

MENTAL HEALTH BILL 2013

Committee

Resumed from 23 September. The Deputy Chair of Committees (Hon Liz Behjat) in the chair; Hon Helen Morton (Minister for Mental Health) in charge of the bill.

Clause 447: Party is an adult —

Progress was reported on the following amendment moved by Hon Helen Morton —

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

Hon SALLY TALBOT: I will just summarise where I think we got to according to my recollection, which was that although the opposition welcomes the minister's amendment, once we started to examine it in more detail, there appeared to be some unanswered questions. We were just teasing out the matter of the grounds for the tribunal forming the opinion that a person was not able to represent the person's interests. I think the minister at one stage said that a child would not be acceptable, and then she said that perhaps a child would be acceptable, for example, if they were providing a translation. We then talked about who could see the medical records of the patient. I asked the minister whether the fact that a person who had been nominated by a patient to represent them in front of the tribunal and who was not eligible to see the record would be a ground for the tribunal determining that that nominated person was not able to represent that person's interests. I think that is where we left it last night.

Hon HELEN MORTON: Hon Sally Talbot asked whether the tribunal, in considering whether a person is willing and able to represent a person's interests, would have regard to the person's capacity to view the restricted information. Although this would be determined on a case-by-case basis, the representative's capacity to view all relevant information may be a relevant factor. If a matter involves restricted information that is likely to feature in the tribunal's deliberations, the tribunal may determine that a person who cannot access that information is unable to adequately represent the person's interests. If this were to occur, the tribunal could make an order that the person be represented and ensure that the representative is a person who can access the relevant information—namely, a lawyer or a mental health advocate. I note that in the absence of the amendment I put forward, the tribunal would have no capacity to even consider this question. The current drafting creates an absolute right to be represented by another person irrespective of that person's capacity to perform the role effectively.

Hon SALLY TALBOT: I have one final question. Can the minister confirm that an advocate will always be able to access the medical records?

Hon HELEN MORTON: It is covered in clause 360, so the answer is yes.

Amendment put and passed.

Hon HELEN MORTON: I move —

Page 307, line 6 — To delete “another person” and insert —
a person listed in paragraph (aa)

This amendment corresponds to the changes agreed to at lines 4 and 5. It inserts a reference to the newly inserted paragraph (aa).

Amendment put and passed.

Hon HELEN MORTON: I move —

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,

Clause 447(2) currently states —

The Tribunal may make an order that the party must be represented in the proceeding if, in the Tribunal's opinion, it is not in the best interests of the party for the party to appear in person ...

That refers to the person appearing in person without representation. The use of the term “may” would give the Mental Health Tribunal discretion to decide whether to make such an order. The proposed amendment removes this discretion when the party in question is the person concerned in the proceeding. The person concerned is defined in clause 389 and in most contexts refers to the patient. The rationale for the amendment is that it would be inappropriate for the Mental Health Tribunal to allow the person concerned, who again would usually be the patient, to appear in person when to do so would be inconsistent with his or her best interests.

Amendment put and passed.

Hon STEPHEN DAWSON: I move —

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.

We believe that this amendment will give the Mental Health Tribunal discretion to make an order that a party must be represented in the proceedings by a legal practitioner. We believe that this is a small amendment but it would make a great deal of difference.

Hon HELEN MORTON: This amendment is not supported. The subject matter of this amendment has already been dealt with by the government amendment to line 6 on page 307. The government amendment clarified that the tribunal may order that a person be represented by a person listed in paragraph (aa)—namely, a legal practitioner, a mental health advocate or another person who in the opinion of the tribunal is willing and able to represent the adult's interests. The government's position reflects the reality that a patient and his or her support persons may legitimately prefer representation by a mental health advocate or other person who is not a legal practitioner. The requirement that a proposed representative who is not a legal practitioner or advocate be willing and able to represent the person's interest is a sufficient safeguard against inappropriate representation.

Amendment put and negatived.

Clause, as amended, put and passed.

Postponed clause 444: Notice of applications —

The clause was postponed on 23 September after it had been partly considered.

The DEPUTY CHAIR (Hon Liz Behjat): Members will recall from last night's proceedings that we now need to return to clause 444, which was postponed until after consideration of clause 447.

Hon HELEN MORTON — by leave: I move —

Page 303, line 28 — To delete “section 447(1)(a) or (b)” and insert —

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

Page 304, line 5 — To delete “section 447(1)(a) or (b)” and insert —

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

The proposed amendments to clause 444 are required as a result of the changes agreed to in clause 447. The amendments are to insert a cross-reference to the newly inserted clause 447(1)(aa) that sets out the person who may represent a person in a proceeding.

Amendments put and passed.

The DEPUTY CHAIR: It is my understanding that Hon Stephen Dawson does not intend to move the amendments standing in his name on the supplementary notice paper.

Hon STEPHEN DAWSON: That is correct; I do not intend to move amendments 85/444 and 86/444 standing in my name on the supplementary notice paper.

Postponed clause, as amended, put and passed.

Postponed clause 445: Notice of hearings —

The clause was postponed on 23 September.

Hon HELEN MORTON — by leave: I move —

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

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

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

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

I have moved these amendments as they are identical to and consequential on the amendments we moved before.

Amendments put and passed.

Hon STEPHEN DAWSON: I will not be moving amendments 87/445 and 88/445 standing in my name on the supplementary notice paper.

Postponed clause, as amended, put and passed.

New Clause 447A —

Hon STEPHEN DAWSON: I move —

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.

Members on this side believe that it would be a worrying situation if we did not ensure that a child be represented by a legal practitioner. Anyone could argue that a child should not have to be represented by a legal practitioner, but it would be dangerous to leave such a discretion to a child. This amendment provides that the child would still be allowed to express his or her views, and the lawyer would be under an obligation to represent the child's best interests and not to act contrary to their instructions.

Hon HELEN MORTON: The government does not support this amendment. Clause 448 already requires all children without capacity to be represented. For children with capacity, an amendment to clause 449 was made in the other place empowering the tribunal to require a child to be represented if it would not be in the child's best interests to appear in person. I will soon move an amendment to line 7 on page 308 that will further strengthen this position by obliging the tribunal to order that the child be represented if the child is the party concerned in the proceeding and it would not be in the child's interests to appear in person.

In addition, clause 450 empowers the tribunal to make arrangements for representation of the party if the party wants the tribunal to do so. These provisions will ensure that children appearing before the tribunal are supported by the representation arrangements that best meet their needs. I do not accept the view that legal representation should be mandatory for each and every child who is a party to a proceeding. For example, a child might legitimately prefer to be represented by a parent, a guardian or a mental health advocate who has been providing support and advice.

Sitting suspended from 6.00 to 7.30 pm

The DEPUTY CHAIR (Hon Liz Behjat): Members, we are dealing with the Mental Health Bill 2013. Before the adjournment, I was about to put the question. We are dealing with issue 6 of the supplementary notice paper at page 22. The question before the chamber is that new clause 447A be inserted.

New clause put and negatived.

Clause 448: Party is a child with capacity to consent —

Hon HELEN MORTON: I move —

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

(iii) the child's parent or guardian;

This proposed amendment removes unnecessary wording from the bill. The power of the tribunal to exclude a person from a hearing is dealt with separately under clause 454, and does not need to be referenced in clause 448. The amendment was recommended by parliamentary counsel.

Amendment put and passed.

Hon HELEN MORTON: I move —

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

a person listed in paragraph (b)

This proposed amendment clarifies who the tribunal may order that the patient be represented by—namely, a person listed in clause 448(1)(b). The persons specified in clause 448(1)(b) are a legal practitioner, a mental health advocate and the child’s parent or guardian.

Amendment put and passed.

Hon HELEN MORTON: I move —

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,

This proposed amendment repeats the change previously agreed to at line 9 on page 307, but this time in relation to a party who is a child. The effect of the amendment is to oblige the tribunal to order that the person concerned in a proceeding, who will usually be the patient, be represented if it would not be in that person’s best interests to appear in person—that is, without a representative.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 449: Party is a child with no capacity to consent —

Hon HELEN MORTON: I move —

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

(c) the child’s parent or guardian;

This proposed amendment removes unnecessary wording from the bill. As previously noted in relation to clause 448, the power of the tribunal to exclude a person from a hearing is dealt with separately under clause 454 and does not need to be referenced in this clause.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 450: Tribunal may make arrangements for representation —

Hon STEPHEN DAWSON: I will not move amendment 92/450 standing in my name on the supplementary notice paper.

Hon HELEN MORTON: I move —

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

in a proceeding

This proposed amendment replaces the term “hearing” with a broader term “proceeding” to reflect the fact that representation may not start and end with a specific hearing. For example, a proceeding may stretch over multiple hearings due to adjournments. The change was recommended by parliamentary counsel.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 451 put and passed.

New clause 451A —

Hon STEPHEN DAWSON: I move —

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.

The proposed amendment is about providing timely access to all tribunal records relating to a client who is a party to tribunal proceedings. We believe this is a positive amendment and will make a difference to the bill.

Hon HELEN MORTON: The government does not support this amendment. Unlike the current act, this bill requires that proceedings be conducted in accordance with the requirements of natural justice. This change will reinforce the right of parties and their representatives to access all information that the tribunal relies upon, subject to the bill's provisions relating to restricted information. Representatives may access information from the relevant mental health service or from the tribunal directly on request. The current practice of the Mental Health Review Board is to provide information via email or telephone. The review board's premises are not designed for visitors to be able to visit and view documents at their leisure. In this respect, I also note that reviews are generally conducted by audiovisual means or at hospitals or clinics, not at the review board's premises. As illustrated by the current practice, there are ways of accessing information that do not involve attending at certain premises.

New clause put and negatived.

Clauses 452 and 453 put and passed.

Clause 454: Closed hearings —

Hon STEPHEN DAWSON: I will not be moving amendment 94/454 standing in my name.

Hon HELEN MORTON: I move —

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.

Clause 454 empowers the tribunal to exclude a person from a hearing or part of a hearing. The Mental Health Law Centre has observed that the patient's right to a fair hearing may be compromised if this power is exercised in relation to the person concerned or the person concerned's representative. The proposed amendment addresses this concern by stating that, in situations in which the person concerned or the person concerned's representative is excluded, the tribunal must make arrangements for the person concerned to be represented. For example, if the person's representative were excluded, the tribunal would be compelled to find a replacement representative for the patient. I note that that is very similar to the amendments that Hon Stephen Dawson was going to move.

Hon STEPHEN DAWSON: We are pleased to support this amendment. We are pleased that the minister again has recognised that there was some merit in the amendment we moved, and for that reason we support this amendment.

Amendment put and passed.

Hon HELEN MORTON: I move —

Page 311, line 16 — To delete the line.

This amendment removes unnecessary wording from the bill and is being moved at the recommendation of parliamentary counsel.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 455 put and passed.

Clause 456: Person chosen by person concerned may be present —

Hon HELEN MORTON: I move —

Page 312, line 3 — To insert after "person" on the second occurrence —
chosen

Clause 456 includes multiple references to "the person". This amendment is designed to improve the readability of the clause by making it clear that the second mention of "the person" in line 3 refers to the person chosen to be present at the proceedings. Again, this change was recommended by parliamentary counsel.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 457 to 469 put and passed.

New clause 469A —

Hon STEPHEN DAWSON: This proposed new clause deals with the issue of decisions in proceedings. It does not seek to mandate that decisions have to be published; it will simply provide the legislative framework to allow the position to be published and will provide parameters for the way in which the decision can be published. It is often quite important that decisions are published because they provide some sort of guidance for future decisions, even though they are not done on an individual basis. I move —

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).

Hon HELEN MORTON: The government does not support the proposed new clause. The subject matter of proposed new clause 469A is already appropriately addressed under clause 466, "Publication of information about proceedings". Clause 466 reflects the sensitive nature of material discussed during Mental Health Tribunal proceedings, creating an offence for the publication of identifying information. Subclause (7) creates a number of exceptions to the offence. Clause 466 is in line with clause 12 of schedule 1 of the Guardianship and Administration Act 1990. Clause 466 does not prohibit the publication of de-identified decisions and, as such, is consistent with the intent of proposed new clause 469A.

New clause put and negatived.

Clause 470 put and passed.

Clause 471: Content —

Hon STEPHEN DAWSON: I will not be moving the amendment in my name.

Clause put and passed.

Clause 472 put and passed.

Clause 473: President of Tribunal —

Hon STEPHEN DAWSON: There are two amendments to clause 473 standing in my name. I will not be moving either of those.

Clause put and passed.

Clauses 474 to 480 put and passed.

Clause 481: Registrar —

Hon STEPHEN DAWSON: I understand that the government will not support my amendment so I will not move the amendment standing in my name.

The DEPUTY CHAIR (Hon Liz Behjat): Hon Stephen Dawson, I notice that a number of amendments standing in your name are listed on the supplementary notice paper. Are you going to move any of those?

Hon STEPHEN DAWSON: Yes.

Clause put and passed.

Clause 482: Functions of registrar —

Hon STEPHEN DAWSON: This is also another clause to which I have a number of amendments on the notice paper that I will not be moving.

Clause put and passed.

Clause 483 put and passed.

Clause 484: Registry staff —

Hon STEPHEN DAWSON: Again, I will not be moving the amendment to clause 484 standing in my name.

Clause put and passed.

Clauses 485 to 490 put and passed.

Clause 491: Terms used —

Hon STEPHEN DAWSON: I sought to move an amendment to clause 379 earlier and it was not supported so I will not move my amendment to this clause in light of that.

Clause put and passed.

Clauses 492 to 512 put and passed.

Clause 513: Responsibility for treatment and care —

Hon SALLY TALBOT: I had a considerable amount to say earlier in this debate about clauses relating to seclusion and restraint. I wanted to ask the minister whether the purpose of clause 513, “Responsibility for treatment and care”, is supposed to cover everything that can be administered to or provided for a patient in a mental hospital or an institution.

Hon HELEN MORTON: The reason for the word “care” is that it picks up the issues around seclusion and restraint, which is what the member is referring to. Consequently, the responsibility for treatment and care covers those things.

Hon SALLY TALBOT: Is it the minister’s intention that it should cover management of patients?

Hon HELEN MORTON: We are having a little difficulty understanding precisely what the member is referring to when she says “management”. We have covered treatment and care, so I do not know what else there is under management. I know that the Mental Health Law Centre made representation to us around this and included restraint and seclusion when it referred to management. If that is the case, that is covered under care. Is there anything else that the member would like to identify under management that we are not aware of?

Hon SALLY TALBOT: I think that probably covers it. I picked up the word “management” in our earlier discussion and wanted to be sure that the intent was not to create a situation whereby something such as isolation or restraint, chemical or physical, could be administered to a patient and then be excluded from this provision because the practitioners could claim that it was neither care nor treatment but was management and that management was excluded under the act. If it is not the intent to exclude something that is classified as management, the minister has indeed satisfied the point.

Hon HELEN MORTON: The member is correct.

Clause put and passed.

The DEPUTY CHAIR (Hon Liz Behjat): I take a moment to welcome into the President’s gallery this evening Ms Isabella Farina, the niece of our Deputy President, on her first visit to Parliament. You are very welcome here, Isabella, and I hope you enjoy the proceedings.

Clauses 514 to 517 put and passed.

Clause 518: Review of treatment —

Hon HELEN MORTON: I move —

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.

The bill empowers the Chief Psychiatrist to direct the patient’s psychiatrist in their patient’s treatment. The penalty for noncompliance with the direction of the Chief Psychiatrist is \$10 000. The current act has an equivalent power but no penalty for noncompliance. The proposed amendment requires the Chief Psychiatrist to provide the patient’s psychiatrist with a reasonable opportunity to withdraw from being the patient’s psychiatrist before directing the psychiatrist to provide a specified treatment. The psychiatrist would not be able to continue in breach of the direction, but would have a statutory right to step aside and allow another psychiatrist to assume responsibility for treating the patient in compliance with the Chief Psychiatrist’s direction. The rationale underlying the amendment is that a psychiatrist may have a legitimate ethical concern about providing a specific treatment that he or she would otherwise not prescribe. To be clear, the amendment applies only to directions that compel the provision of specified treatment; it does not vary the existing position in directions to cease providing a specific treatment or treatment generally. I indicate that this amendment was sought by Hon Nick Goiran, and I appreciate his input to the bill.

Hon NICK GOIRAN: I take the unusual step to contribute to the consideration of this clause. I hope that the Minister for Mental Health has appreciated my self-control in not responding to any clause other than this one. However, I feel the need to contribute to it and I warmly encourage members to support it. The simple reason is that in the absence of this amendment, the Chief Psychiatrist could direct a fellow medical practitioner to take

certain action with respect to a patient. The problem with that course of action in isolation of this amendment is that it would, in my view, breach a very important principle for medical practitioners—that is, the principle of conscientious objection. In other words, a medical practitioner should always be free to operate in accordance with their conscience, and they should be able to object from participating in any medical procedure if it is against their conscience. Accordingly, I am very pleased that the hardworking Minister for Mental Health has agreed and has moved this amendment, because it will ensure that if a treating psychiatrist disagrees with the decision of the Chief Psychiatrist—that may well happen—they will have the ability to remove themselves from the arena, and the Chief Psychiatrist can then proceed in accordance with their expertise and appoint somebody else to assist the patient as he or she deems fit, but the important principle of conscientious objection would not have been breached. It is for those reasons that I warmly encourage members to support this amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 519 to 534 put and passed.

Clause 535: Delegation by Chief Psychiatrist —

Hon STEPHEN DAWSON: I move —

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.

In the submission that members received from the Mental Health Law Centre this clause 535 was addressed. I want to put on the record the comments made by the Mental Health Law Centre on this clause. I will do it briefly, but I think it is important to acknowledge them on the record. The briefing note states —

The Stokes report identified the total lack of a single point of authority as one of the contributing factors to poor governance and lack of a uniformly good standard of care. The recent reports by the Coroner into 10 Graylands patient deaths reveals some outcomes of this lack of a single point of authority and poor standards of care. One of the reasons for a lack of a single point of authority in the mental health services is the unconstrained delegation powers of the Chief Psychiatrist. In some circumstances the Chief Psychiatrist's oversight of Treating Psychiatrists' obligations were delegated to clinical directors who were also Treating Psychiatrists.

The Bill could be improved by fettering the delegation powers of the Chief Psychiatrist, to require delegates to comply with certain prescribed standards (thus effecting a change implied as necessary from the Stokes Report, which criticised variable standards), standardising the standards to which all the mental health services must comply, publishing the delegations in the Government Gazette (transparency—said to be of concern in the Report), to delegate to a person (not an office) and not to permit a delegation that would effect a Treating Psychiatrist being delegated the Chief Psychiatrist oversight, when acting as a Treating Psychiatrist (that is so they cannot have oversight of themselves—arguably invalid).

That is according to this briefing note. The briefing note continues —

In the experience of the MHLC, it is sometimes very hard to work out who was in charge of a hospital/hostel/ward at the time of a particular adverse event and thus responsible for that event. The person in charge is often difficult to discover.

The intention of this amendment is to ensure that a delegation by the Chief Psychiatrist is done in a manner that is appropriate, and that the delegation is not unfettered. In light of those comments, I have moved this amendment.

Hon HELEN MORTON: The government will not support this amendment. The proposed amendment would create practical difficulties, with no commensurate benefit to patients. Under the Interpretation Act 1984, delegations may be made to a specified person or persons, or a specific class, or may be made to the holder, or holders, for the time being of a specified office or class of office. Limiting delegations to named psychiatrists

would require constant revision of delegations in response to changes in staffing arrangements and leave arrangements. This would be an unwarranted administrative burden. Given that the overwhelming majority of psychiatrists are employed in mental health services, the proposed amendment would limit possible delegates to a very small number of psychiatrists, private consultants and those who work in academia. These psychiatrists may not be sufficiently familiar with the legislation to perform delegated functions. This would make it very difficult, if not impossible, to delegate effectively, leaving a situation in which the Chief Psychiatrist may be required to be on call at all times.

Hon SALLY TALBOT: It is not clear to me, minister, how the government is proposing to prevent one particular aspect of what Hon Stephen Dawson has just read into the record from continuing to occur—that is, the oversight of a person by themselves. The minister may think that she has covered that in her response but I could not unpick it from the rest of her comments. Could the minister please address that? Is the minister clear about what I am talking about?

Hon HELEN MORTON: I understand the concern that the member is raising, and I will just paraphrase it to make sure that I have got it right. As I understand it, the concern is that the delegation may be to a psychiatrist who is also the treating psychiatrist of a patient. My advice is that the delegations are made to heads of services. Those heads of services do very little, if any, clinical work. They are management psychiatrists, if that is an appropriate term to use. Those psychiatrists often also hold academic positions. Therefore, the delegations are not made to front-line psychiatrists. In the last 12 months, when delegations have been renewed, those delegations have reflected that practice.

Hon SALLY TALBOT: I absolutely accept what the minister is saying, and I can see that in by far the majority of cases this would not be a problem, either because it would not happen or because the person who is the head of the department or the manager will not be the treating psychiatrist. However, if it is the minister's intention that that delegation should not be made to the treating psychiatrist, surely the legislation should spell that out. I do not think it would be that complicated to do it.

Hon HELEN MORTON: It already does. It states that, in addition, the Chief Psychiatrist is already empowered to specify limitations and conditions for each delegation. That is at section 59(1)(c) of the Interpretation Act.

Hon SALLY TALBOT: The minister has just established that she would not envisage that situation ever happening again. She knows that it has happened in the past. Will it, for instance, be mentioned in the standards and guidelines, or will it actually be in the regulations, that this is not expected to happen or that it is prohibited by the regulations?

Hon HELEN MORTON: A standard has not been written around delegations. This work is undertaken directly by the Chief Psychiatrist, and the Chief Psychiatrist would be responsible for making sure those delegations are appropriate. It does not involve anybody else but the Chief Psychiatrist in that process.

Hon SALLY TALBOT: I do not think that that is acceptable. The whole matter of delegation was at the heart of the Stokes report. It is the very fundamental. The minister should not express impatience with me.

Hon Helen Morton: You're just exaggerating, that is all.

Hon SALLY TALBOT: I do not think I am.

Hon Helen Morton: You said "the heart of the Stokes report". Go for it; that is fine.

Hon SALLY TALBOT: Thank you very much. I will work to the direction of the Chair, thank you, minister.

The DEPUTY CHAIR (Hon Liz Behjat): If we direct all our comments through the Chair, I think we will get to the end of this eventually.

Hon SALLY TALBOT: Thank you, Madam Deputy Chair.

The fundamental problem identified by the Stokes report is the lack of a reliable chain of command—a single point of authority. Over and over again, page after page, for dozens of pages, that is what Stokes is talking about. Although I agree with the minister in a limited sense that every single one of those problems cannot be directly attributed to a problem with delegation, nevertheless delegation is going to play a role in exacerbating the problems that exist around the absence of a clear chain of command. And yet, the minister has put on the record now that it is not her intention to have a whole lot of regulations around delegation, because it all depends on the Chief Psychiatrist. I do not think that that is acceptable. The minister is obviously impatient with the point I am making, but perhaps she would like to put on the record why she thinks this will not be a problem. I think she has just cut away an opportunity to go right to the core of the problem that Professor Stokes identified.

Hon HELEN MORTON: I will just add again that clause 535(2) requires the delegation to be in writing and signed by the Chief Psychiatrist. Those delegations are in the form of a notice. They are available to the public, if the public wants to observe them, have a look at them or have access to them. It is not as if there is anything secretive happening about this. If people are concerned about a notice, they can raise the issue et cetera. I do not believe that this was the major issue in the Stokes review that the member is referring to.

Hon STEPHEN DAWSON: Can the minister tell us how the public will access these notices? The minister said that they would be public. Will they be available on the internet? If it was not planned to make them available on the internet, would the minister consider taking away from tonight's debate a message seeking the Chief Psychiatrist's agreement that these notices be available on the internet? I think that would help address some of the concerns that have been expressed in here and also by members of the sector and, indeed, in the Stokes report.

Hon Helen Morton: I am sorry; I was taking advice. Can you summarise that? I need to get advice on these matters. I was listening at the beginning but I did not hear in the end.

Hon STEPHEN DAWSON: In summary, I asked: Where will these public notices be available? Will they be available on the internet; and, if it was not planned to make them available on the internet, will the minister give an undertaking tonight that she will raise with the Chief Psychiatrist whether it is feasible to put all these notices on the internet so that anyone can access them easily, because that would allay some of the fears expressed about delegations?

Hon HELEN MORTON: There is no reason why they cannot be put on the Chief Psychiatrist's website, and I will raise it with him.

Hon SALLY TALBOT: Clause 535(1) states —

The Chief Psychiatrist may delegate to another psychiatrist any power or duty of the Chief Psychiatrist
...

Does that include the power to delegate?

Hon HELEN MORTON: I draw the member's attention to subclause (3), which basically says that is not possible.

Amendment put and negatived.

Hon STEPHEN DAWSON: I move —

Page 355, line 20 — To delete "Psychiatrist." and insert —
Psychiatrist and must be published in the *Gazette*.

When I spoke to my earlier amendment to clause 535, I mentioned some of the criticisms in the Stokes report about poor governance or a lack of a uniformly good standard of care. I think a safeguard in this case would be that when a delegation is made, it should be published in the *Government Gazette*, because then people would know it has been made and people would be able to access it easily.

Hon HELEN MORTON: The government does not support this amendment. The proposed amendment around gazettal is unnecessary and may jeopardise the treatment and care of patients by causing unnecessary delays. Clause 535(2) requires that delegations be in writing and signed by the Chief Psychiatrist. I am advised that at present the office of the Chief Psychiatrist makes available instruments of delegation pertaining to duties and powers. It is intended that this policy continue under the legislation and, as we indicated regarding subclause (1), this can be published on the Chief Psychiatrist's website.

Hon SALLY TALBOT: The minister said that subclause (3) provides that the Chief Psychiatrist cannot delegate the power to delegate. I am not sure that is the answer to my question. That clearly refers to a person to whom the power is delegated, which is not the Chief Psychiatrist.

Hon HELEN MORTON: I think Hon Sally Talbot is correct when she says that subclause (3) refers to sub-delegation from people to whom the Chief Psychiatrist has delegated and that they cannot then sub-delegate to somebody else. However, the issue about whether the Chief Psychiatrist can delegate his functions of delegation to somebody else is covered by the fact that the Chief Psychiatrist is the only person who can delegate.

Amendment put and negatived.

Clause put and passed.

Clauses 536 to 574 put and passed.

Clause 575: Authorised recording, disclosure or use of information —

Hon HELEN MORTON: I move —

Page 381, line 26 — To delete “332(7),” and insert —
332(7) and (8),

The proposed amendment to clause 575 corrects a minor cross-referencing issue that was created by the insertion of clause 332(8) during consideration in detail in the other place.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 576 to 580 put and passed.

New clause 580A —

Hon STEPHEN DAWSON: I move —

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).

With this amendment we seek to award somebody who has been unlawfully detained a modest amount of \$1 000 for each day or part of a day that they have been detained. We want people who are making decisions to detain mentally ill or mentally impaired people to have gone through proper process—to ensure they have dotted the i’s and crossed all the t’s. If somebody has been detained unlawfully, we are seeking compensation to be paid so that the victim who has been wronged gets some recourse under this bill.

Hon HELEN MORTON: The government will not support this new clause. An aggrieved person may have avenues for recourse via common law and the Criminal Code, in addition to the right to complain to the Health and Disability Services Complaints Office and to obtain a declaration from the Mental Health Tribunal. I do not believe it is necessary for the Mental Health Act to interfere in the remedies that courts may order under common law.

Hon STEPHEN DAWSON: All I can say is that that is disappointing. We have lots of penalties in this bill with corresponding penalties in the Criminal Code, yet they are not included in this bill. I think it is unfair for the minister to say that people who have been subject to unlawful detention have recourse under the Criminal Code. Why can we not put something in this bill giving them recourse?

Hon NICK GOIRAN: I am interested to ask Hon Stephen Dawson where the figure of \$1 000 per day came from. Hon Stephen Dawson wants to move this new clause and I am interested in the concept of it. Obviously, someone has dreamt up the idea that \$1 000 per day is a reasonable amount of compensation for someone who is unlawfully detained and I wonder where that figure has come from. Has it come from New South Wales, Queensland or Victoria? Who came up with the idea of \$1 000 per day?

Hon STEPHEN DAWSON: I was seeking your guidance, Madam Deputy Chair, as to whether I could answer Hon Nick Goiran’s question, which is why I did not offer to answer it in the first place. As we are in committee and as this is my proposed new clause, I guess I am able to answer that question, and I am always very happy to answer questions for Hon Nick Goiran. This amount came out of discussions amongst the opposition. We thought that a clause should be included in this bill that provided for compensation and it was felt that \$1 000 was a modest amount, but would still act as a deterrent to ensure that people were not unlawfully detained under this bill. I hope that answers Hon Nick Goiran’s question.

New clause put and negatived.

Clause 581 put and passed.

Clause 582: Protection from liability when detaining person with mental illness —

Hon HELEN MORTON: I move —

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

in good faith

The Mental Health Law Centre and Health Consumers' Council have expressed concern about the breadth of clause 582. The amendment I move to clause 582 responds to this by limiting the protection from liability to circumstances in which a person is acting in good faith.

Amendment put and passed.

Hon HELEN MORTON: I move —

Page 387, line 22 — To delete “section 227(2) and (3),” and insert —
section 227(2) to (6),

This amendment changes cross-referencing associated with the amendment to clause 227 around the meaning of bodily restraint.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 583 to 585 put and passed.

Schedule 1 put and passed.

Schedule 2: Notifiable events —

Hon HELEN MORTON: I move —

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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The proposed amendment to schedule 2 corresponds with the amendment to clause 129 around making a transport order a notifiable event. The insertion of the reference to clause 129 into schedule 2 is needed for the sake of completeness, ensuring ease of reference.

Amendment put and passed.

Schedule, as amended, put and passed.

Title put and passed.