MENTAL HEALTH BILL 2013

Consideration in Detail

Resumed from 20 March.

Clause 262: Restrictions on freedom of communication —

Debate was adjourned after clause 261 had been agreed to.

Dr A.D. BUTI: I rise to speak on this clause and I will move an amendment that is in my name on the notice paper. Clause 262 deals with the issue of freedom of communication and tries to restrict —

The ACTING SPEAKER (Mr N.W. Morton): Member, sorry, just to clarify—are you talking to the amendment now?

Dr A.D. BUTI: No; I will move the amendment shortly.

This clause is about trying to restrict freedom of communication to the patient. It states —

> (1) A psychiatrist may make an order —
>
> (a) prohibiting a patient from exercising a right under section 261 …

Which deals with the freedom of lawful communication —

> (b) limiting the extent to which a patient can exercise a right under section 261.

That is quite significant in possibly restricting the rights for lawful communication. This clause provides for another restriction; subclause (3) provides that a psychiatrist has the ability to restrict communication between the patient and their lawyer or mental health advocate. That is a major concern. Therefore, I move —

> Page 190, line 21 to page 191, line 2 — To delete the lines and substitute —
>
> (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).

The clause as it currently stands is about the psychiatrist being able to limit the ability of a patient to communicate with their lawyer or mental health advocate if the psychiatrist believes that it is in the patient's best interests or it is necessary because no other steps can be taken to reduce a serious risk to the patient's safety.

I ask any medical practitioners that may be at the despatch box or in the house to please excuse me, but the medical profession is quite often suspicious of lawyers. I do not think we want a situation in which the psychiatrist determines whether a lawyer can speak to their client or, in this regard, the patient. Whatever people may think, overall lawyers do have the best interests of their clients at stake. They have a fiduciary duty and, unlike under this Mental Health Bill 2013, if there is a financial interest, it has to be disclosed. Under this bill a psychiatrist does not have to do that. The duties of a lawyer are very onerous. I think that only in incredibly rare cases would a lawyer speak to a client if they thought it would have a significant negative effect on the health or safety of the patient. I am not sure how it would affect the patient's safety though. Is a lawyer going to suggest that the patient break out of an authorised hospital? Would they advise the patient not to take their medication or not to engage in certain treatment that their psychiatrist considers beneficial? That may happen but it would be very rare. Of course, we cannot base a clause on a premise of a worst-case scenario that may never happen, or would happen very rarely.

It is an incredible power to allow a psychiatrist to determine whether a person's legal practitioner or their mental health advocate should be excluded from speaking to their client. That should be a decision made between the client and the lawyer. The client always has a right to say that they do not want to communicate with their lawyer. They have that right, so why are we doing this here? This clause is not restricted to involuntary patients; therefore, the government is saying that under this clause, as it now stands, a psychiatrist can prohibit a lawyer or a mental health advocate from communicating with a patient—that is, the client—based on the view of the psychiatrist even if the patient is voluntary.

Ms A.R. MITCHELL: I inform the member that the purpose of this clause is to protect the lawyer and the advocate. It is there for situations when the psychiatrist feels that the lawyer or the advocate is in potential danger, and not necessarily the patient. Swing that one around, because it is protection for the lawyer and the advocate, not the patient. It certainly does not restrict other forms of communication; it is just face-to-face and in some situations. It is not there because they think that the lawyer is going to harm the patient.

Dr A.D. BUTI: We have a situation here where the clause has been drafted for the purpose of protecting the lawyer. I thought this bill was all about protecting the mental health patient. Also, I would like to know where that clause states that this is to protect the lawyer, because actually it does not. It does state "a serious risk to the safety of the legal practitioner or mental health advocate" but surely that should be left up to them. If lawyers or advocates feel that they need to speak to their client, they will. They will not be silly and endanger themselves. What should happen in a simple mental health system is the psychiatrist should speak to the lawyer or mental health advocate and tell them that they have concerns about face-to-face communication with the patient. I do not know where it says "face-to-face" in that clause anyway. Is the parliamentary secretary able to point out where it refers to "face-to-face"? It says "receive visits", but that can be through a protective shield. There could be a two-way mirror, so it does not actually have to be a physical visit. The way this bill is drafted, a physical visit can be prevented even if there was a shield between the patient and the lawyer or mental health advocate. Leave it up to them, because denying that contact may actually have a negative effect on the patient.

The premise of this bill is to act in the best interests of the mentally ill patient rather than being concerned with third parties. It should not be left to the psychiatrist; leave it up to the legal practitioner and the mental health advocate to work it out with the patient. As I said, if a psychiatrist speaks to the legal practitioner or the mental health advocate and points out the dangers, generally most lawyers and mental health advocates are reasonable, logical people and they are not going to put themselves in danger unnecessarily. So leave it up to them. At the moment this bill gives the psychiatrist the veto to communication which is incredibly important.

Ms A.R. MITCHELL: The member is correct; we certainly hope that it would only be a very rare occasion. The examples the member gave of having a face-to-face meeting with some form or mirror or barrier would be fantastic, but in some locations that is not possible. It is a rare occasion and it is there for when no other steps can be taken to reduce that risk. The member espoused that lawyers are very reasonable people. I accept that, but I have it on very good authority that psychiatrists are very reasonable people as well. We would certainly like to think that between the two an agreement could be reached, but if there was a situation in which there was potential danger to the legal practitioner or the mental health advocate, someone would have to take control. That is what this clause does.

Division

Amendment put and a division taken, the Acting Speaker (Mr N. Morton) casting his vote with the noes, with the following result —

Ayes (18)

Dr A.D. Buti	Mr F.M. Logan	Mr J.R. Quigley	Mr P.B. Watson
Mr R.H. Cook	Mr M. McGowan	Ms M.M. Quirk	Mr B.S. Wyatt
Ms J.M. Freeman	Ms S.F. McGurk	Ms R. Saffioti	Mr D.A. Templeman *(Teller)*
Mr W.J. Johnston	Mr M.P. Murray	Mr C.J. Tallentire	
Mr D.J. Kelly	Mr P. Papalia	Mr P.C. Tinley	

Noes (34)

Mr P. Abetz	Ms W.M. Duncan	Dr G.G. Jacobs	Mr D.C. Nalder
Mr F.A. Alban	Ms E. Evangel	Mr S.K. L'Estrange	Mr J. Norberger
Mr C.J. Barnett	Mr J.M. Francis	Mr R.S. Love	Mr D.T. Redman
Mr I.C. Blayney	Mrs G.J. Godfrey	Mr W.R. Marmion	Mr A.J. Simpson
Mr I.M. Britza	Mr B.J. Grylls	Mr J.E. McGrath	Mr M.H. Taylor
Mr G.M. Castrilli	Dr K.D. Hames	Mr P.T. Miles	Mr T.K. Waldron
Mr M.J. Cowper	Mrs L.M. Harvey	Ms A.R. Mitchell	Mr A. Krsticevic *(Teller)*
Ms M.J. Davies	Mr C.D. Hatton	Mr N.W. Morton	
Mr J.H.D. Day	Mr A.P. Jacob	Dr M.D. Nahan	

Pairs

Ms J. Farrer	Mr V.A. Catania
Mrs M.H. Roberts	Mr T.R. Buswell
Ms L.L. Baker	Mr R.F. Johnson

Amendment thus negatived.

Clause put and passed.

Clauses 263 to 268 put and passed.

Clause 269: Provision of information or involvement not in patient's best interests —

Dr A.D. BUTI: This is another clause that imposes restrictions of some sort, this time in regard to information being provided to the patient's nominated person. I would like some clarification on when it would be in the patient's best interest for the nominated person not to be provided with that information, because I thought that the whole idea of the nominated person was to support the patient. Of course, they could not really do that if they did not necessarily have all the information before them. Will the parliamentary secretary give us some examples of situations in which information would not be provided?

Ms A.R. MITCHELL: The nominated person is a choice of the patient, and that is their call, but there could be a situation in which the nominated person may—I am trying to put this in a nice way—not be the best person for that patient. They may be gaining some financial benefit out of it. Dare I say that the patient could be a victim of domestic violence or other form of abuse? Therefore, it is a protection for the patient.

Dr A.D. BUTI: That is quite reasonable, but I notice that clause 269(2) provides that in a situation in which the nominated person is not entitled to be provided with the information, the psychiatrist must —

(a) file a record of the decision and the reasons for it; and

(b) give a copy to each of —

(i) the patient; and

(ii) the Chief Mental Health Advocate.

Will the recording of the decision and the reason for it also include details of information that is being denied? That is one question. What the parliamentary secretary said was quite reasonable. Secondly, is it possible for the patient then to nominate another person? It may be in another clause. If it has been decided that that nominated person is not appropriate, it really becomes pointless to have that nominated person. I presume that nothing restricts that patient from nominating another person.

Ms A.R. MITCHELL: I have been informed that only the reasons for not informing the nominated person are recorded and not the other detail. The patient can revoke the nomination.

Clause put and passed.

Clauses 270 to 280 put and passed

Clause 281: Close family members —

Dr A.D. BUTI: This clause deals with close family members and lists possible relationships. I briefly refer again to clause 280; I am not challenging anything. Clause 280 states, in part —

(3) It is also recognised that, even though a family member is a person's carer —

(a) the person may not identify the family member as his or her carer; or

(b) the family member may not identify himself or herself as the person's carer.

Under the list in clause 281, what happens when a number of family members come forward? Can we have dual carers and so forth or is it only one person at a time? If it is only one person at a time, how is it prioritised?

Ms A.R. MITCHELL: I think the member has picked up that clause 283 states that there can be more than "one carer or close family member".

Clause put and passed.

Clauses 282 to 303 put and passed.

New clause 303A. —

Dr A.D. BUTI: I move —

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.

As I said, I notice that the government is also looking at moving some amendments. This new clause is about trying to keep in check medication, especially in the case of off-label medication, which is defined under our new clause. The amendment serves to provide some protection to children when using off-label treatment. It is incredibly reasonable for a parent to have the right to veto such treatment—unless it is determined by the Mental Health Tribunal that the parent is unfit to be the primary responsible carer for the welfare of the child in question because, obviously, in some cases, a parent is not the appropriate person. If that is the case, it must be reported to not only the Chief Mental Health Advocate, but also the Chief Psychiatrist. This amendment is incredibly important.

The parliamentary secretary will be speaking to her proposed new clause, which deals with involuntary patients. We believe that this provision should not deal only with involuntary patients. Unfortunately, Western Australia has a sad history with medication. As the former member for Bassendean has researched and frequently written about—he even published a very fine book on the matter—a number of doctors were over-medicating children in Western Australia. One primary school in my electorate, at recess time, had a long queue of children lining up to receive their medication for attention deficit hyperactivity disorder. Due to the work of the former member for Bassendean, a number of those doctors were marked out—that is, found and identified—and this has resulted in a substantial decrease in over-prescribed medication for ADHD. It is prudent in this situation to ensure that if a child has off-label treatment, a parent, serving in his or her capacity as a guardian, has the right to veto that treatment, unless it is found that they are not fit to be the primary responsible carer. Under the legislation, a guardian has a right to make a decision about whether a child should be subjected to ECT. Therefore, it states that a guardian can approve the use of ECT, but, as the bill currently stands, a parent does not have the right to veto medication. That is absurd. The opposition feels very strongly about this new clause. The work of the former member for Bassendean should be applauded in this area. His work, if anything, makes it incredibly important that this clause be agreed to by this Parliament. We must do whatever we can to ensure that the historic overtreatment of children with medication is not repeated, especially with off-label treatment.

Mr P. PAPALIA: Before the parliamentary secretary responds, I add a few comments in support of the member for Armadale's contribution. The dangers represented by off-label treatment of children are not only real, but also significant. As indicated by the member for Armadale, Western Australia has a history with this serious issue, and it should not be ignored. One has to ask, in the event that both the parliamentary secretary and government do not support this amendment: why not? The new clause is quite reasonable, given that it does nothing to complicate or impede the application of this legislation as intended in the enhancement of the treatment of the mentally ill in Western Australia. None of it is affected in a negative fashion by the inclusion of this new clause, which I understand has resulted from a recommendation by the Health Consumers' Council of Western Australia. The clause has been drafted in a reasoned fashion, and has been presented in good faith by the opposition. To go through another process by which the government refuses to countenance an amendment for no other reason than obstinacy would be disappointing. Given that we have been going through this legislation for a number of days now, the parliamentary secretary should be capable of standing to give the argument on behalf of her minister in response to this new clause countering the suggestion that this is a reasonable and necessary change to the legislation. If it is not, she should tell us why that is the case. The parliamentary secretary should not just say that she trusts people. She should not just say that there is an advisory board or that there are provisions for advocacy. That is all taken into account in the drafting of this new clause proposed by the member for Armadale. It proposes an improvement, a strengthening, to the support and protection of vulnerable people, and it does not complicate or impede the application of the legislation. I implore the parliamentary secretary to not refuse the new clause based on the standard procedure: "That is what we will do with this bill." If that is all that will happen, I would rather the parliamentary secretary stood up and said that that is what she will do. I would rather a bit of honesty than lip-service be applied when the opposition introduces amendments to improve things—that is, for the government to say, "Yes, the opposition has some ideas but they are not necessary given that the bill already has all these other safeguards in force." That would not be adequate in light of the experience and poor record with off-label treatment drugs in Western Australia, particularly with prescription drugs.

The profession has not covered itself in glory in this regard. That happened in recent times; it was not a long time ago. From 2003 to 2008, we saw significant change as a consequence of nothing other than the compelling evidence concerning the use of prescription drugs with children. We saw a significant drop—a halving—in the prescription rate. That is evidence that we cannot just trust people. As much as I admire and respect people in the medical profession, and recognise that most people do the right thing and intend to do the best for their patients,

added security is needed, as provided by this new clause, which I fully support. I ask that the parliamentary secretary consider it. If she cannot consider it because the Minister for Mental Health does not give her that latitude, at least acknowledge that, and concede that the new clause is worth considering and might be further investigated in the upper house.

Ms A.R. MITCHELL: I say to the members for Warnbro and Armadale that we certainly did take on board the member for Armadale's proposed new clause. We considered it had merit. It made us look at how such a provision should best be used. That is why we have come back with an alternative amendment saying that we believe it should apply to involuntary patients, rather than all patients.

Even though it is not particularly related to this bill, the issue that has been raised about the prescription of stimulants during the period highlighted has been addressed. The prescription of stimulants is well tracked by the Department of Health, and also through the other avenues with doctor-shopping exercises and such things. Stimulants are being well tracked; that has been addressed. The members for Warnbro and Armadale are right: the matter certainly needed to be addressed. However, off-label treatment is not just about stimulants. In our proposed new clause we went for involuntary patients rather than voluntary patients because if we provided for everybody, we would talk about every prescription that comes from a general practitioner, from another medical practitioner or from anyone else.

Dr A.D. Buti interjected.

Ms A.R. MITCHELL: No; off-label. We believe that probably about 90 per cent of all prescriptions for children are off-label. That is not really necessary.

Dr A.D. Buti: It is.

Ms A.R. MITCHELL: And it does not occur in any other part of health care.

Dr A.D. Buti: It is necessary; otherwise, you would not bring in an amendment.

Ms A.R. MITCHELL: Yes, for involuntary people.

Dr A.D. Buti: But you still think it is necessary.

Ms A.R. MITCHELL: Once again, it is because there is no parent veto. The opposition's amendment would do it for all voluntary patients when it is not done for any other part of health care; they are saying that because it is in mental health, it has to be there. We are trying to balance this so that mental health and health are treated equally, and treated well. We agree that there should be a provision concerning off-label treatment for involuntary patients and, in fact, some clauses to manage it.

Dr A.D. BUTI: At least we have an admission that the parliamentary secretary agrees that there needs to be some recording and scrutiny, because it will be done for involuntary patients. Here we are talking about children who have, or potentially have, a mental illness. We are not just talking about the general public and a child who gets some antibiotics for a cut on their foot; we are talking about children who are vulnerable in the first place because they are children, and they have a mental illness. The parents should have a right to veto that treatment. If the treatment is really, really necessary, hopefully the parent will not veto it. We are looking at parents who have the capacity to have that responsibility, as we state in our amendment. If it is considered that they do not have the capacity or they are not the appropriate person, they will not have that right to veto the treatment. My new clause provides a level of scrutiny. The parliamentary secretary mentioned that in recent history there was an issue about the over-prescription of certain drugs. Who is to say that will not happen again? We should be proactive about ensuring there is no repeat of reprehensible behaviour by certain people in the medical profession. The opposition's amendment is incredibly reasonable. The parliamentary secretary has admitted there is merit in our new clause because she proposes to move her own new clause. As the member for Warnbro stated, hopefully the parliamentary secretary's proposed new clause was not brought on to ensure that even though she had a concern, she did not want to accede to our new amendment. Throughout this debate, the parliamentary secretary has not conceded anything—nothing at all. But the parliamentary secretary has on occasion come back with her own amendments, which have been developed after she saw our amendments. That is just churlish. If the opposition has a good amendment, accept it. This will not decide the next election. Whether the parliamentary secretary agrees to the insertion of new clause 303A or not will not even decide the Senate election on Saturday. Our primary job as parliamentarians in this house is to enact the best possible legislation. We represent the constituents in our electorates. We have a duty to produce the best possible legislation, whether it is from the government side or from the opposition side. I repeat: if I am ever fortunate enough to be sitting where the parliamentary secretary is sitting, I will gladly accept the opposition's amendments. To me, there is no political danger in the parliamentary secretary accepting it and moving on. We have been considering this bill for a long time. We have moved a number of reasonable amendments, some of which the parliamentary secretary agreed with, at least to an extent, because she has come back with her own

amendments, but she will not agree to this new clause, which is incredibly reasonable and provides a level of scrutiny that is justified, based on Western Australian history.

Ms A.R. MITCHELL: I look forward—no, I do not look forward, actually!—to one day sitting on that side and the member for Armadale sitting at this table and renewing our debates in other ways. If I could just reaffirm for the member: for a voluntary patient, the parents have the right to veto the use of any drugs, whether off-label or label. The figure I used was that 90 per cent of all prescribed drugs for children—I was not talking about adults—is basically off-label. That applies to every bit of medication; it is not just for mental health. If we are talking about a voluntary mental health patient, there is quite a significant difference. We certainly recognised that the member raised a good point, but I suppose having worked on developing the bill and working through it, we can put all the bits together. I hope the member recognises that as well. The member said we want the best legislation, and that is what we want here. We do not want something that might have been easy to accept. At the same time, we have recognised that the member raised a good point but we believe that it is best to use the member's amendment for involuntary patients only. That is the difference. We believe that it certainly is worth mentioning and covering.

Mr P. PAPALIA: I would like the advisers to work a little harder on responding to this proposed new clause. Did the parliamentary secretary say 94 per cent of all medications for children are off-label?

Ms A.R. Mitchell: No; about 90 per cent.

Mr P. PAPALIA: About 90 per cent of all medications. Is that in the field of mental health or in all treatments of children?

Ms A.R. Mitchell: In health right across the board.

Mr P. PAPALIA: Is that 90 per cent of medications that are available?

Ms A.R. Mitchell: It is prescriptions for children that are off-label.

Mr P. PAPALIA: Are 90 per cent of prescriptions to children in Western Australia off-label?

Ms A.R. Mitchell: Yes. *The Medical Journal of Australia* 2006 stated that.

Mr P. PAPALIA: Is the parliamentary secretary essentially saying that that is not in accordance with advice from the Therapeutic Goods Administration?

Ms A.R. Mitchell: The "off-label" does not mean that the TGA has rejected the use of the treatment. It typically means that the TGA has not been asked to evaluate the specific indication for that.

Mr P. PAPALIA: Typically, it means that it has not been asked to evaluate the application of that drug for that purpose.

Ms A.R. Mitchell: Yes, that is right.

Mr P. PAPALIA: Does it not concern the parliamentary secretary in this particular field that we are addressing—the treatment of children—that there are potentially unknown side effects in the use of a drug for that treatment? To put it another way: why do we need carte blanche approval for the use of these off-label drugs in this fashion as opposed to constraining it to being able to be used, provided that the parents have a veto? Why is it so outrageous? This is the specific thing I want the parliamentary secretary to address. I seek advice from her advisers: why is it so wrong to consider giving parental veto over use of these off-label drugs?

Ms A.R. Mitchell: They do. Parents have the right of veto.

Mr P. PAPALIA: Our proposed new clause does but the legislation does not. Why does the parliamentary secretary oppose our amendment to provide parental veto over use of these off-label drugs in these instances with the quite —

Ms A.R. Mitchell: Member, I say again: your amendment puts it in, but under current common law and the bill, the child's parent or guardian is the decision-maker unless the child is a mature minor. It is covered for voluntary patients.

Mr P. PAPALIA: I ask again: why is the parliamentary secretary refusing to countenance being very specific about providing this veto here? For all intents and purposes, if the parliamentary secretary accepts that that is not an unreasonable thing, and she is actually arguing that is already the case, why would she oppose an amendment that does not in any way impede the application of this legislation?

Dr A.D. BUTI: Further to the member for Warnbro's comments, the parliamentary secretary said that the parent already has the veto. Clause 301, "Views of child's parent or guardian", states —

> In performing a function under this Act in relation to a child, a person or body must have regard to the views …

That is not a veto. We recognise that the views of the child's parent or guardian should be taken into consideration.

Mr P. Papalia: Which clause was that?

Dr A.D. BUTI: That was clause 301.

Mr P. Papalia: That is not the same thing.

Dr A.D. BUTI: No, of course it is not. It is saying that the views of the child's parent or guardian must be taken into consideration. We are not asking for a veto. The parliamentary secretary talked about the definition of off-label drugs. I am not sure whether her definition coincides with the definition in our amendment. Our amendment states —

> 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.

That is not the same definition that the parliamentary secretary provided in response to the member for Warnbro. We are looking at a drug that will be utilised in a way that is contrary—that means it is different, not the same—to the manufacturer's prescribing information as approved by the Therapeutic Goods Administration. That is a little different from what the parliamentary secretary stated in her response to the member for Warnbro, which is based on her statistic of 90 per cent that came from a 2006 journal. That journal is now eight years old. The data would probably be 10 years old because it would have been collected a year or two before its publication.

Ms A.R. Mitchell: I refer you to clause 302(3).

Dr A.D. BUTI: That clause states —

> A treatment decision about the provision of treatment to the child may be made by the child's parent or guardian unless it is shown …

That is not a veto. A treatment decision about the provision of treatment to the child may be made, but it is not a veto. It is not mandated. Legislation is very precise and so much has been discussed and so many court cases have hinged on whether legislation says "shall" or "may". "May" is not a veto. All that clause does is to say that the parent's view should be taken into consideration. Our clause is very precise and reasonable. We have included a concise definition of "off-label treatment". By not allowing this amendment, the parliamentary secretary is saying that a doctor can prescribe medication to a child with a mental illness that is contrary to the manufacturer's prescribed information as approved by the Therapeutic Goods Administration. The parliamentary secretary thinks it is okay for children in Western Australia who have a mental illness to be prescribed treatment that is contrary to the manufacturer's prescribed information as approved by the Therapeutic Goods Administration without the parent, who is their legal guardian, having the right to veto such treatment if that parent is considered fit. As we state, sometimes the parent will not be fit; they will not have that ability. In those cases, that determination has to be reported to the mental health advocate. Any off-label treatment should be reported to the Chief Psychiatrist, so there should be increased scrutiny. The manufacturer of the drug is saying that this treatment should not take place or has not been approved by the Therapeutic Goods Administration. The parliamentary secretary thinks it is okay for that to happen and the parent does not have a right to veto. That is incredible.

Mr P. PAPALIA: Following on from the member for Armadale—I endorse what he said—are the parliamentary secretary's advisers aware of off-label prescriptions that have been given to children, resulting in children self-harming, having suicidal tendencies and that sort of thing? Are they aware of any of that type of activity as a consequence of using off-label drugs for treatment of mental health illness in Western Australia?

Ms A.R. Mitchell: Sorry; I was not concentrating.

Mr P. PAPALIA: Are the parliamentary secretary's advisers aware of any recent evidence suggesting self-harm or other dangerous consequences of off-label use of medications for treatment of mental illness in Western Australia?

Ms A.R. Mitchell: My understanding is that the TGA says no.

Mr P. PAPALIA: What does that mean? Are the parliamentary secretary's advisers aware of any recent studies that have suggested that off-label medication of mentally ill children has resulted in self-harm or other dangerous behaviours?

Ms A.R. MITCHELL: The Therapeutic Goods Administration is the premium body for drug regulation. It follows what is going on and puts out reports and all sorts of things. It has expressed no concern about off-label

treatments. I wish to reinforce that if a parent or a mature minor says no to off-label treatment, no off-label treatment will be prescribed. There is no power in this bill to give psychiatrists the ability to force voluntary patients to take medication. I do not believe that the matter the member is concerned about is an issue. If off-label treatments are used, it gets reported to the Chief Psychiatrist and, therefore, the Chief Mental Health Advocate finds out as well. We are covering that because of the situation that the member for Armadale raised. Once again, I suppose we would say there are potential side effects from using both label and off-label medications. They are explained to the people involved before any consent is given, except it is not as easy for involuntary patients, although they often still have the capacity to make that decision.

Mr P. PAPALIA: I am not a lawyer, but from my reading of that clause to which the member for Armadale referred earlier and the one that the parliamentary secretary drew our attention to, a treatment decision about the provision of treatment to the child may be made by the child's parent or guardian unless it is shown that the child has the capacity to make the treatment decision himself or herself. We have more lawyers over here at the moment than we can poke a stick at. The use of the word "may" does not impose any obligation. I have accrued a minimal awareness of legal language during the past seven years.

I have sat through a few debates listening to much more learned people than I on the law. They invariably point out that the word "may" does not compel or obligate an authority to pursue a course of action; it urges them to, but it does not compel them. In layman's terms, that is the difference between "may" and "shall". If the government wants this to be an absolute obligation, it should change its own definition and use "shall". That aside, I do not think that addresses this issue. The intent of this amendment is not to impose an obligation on authorities to enable a veto by parents prior to the use of off-label treatment; it is to draw the attention of the Parliament and the authorities to legitimate concerns regarding off-label treatment. This amendment calls upon members of Parliament and the authorities concerned to enable a child's parents to have the opportunity to veto the use of this type of treatment. If the parliamentary secretary reads the first paragraph of the amendment, the intent is clear. It is quite disturbing when we consider the implications of an off-label treatment. New subclause (1) of the amendment reads —

> 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.

It is not about whether the Therapeutic Goods Administration has been asked about it. The specific concern that we are highlighting and drawing to the attention of the Parliament and that hopefully the government will consider is related to treatment that is contrary to the manufacturer's prescribing information. The people who make this stuff are saying, "Do not use it like this."

Ms A.R. Mitchell: They do not necessarily say that.

Mr P. PAPALIA: They are saying, "Use it like this." They do not talk about using it in a completely different fashion. Why would the government argue that somebody should be allowed to prescribe something without any constraint when that is not at all the way in which the manufacturer has recommended it be used? What is the overwhelming argument in favour of having that lax approach to this, other than the parliamentary secretary does not want to accept an amendment from the opposition? This applies to the advisers, the department and the clinicians. These concerns have been voiced by the opposition on behalf of the people of Western Australia. They should not be refused outright on the grounds that the parliamentary secretary cannot be bothered to amend legislation. Admittedly, the government has done a lot of work on this legislation after a significant period of consultation, but on this issue the proponents of the amendment that has been moved were not given a voice. The government did not listen to their advocacy; otherwise it would have included something like this in the legislation. As much as this bill has gone through a consultative process, it does not incorporate or acknowledge the specific concerns about off-label medication that we are advocating. If the government is just going to oppose the amendment, I do not mind, as we regularly see political obstinacy, and, unfortunately, without Hon Troy Buswell, it will probably happen a lot more.

Dr A.D. BUTI: I am enjoying what the member for Warnbro is saying and I would like to hear more.

The ACTING SPEAKER (Mr N.W. Morton): Member for Warnbro, just a reminder to refer to members in this chamber by their seat.

Mr P. PAPALIA: We can also use the term "Hon Troy Buswell, MLA", which is what I did call him.

The ACTING SPEAKER: He is the member for Vasse.

Mr P. PAPALIA: Mr Acting Speaker, that is a legitimate form of address.

The ACTING SPEAKER: He is the member for Vasse—continue.

Mr P. PAPALIA: I was not being disrespectful. I was being respectful of him. I was pointing out that of all the ministers in this government, and in the previous term of this government—beyond the former local government

minister, John Castrilli—the minister who accepted the most number of amendments to make legislation better was the member for Vasse. I was just acknowledging that. It will be a poorer place in that respect for the absence of that member—in the event that he goes anywhere. The member for Bunbury did the same thing on the Cat Bill—notably and famously! It was drafted very poorly by somebody else, but he did accept amendments and, as a consequence, the legislation was better. In this case, we are advocating on behalf of people with legitimate concerns who I think have focused on this issue in far more detail than anybody else in the state. That is undeniable. With good reason, they have articulated concerns that should be addressed. I do not think they should be rejected outright for the sake of the government saying it will not change the bill.

Mr J.R. QUIGLEY: The parliamentary secretary said that proposed new clause 303A is similar to clause 302(3). Of course, nothing could be further from the truth. Clause 302(3) states —

> A treatment decision about the provision of treatment to the child may be made by the child's parent or guardian —

It does not have to be. They can choose not to participate, and a child could then be administered an off-label treatment of a drug being used within the psychiatric sphere on an experimental basis. The clause only gives permission for the parent to veto it if they want to, but even that permission is qualified by saying —

> unless it is shown that the child has the capacity to make the treatment decision himself or herself.

However, treatment decisions about off-label use of medication are complex and, I submit to this chamber, beyond the reach or stretch of a child to understand that that which is being prescribed or administered does not fall within the recommendations of the manufacturer of the drug or the Therapeutic Goods Administration. For the parliamentary secretary at the table of the chamber this afternoon to assert that the community's concerns about off-label prescription and off-label treatment is covered by clause 302(3) is wide of the mark. This question, I submit, should not be resolved as a matter of party ideology. We are talking about the administration of drugs to children in circumstances and under conditions not approved by the Therapeutic Goods Administration. This should not be reduced to a Labor–Liberal divide. This is not a matter of ideology. We should be putting the interests of children first in the chamber this afternoon. The welfare of these child patients should be our first, second and third priorities. The amendment to insert new clause 303A does not in any way cut across the purpose of this legislation. The amendment does not undermine the government's endeavour to bring the Mental Health Act up to date by way of the Mental Health Bill 2013. It does not do any of those things that could cause a responsible government to hesitate; it simply includes a protection for children. If this Parliament cannot put the interests of children before the interests of party ideology, this Parliament is failing in its responsibility to these sick children in this community.

Mr P. PAPALIA: I have been doing a little research and I want to pose a specific question to the parliamentary secretary's advisers about the off-label amendment. Would it be considered off-label treatment if children were prescribed antidepressant medication prior to receiving adequate counselling if there were international guidelines advising that that was the proper practice? If the proper practice was to receive adequate counselling before receiving antidepressant medication, but they were given antidepressant medication before they had any counselling, would that constitute off-label prescription or use of off-label medication?

Ms A.R. MITCHELL: I have a couple of areas to come back to, and I would like to reaffirm to members in this chamber that we are very conscious of making sure that the children of Western Australia are well protected through this bill and anything we do. There has been a lot of community involvement to get to this point and it did not appear that this was an insignificant issue during the consultation and the 1 300 submissions and things that were received. We certainly took on board the amendment that the member for Armadale brought forward, but after further investigation and work on our part we believed that it was too broad, and have decided that this is the way we are going.

Member for Butler, clause 175(1) reads —

> A voluntary patient cannot be provided with treatment without informed consent being given to the provision of the treatment.

That brings in what the member for Warnbro asked about. If any parent or mature minor does not agree to the medication, whether off-label or labelled, they would not get any medication; they would perhaps choose not to receive treatment. They have to agree to it whether it is off-label or Therapeutic Goods Administration-approved medication, so I think we have it covered. That is why we are not supporting the broad amendment but going for a specific amendment.

Mr P. PAPALIA: I will pursue this specific matter. I want the parliamentary secretary to answer this and I want her to seek advice from her advisers: would it be considered off-label if a child was prescribed a drug that had been trialled only on adults?

Ms A.R. Mitchell: Yes.

Mr P. PAPALIA: Does the parliamentary secretary have any concerns at all about the treatment of children who are mental health patients with a drug that has been trialled only on adults and has not been trialled at any time on children?

Ms A.R. Mitchell: I am answering by way of interjection. I have been informed that the majority of drugs, whether for cancer or antibiotics, are basically all tested on adults, not children.

Mr P. PAPALIA: Is the parliamentary secretary aware that selective serotonin reuptake inhibitors antidepressants are not licensed for use in under-18s and that they increase the risk of suicidality, yet thousands of children are prescribed them across Australia right now?

Ms A.R. Mitchell: I have been informed that the Western Australian Chief Psychiatrist has put out a directive on this matter to all medical practitioners already.

Mr P. PAPALIA: In what way?

Ms A.R. Mitchell: He has sent out a directive that that discussion must be part of the informed consent process that would happen between patient, parent and psychiatrist or medical practitioner.

Mr P. PAPALIA: Where is that in this legislation?

Mr P. Abetz interjected.

Mr P. PAPALIA: I am asking someone over here with the advisers, not the member.

Ms A.R. Mitchell: It is an administrative direction, member.

Mr P. PAPALIA: Does the parliamentary secretary understand what we are getting at?

Ms A.R. Mitchell: But that is occurring now.

Mr P. PAPALIA: Does the parliamentary secretary understand what we are getting at?

Ms A.R. Mitchell: Yes, and I believe it has been covered.

Mr P. PAPALIA: It is not in the legislation, and we are proposing an amendment that will apply a more rigid analysis of the prescription of off-label drugs to children and provide in the legislation by definition a right of veto to parents. We do not have that at the moment. Why would the government oppose that?

Ms A.R. Mitchell: Because that practice is occurring as we speak all the time.

Mr P. PAPALIA: No; is it legislated?

Ms A.R. Mitchell: No, but it is —

Mr P. PAPALIA: The parliamentary secretary is just saying it is a directive. That is like saying to me, "I trust the person who is doing the job right now. I have no idea who will be doing the job in five years' time, but they may have a completely different viewpoint. There is no compulsion upon that new person who is doing the job in five years' time to obey the intent of this place, but I am comfortable with it, thanks very much."

Ms A.R. Mitchell: Member for Warnbro, I go back to clause 175(1), which states —

> A voluntary patient cannot be provided with treatment without informed consent being given to the provision of the treatment.

If a doctor does not seek that informed consent, he or she will face disciplinary action by the Medical Board of Australia. It is in the legislation; the informed consent process is there.

Dr A.D. Buti: But your informed consent is not properly informed consent —

The ACTING SPEAKER (Ms L.L. Baker): Member, we have a member on his feet.

Mr P. PAPALIA: Sorry; I might cede the floor shortly. I have just been giving the parliamentary secretary the opportunity to reply by way of interjection, but I acknowledge the point made by the member for Armadale. We had some debate on informed consent in this place in the context of this legislation that suggested that no-one is compelled by this legislation to notify anybody of any remuneration they may receive from a producer of a drug or a treatment practice. That is not real informed consent. We are talking about it in this context because there are drug producers that advocate the use of their product. I think the only true informed consent is if a clinician advises a patient, "Look, I'm telling you this, but I'm going to get an extra X amount of money as a consequence of prescribing this particular drug from the company that produces it." That is true informed consent. We do not have true informed consent in this state, so the debate is well and truly open.

Dr A.D. BUTI: What legality does a directive from the Chief Psychiatrist have? If it is not followed, what sanction is there?

Ms A.R. MITCHELL: I take members back to clause 19, "Explanation of proposed treatment". Subclause (1)(c) reads —

> warning the person of any risks inherent in the treatment.

Dr A.D. BUTI: That may be the case and they may warn them, but as we said, we still do not have informed consent. There is no informed consent in this legislation because the government is not mandating the disclosure of financial interests. The parliamentary secretary has said that the Australian Medical Association has recommended that, but it goes against the AMA's procedures and conduct. The Medical Board of Australia quite categorically states that financial interests have to be disclosed. Be that as it may, the fact is that all the clauses the parliamentary secretary has referred to—whether we go to clauses 302, 175 or 19(1)—still do not mandate that the parent has a veto. What is the issue about a parent not having the right to veto a treatment that is contrary to the manufacturer's directive on how it should be used? What is the problem? The parliamentary secretary still has not given us the problem with our amendment. All new clause 303A does is give the parent a right, as the guardian has, to be involved in the process of treatment and to veto off-label treatment if they think it is appropriate to do so. What is the problem with that? There is no problem actually. It is very hard not to be cynical. The parliamentary secretary thought our amendment was worth considering and came back with her own amendment. Where in the parliamentary secretary's amendment, which I know we will discuss shortly, does it give the parent any right to veto? It does not give the parent any right to do that. All the parliamentary secretary's amendment does is ensure that there is a recording of the off-label treatment. There is no veto right for the parent. The parliamentary secretary talks about it being restricted to involuntary patients and says that that is the difference from our amendment. However, our amendment is a lot more different in the sense that it will give the parent a veto on treatment. We give parents the right to determine whether their child receives vaccination. We may make a decision that it is irresponsible for that parent to do that—we may; some would not—but we give parents that right. This legislation deals with mentally ill children and it does not give the parent the right to say, "We don't want our children to be treated with drugs that will be used in a manner that is contrary to the manufacturer's recommendation." Why should a parent not have the right to veto that treatment? I still have not heard the parliamentary secretary articulate one reason why our amendment is not reasonable and responsible.

Mr P. PAPALIA: I have just been doing a little research on the run in response to the parliamentary secretary's advice of no knowledge of concerns about the off-label treatment of children in mental health matters in Western Australia. I am not sure whether the parliamentary secretary was talking about Western Australia alone or Australia generally. I draw the parliamentary secretary's attention to an article in *The Sunday Age* of 8 July 2012 entitled "Youth mental health team too free with drugs: audit", which states —

> AUSTRALIA'S largest youth mental health service prescribed medication to a majority of depressed 15 to 25-year-olds before they had received adequate counselling, despite international guidelines advising against the practice.

I thought that was a classic example of the concerns we are articulating about a propensity to use these drugs far more widely than the manufacturer's intent and therefore the need to have a safeguard with specific reference to a veto authority by parents for off-label treatment. The article states —

> An audit of Orygen Youth Health medical records found 75 per cent of those diagnosed with depression were given the drugs too early.

The service effectively breached clinical guidelines for the use of those antidepressants. It was the biggest care provider in the country at that time and it was massively breaching the manufacturer's guidelines. This was in Australia. What is to prevent the same sort of thing occurring? Why would the government not consider a reasonable amendment that does not impede or constrain the authorities in any way but just provides a little more specific protection to children in the off-label treatment of mental illness—that is, with drugs in a manner that is contrary to the manufacturer's prescribing information? I cannot understand why the government opposes new clause 303A. The parliamentary secretary has not provided any justification other than to say that the government has consulted. The government has not listened to the consultation, if that is the case, because this advice was coming from the Health Consumers' Council; it suggested this amendment. It seems reasonable to me. Obviously, the opposition has moved this amendment because we think it is reasonable, yet the parliamentary secretary's suggestion is that it is unnecessary. However, I am not getting the sense that there was much in the way of research about the threat presented by the off-label treatment of children in the field of mental illness. Was much research conducted to determine whether it is an issue that we should be concerned about in Australia? Is the parliamentary secretary just not going to answer?

Ms A.R. MITCHELL: I believe that we have responded to the questions that the member for Warnbro raised. We have given members opposite the information. Unfortunately, we have not said that we want to do what the opposition wants to do, but we have given it the information —

Mr P. Papalia: You haven't done that in anything so far in how many pages of the bill?

Ms A.R. MITCHELL: As I said, we have given the information. We have provided the support —

Mr P. Papalia interjected.

The ACTING SPEAKER: Member for Warnbro!

Ms A.R. MITCHELL: I believe that we have covered all aspects within this bill, and we believe that the safeguards are there.

Division

New clause put and a division taken, the Acting Speaker (Ms L.L. Baker) casting her vote with the ayes, with the following result —

Ayes (18)

Ms L.L. Baker	Mr F.M. Logan	Mr J.R. Quigley	Mr P.B. Watson
Dr A.D. Buti	Mr M. McGowan	Ms M.M. Quirk	Mr B.S. Wyatt
Ms J.M. Freeman	Ms S.F. McGurk	Ms R. Saffioti	Mr D.A. Templeman *(Teller)*
Mr W.J. Johnston	Mr M.P. Murray	Mr C.J. Tallentire	
Mr D.J. Kelly	Mr P. Papalia	Mr P.C. Tinley	

Noes (34)

Mr P. Abetz	Ms W.M. Duncan	Dr G.G. Jacobs	Mr D.C. Nalder
Mr F.A. Alban	Ms E. Evangel	Mr S.K. L'Estrange	Mr J. Norberger
Mr C.J. Barnett	Mr J.M. Francis	Mr R.S. Love	Mr D.T. Redman
Mr I.C. Blayney	Mrs G.J. Godfrey	Mr W.R. Marmion	Mr A.J. Simpson
Mr I.M. Britza	Mr B.J. Grylls	Mr J.E. McGrath	Mr M.H. Taylor
Mr G.M. Castrilli	Dr K.D. Hames	Mr P.T. Miles	Mr T.K. Waldron
Mr M.J. Cowper	Mrs L.M. Harvey	Ms A.R. Mitchell	Mr A. Krsticevic *(Teller)*
Ms M.J. Davies	Mr C.D. Hatton	Mr N.W. Morton	
Mr J.H.D. Day	Mr A.P. Jacob	Dr M.D. Nahan	

Pairs

Mrs M.H. Roberts	Mr T.R. Buswell
Ms J. Farrer	Mr V.A. Catania
Mr R.H. Cook	Mr R.F. Johnson

New clause thus negatived.

New Clause 303A —

Ms A.R. MITCHELL: I move —

To insert after clause 303 and before the note for part 18 —

303A. Off-label treatment provided to child who is involuntary patient

(1) This section applies if off-label treatment is provided to a child who is an involuntary patient.

(2) In this section—

approved product information, for registered therapeutic goods, means the product information approved under the Therapeutic Goods Act 1989 (Commonwealth) in relation to the registered therapeutic goods;

off-label treatment means the use of registered therapeutic goods other than in accordance with the approved product information for the registered therapeutic goods;

product information has the meaning given in the Therapeutic Goods Act 1989 (Commonwealth) section 3(1);

registered therapeutic goods means registered goods as defined in the Therapeutic Goods Act 1989 (Commonwealth) section 3(1).

(3) The patient's psychiatrist must ensure that, as soon as practicable —

(a) a record of these things is filed —

(i) the decision to provide the off-label treatment, including a description of the off-label treatment;

(ii) the reasons for the decision;

and

(b) a copy of the record is given to the Chief Psychiatrist.

Dr A.D. BUTI: It is very disappointing that the opposition's amendment was lost. It is extremely disappointing. The amendment before us is better than nothing, so we will support it, but I bring to the house's attention the new clause 303A(2) moved by the parliamentary secretary, which reads, in part —

> ***off-label treatment*** means the use of registered therapeutic goods other than in accordance with the approved product information for the registered therapeutic goods

This subclause is quite similar to the opposition's amendment, but of course the government never allows the opposition to have anything. In any case, this amendment does not really do anything but provide for the recording of the use of off-label treatment on a child who is an involuntary patient. Voluntary patients are forgotten here. The government believes that it is necessary to record the off-label treatment of involuntary patients but not voluntary patients. Why would we not do that? The government did not accept our amendment about a parent's veto, so why does it accept the recording of off-label treatment for involuntary patients but not for voluntary patients? Under the parliamentary secretary's amendment the parent does not have any veto rights, so there could still be an abuse, and the recording is post facto. It is okay to record things; but if the damage has already been done, it has already been done. This amendment does nothing for this situation, but it is better than nothing and the opposition supports it.

New clause put and passed.

Clause 304: Terms used —

Dr A.D. BUTI: This clause deals with terms under part 19 of the bill, which covers complaints about mental health services. I move —

> Page 217, after line 2 — To insert —
>
> or
>
> (iii) medical and epidemiological research; or
>
> (iv) those undertaking apprehension and seizure; or
>
> (v) associated welfare services;

This section deals with complaints about medical health services and the opposition believes that the current definition of a mental health service is as stated in clause 304 of the bill, which states —

> ***mental health service*** —
>
> (a) means —
>
> (i) a service provided specifically for people who have or may have a mental illness; or
>
> (ii) a service provided specifically for carers of people who have or may have a mental illness;
>
> but
>
> (b) does not include …

There are people providing services for people with mental illness who are engaged in medical research, which can be incredibly important. Of course that research can lead to certain treatments being devised and avised. The government refused to accept the opposition's amendment that a treating practitioner needs to disclose any relationship that they may have with a research institution, and we think it is incredibly important to have that provision here. It is also important to ensure that people who engage in the apprehension and seizure of mentally ill people come under the definition of a mental health service, as should those providing associated welfare services. This clause deals with complaints about mental health services. If there is a clause to deal with complaints about mental health services, the definition of a mental health service has to include the whole gamut of bodies, authorities and personnel that may be involved in delivering some type of service to those with a mental illness. That is why I move this amendment.

Ms A.R. MITCHELL: We believe that the member's proposed amendment is already covered throughout this bill. I will explain why I think it has been covered. We have received advice from the director of the Health and Disability Services Complaints Office. Firstly, the medical and epidemiology research is covered under HADSCO's primary legislation, which is the Health and Disability Services (Complaints) Act 1995. The inclusion of those undertaking apprehension and seizure is not considered necessary because it would capture WA Police, and complaints about police are managed by the Corruption and Crime Commission, not HADSCO. The mental health services that undertake apprehension and seizure activities are already covered under the existing definition. Associated welfare services that provide specifically for people with a mental illness are also covered under the existing definition.

Dr A.D. Buti: Which definition?

Ms A.R. MITCHELL: The definition of "mental health service".

Dr A.D. Buti: Where?

Ms A.R. MITCHELL: Clause 304, page 216, line 26, "mental health service".

Dr A.D. Buti: What is that?

Ms A.R. MITCHELL: It is a welfare service for people with a mental illness.

Dr A.D. Buti: But where is welfare services provided for under the bill?

Ms A.R. MITCHELL: Under mental health service. It is a welfare service for people with a mental illness in the section with the mental health service.

Dr A.D. Buti: Are you saying that the definition of a mental health service —

Ms A.R. MITCHELL: It is a service, so it is in the definition of "mental health service", which states —

> … a service provided specifically for people who have or may have a mental illness;

A welfare service is a service that is providing for people with a mental illness.

Dr A.D. BUTI: That explanation by the parliamentary secretary was a clear example of how the government is treating any amendment moved by the opposition. To say that the definition of "mental health service" covers welfare services is one argument that might be made. At other times throughout this debate the parliamentary secretary has determined that it is necessary to define X, Y and Z. We are just trying to give greater clarity. The parliamentary secretary says that it is already covered, but that does not mean that it should not be included more specifically to ensure that welfare providers understand that they may be covered by this bill. I assume that many people who read the definition of "mental health service" in this bill would not think that welfare services are classified as mental health services. Why not clear that up for the benefit of the patient and welfare services?

The parliamentary secretary may say that something is covered by the Health and Disability Services (Complaints) Act 1995, but I thought that one of the reasons for introducing this bill was to try to bring the whole gamut of the way we treat people with mental illness under the one act, so I wonder why that would not be included here.

The parliamentary secretary referred to the police. What happens if a complaint is made against the police? An internal investigation takes place. A lot of complaints are made about internal investigations. We know from the Parliamentary Inspector of the Corruption and Crime Commission that heavy-handed methods have been used against people and that that has not been dealt with properly by the police. I have often referred to how a professor of law at the University of Western Australia, who happens to be a friend of mine, was treated and how the internal investigation by the police was very cursory. The police are often at the coalface of interaction with people with mental illness, so why not bring them under the Mental Health Act? Surely a mentally ill patient should have the right to make a complaint about how they are treated by police within the jurisdiction of this bill. The whole idea of the Mental Health Bill is to bring the various mental health strains and issues under the one piece of legislation. All this amendment does is to ensure that that is the case, and makes it clear for the patient and those involved in providing that service.

Ms A.R. MITCHELL: We did not expressly include "welfare service" because we did not include all the other services that could be included; we would not leave any one out. Other examples are clinical services, accommodation services, rehabilitation services, vocational services, diversion services, befriending services and case management services. A number of services could also be considered. The member for Armadale specifically raised welfare services, but we believe a number of services are covered under new clause 304(a)(2). We believe welfare services are covered, as are all the other services that may fit under there.

Mr P. PAPALIA: With reference to the parliamentary secretary's response, I have a question: would the parliamentary secretary or her advisers consider police who have been called by parents or carers of a mentally ill person, who may be in psychosis or other serious illness, to escort them to a secure facility, part of the definition of "mental health service"?

Ms A.R. Mitchell: Sorry?

Mr P. PAPALIA: A frequent occurrence is for a mentally ill person to be so distressed or in psychosis or some other serious state that they are beyond the control or capabilities of their carers or their parents, if they are an adult child. In that case, carers or parents are often compelled to call the police to assist. As the parliamentary secretary would be aware, very few resources are available for escorting such mentally ill people to a secure facility. In those cases, when the police are called, are they considered by the parliamentary secretary's definition to be part of the mental health service?

Ms A.R. MITCHELL: The police provide a service to the whole community. If a complaint is made against the police, across the board, it goes to the Corruption and Crime Commission.

Mr P. PAPALIA: That is an interesting response. As the parliamentary secretary would be aware, her government introduced mandatory sentencing for assaults on police. In the event that a mentally ill person assaults a police officer, which attracts mandatory sentencing consequences, the outcome would be significantly different from the outcome of any other type of event. From what we have seen, unless through some fortunate location of the camera there is closed-circuit television imagery to show that an assault did not take place, the accused does not have the opportunity to complain and they are simply imprisoned, because that is the nature of mandatory sentencing. It is entirely at the discretion of the police officer whether to charge an individual with aggravated assault, or whatever the charge is, that results in them facing a mandatory sentence. The point is that they do not have the opportunity to complain. They may notionally have the opportunity to complain, but if they are not fortunate enough, as some people have been, to have the benefit of CCTV imagery to show that the police were not telling the truth, they have no chance of avoiding a mandatory sentence. That is the truth. It does not matter what the law says about their ability to appeal to the Corruption and Crime Commission because the CCC will not listen because it has no evidence. The CCC can act only on evidence presented to it. If the evidence consists entirely of one person's word against another, the accused has no chance. The CCC will not deal with it, just as most courts would not.

Parents of mentally ill offenders have come to me and said how distressed they are about the introduction of the mandatory sentencing legislation because they are fearful that if they are to call the police, their adult child in their distressed state, by virtue of being put in close proximity to police, will, in all likelihood, assault the police in a way that results in a mandatory sentencing charge being laid against them. If the police, who in this instance are called for no other reason than the fact that it is a significant mental illness situation, are not considered to be part of the mental health service in accordance with the definition in the bill, individuals will be confronted with a situation in which they may be given a mandatory sentence. Unless the police are benevolent and do not charge them, they will be incarcerated. I have had parents of mentally ill offenders tell me that they would rather be physically assaulted and killed by their child than call the police because they do not want their child to encounter the police and therefore be indirectly responsible for their child going to prison. It is an interesting question. When the police respond in those cases, are they considered to be part of the mental health service?

Ms A.R. MITCHELL: Member for Warnbro, the situation regarding police came up during the second reading debate and I certainly responded to that. I outlined how police are required to do specific training to deal with people with a mental illness or suspected mental illness, and that training is quite comprehensive and ongoing. The member has expressed his concern, but we believe that police do the best they can to avoid those situations; they do not want them. They have more training than I think people understand them to have.

Mr P. PAPALIA: That is the problem; we are not defining it other than to provide —

> ***mental health service*** —
>
> (a) means —
>
> (i) a service provided specifically for people who have or may have a mental illness;

Sitting suspended from 6.00 to 7.00 pm

Debate adjourned, on motion by **Mr J.H.D. Day (Leader of the House)**.