOIRAN: Yes, but this paper was doing consultation just with respect to the national code and nevertheless, as part of the consultation process, having consulted with more than 40 stakeholders, there was a suggestion that the own-motion powers be expanded to all other services under HADSCO's jurisdiction. Evidently, the government considered that and said, "No, we don't want to do that; we only want it to be with regard to breaches of the national code." I do not necessarily quibble with that; I think there are some issues with regard to own-motion investigations generally in that power in any event. Nevertheless, that was the decision made by the government. I just wonder why the government decided to not pick up the suggestion in the consultation paper and expand it beyond that, other than, as the parliamentary secretary said, that we are just doing the national code. The national code consultation suggested it go wider than that. Someone has obviously thought that that is not a good idea.

Hon SAMANTHA ROWE: I am advised that this is just one of many suggestions felt to be out of scope for this legislation in implementing the national code.

Hon NICK GOIRAN: Is there any intention on the part of government to expand the own-motion powers for HADSCO?

Hon SAMANTHA ROWE: Not at this time.

Hon NICK GOIRAN: I almost had written down in my notes that that would be the response. With regard to this own-motion power that will come into effect for the first time for HADSCO, what will the time limit be for HADSCO to initiate one of these investigations?

Hon SAMANTHA ROWE: Honourable member, I am advised that there will be no time limit on an investigation, but a prosecution will have to be done within a 12-month period, so it will have to fit within that.

Hon NICK GOIRAN: The consultation paper suggested that the Health and Disability Services Complaints Office have a three-year time limit, which would be consistent with the statute of limitations for medical negligence complaints. Why has a decision been made to deviate from that suggestion, not just immaterially but very significantly—from a three-year limitation period to an unlimited one?

Hon SAMANTHA ROWE: I am advised that other jurisdictions do not have a time limit and we want to have national consistency.

Hon NICK GOIRAN: Is that the case in all other jurisdictions?

Hon SAMANTHA ROWE: To clarify, that is the case in the jurisdictions that have the national code.

Hon NICK GOIRAN: What will be the time limit for an ordinary person to put in a complaint?

Hon SAMANTHA ROWE: I am advised that it will be two years, but that will be discretionary.

Hon NICK GOIRAN: The parliamentary secretary has referred to a 24-month period—that is, two years for an ordinary person to put forward a complaint. In fairness, the decision by government that will be implemented in this bill is consistent with the proposed time frame for the making of a complaint about a breach of the national code. In the consultation paper report tabled earlier by the parliamentary secretary, I note that some 25 submitters agreed with that time frame, albeit it was not unanimous. Some submitters held a different view. I understand that the majority of those who did not support the 24-month time frame felt that it should be a lesser period of 12 months, and one stakeholder said that it should be unlimited. In contrast to that, the government has gone and given HADSCO an unlimited time frame. What is the justification for a consumer—an ordinary person—having only two years to put in a complaint, whereas HADSCO will have an unlimited period?

Hon SAMANTHA ROWE: I am advised that the two years for a person to make a complaint is discretionary; it is not mandatory. There is that discretionary power if it is felt that there is good reason to go beyond the two years. For the director-initiated inquiries, it could be that, historically, a trend of complaints has occurred that might warrant an investigation, and that might well be beyond the two years.

Hon NICK GOIRAN: That is a fair point, parliamentary secretary—I was going to say parliamentary inspector!—but I note that apparently under section 10(1)(e) of the act there is a provision, when read with section 45, for the minister to direct the director to conduct an investigation with such terms of reference as the minister may specify. If the director found that there was a systemic issue, which, as the parliamentary secretary says, dealt with significant historic matters, would it not be better if he or she brought it to the attention of the minister and the minister could then exercise the powers set out in section 45? Is the intention of this bill to retain those ministerial powers to be able to direct those types of investigations?

Hon SAMANTHA ROWE: Yes, it is.

Hon NICK GOIRAN: The parliamentary secretary indicated that there is a 24-month time limit but that it is discretionary. Similar to the question I asked earlier, is there some kind of guidance such as documents, policies or procedures that could guide HADSCO in the exercise of that discretion and the time frame in which complaints could be received or considered?

Hon SAMANTHA ROWE: I might need to take that question on notice, if that is okay. I am advised that it will be based on a case-by-case basis, but we will try to get some further information.

Committee interrupted, pursuant to standing orders.

[Continued on page 4366.]