MENTAL HEALTH BILL 2013

Committee

Resumed from 11 September. The Chair of Committees (Hon Adele Farina) in the chair; Hon Helen Morton (Minister for Mental Health) in charge of the bill.

Clause 25: Criteria for involuntary treatment order —

Progress was reported on the following amendment moved by Hon Stephen Dawson —

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

Hon STEPHEN DAWSON: I moved the amendment last time the chamber sat. During that time I made a point to the Minister for Mental Health—I quoted from my handwritten notes—and I referred to a line from page 14 of the explanatory memorandum, to which we have gone back again, because the minister pointed out that it did not exist in the latest explanatory memorandum. When I referred to my notes, I found that it came from a document provided by Martin Whitely of the Health Consumers Council, and it was signed by a number of agencies. I undertook to find out where that was from. However, the point remains, as I have said previously, that we sought to remove those two lines. I seek the minister's view on that issue.

Hon HELEN MORTON: I believe that I had already covered the government's position on why it believes that "serious harm"—serious harm to the person or to another person—needs to be in the bill. It is a significant risk of serious harm, and I think I covered that in my second reading response and also in looking at these issues here again. Unless people are looking for a reiteration of that conversation, I leave it and say that the government will not be supporting the amendment.

Hon SALLY TALBOT: I certainly do not want to hold up the passage of this bill, but it might be useful if the minister could re-canvass those issues. Perhaps the minister could do it in the context of helping me and anybody else who might appreciate clarification and to understand that this is the place where it is relevant to talk about the fact that you, as minister, had talked about removing reputational damage, which I think exists in the current version of the legislation. This may be the wrong place in the bill to be talking about this, but I understand that at one stage it was the government's intention, or at least the minister's intention, to remove reputational damage specifically, and that by going for this more general term "harm", it still includes reputational damage and may well have opened up the field even more widely.

Hon HELEN MORTON: I will go through that information again, and I am happy to do that. The reference to serious harm is intended to encompass harm arising in the social and economic domains. As I observed in my second reading speech in May, many people with the lived experience of mental health will say that serious harm arising in these domains can have as devastating an impact on individuals and families as other types of harm. Consider, for example, a person whose livelihood and sense of self-respect are impacted by an action such as shouting and screaming in a public place or going naked in public, noting that public shame is a known driver for suicide reported in psychiatric literature. Also consider that a person whose illness induces paranoia risks permanently alienating them from their family and friends whose support is so vital in their recovery. That actually happens; families will tell the member that. Families, carers and staff in the field will confirm that such scenarios are sadly not altogether uncommon. In each of these cases there may be reasonable alternatives to involuntary treatment. The bill makes it very clear that involuntary treatment orders cannot be made where a less restrictive option is reasonably available, but if other reasonable options are unavailable or have been exhausted, and if the person meets all of the criteria, the option of involuntary treatment should be able to be considered, and that is what this bill seeks to achieve. The position in the bill regarding serious harm aligns with wording in almost all other Australian jurisdictions, including the recently enacted Victorian bill. Notably, there was a time when in New South Wales mental health legislation harm in the social domain was excluded from the criteria for involuntary status. There were strong calls from a range of stakeholders, particularly carers, to amend this position and in 1997 the legislation was amended to include serious harm, and this is the position in the current New South Wales Mental Health Act enacted in 2007. This experience illustrates how well-intentioned efforts to restrict the grounds for involuntary treatment can produce outcomes that are unacceptable in the community and to those impacted by mental illness. The bill requires the Chief Psychiatrist to publish guidelines regarding the practical application of the criteria, including the meaning of serious harm. Consumers, families, carers and other stakeholders will be consulted in the development of those guidelines.

Just going on a bit further to the issue of reputation, which Hon Sally Talbot raised, the bill does not permit a person to be made an involuntary patient merely because there is a risk to their reputation; however, it is possible to envisage circumstances in which risk to reputation is a factor in determining that the person is at risk of serious harm. To meet the threshold for serious harm under the bill, the damage would need to be of a highly significant or impactful nature—for example, where there is a clear flow-on effect for the person's relationship or ability to maintain employment, or a combination of the two. It is fair to query how this position compares

with the current legislation. A perception exists among consumers, families and carers that the express references to reputation and relationships in the current act have, on occasions, been used to justify involuntary treatment merely because the person has engaged in behaviour that is embarrassing or offensive. I know that most clinicians would strongly object to this suggestion, but the fact that perception exists is cause to question the appropriateness of retaining such specific criteria in the bill. The bill quite properly places the emphasis on the consequences for the person—in this case, serious harm rather than the contestable or value-laden question of whether a person's reputation has been damaged.

Just going on to the issue Hon Sally Talbot raised about whether the bill in fact broadens the criteria, it has been suggested that it substantially broadens the criteria for involuntary treatment, and I disagree with that suggestion for several reasons. First, the involuntary criteria in the current act refer to serious damage to any property. This broad formulation of words has been removed from the corresponding clause in the bill. Second, under the current act, harm to relationships does not even need to be serious to provide grounds for involuntary treatment. Third, damage to reputation will not always constitute serious harm for the purposes of the bill. To meet the new threshold, the damage to reputation would need to be of a particularly impactful nature, such as where it has a demonstrable impact on employment prospects or critical relationships.

Hon SALLY TALBOT: I think we might just take a minute to mull over what the minister has just said. It is a little disconcerting to have such a compacted argument put to us and I am bit intrigued that we might have missed out on some of that explanation on the basis that it has already been given. I think the minister had some new information in what she has just read into the record. I suppose that we ought to start with a recognition—let us be realistic about this. The minister will not accept the amendment and people on this side of the chamber believe very strongly that this clause needs to be amended, so we will arrive at an endpoint at which it is simply a case of a basic disagreement. The minister will argue one thing and we will argue exactly the contrary. I suppose that our responsibility as an opposition is to understand as deeply as we can and to encourage the minister to be as fulsome as she is possibly able to be about how she intends this clause to operate when it becomes law. Let us start with the proposition that it seems to us on this side of the chamber to be a basic fact that when specific definitions are removed from a clause, it cannot then be argued that the criteria are being narrowed. Although we would agree with the minister entirely that things like damage to property should not be included as grounds for making an involuntary detention order, nevertheless, by replacing those specifics with a blanket phrase such as "a significant risk to the health or safety of the person" or "a significant risk of harm to the person", all those subcategories that the minister claims to be eliminating as grounds for involuntary detention in fact remain in the bill under that wider umbrella. I am interested to know how the minister thinks we can be sure that something like damage to property or damage to a relationship could not in fact be grounds for a reason for making an involuntary detention order. If there is nothing excluding it in the bill, particularly given that it does not contain the definition of "significant risk" or "serious harm", I just do not understand how the minister can claim to be so certain that those things have been eliminated as grounds for involuntary detention.

Hon HELEN MORTON: The first point I make is that all the criteria have to be met, so it is not a possibility that somebody can be made involuntary on the basis of just serious damage to reputation or whatever words Hon Sally Talbot used. All the criteria have to be met. It is not possible for someone to be made an involuntary patient on the basis of one issue alone. The criteria that have to be met are: the person has a mental illness for which the person is in need of treatment and because of the mental illness there is a significant risk to the health or safety of that person or another person; or they have a mental illness and they, or another person, are at significant risk of serious harm. I will come back to issues around reputation and—what was the other one the member talked about?

Hon Sally Talbot: Damage to relationships and damage to property.

Hon HELEN MORTON: The other criteria are that the person does not demonstrate the capacity required by section 18 to make a treatment decision; that treatment in the community cannot be reasonably provided; and that the person cannot be adequately provided with treatment in any way that is less restrictive. All those criteria need to be met.

I am not arguing that the issues the member said have been removed have been removed—that is a comment that the member is making—because I know that the guidelines being developed by the Chief Psychiatrist cover the issues that the member is raising. There are very valid reasons for including those things. People suffer serious harm to themselves in terms of not only their reputation, but also their finances. I do not think anybody is even arguing any more—as was previously being argued—that we should remove financial harm. It is easily recognisable that when a person is in a manic phase of an illness, they may make decisions that will have a serious financial impact on themselves or other people. Equally, people may have really difficult perceptions about issues to do with their reputation and their relationships. I have heard of people who have walked naked down the street, and that has had an impact on their ability to maintain their business or their employment et cetera by virtue of their illness. I also am not sure—I am questioning—whether the member is arguing that that

is not one of the criteria that must be met, along with all these other criteria, in order for a person to receive involuntary treatment. I do not believe the member is suggesting that we should let that person keep walking naked around the streets or around the shops, just because we do not have the means at our disposal to provide the person with treatment. The person may not know, understand or believe that they require treatment, but it is very clear to their family and to the people who have been involved with the person that they need that treatment, and that the lack of treatment is likely to have an ongoing impact on the person's reputation. The same applies to relationships. The person's psychotic illness may lead them to believe that their family members—whom the person so needs in terms of providing ongoing support in the community—are out to kill them, or something dreadful like that, yet we know that when the person receives treatment, they are able to put away those feelings and thoughts. I do not believe the member is saying that we should let these people continue to have these clearly psychotic thoughts, when they are able to be treated, even though at the time they do not recognise that they need that treatment.

Hon SALLY TALBOT: The minister is absolutely right. That is not what I am arguing. During the second reading debate, and also in my comments on clause 1, I drew attention to what some people might see as a very abstract solution to the abstract question about what we do when rights conflict. This is a very obvious case in which rights will frequently conflict and we do not have a means of resolving that conflict. In fact, that is not quite true, because under this bill, we do have a means of resolving that conflict. But there is only one means, and that is to put the person under an involuntary detention order. That is what I am objecting to. I am suggesting that in the case that the minister has referred to—of a person who is engaging in inappropriate behaviour—there may be other instruments that are already available and that can be used, such as guardianship orders and administration orders. Those orders might be more complicated to put in place, or they might take a little longer. But if we understand this question to be one about what justifies removing a person's liberty—which is, after all, what involuntary detention is; it is mandatory detention—we open up the discussion about whether there are alternative mechanisms that could be used. I have already acknowledged that we are not going to agree on this. But I ask the minister, when she is considering her response to the point I am making about the conflict between liberty and dignity, to tell us what caused her to change her mind. I do not think I have invented the suggestion that the minister at one stage was arguing that loss of reputation should be removed as a ground for mandatory detention. I think the minister has publicly stated that. I would like the minister to be absolutely clear with us—without divulging any confidences about people's experiences to which she has become a party—what caused her to change her mind.

Hon HELEN MORTON: With regard to the first part of that conversation, which relates to why we do not use other means at our disposal, the role of the clinical psychiatrists is very much around their capacity, knowledge, experience and skill in being able to determine when a person has a treatable mental illness that is leading to the problems that we are talking about. I believe the role of the Chief Psychiatrist in putting out the guidelines around the meaning of "serious harm", and the other criteria that fall under it, are about recognising the knowledge and skill of the psychiatrists to undertake that role. I do not see why we would need to go to another party to do that when we already have the very people involved in the area of mental illness who are skilled and specifically trained to ascertain that particular point for people and then provide the follow-up services that they require.

With regard to when did I change my mind, or whatever it was, the thing that I did not like in the existing act is that those areas were specifically identified and in fact were, as I said before, less onerous in terms of a requirement to meet the level of seriousness, which is now covered in the notion of significant risk of serious harm to the person or another person. Although I think the existing bill refers only to harm to reputation, finances, property and relationships, all of those will be included in the guidelines. There was never a suggestion on my part that they would not ever, in some way or another, factor into the criteria that would need to be met in order for a person to meet the involuntary criteria. It was around whether we needed to spell it out in a more fulsome way in the guidelines. I believe that is now going to happen. This is building on the capacity, training, knowledge and skill of psychiatrists and giving them the extra guidelines that go with that. In that process, as has been demonstrated through everything else that we have included in this bill, the consumers and carers of people with a mental illness will be heavily involved in developing those guidelines.

Hon SALLY TALBOT: I am happy to move on from this point—no, I am not happy, because I would like to have won the argument. I do not think the minister will accept my point, but I recognise that we will inevitably move on from this point fairly shortly. I want to put on record my reaction to what the minister said in the last 20 minutes or so about one of the main drivers for replacing the specific language of the existing act with this much broader definition in the current bill and the advice the minister has given us that those details will be spelled out in the guidelines. I understand the minister to be saying that the change was driven primarily by carers. It is probably reasonable to point out at this stage of the debate that I have had some direct experience of this. About 20 years ago my mother had a serious psychiatric illness. She was a very prominent member of her community in the United Kingdom. She was a senior magistrate and the chair of the Children's Court, and she

indeed had a reputation that could be destroyed. I must say that during two periods of her life she did her very best to destroy that reputation. Looking at the terms of the bill, I can clearly see that my mother going through those stages of her illness would certainly have met the criteria contained in subclause (1)(a), (c) (d) and (e) for requiring treatment. She did end up receiving this treatment. The point I want to make and the reason I want to personalise this so that I am not seen to be speaking purely from a theoretical or abstract position is that I hope the minister, her advisers and the stakeholders who have made this point to the minister about the need for this clause are fully cognisant that a mandatory detention order is a very, very serious thing, and that, in itself, has a serious impact on the patient who is subject to that order. My own personal judgement, having been through two episodes of trying to care for somebody who was in that position, is that my mother's situation would not have been improved had she been made an involuntary patient and placed in some kind of mandatory detention. She did, in fact, fully recover her reputation, which was probably a tribute, not only to her own strength of personality but also the people in her community who were prepared to understand what had happened to her. I would like to continue to see some of the energy and enthusiasm the minister has put into this bill in developing clauses like this, go into the removal of stigma in the case of mental illness. Recognising that the minister has the numbers in this place and, sadly, we will not be able to see the guidelines before we pass this legislation, which is not a good thing, I recognise that the best the opposition can do in this place is to put our point of view as strongly as we can.

Hon HELEN MORTON: I would rather move on from here, but a couple of matters were raised that I need to clarify. The comment that I made about the push by carers related to the New South Wales legislation and the changes made there. My second point is that we got significant advice from Professor Carey in New South Wales around this area. He was one of the people we obtained support from in that area. I really appreciate that Hon Sally Talbot talked about her mother's circumstances, and it is obvious that in her case that was the least restrictive environment and not an involuntary treatment environment. Although I agree and support that Hon Sally Talbot's mother was treated in the right environment for her, unfortunately, there are other people who are unable to receive that form of treatment and support, and subsequent recovery without coming into an involuntary setting.

Hon STEPHEN DAWSON: I am not ready to move on from this, even if Hon Sally Talbot has indicated she has exhausted her questions for the time being. Why is there no definition of serious harm in this bill? Why is it being left to regulations or guidelines? In her comments earlier today, I think the minister mentioned the Victorian and New South Wales legislation. Certainly, the minister mentioned Victoria and New South Wales last Thursday, because I have *Hansard* in front of me. At that time, the minister did not say whether Victoria, New South Wales or any other Australian jurisdiction included a definition of serious harm. Firstly, I would like to know whether a definition is included in legislation in other states; and, secondly, I do not think the minister has addressed specifically why she has not included a definition of serious harm in this bill.

Hon HELEN MORTON: I am advised that it is not spelt out in any more detail in legislation in the other states. Secondly, the reason it is in the bill in the way it is, is because the reference to serious harm is intended to encompass harm arising from areas of social and economic domains, and it is not possible to try to itemise every one of those potential harms, which are unique to each individual and their circumstances at the time.

Hon STEPHEN DAWSON: Surely, people deserve to know what this bill means for them when they are at risk of involuntary treatment. Other definitions in the bill have included a range of things, so I do not agree that it is not possible to define everything that is potentially included in a definition of "serious harm" so that people know what they are dealing with and it is not left hanging for others, rather than this Parliament, to decide. I do not think I am going to get an answer from the minister on that point, so I may as well keep going.

I have foreshadowed some other amendments to this clause, which I understand may fall away if members vote this amendment down. The other amendments relate to financial harm to the person. I did not hear the interview, but I am told that in May 2012 the minister commented on radio 6PR that the criteria for involuntary detention would be narrowed to remove damage to reputation. At the time, that gave the sector some confidence and comfort, so it was shocked to see what was included in this bill. Does the minister admit that she made those comments in the first place? I understand, having listened to the minister today, that her view has changed, but does she admit she made those comments and does she understand why the sector is concerned by this clause?

Hon HELEN MORTON: I do not recall the specific context around the comments I made on 6PR radio. I remember where I was sitting at the time—I was in the car. I had pulled over after hearing Martin Whitely talking on the radio and I phoned in to comment. I think he had suggested that somebody could be given involuntary treatment wholly and solely on the basis of something like reputational harm, financial harm, or whatever it was they were talking about. At that time I would have made the comment that all of the criteria had to be met and that significant risk of serious harm to a person or another person is a valid component of that criteria. However, I would not have wanted to include in the bill any one of those particular items because I think it is broader. I will try to finish that sentence, as I tend to jump around a bit much. My point is that the

conversation at the time resulted from a suggestion somebody made that a person could be given involuntary detention on that basis alone.

However, I would say that the conversation was about saying that we would not focus on a specific area like that in the bill. It should be remembered that one of the original aspects of the bill was around attempting to make it clear that sterilisation does not come under psychiatric treatment in the bill, but people started to focus on that and to suggest that the bill somehow indicated that people could be sterilised as a means of psychiatric treatment. In the same way, leaving words in the bill such as "reputation", "financial risk" and "relationships" means that people start to focus on those words as being the way in which a person can be made an involuntary patient. Removing those words from the bill and encapsulating them in the current arrangement of significant risk of serious harm to the person or to another person and providing guidelines makes it clearer and easier for people to understand that the significant risk of serious harm has to be met and that a range of factors need to be considered in every one of these cases, and that range of factors can include relationships, finances, or a combination of the lot. Having that spelt out in the guidelines gives the clinicians clarity around what they need to consider. I am absolutely clear that removing those individual items from the bill allows people to get a better understanding of the fact that all the criteria have to be met and that the risk of serious harm to the person or another person has to be significant. Those are the comments I want to make.

Hon STEPHEN DAWSON: I think the term "serious harm" is so broad that the net effect will be to make it more likely that many more people will be involuntarily detained and treated. The minister touched on reputation a minute ago and gave the example of somebody walking naked down the street. This person might be about to do something embarrassing, but what is the greater risk to that person's reputation—streaking or being locked up? What does greater damage to a person's reputation? I contend, and some people who have spoken to me about the bill have suggested, that the stigma attached to being locked up and involuntarily detained has had a much, much worse impact on them over the past few years. What is the greater risk to a person's reputation—walking naked down the street or being locked up, and what that means for the rest of their life?

Hon HELEN MORTON: With all due respect, I think the member is missing the point here. The public humiliation is one aspect of this, and I do not want anybody to endure public humiliation if they do not need to. But people do endure public humiliation, and I understand that. The point of this clause is that it is one criterion of a set of criteria that enables that person to get involuntary treatment.

Hon Stephen Dawson: But we don't know what else is in the set?

Hon HELEN MORTON: We know what is in the set of criteria; it is that they have to have a mental illness that is treatable, and it is because of their mental illness that they are streaking, not just because they feel like streaking. I know that people streak all the time. That is not a criterion for someone to become an involuntary patient. They have to have a mental illness and that mental illness must require treatment. One way to indicate that a person has a mental illness is their propensity to engage in actions and behaviours as a result of their mental illness that puts them at serious risk of serious harm to themselves or another person, and one way in which they do that is by doing something that puts them at serious risk of doing serious harm to their reputation. This is about enabling a person to receive the treatment that they need to enable them not to have to engage in that behaviour in the future or on an ongoing basis. If I accepted the member's proposals around this, we would see those people behaving in the way that they are and undergoing public humiliation without treatment.

Several members interjected.

The CHAIR: Order, members! The minister has the call.

Hon HELEN MORTON: These are the criteria for somebody to receive involuntary treatment. This provision is for people who do not believe that they have a problem. They do not understand and they do not have the insight or the capacity to make that decision. These are the criteria for involuntary treatment. Without the means by which these criteria are met, these people would often go untreated because they do not believe they need treatment. Of course, the clause also requires, as we have already said—please do not forget this—that people cannot be provided with treatment in a less restrictive option because they do not have the capacity, as I already indicated, to recognise that they need that treatment. I do not believe that any one of us would rather see that person continuing the behaviour and the torment that they may have—psychotic illnesses create the most amazing torment for people—without them receiving the treatment that they can be given. That torment often reflects or comes from a person's alienation from their family or a relationship difficulty such as a separation from a husband or wife or family. That is the sort of torment that we are talking about. I do not believe that the member would want a person to continue experiencing that torment, public humiliation and risk of harm to their reputation and not receive the treatment that they need, even though they do not recognise their illness.

Hon SALLY TALBOT: I am sorry if I created a misunderstanding earlier. When I said that I was coming to the end of my remarks on reputational damage, I did not mean the end of my remarks about clause 25. I have

a couple more things I would like to cover. One issue arises directly from what the minister has just been talking about. Paragraph (e) states —

> that the person cannot be adequately provided with treatment in a way that would involve less restriction on the person's freedom …

Of course, that may be because often the government has failed to provide those services through which that person could be provided with treatment in a less restrictive environment. I do not think that the minister has much solid ground beneath her feet, arguing that paragraph (e) is a very significant provision. I quite understand —

Hon Helen Morton: The member said that paragraph (e) is what? What was the last sentence?

Hon SALLY TALBOT: I do not think that the minister is on very solid ground in arguing that paragraph (e) is one of the safety valves in this clause. I think paragraph (e) is there just to recognise the reality that the provision of services by government often fails, particularly in regional and remote areas. I do not think that the minister is on very strong ground there at all. I think the idea that Hon Stephen Dawson canvassed about the difference between streaking and engaging in behaviour that damages a person's reputation is right. The line between the understanding of each type of behaviour is much more blurred than the minister is indicating.

If we think of people who commit serious crimes, particularly serious violent crimes, the community will make an assumption that that person must have a mental illness because they committed those crimes. In other words, a kind of post facto diagnosis is done of that person, when in fact of course our court system demands that the insanity of the person be proved in court before they can rely on that as something that mitigates not in their favour, but in getting a less harsh sentence or being considered within different parameters. I do not think those lines are clear-cut at all, and that goes again to the heart of our concern with this part of the bill.

There are two things that I would like to specifically clarify and I will ask the minister both these questions in one go. The minister has referred several times to the phrase "all the criteria have to be met". There might be some residual misunderstanding about whether she means reputational damage and damage to property and damage to relationships and damage to financial status. I think what she means is that paragraphs (a) to (e) of clause 25(1) all have to be satisfied.

Hon Helen Morton: That is correct.

Hon SALLY TALBOT: My last question is about the status of the guidelines. Who is developing the guidelines in consultation with whom, and when will the guidelines be available? I will leave it at that and see how the minister responds.

Hon HELEN MORTON: I will answer the last part of the question first. As I think I have previously indicated, the standards and guidelines are being undertaken through the Office of the Chief Psychiatrist. They go to a standards and guidelines reference group, which has consumer and carer representation. They then go to the Mental Health Bill Implementation Reference Group, which is an overarching group of people who monitor and progress the implementation of the bill, and the bill implementation reference group will sign off on them. Again, there are people with a mental illness and carers in that group.

Hon Sally Talbot: Can I ask you to clarify that? Is that all within the Mental Health Commission?

Hon HELEN MORTON: The Chief Psychiatrist is not within the Mental Health Commission.

Hon Sally Talbot: In the Department of Health.

Hon HELEN MORTON: He is at the moment, yes. But under this legislation, should it be passed, he will be independent of both.

Hon Sally Talbot: When are the guidelines being developed—now, in his current position?

Hon HELEN MORTON: The guidelines are progressing now.

I want to pick up on a comment the member made earlier about paragraph (e), which states —

> that the person cannot be adequately provided with treatment in a way that would involve less restriction on the person's freedom of choice and movement than making an inpatient treatment order.

The suggestion was that somehow or other that is a catch-all phrase for the government because we are not providing services for people. I obviously refute that. I reiterate that we have the lowest level of community treatment orders of any mainland state. Those services are available in the community if people want them, but the ability of the psychiatrists and the teams working with people is such that they are managing people quite well without community treatment orders. Equally, there are geographical locations where those sorts of services

are quite difficult to provide. No other state has to provide services over the vast geographical distances that Western Australia has. There are factors that come into play in this as well. I obviously refute the comment that paragraph (e) is a catch-all phrase to somehow excuse the government from providing services. That is not the case, and the member will find that the level of community services will ramp up considerably with the introduction of the mental health services plan, and the introduction of the use of the audiovisual capability under this bill also will make a difference in this area.

Hon SALLY TALBOT: I have a couple more questions about the guidelines. Is this a one-off process? Is the process to develop the guidelines and then for the two groups to which the minister referred to be disbanded?

Hon HELEN MORTON: The Chief Psychiatrist's expectation is that the guidelines will be reviewed annually, so that will be an ongoing process.

Hon SALLY TALBOT: By whom will the guidelines be reviewed annually?

Hon HELEN MORTON: The Chief Psychiatrist does not have the ability to do everything personally, so the Chief Psychiatrist will nominate a group of people involving consumers and carers.

Hon SALLY TALBOT: I presume that will be consumers and carers and mental health professionals.

Hon Helen Morton: Absolutely.

Hon SALLY TALBOT: It is not specified anywhere in the bill who will be responsible for the ongoing annual review of the guidelines.

Hon HELEN MORTON: The bill specifies that the Chief Psychiatrist will be responsible for that.

Hon SALLY TALBOT: My last question on this matter is about whether the guidelines will be disallowable. Will they be made public; and, if so, how will they be made public?

Hon HELEN MORTON: The first point to make is that under the bill there is a requirement for the guidelines to be published. They will be available on the Mental Health Commission's website. They will be developed, as we have said, through that process involving lots of key stakeholders well and truly before the work of the bill commences. Consequently, on the point that the member made about whether they will be disallowable, I assume that she meant in terms of regulations coming through Parliament, and the answer is no.

Division

Amendment put and a division taken, the Chair (Hon Adele Farina) casting her vote with the ayes, with the following result —

Ayes (11)

Hon Robin Chapple	Hon Adele Farina	Hon Amber-Jade Sanderson	Hon Darren West
Hon Stephen Dawson	Hon Lynn MacLaren	Hon Sally Talbot	Hon Samantha Rowe *(Teller)*
Hon Kate Doust	Hon Ljiljanna Ravlich	Hon Ken Travers	

Noes (20)

Hon Martin Aldridge	Hon Jim Chown	Hon Nigel Hallett	Hon Robyn McSweeney
Hon Ken Baston	Hon Peter Collier	Hon Alyssa Hayden	Hon Michael Mischin
Hon Liz Behjat	Hon Brian Ellis	Hon Col Holt	Hon Helen Morton
Hon Jacqui Boydell	Hon Donna Faragher	Hon Peter Katsambanis	Hon Simon O'Brien
Hon Paul Brown	Hon Dave Grills	Hon Rick Mazza	Hon Phil Edman *(Teller)*

Pairs

Hon Sue Ellery	Hon Mark Lewis
Hon Alanna Clohesy	Hon Nick Goiran

Amendment thus negatived.

Hon STEPHEN DAWSON: I move —

Page 23, lines 1 and 2 — To delete "harm to the person or to another person" and insert —

financial harm to the person

Obviously, it was the will of the house not to delete those two lines in the previous amendment moved. However, I urge the minister to consider this amendment, which essentially brings us back to where we are in the current Mental Health Act 1996, which lists "serious financial harm" as part of the criteria for involuntary treatment. I am not going to spend much time on this amendment. I just want to make the point this afternoon that my concern remains that the bill refers to "serious harm" but there is no definition in the bill of "serious

harm". Granted that the minister said the definition will be in the guidelines and that a committee will put those guidelines together that will include carers, medical practitioners and consumers. However, this clause, as written, is too broad and all-encompassing and it would make more sense and would be better to use the phrase "financial harm".

Hon HELEN MORTON: I am not going to continue repeating everything that I have already said. I do recall, though, my conversations with Martin Whitely, who was obviously the author of the document that opposition members are referring to quite a lot. I had one conversation with him around "financial harm" and he acknowledged that it needed to be considered. I had further conversations with him about various other aspects, including areas around harm in the social domain, for example, but I believe I have already covered all those issues and I do not propose to go over them again.

Hon STEPHEN DAWSON: I will not leave alone that snide remark made by the minister. The opposition does care about this stuff, and not because Martin Whitely has made a submission or a statement. The concern is in the sector. Submissions received by all members of this chamber were signed by the Consumers of Mental Health WA, the Health Consumers Council, the Mental Health Law Centre and Mental Health Matters 2. Indeed, we all got a substantial submission from the Mental Health Law Centre with clause-by-clause consideration of the bill. The opposition is not moving this amendment, as I said, because Martin Whitely has suggested it. It is moving this amendment because this issue is a real concern. We believe that the phrase should read "financial harm" and should not be broadened to the effect to which the minister is trying to broaden it. Obviously the minister disagrees, but I think it was rude of her to suggest that we are moving the amendment because Martin Whitely said an amendment should be moved. Plainly and simply, we believe this amendment will make the bill better.

Hon HELEN MORTON: I will make one further point on this amendment. After I received this joint submission, I met with the Consumers of Mental Health, the Health Consumers Council, the Mental Health Law Centre and Mental Health Matters 2. Because the people from these organisations did not come and speak to me to get what I considered to be the balance to the position, I asked them why they would not want to have that conversation with me. I do not know whether it was because they did not have time, but I subsequently had that conversation with them and, to be honest, they made it clear to me that they were easily able to understand the balance that needed to be brought into the clause.

Hon STEPHEN DAWSON: The minister in one sentence said that this is Martin Whitely's submission, yet a few minutes later she admitted that this was the joint view in a submission by a range of agencies. She cannot say one thing and then a minute later backtrack or totally go in a different direction. The fact is that this amendment was the submission received by the opposition, it was considered by us and we believe that it will make the bill better. However, I will not go on any longer. Let us move on, Madam Chair.

Amendment put and negatived.

The CHAIR: Members, there is still one further amendment to clause 25 standing on the supplementary notice paper in the name of Hon Stephen Dawson.

Hon STEPHEN DAWSON: In light of the decision on the last amendment, I will not move amendment 124/25.

Clause put and passed.

Clauses 26 and 27 put and passed.

Clause 28: Detention to enable person to be taken to authorised hospital or other place —

Hon HELEN MORTON: I move —

Page 25, line 30 — To delete "referral" and insert —

order

The amendment I move simply replaces "referral" in clause 28(1) with "order". Clause 28(1) allows a medical practitioner or authorised mental health practitioner to make an order to detain a referred person on a referral for up to 24 hours to facilitate examination by a psychiatrist. Referrals last longer than 24 hours. The current drafting means that a detention order could be made within only the first 24 hours of a referral being made. This means that the referring practitioner has a choice between detaining the person within 24 hours or taking the significant risk that despite the referred person already being deemed to be at risk of serious harm, the person will not need to be detained during the life of the referral. Given this choice, clinicians who exercise reasonable caution will err on the side of making a detention order. Eliminating the requirement that detention commence within 24 hours will allow clinicians to refer a person without also making a detention order, safe in the knowledge that detention can be initiated at a later point if, and only if, it becomes required.

Hon SALLY TALBOT: Can I ask the minister: is this a bit more than a drafting error? This is a change—a quite significant amendment—to the way referrals and orders are made.

Hon Helen Morton: It is still drafting.

Hon SALLY TALBOT: Is the minister classifying it as a drafting error?

Hon Helen Morton: Yes.

Hon SALLY TALBOT: When does the countdown start in terms of the 72 or 144 hours?

Hon HELEN MORTON: When the first detention order is made, a person can be referred prior to the detention order being made; so this allows that time after being referred for the detention order to be made.

Hon SALLY TALBOT: Minister, how long can a person be detained under a referral provision before an order can be made?

Hon HELEN MORTON: The referral order lasts for 72 hours. The person can be detained within that 72 hours, but they can be detained for only up to 24 hours and then another detention order would need to be made.

Hon STEPHEN DAWSON: I am just trying to work my way through this as well. Later on in the bill, clause 28 refers to maximum detention times. The 72 hours for the metropolitan area is a maximum; so is the 24 hours' part of the 72 hours?

Hon Helen Morton: Within that.

Hon STEPHEN DAWSON: It is not on top of, and the 72 and 144 hours remain; this is just a subset of that 72 hours.

Hon HELEN MORTON: Yes; that is correct.

Hon SALLY TALBOT: Is there a limit on the number of times a referral order can be repeated? In the case of somebody who is in a remote location, do they have to keep coming back every 23-and-a-half hours to reissue the referral order?

Hon HELEN MORTON: The referral order can last up to 72 hours and it cannot be renewed. The detention order lasts 24 hours, or up to 24 hours, within the 72 hours, and it can be renewed up to the total of the 72 hours, if necessary.

Amendment put and passed.

Hon HELEN MORTON: I move —

Page 25, line 31 — To delete —

, because of the person's mental or physical condition,

A number of clauses allow a referred person to be detained or transported on the basis of the person's mental or physical condition. The first of such clauses in the bill is at clause 28. During debate in the other place concern was raised around the inclusion of physical condition. The amendment that I move is to delete the words "because of the person's mental or physical condition". The rationale for that is that the person's condition is comprehensively and more appropriately dealt with via the referral process. I remind members that the detention powers under clause 28 apply only to referred persons. The referral process requires an assessment by a medical practitioner or authorised mental health practitioner. A referral can be made only if the practitioner who carried out the assessment develops a reasonable suspicion that the person is in need of an involuntary treatment order. The criteria include, among other things, that the person has a mental illness that is in need of treatment. The purpose of the detention and transport powers is to facilitate examination of a referred person by a psychiatrist—that is, to merely give effect to the referral. A simple example of when these powers may need to be exercised is when a person at serious risk of self-harm is unwilling to present for examination of their own volition. If at any time a medical practitioner or authorised mental health practitioner suspects that the person no longer meets the involuntary treatment criteria, the appropriate course of action is to consider revoking the referral. If the referral is revoked while the person is detained, the person must be released. The power to detain is subject to the principles of detention under clause 170. Among other things, these principles require that a person be detained for as brief a period as possible with the least possible restriction on that person's dignity.

Hon SALLY TALBOT: The minister will be familiar with the argument raised in another place about the inclusion of "physical", particularly in light of the Stokes report. It is not clear that what the minister is proposing to do here will remove that reference, which has the effect of only broadening the criteria in a similar way that we have talked about in relation to those areas that were identified as problematic in clause 25. I think that the point is better served by removing the reference to "physical condition" to make it absolutely clear that what we are dealing with here is mental illness. If the person has a physical illness, it is entirely inappropriate for them to be subject to any sort of referral or order under this bill.

Hon HELEN MORTON: This will actually simplify the matter. The determination under which a person is being referred for a mental illness is already covered under the criteria in clause 25.

Committee interrupted, pursuant to standing orders.

[Continued on page 6205.]