

WESTERN AUSTRALIA

LEGISLATIVE COUNCIL

AMENDMENTS AND SCHEDULES

Supplementary Notice Paper No. 41
Issue No. 6

TUESDAY, 23 SEPTEMBER 2014

MENTAL HEALTH BILL 2013 [41-2]

When in committee on the *Mental Health Bill 2013*:

Clause 4

Minister for Mental Health: To move –

1/4 Page 4, lines 16 and 17 — To delete “mental health practitioner;” and insert —

other health professional;

Minister for Mental Health: To move –

115/4 Page 5, after line 26 — To insert —

health professional means —

- (a) a medical practitioner; or
- (b) a nurse; or
- (c) an occupational therapist; or
- (d) a psychologist; or
- (e) a social worker; or
- (f) in relation to a person who is of Aboriginal or Torres Strait Islander descent —
 - (i) a health professional listed in paragraphs (a) to (e); or
 - (ii) an Aboriginal or Torres Strait Islander mental health worker;

Minister for Mental Health: To move –

2/4 Page 6, lines 7 to 11 — To delete the lines and insert —

involuntary patient has the meaning given in section 21(1);

involuntary treatment order has the meaning given in section 21(2);

New Clause 8A

Hon Stephen Dawson: To move –

54/NC8A Page 14, after line 2 — To insert —

8A. Advance health directive

- (1) Notwithstanding anything in this Act to the contrary, the scheme of the *Guardianship and Administration Act 1990* relating to advance health directives must be followed in its entirety in order to give them full force and effect.
- (2) A psychiatrist must not act contrary to an advance health directive unless the State Administrative Tribunal has determined that the psychiatrist can do so.
- (3) The State Administrative Tribunal shall have jurisdiction to make a determination in subsection (2) and shall, in exercising this jurisdiction, follow the provisions of the *Guardianship and Administration Act 1990*.

Clause 19

Hon Stephen Dawson: To move –

55/19 Page 20, after line 2 — To insert —

; and

- (d) advising that the person may refuse to consent to the admission or treatment and that, if the person does give consent, the person can withdraw consent at any time; and
- (e) advising that the person may obtain independent legal and medical advice about the admission or treatment before consent is given and that the person may request assistance to obtain that advice; and
- (f) informing the person about any financial advantage that may be gained by any medical practitioner or mental health service in respect of the admission or treatment, except information about the fees and charges payable by or on behalf of the person for the admission or treatment; and
- (g) informing the person about any research relationship between any medical practitioner and any mental health service that may be relevant to the admission or treatment.

Clause 20

Minister for Mental Health: To move –

116/20 Page 20, line 22 — To delete “medical practitioner or other”.

Clause 25**Hon Stephen Dawson:** To move –

123/15 Page 23, lines 1 and 2 — To delete the lines.

Hon Stephen Dawson: To move –

56/25 Page 23, lines 1 and 2 — To delete “harm to the person or to another person” and insert —

financial harm to the person

Hon Stephen Dawson: To move –

124/25 Page 23, lines 20 and 21 — To delete “harm to the person or to another person” and insert —

financial harm to the person

Clause 28**Minister for Mental Health:** To move –

3/28 Page 25, line 30 — To delete “referral” and insert —

order

Minister for Mental Health: To move –

4/28 Page 25, line 31 — To delete “, because of the person’s mental or physical condition,”.

Hon Stephen Dawson: To move –

57/28 Page 25, line 31 — To delete “or physical”.

Hon Stephen Dawson: To move –

121/28 Page 26, line 10 — To insert after “than” —

72 hours.

Hon Stephen Dawson: To move –

122/28 Page 26, lines 11 to 14 — To delete the lines.

Minister for Mental Health: To move –

5/28 Page 26, lines 19 and 20 — To delete “, because of the person’s mental or physical condition,”.

Minister for Mental Health: To move –

6/28 Page 27, lines 10 and 11 — To delete “the person’s psychiatrist” and insert —

a health professional who is currently providing the person with treatment

Clause 29**Minister for Mental Health:** To move –

7/29 Page 28, line 6 — To delete “because of the person’s mental or physical condition,”.

Clause 34**Minister for Mental Health:** To move –

8/34 Page 32, line 7 — To delete “the inpatient’s psychiatrist” and insert —

a health professional who is currently providing the inpatient with treatment

Clause 42**Hon Stephen Dawson:** To move –

58/42 Page 36, after line 21 — To insert —

(2A) Any information provided to the practitioner under subsection (2) must be notified to the Chief Mental Health Advocate.

Clause 48**Minister for Mental Health:** To move –

117/48 Page 40, lines 2 to 14 — To delete the lines.

Minister for Mental Health: To move –

118/48 Page 41, line 1 — To delete “prescribed”.

Clause 52**Minister for Mental Health:** To move –

9/52 Page 42, line 21 — To delete “the person’s psychiatrist” and insert —

a health professional who is currently providing the person with treatment

Clause 53**Minister for Mental Health:** To move –

10/53 Page 43, line 17 — To delete “the person’s psychiatrist” and insert —

a health professional who is currently providing the person with treatment

Clause 58**Minister for Mental Health:** To move –

11/58 Page 47, line 9 — To delete “the person’s psychiatrist” and insert —

a health professional who is currently providing the person with treatment

Clause 59**Minister for Mental Health:** To move –

12/59 Page 48, line 20 — To delete “the person’s psychiatrist” and insert —

a health professional who is currently providing the person with treatment

Clause 62**Minister for Mental Health:** To move –

13/62 Page 50, lines 24 and 25 — To delete “, because of the person’s mental or physical condition,”.

Minister for Mental Health: To move –

14/62 Page 51, lines 6 and 7 — To delete “, because of the person’s mental or physical condition,”.

Minister for Mental Health: To move –

15/62 Page 51, line 25 — To delete “the person’s psychiatrist” and insert —

a health professional who is currently providing the person with treatment

Clause 63**Minister for Mental Health:** To move –

16/63 Page 52, line 16 — To delete “because of the person’s mental or physical condition,”.

Clause 70**Minister for Mental Health:** To move –

17/70 Page 56, line 14 — To delete “the person’s psychiatrist” and insert —

a health professional who is currently providing the person with treatment

Clause 79**Minister for Mental Health:** To move –

119/79 Page 60, lines 17 to 29 — To delete the lines.

Minister for Mental Health: To move –

120/79 Page 61, line 14 — To delete “prescribed”.

Clause 126**Minister for Mental Health:** To move –

18/126 Page 95, lines 22 to 28 — To delete the lines and insert —

- (c) the supervising psychiatrist reasonably believes that, despite the steps that have been taken, the non-compliance is continuing and that, if the non-compliance continues, there is —
 - (i) a significant risk to the health or safety of the involuntary community patient or to the safety of another person; or
 - (ii) a significant risk of serious harm to the involuntary community patient or to another person; or
 - (iii) a significant risk of the involuntary community patient suffering serious physical or mental deterioration.

Clause 129**Minister for Mental Health:** To move –**19/129** Page 98, after line 4 — To insert —

- (5) The making of a transport order under subsection (2) is an event to which Part 9 applies and the practitioner who makes the order is the person responsible under that Part for notification of that event.

Clause 133**Minister for Mental Health:** To move –**20/133** Page 102, lines 3 and 4 — To delete “because of the involuntary community patient’s mental or physical condition,”.**Clause 139****Minister for Mental Health:** To move –**125/139** Page 104, lines 21 and 22 — To delete “nominated person, carer or close family member” and insert —

carer, close family member or other personal support person

Clause 140**Minister for Mental Health:** To move –**126/140** Page 105, line 4 — To delete “nominated person, carer or close family member” and insert —

carer, close family member or other personal support person

Minister for Mental Health: To move –**127/140** Page 105, line 5 — To delete “nominated person, carer or close family member” and insert —

carer, close family member or other personal support person

Clause 142**Minister for Mental Health:** To move –**128/142** Page 106, line 2 — To delete “nominated person, carer or close family member” and insert —

carer, close family member or other personal support person

Minister for Mental Health: To move –**129/142** Page 106, line 9 — To delete “nominated person, carer or close family member” and insert —

carer, close family member or other personal support person

Minister for Mental Health: To move –

- 130/142** Page 106, line 11 — To delete “nominated person, carer or close family member” and insert —
carer, close family member or other personal support person

Minister for Mental Health: To move –

- 131/142** Page 106, line 15 — To delete “nominated person, carer or close family member” and insert —
carer, close family member or other personal support person

Minister for Mental Health: To move –

- 132/142** Page 106, line 18 — To delete “nominated person, carer or close family member” and insert —
carer, close family member or other personal support person

Clause 143

Minister for Mental Health: To move –

- 133/143** Page 106, line 29 — To delete “nominated person, carer or close family member” and insert —
carer, close family member or other personal support person

Minister for Mental Health: To move –

- 134/143** Page 106, lines 30 and 31 — To delete “nominated person, carer or close family member” and
insert —
carer, close family member or other personal support person

Minister for Mental Health: To move –

- 135/143** Page 106, lines 33 and 34 — To delete “nominated person, carer or close family member” and
insert —
carer, close family member or other personal support person

Minister for Mental Health: To move –

- 136/143** Page 107, line 3 — To delete “nominated person, carer or close family member” and insert —
carer, close family member or other personal support person

Clause 144**Minister for Mental Health:** To move –**137/144** Page 107, lines 17 and 18 — To delete “nominated person, carer or close family member” and insert —

carer, close family member or other personal support person

Minister for Mental Health: To move –**138/144** Page 107, line 23 — To delete “nominated person, carer or close family member” and insert —

carer, close family member or other personal support person

Minister for Mental Health: To move –**139/144** Page 107, line 26 — To delete “nominated person, carer or close family member” and insert —

carer, close family member or other personal support person

Minister for Mental Health: To move –**140/144** Page 107, lines 28 and 29 — To delete “nominated person, carer or close family member” and insert —

carer, close family member or other personal support person

Clause 145**Hon Stephen Dawson:** To move –**59/145** Page 108, after line 31 — To insert —

(aa) the Chief Psychiatrist;

Clause 148**Hon Stephen Dawson:** To move –**60/148** Page 111, after line 29 — To insert —(aa) give a copy to the Chief Psychiatrist and the Chief Mental Health Advocate;
and**Clause 154****Hon Stephen Dawson:** To move –**61/154** Page 115, after line 22 — To insert —

(aa) give a copy to the Chief Mental Health Advocate; and

New Clause 155A**Hon Stephen Dawson:** To move –

62/NC155A Page 116, after line 9 — To insert —

155A. Person not to be detained for more than 96 hours

Notwithstanding anything in this Act to the contrary, the sum of —

- (a) the periods a person is detained pursuant to all orders made under section 28; and
- (b) the periods a person is detained pursuant to all transport orders made under this Act (including any extensions thereto),

must not exceed 96 hours.

Clause 156**Hon Stephen Dawson:** To move –

63/156 Page 117, after line 24 — To insert —

- (aa) must, as soon as practicable after apprehending a person under subsection (1), notify the Chief Mental Health Advocate of such action; and

Clause 162**Hon Stephen Dawson:** To move –

64/162 Page 121, after line 19 — To insert —

- (3) A police officer or authorised person who searches a person under subsection (2)(a), or seizes any article under subsection (2)(b), must, as soon as practicable after such search or seizure, notify the Chief Mental Health Advocate of such action.

Clause 194**Hon Stephen Dawson:** To move –

65/194 Page 145, line 15 — To delete “14” and insert —

16

Clause 207**Hon Stephen Dawson:** To move –

66/207 Page 153, lines 17 and 18 — To delete “child under 16 years of age” and insert —

person under 18 years of age

Clause 212

Minister for Mental Health: To move –

21/212 Page 155, after line 9 — To insert —

- (2) A person is not secluded merely because the person is alone in a room or area that the person is unable to leave because of frailty, illness or mental or physical disability.

Clause 224

Hon Stephen Dawson: To move –

67/224 Page 164, after line 6 — To insert —

- (aa) the Chief Mental Health Advocate; and

Clause 227

Minister for Mental Health: To move –

22/227 Page 165, after line 17 — To insert —

- (2A) A person is not being physically restrained merely because the person is being provided with the physical support or assistance reasonably necessary —
 - (a) to enable the person to carry out daily living activities; or
 - (b) to redirect the person because the person is disoriented.

Clause 228

Hon Stephen Dawson: To move –

68/228 Page 166, after line 16 — To insert —

- (c) bodily restraint should be regarded as a treatment of last resort.

Clause 240

Hon Stephen Dawson: To move –

69/240 Page 176, after line 31 — To insert —

- (aa) the Chief Mental Health Advocate; and

Clause 241**Minister for Mental Health:** To move –**141/241** Page 178, lines 16 to 20 — To delete the lines and insert —

- (2) The person in charge of the hospital must ensure that a medical practitioner physically attends on the person, for the purpose of examining the person to assess the person’s physical condition, as soon as practicable and, in any event, within 12 hours after the time when the person is admitted or received, and at reasonable intervals after that initial attendance, until the first of these things occurs —
- (a) the person is examined by a medical practitioner;
 - (b) if the person is a voluntary inpatient —
 - (i) the person refuses to consent to being examined by a medical practitioner; or
 - (ii) if the person does not have the capacity to consent to being examined by a medical practitioner — the person who is authorised by law to consent to the provision of treatment to the person refuses to consent to the person being examined by a medical practitioner;
 - (c) the person is released or discharged by or otherwise leaves the hospital.

Hon Stephen Dawson: To move –**70/241** Page 178, line 20 — To insert after “condition” —

and the medical practitioner must contact all medical practitioners who are currently treating the admitted person to discuss the physical and mental health needs of the patient.

Minister for Mental Health: To move –**142/241** Page 178, lines 21 to 23 — To delete the lines and insert —

- (3) For the purpose of assessing under this section the physical condition of a person referred to in subsection (1)(a)(ii) or (iii) or (b), these things may be done without consent —

Minister for Mental Health: To move –**143/241** Page 178, lines 27 and 28 — To delete “purposes of subsection (2)” and insert —

purpose of assessing under this section the person’s physical condition

New Clause 246A**Hon Stephen Dawson:** To move –

71/NC246 Page 182, after line 31 — To insert —

246A. Psychiatrist to notify State Administrative Tribunal

A psychiatrist who makes an involuntary treatment order must notify the State Administrative Tribunal to appoint a guardian for the limited purpose of arranging legal representation for the patient as necessary.

Clause 248**Minister for Mental Health:** To move –

144/248 Page 183, line 25 — To delete “that” and insert —

that, as soon as practicable after the refusal,

Clause 253**Minister for Mental Health:** To move –

23/253 Page 185, line 24 — To delete “\$15 000” and insert —

\$24 000

Clause 254**Minister for Mental Health:** To move –

145/254 Page 186, before line 1 — To insert —

- (b) unlawful sexual contact with the person by a person who is not a staff member of a mental health service that occurs at a hospital; or

Clause 262**Hon Stephen Dawson:** To move –

72/262 Page 190, line 21 to page 191, line 2 — To delete the lines and insert —

- (3) A psychiatrist cannot make an order under subsection (1) prohibiting, or limiting the extent of, a patient’s right under sections 261(3)(c) or (d).

New Clause 303A**Hon Stephen Dawson:** To move –

73/NC303 Page 215, after line 5 — To insert —

303A. Off-label treatment of a child

- (1) For the purposes of this section —
off-label treatment means treatment contrary to the manufacturer’s prescribing information as approved by the Therapeutic Goods Authority.
- (2) A parent has a right to veto the use of off-label treatment of his or her child, unless it has been determined by the Mental Health Tribunal that the parent is unfit to have the primary responsibility for the care and welfare of the child.
- (3) Any determination under subsection (2) must be reported to the Mental Health Advocate.
- (4) Any off-label treatment of a child must be reported to the Chief Psychiatrist.
- (5) This section applies notwithstanding anything to the contrary in this Act.

Clause 305**Hon Stephen Dawson:** To move –

74/305 Page 218, after line 2 — To insert —

or

- (iii) bodies/individuals undertaking medical and epidemiological research; or
- (iv) bodies/individuals undertaking apprehension and seizure services; or
- (v) welfare services/individuals contracted to provide services to the mental health service;

Minister for Mental Health: To move –

146/305 Page 218, after line 2 — To insert —

- (iii) the carrying out of medical or epidemiological research relating to mental illness;

Minister for Mental Health: To move –

147/305 Page 218, after line 10 — To insert —

provide, in relation to a mental health service, includes to carry out;**Clause 316****Hon Stephen Dawson:** To move –

75/316 Page 226, lines 9 and 10 — To delete “is not a relative of the complainant”.

Clause 317**Minister for Mental Health:** To move –**24/317** Page 226, line 22 — To delete “who is” and insert —

and is

25/317 Page 226, after line 24 — To insert —

- (e) a person who is being paid through a funding arrangement with government to provide free advocacy services and is representing a person who has, or may have, a mental illness or a carer of a person who has, or may have, a mental illness.

Clause 320**Minister for Mental Health:** To move –**150/320** Page 228, line 18 — To insert after “by” —

delaying,

Clause 324**Hon Stephen Dawson:** To move –**76/324** Page 230, line 11 — To insert after “the complaint” —

without duress

Clause 328**Minister for Mental Health:** To move –**26/328** Page 234, lines 13 and 14 — To delete the lines.**Clause 337****Minister for Mental Health:** To move –**27/337** Page 243, line 29 — To delete the line and insert —

so many of those people as the Director considers appropriate.

Clause 360**Minister for Mental Health:** To move –**28/360** Page 262, line 29 — To delete “section 249(1)(a).” and insert —

section 249(1)(a) or (b) or (3).

Minister for Mental Health: To move –

29/360 Page 263, lines 4 and 5 — To delete “section 249(1)(a); and” and insert —
section 249(1)(a) or (b) or (3), as the case requires; and

Clause 361

Minister for Mental Health: To move –

30/361 Page 263, line 19 — To delete “section 249(1)(a); and” and insert —
section 249(1)(a) or (b) or (3); and

Hon Stephen Dawson: To move –

77/379 Page 273, lines 7 and 8 — To delete “direction or declaration” and insert —
direction, declaration or recommendation

Clause 386

Hon Stephen Dawson: To move –

78/386 Page 276, lines 21 to 24 — To delete the lines.

Hon Stephen Dawson: To move –

79/386 Page 277, after line 9 — To insert —

and

- (c) there is no new relevant evidence or change in the circumstances regarding the patient’s detention.

Clause 387

Hon Stephen Dawson: To move –

80/387 Page 278, lines 24 to 27 — To delete the lines.

Clause 393

Minister for Mental Health: To move –

31/393 Page 282, lines 19 to 22 — To delete the lines and insert —

- (b) if the proceeding relates to an application made under section 390 and the applicant is not the involuntary patient — the applicant; and

Clause 395**Hon Stephen Dawson:** To move –

81/395 Page 284, lines 5 to 7 — To delete the lines and insert —

- (3) The Tribunal may make an order to give a direction under subsection (1) in relation to an involuntary patient’s treatment, support or discharge plan, and may make —

Clause 397**Minister for Mental Health:** To move –32/397 Page 284, line 27 — To delete “*order*) —” and insert —*order*) that is or was in force —**Clause 398****Minister for Mental Health:** To move –

148/398 Page 285, line 5 — To delete “section 400” and insert —

section 400(1)

Minister for Mental Health: To move –

33/398 Page 285, line 6 — To insert after “order is” —

or was

Hon Stephen Dawson: To move –

82/398 Page 285, line 6 — To insert after “order” —

, referral or transport order

Clause 400**Hon Stephen Dawson:** To move –

83/400 Page 286, line 24 — To delete the line and insert —

- (a) the patient (whether a voluntary patient or an involuntary patient);
 (aa) a legal practitioner representing the patient;

Minister for Mental Health: To move –

34/400 Page 286, line 24 — To delete “patient;” and insert —

patient or the person who was the subject of the treatment order;

Minister for Mental Health: To move –

35/400 Page 286, line 27 — To delete “patient;” and insert —

patient or of the person who was the subject of the treatment order;

Minister for Mental Health: To move –

36/400 Page 286, after line 30 — To insert —

- (2) An application cannot be made under section 398(1) in respect of a treatment order that ceased to be in force more than 6 months ago unless, in the Tribunal’s opinion, the applicant shows good reason for the delay.

New Clause 400A

Minister for Mental Health: To move –

37/NC400A Page 286, after line 30 — To insert —

400A. Parties to proceeding

The parties to a proceeding under this Division are —

- (a) the involuntary patient or the person who was the subject of the treatment order; and
- (b) if the proceeding relates to an application made under section 398(1) and the applicant is not the involuntary patient or the person who was the subject of the treatment order — the applicant.

Clause 401

Minister for Mental Health: To move –

38/401 Page 287, line 3 — To insert after “to be” —

or to have been

Minister for Mental Health: To move –

39/401 Page 287, line 4 — To insert after “order is” —

or was

Minister for Mental Health: To move –

40/401 Page 287, line 5 — To insert after “been” —

or was

Minister for Mental Health: To move –
41/401 Page 287, line 14 — To insert after “been” —

or were

New Clause 401A

Minister for Mental Health: To move –
42/NC401A Page 287, after line 15 — To insert —

401A. Discretion not to decide on validity of treatment order no longer in force

- (1) In this section —
question of law includes a question of mixed fact and law.
- (2) The Tribunal is not required to decide whether a treatment order that was in force was valid or invalid, but may do so if satisfied that the matter raises —
 - (a) a question of law; or
 - (b) a matter of public interest.

Clause 404

Minister for Mental Health: To move –
43/404 Page 288, lines 14 to 16 — To delete the lines and insert —

- (b) if the applicant is not the long-term voluntary inpatient — the applicant; and

Clause 406

Hon Stephen Dawson: To move –
84/406 Page 289, lines 15 to 17 — To delete the lines and insert —

On completing a review under this Division in respect of a long-term voluntary inpatient, the Tribunal may make any orders, and give any directions, the Tribunal considers appropriate. The Tribunal may also make an order, direction or recommendation in relation to any of the following –

Clause 409

Minister for Mental Health: To move –
44/409 Page 290, line 31 — To delete the line and insert —

- (b) the applicant; and

Clause 416**Minister for Mental Health:** To move –**45/416** Page 294, line 9 — To delete the line and insert —

(b) the applicant; and

Clause 420**Minister for Mental Health:** To move –**149/420** Page 296, after line 5 — To insert —

(c) to ensure that a treatment, support and discharge plan for a patient is prepared, reviewed or revised;

Clause 426**Minister for Mental Health:** To move –**46/426** Page 298, lines 26 and 27 — To delete the lines.**Clause 431****Minister for Mental Health:** To move –**47/431** Page 300, lines 16 to 18 — To delete the lines and insert —

(b) if the applicant is not the person who made the nomination — the applicant; and

Clause 433**Minister for Mental Health:** To move –**48/433** Page 301, lines 10 and 11 — To delete the lines and insert —

(b) if the applicant is not the person whose rights it is alleged are affected — the applicant; and

Clause 444**Minister for Mental Health:** To move –**151/444** Page 303, line 28 — To delete “section 447(1)(a) or (b)” and insert —

section 447(1)(aa) or (b)

Minister for Mental Health: To move –**152/444** Page 304, line 5 — To delete “section 447(1)(a) or (b)” and insert —

section 447(1)(aa) or (b)

Hon Stephen Dawson: To move –

85/444 Page 304, lines 10 to 19 — To delete the lines and insert —

- (a) the child’s representative under section 449(1); and
- (b) if the child’s parent or guardian is not a party — the child’s parent or guardian; and

Hon Stephen Dawson: To move –

86/444 Page 304, lines 21 to 26 — To delete the lines and insert —

- (d) any carer, close family member or other personal support person of the child —
 - (i) who is not a party; and
 - (ii) whose name and contact details are provided to the Tribunal;

Clause 445

Minister for Mental Health: To move –

153/445 Page 305, line 13 — To delete “section 447(1)(a) or (b)” and insert —

section 447(1)(aa) or (b)

Minister for Mental Health: To move –

154/445 Page 305, line 18 — To delete “section 447(1)(a) or (b)” and insert —

section 447(1)(aa) or (b)

Hon Stephen Dawson: To move –

87/445 Page 305, lines 23 to 32 — To delete the lines and insert —

- (a) the child’s representative under section 449(1); and
- (b) if the child’s parent or guardian is not a party — the child’s parent or guardian; and

Hon Stephen Dawson: To move –

88/445 Page 306, lines 2 to 7 — To delete the lines and insert —

- (d) any carer, close family member or other personal support person of the child —
 - (i) who is not a party; and
 - (ii) whose name and contact details are provided to the Tribunal.

Clause 447**Hon Stephen Dawson:** To move –**89/447** Page 307, lines 4 and 5 — To delete the lines and insert —

- (a) may appear in person; or
 - (aa) may be represented by —
 - (i) a legal practitioner; or
 - (ii) any other person
- or

Minister for Mental Health: To move –**155/447** Page 307, lines 4 and 5 — To delete the lines and insert —

- (a) may appear in person; or
 - (aa) may be represented by any of these people —
 - (i) a legal practitioner;
 - (ii) a mental health advocate;
 - (iii) any person who, in the Tribunal’s opinion, is willing and able to represent the adult’s interests;
- or

Minister for Mental Health: To move –**156/447** Page 307, line 6 — To delete “another person” and insert —

a person listed in paragraph (aa)

Minister for Mental Health: To move –**157/447** Page 307, line 9 — To delete “may” and insert —

must in the case of the party who is the person concerned in the proceeding, and may in the case of any other party,

Hon Stephen Dawson: To move –**90/447** Page 307, after line 12 — To insert

- (2A) The Tribunal may specify in an order made under subsection (2) that the party must be represented in the proceeding by a legal practitioner.

New Clause 447A**Hon Stephen Dawson:** To move –

91/NC447 Page 307, after line 19 — To insert —

447A. Party is a child

- (1) In a proceeding, a party who is a child must be represented by a legal practitioner.
- (2) Even though a party who is a child is represented in the proceeding, the child is entitled to express in person his or her views about any matter arising in the course of the proceeding that may affect the child, whether or not the child has sufficient maturity and understanding to make reasonable decisions about matters relating to himself or herself.

Clause 448**Minister for Mental Health:** To move –

158/448 Page 307, lines 28 to 30 — To delete the lines and insert —

- (iii) the child’s parent or guardian;

Minister for Mental Health: To move –

159/448 Page 308, line 4 — To delete “another person” and insert —

a person listed in paragraph (b)

Minister for Mental Health: To move –

160/448 Page 308, line 7 — To delete “may” and insert —

must in the case of the party who is the person concerned in the proceeding, and may in the case of any other party,

Clause 449**Minister for Mental Health:** To move –

161/449 Page 308, lines 25 to 27 — To delete the lines and insert —

- (c) the child’s parent or guardian;

Clause 450**Hon Stephen Dawson:** To move –

92/450 Page 309, lines 4 to 6 — To delete the lines and insert —

The Tribunal —

- (a) must make arrangements for the party to be represented at a hearing if the party is the person concerned in the proceeding; and
- (b) may make such an arrangement for any other party.

Minister for Mental Health: To move –

162/450 Page 309, line 5 — To delete “at a hearing” and insert —

in a proceeding

New Clause 451A

Hon Stephen Dawson: To move –

93/NC451 Page 309, after line 13 — To insert —

451A. Access to the Tribunal’s records

For the purpose of conducting a proceeding, a party appearing in person or a party’s representative under section 447, 448 or 449 is entitled to inspect, and to take a copy of the whole or any part of, the Tribunal’s records relating to the proceedings —

- (a) at any time the office of the Tribunal is open for business; and
- (b) at any other time by arrangement with the registrar.

Clause 454

Hon Stephen Dawson: To move –

94/454 Page 311, after line 15 — To insert —

- (3A) If the Tribunal makes an order under subsection (2)(b) excluding the person concerned in the proceeding or the person concerned’s representative under section 447, 448 or 449 from a hearing or a part of a hearing, the Tribunal must make arrangements for the person concerned to be represented at the hearing or part of the hearing.

Minister for Mental Health: To move –

163/454 Page 311, after line 15 — To insert —

- (3A) The Tribunal must make arrangements for the person concerned in a proceeding to be represented at a hearing or a part of a hearing if —
 - (a) the person concerned is excluded by an order made under subsection (2)(b) from the hearing or part of the hearing and is appearing in person in the proceeding; or
 - (b) the person concerned’s representative in the proceeding is excluded by an order made under subsection (2)(b) from the hearing or part of the hearing.

Minister for Mental Health: To move –

164/454 Page 311, line 16 — To delete the line.

Clause 456**Minister for Mental Health:** To move –**165/456** Page 312, line 3 — To insert after “person” (2nd occurrence) —

chosen

New Clause 469A**Hon Stephen Dawson:** To move –**95/NC469** Page 320, after line 28 — To insert —**469A. Publication of the Tribunal’s decisions**

- (1) The Tribunal may publish all or any of its decisions in any form (including electronic form) that the Tribunal considers appropriate.
- (2) A decision may be published under subsection (1) with or without the reasons for it.
- (3) All personal information must be removed from a decision before it is published under subsection (1).

Clause 471**Hon Stephen Dawson:** To move –**96/471** Page 321, after line 27 — To insert —

- (iii) the period within which a proceeding must be brought before the Tribunal; and
- (iv) the period within which a document received under this Act by the Tribunal must be dealt with; and
- (v) the period within which a document must be given under this Act by the Tribunal;

New Clause 473A**Hon Stephen Dawson:** To move –**97/NC473** Page 322, after line 24 — To insert —**473A. Qualifications of the President**

The President must be either:

- (a) a judge or former judge of the Supreme, District or Family Court of Western Australia; or
- (b) an Australian lawyer as defined by the *Legal Profession Act 2008* and have at least 8 years legal experience.

New Clause 473B**Hon Stephen Dawson:** To move –**98/NC473** Page 322, after line 24 — To insert —**473B. General function of President**

The President is responsible for the administration of the Tribunal and is to be assisted by the Registrar appointed under section 481 and Tribunal staff appointed under section 484.

New Clause 478A**Hon Stephen Dawson:** To move –**99/NC478** Page 324, after line 21 — To insert —**478A. Code of Conduct**

- (1) The President of the Tribunal must make and maintain a written code of conduct applying to each member.
- (2) To the extent that the President of the Tribunal considers appropriate, the President must consult with these people about what the code of conduct should contain —
 - (a) members;
 - (b) the registrar and the registry staff referred to in section 484;
 - (c) the Public Sector Commissioner;
 - (d) other persons the President considers appropriate.
- (3) A member must comply with the code of conduct.

New Clause 478B**Hon Stephen Dawson:** To move –**100/NC478** Page 324, after line 21 — To insert —**478B. Suspending member from office**

- (1) The Minister may suspend a person from the office of member if the Minister believes —
 - (a) that there may be a reason under section 478 to remove the person from the office of member; or
 - (b) that the person is the subject of a matter before the Tribunal otherwise than as a member.
- (2) A person suspended from office under subsection (1) remains entitled to the emoluments of the office while suspended.

Clause 481

Hon Stephen Dawson: To move –

- 101/481** Page 326, lines 18 and 19 — To delete “who is appointed” and insert —
appointed by the President

Clause 482

Hon Stephen Dawson: To move –

- 102/482** Page 326, line 21 — To delete the line and insert —

Without limiting the general function of the Registrar to assist the President, the functions of the Registrar are —

Hon Stephen Dawson: To move –

- 103/482** Page 326, line 27 — To delete the line and insert —

or under rules made under section 470; and

Hon Stephen Dawson: To move –

- 104/482** Page 326, line 29 — To delete “as soon as practicable; and” and insert —

within the period specified under rules made under section 470; and

Hon Stephen Dawson: To move –

- 105/482** Page 327, line 3 — To delete “as soon as practicable; and” and insert —

within the period specified under rules made under section 470; and

Hon Stephen Dawson: To move –

- 106/482** Page 327, line 6 — To delete the line and insert —

Act, including within the period specified under rules made under section 470; and

Clause 484

Hon Stephen Dawson: To move –

- 107/484** Page 327, line 21 — To delete the line and insert —

to assist the President and Registrar in performing their functions under

Clause 491**Hon Stephen Dawson:** To move –**108/491** Page 331, line 8 — To delete “direction or declaration” and insert —

direction, declaration or recommendation

Clause 518**Minister for Mental Health:** To move –**49/518** Page 346, after line 20 — To insert —

- (4A) The Chief Psychiatrist cannot give the psychiatrist a direction under subsection (4)(b) to provide the patient with specified treatment unless the Chief Psychiatrist gives the psychiatrist a reasonable opportunity to withdraw from being the patient’s psychiatrist.

Clause 535**Hon Stephen Dawson:** To move –**109/535** Page 355, lines 16 to 18 — To delete the lines and insert —

- (1) The Chief Psychiatrist may delegate to a named psychiatrist referred to in subsection (1A) any power or duty of the Chief Psychiatrist under this Act other than this provision and section 544(2) or under another written law.
- (1A) For subsection (1), the named psychiatrist —
- (a) must be a psychiatrist under paragraph (a) of the definition of *psychiatrist* in section 4; and
 - (b) cannot be a staff member of, or be involved in, the management of a mental health service.

Hon Stephen Dawson: To move –**110/535** Page 355, line 20 — To delete “Psychiatrist.” and insert —Psychiatrist and must be published in the *Gazette*.**Hon Stephen Dawson:** To move –**111/535** Page 355, after line 22— To insert —

- (3A) A person to whom a power or duty is delegated under this section must exercise or perform that power or duty in accordance with the standards published under section 545(2)(f) for that purpose.

Hon Stephen Dawson: To move –**112/535** Page 355, line 25 — To insert after “with” —

the standards referred to in subsection (3A) and

Clause 545**Hon Stephen Dawson:** To move –**113/545** Page 361, lines 13 to 15 — To delete the lines and insert —

- (2) The Chief Psychiatrist must publish standards for each of these purposes —
- (a) the treatment and care to be provided by mental health services to the persons specified in section 513(1);
 - (b) the exercise of apprehension powers under Part 11 Division 1;
 - (c) the exercise of search and seizure powers under Part 11 Division 2;
 - (d) the transport of persons under transport orders;
 - (e) the installation, maintenance and use of closed circuit television to monitor the treatment, care and management by staff members of mental health services of patients who are admitted by, and persons who are detained under this Act at, those mental health services;
 - (f) the exercise or performance by a person of a power or duty of the Chief Psychiatrist that is delegated to the person under section 535.
- (2A) In preparing standards for publication under subsection (2)(a) to (d), the Chief Psychiatrist must have regard to —
- (a) any standard or other document prescribed by the regulations for that purpose; and
 - (b) the needs of persons who are of Aboriginal or Torres Strait Islander descent; and
 - (c) the needs of persons from culturally and linguistically diverse backgrounds.
- (2B) For subsection (2A)(a), the regulations may prescribe a standard or other document as in force at a particular time or as in force from time to time.
- (2C) Without limiting the duty under subsection (2) to publish standards from time to time as occasion requires, the Chief Psychiatrist must publish standards under subsection (2)(a) to (d) within 12 months after the day on which Part 27 comes into operation.

Clause 575**Minister for Mental Health:** To move –**50/575** Page 381, line 26 — To delete “332(7),” and insert —

332(7) and (8),

New Clause 580A

Hon Stephen Dawson: To move –

114/NC580A Page 386, after line 15 — To insert —

580A. Compensation for unlawful detention

- (1) This section applies if a person is detained contrary to this Act.
- (2) The minimum amount of damages that the person is entitled to be awarded for the unlawful detention referred to in subsection (1) is \$1 000 for each day or part of a day that the person is unlawfully detained.
- (3) A court cannot award the person damages contrary to subsection (2).

Clause 582

Minister for Mental Health: To move –

51/582 Page 387, line 12 — To insert after “charge” —

in good faith

Minister for Mental Health: To move –

52/582 Page 387, line 22 — To delete “section 227(2) and (3),” and insert —

section 227(2) to (6),

Schedule 2

Minister for Mental Health: To move –

53/S2 Page 393, in the Table, after row 10 — To insert —

s. 129(5)	The making of a transport order under s. 129(2)	The practitioner who makes the order
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