HEALTH SERVICES AMENDMENT BILL 2021

Committee

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Steve Martin) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

Clause 35: Section 66 replaced —

Debate was interrupted after the clause had been partly considered.

Clause put and passed.

Clause 36 put and passed.

Clause 37: Section 76A inserted —

Hon NICK GOIRAN: In my view, clauses 37 and 38 come as a package. From what I can gather, we are creating a standalone misconduct provision. It is not necessarily new because, as members will see from the blue bill, particularly at page 72, misconduct provisions already exist in the current Health Services Act 2016 at section 77, but we will now be creating a special standalone provision at proposed section 76A. Two immediate questions arise. What necessitates the need for it to be a standalone section? But, more substantively, on how many occasions has the minister had to remove a member of the board because of misconduct?

Hon SUE ELLERY: To answer the second bit first—how many times?—the answer is none to the best of the knowledge of the advisers here. The first part of the honourable member's question was about why we should make the change and create a standalone provision. The answer is really to provide an explicit and clearer definition of the term "misconduct". The definition of "misconduct" in the act is very general. It is defined as —

> … includes conduct that renders the member of a board unfit to hold office as a member even though the conduct does not relate to a duty of the office.

To provide greater clarity, the term "misconduct" is amended to also expressly include a breach of a duty of a board member under the amended section, a breach of a duty under the Statutory Corporations (Liability of Directors) Act 1996; or a breach of duty found in the common law.

Hon NICK GOIRAN: I note that the general definition of "misconduct"—the Leader of the House described it as general or broad; one of those two words—will be retained word for word in the new definition. The member indicated that no board members have been removed for misconduct—my question was specifically in respect of misconduct—to the best of the government's knowledge at this time. Does that also apply to the other existing provisions for removal, which are neglect of duty, incompetence, mental and physical incapacity and absence from three consecutive board meetings?

Hon SUE ELLERY: No. No board members have been suspended for those reasons.

Hon NICK GOIRAN: In other words, to the government's best knowledge, if moving forward there is a removal under the provisions of this bill for the first time, what type of conduct would render a member of the board unfit to hold office as a member of the board?

Hon SUE ELLERY: I have given the honourable member an answer of the things that have been added to the clause. It is hypothetical. I mean, how long is a piece of string? I am not in a position to give the member examples. The definitions are there as I just read out. The examples that I gave the member that will be expressly included are a breach of board member's duties under the amended section, a breach of a duty under the Statutory Corporations (Liability of Directors) Act; or a breach of duty found in the common law or equity. That is vast and I am not able to give the member a list of things that may or may not fall within that.

Hon NICK GOIRAN: If the Leader of the House has the blue bill handy, she will see that what she has just read is proposed section 76A(1)(b). My question is in respect to (1)(a). What type of conduct might render a board member unfit? Accepting that it seems to be that some examples are not readily available, the question that follows then is: What is going to guide the minister in determining whether to remove the board member? What is the, for example, standard of proof that the minister will need to be satisfied that would be appropriate for her to exercise this power for the first time under amended section 76A(2)(b)? It states —

> (2) The Minister may remove a member of a board from office on the grounds of —
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> …
>
> (b) misconduct …

Is there something that guides that particular process? Maybe something already in existence or across government that deals with the removal of board members. As part of that, minister, to round out the questions on this clause,

is there then some form of appeal process for a board member who feels aggrieved by a decision of the minister to have them removed?

Hon SUE ELLERY: While the advisers are looking for an answer to the last part of the member's question about whether there is an appeal, for example, to a decision, as I am advised the board will have policies and procedures in place about how it conducts itself as a board, which is normal for boards. There is no prescribed list that I am able to give the member, but if he thinks about the current steps that are being taken to address sexual harassment in the mining and resources industry, for example, in those circumstances we might expect now that the boards of those respective companies might have policies in place so that if a member of a board is found to have breached that kind of policy, in the company's view, that would make them unfit. That is the kind of thing that is in place.

I will see whether I can give the member an answer to the last part of the member's question. There is no express provision that is going to make that an appealable situation. More generally, in terms of the public sector requirements that apply to boards, they are required to abide by the public sector code of ethics that is issued by the Public Sector Commissioner. Public sector boards are required to develop, implement, promote and insure compliance with their own codes of conduct and have training on accountable and ethical decision-making; that is mandatory across Health and is undertaken by boards. The code must cover the following areas: personal behaviour, communication and official information, fraudulent and corrupt behaviour, use of public resources, record keeping and the use of information, conflicts of interest, gifts and benefits, and the reporting of suspected breaches of the code. A judgement might be made on particular circumstances about whether an alleged breach of any of those things constitutes a breach.

Hon NICK GOIRAN: There is no express provision for appeal, so what recourse will be available to a member accused of neglect of duty by the minister, who says, "Well, they have a mental or physical incapacity", and the board member says, "Well, I don't have a mental or physical incapacity at all. Here's a medical report from my specialist that confirms that is not the case"? What would happen if the minister believed that the person had been away for three consecutive ordinary board meetings and the member is able to demonstrate to the minister that the minutes show they were there or something to that effect? What mechanism will be available to a member who is subject to this provision?

Hon SUE ELLERY: The advice I have is that there is not a formal mechanism. I would expect, and this is my advice, that in those circumstances, the person would write to the minister and say, "I note your decision. Here is why I do not think you should have made that decision—because of factors X, Y and Z. I was at the meeting. I was sitting next to X and it was date Y" et cetera.

Hon NICK GOIRAN: Yes. There is recourse in the sense of being able to go to the decision-maker, which is the minister, but if the problem is that there is some kind of dispute between the minister and the board member, where will the board member go from there?

Hon Sue Ellery: There is not a provision, honourable member.

Hon NICK GOIRAN: Yes, I acknowledge that, but what will happen with the member?

Hon SUE ELLERY: The member will be removed.

Hon NICK GOIRAN: Yes. That will be it; there will be no further right to any other judicial proceedings. Could they go to the Supreme Court?

Hon SUE ELLERY: They might have some rights to that jurisdiction as ordinary citizens. The advice I am being given is that there is nothing explicit in this bill that sets it out. However, they may choose to exercise their rights as citizens to pursue whatever they are able to through the courts, but there is nothing explicit in this legislation.

Hon MARTIN ALDRIDGE: I have a couple of questions on this clause. Yesterday, the Standing Committee on Uniform Legislation and Statutes Review tabled its 142nd report on the Directors' Liability Reform Bill 2022. Do not tell Hon Donna Faragher, who chairs that committee and sits in front of me, that I have not actually opened it! Has it been contemplated whether the passage of this bill will have any impact on the provisions with regard to director liability?

Hon SUE ELLERY: No is the advice that I have. The advisers here do not know. The government has not responded to that report. We will have the debate when the matter is listed. I have no advice here that I am able to give the honourable member.

Hon MARTIN ALDRIDGE: There are only two findings; there are no recommendations. The report is obviously on a government bill that was referred. My immediate concern is that that bill was drafted after this bill, because I think this bill had its genesis in 2019, if I am not mistaken. The risk is that there could be some inconsistency between our amendment and that bill. There may not be. I am just putting it on the record that it might be something that five minutes of contemplation might be able to resolve.

Hon Sue Ellery: Noted.

Hon MARTIN ALDRIDGE: In the explanatory memorandum, the paragraph on clause 37 says —

> It is intended that the Minister may remove a board member for misconduct in circumstances where the board member has:
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> …
>
> (e) made a profit at the expense of the HSP;

It is not defined any more than that, but I thought that there would be quite regular circumstances in which a board member would be in a position of profit at the expense of the HSP. Obviously, it would not be in perhaps a corrupt sense, but in the ordinary receipt of remuneration, allowances, expenses and the like. I am not sure how that is necessarily reflected in clause 37; it is just in the explanatory memorandum. I wonder whether the minister could give me some comfort about how that might be interpreted and applied.

Hon SUE ELLERY: The honourable member may be right in identifying that the EM uses a kind of truncated description of the relevant clause. Proposed section 79(3)(e) states —

> not to profit at the expense of the health service provider or the State, unless the member has the consent of the board or committee of which the member is a part …

It is anticipated that there may be arrangements that need to be declared, understood and agreed to.

Clause put and passed.

Clause 38 put and passed.

Clause 39: Section 78A inserted —

Hon NICK GOIRAN: What functions of the board would need to be delegated by the board to a staff member of another health service provider?

Hon SUE ELLERY: From time to time, a HSP may, for reasons of transparency and to be at arm's length, delegate a power to an employee of another HSP to, for example, conduct an investigation into a clinical incident. It might want someone from outside to do that, not someone who is employed by the relevant HSP.

Clause put and passed.

Clause 40 put and passed.

Clause 41: Section 79 amended —

Hon NICK GOIRAN: Clause 41 deals with duties and personal interests. I note that it appears that the board or the committee will have the final say on what is a conflict or what is proper. What will the role of the minister be on these purported conflicts and in deciding whether or not something is proper?

Hon SUE ELLERY: There is no role for the minister in determining what is proper or improper. As the honourable member would be able to see, proposed subsection (4) states that if the department CEO considers it reasonably likely—it is not necessarily that they have reached a conclusion, but they consider it reasonably likely—that there has been a breach, they must advise the minister of a likely breach of the duty while they are carrying out the rest of their investigations. I am not sure whether that takes us any further.

Hon NICK GOIRAN: That is when there is consideration that there might have been a breach of duty. I note that under proposed section 79(3)(b) it is possible for a member to proceed, notwithstanding the fact that they have a personal interest, but the caveat is that they must have the consent of the board. They would then not be breaching anything and it is possible that the minister would not be informed. Is it the intention that the minister will be informed of these types of conflicts that have received the consent of other board members or the committee?

Hon SUE ELLERY: No, honourable member; that is a standard provision on how personal interests and potential conflicts of interest should be managed. It is possible to a have a conflict and for a system, procedure or policy to be in place for a board where that is declared. The person would not take part in the decision-making on anything that overlaps the particular matter. If Hon Nick Goiran's question is whether if someone declares a potential conflict of interest, that will automatically have to be brought to the attention of the minister, the answer is no, because the board would manage that itself.

Hon NICK GOIRAN: Proposed section 79(3) (e) refers to the expectation that a member of a board or a committee has a duty not to profit at the expense of the health service provider. We quite understand why that provision has been put in place. But, once again, there are circumstances in which it appears they will be allowed to continue to participate if they have the consent of the board or committee. What circumstances are envisaged in which it would be appropriate for a board member to profit at the expense of a health service provider?

Hon SUE ELLERY: We did canvass this; Hon Martin Aldridge and I had a conversation about this a few minutes ago. One can imagine that with particular areas of clinical expertise, we would want a person with that clinical expertise sitting around the board table. But as a consequence of having that clinical expertise, that person might be in a business with a commercial interest. We do not want to be in a position in which we cannot use the skills

of the person whose skills are needed because they have a commercial arrangement in place. The interest needs to be recognised and consented to and everybody needs to understand entirely what that interest is so that it can be managed, in the same way that boards all around the place manage areas of potential conflict of interest.

Hon NICK GOIRAN: Is it then the case that in that specific instance in which a board member will profit at the expense of the health service provider, they will not participate in the deliberation that leads to the decision? They may be, as the minister said, an expert in the field and their expertise, advice and counsel might be sought—I see no difficulty with that if it is done in a transparent fashion and everyone understands exactly what is going on—but when push comes to shove and a decision needs to be made, which will ultimately be for the benefit of that board member at the expense of the health service provider, under this provision are they able to participate or will they have to stand aside?

Hon SUE ELLERY: It will depend a little on the circumstances, honourable member. We also canvassed a little earlier the requirements for boards to have policies and procedures in place, set out by the Public Sector Commission. That includes training on how to identify potential conflicts of interest, how to manage conflicts of terrorist, ethical decision-making and all those sorts of elements. It is about managing a potential conflict of interest, and that may include the person not participating in the final decision-making about something after it has clearly been established that they will profit from that decision. That may well be the case. That is normal practice for how that kind of conflict is handled, but it is not necessarily how it will be handled every time because it will depend on the circumstances.

Hon NICK GOIRAN: At a systemic level, the minister indicated that guidance is provided by the Public Sector Commissioner in these matters, and that guidance is expected to be adhered to by all health service providers—everybody in the public sector.

Hon Sue Ellery: Yes, all public sector boards.

Clause put and passed.

Clauses 42 to 44 put and passed.

Clause 45: Section 103 amended —

Hon MARTIN ALDRIDGE: Clause 45 effectively replaces the definition of "employing authority". One of the things that I raised in my second reading contribution was that I thought that this provision—it largely replicates the existing provision but it also clarifies it—is a little unusual in that it vests employment responsibility with a board-governed HSP. I do not have any great expertise in board governance, but I am a member of a —

Hon Sue Ellery: A very important board.

Hon MARTIN ALDRIDGE: — of a private company.

Hon Sue Ellery: I thought you were going to go talk about the school.

Hon MARTIN ALDRIDGE: I am not on the school board anymore.

One of the concepts that is drilled into us is that boards need to take a nose in, fingers out approach. They are there to govern, set the strategic direction and hold the executive accountable. I find the concept of effectively giving boards employing authority, unless that is vested to the chief executive or somebody else, a little unusual. I am not sure that it is necessarily modern, particularly in the context of health service providers, which are enormous employers. I would have thought, probably unfortunately for the chief executives of HSPs, that a big part of their job is managing their employees on a daily basis. Practically, the concept of a board being the employing authority is probably not likely to be the case. I understand that the government's point is that the board can delegate functions of its employing authority to the chief executive. My question is: given that we are not deviating too much from the current arrangement, what is the current practice of health service providers with respect to boards versus chief executives managing these day-to-day matters?

Hon SUE ELLERY: The current practice is that the boards delegate their function to the chief executive. The changes in the bill will provide greater clarity. It is expected that the boards will continue to provide oversight and that they will delegate their powers to—what was the expression the member used? Was it fingers in?

Hon Martin Aldridge: Noses in, fingers out.

Hon SUE ELLERY: The boards will delegate that to the chief executive.

Hon MARTIN ALDRIDGE: Will a board be given discretion to limit that delegation? We have chief executives. We also have health executives. We learnt yesterday that there are 70 or 80 of those across the HSPs. We also have employees. Could a board make a decision that it wants employment matters for chief executives to be its responsibility, and delegate to chief executives responsibility for the day-to-day management of employees? Will that be possible or will it literally be either a full delegation or no delegation?

Hon SUE ELLERY: Proposed section 78A, earlier in the bill, states that the board can delegate any part, or all, of a particular function. It will be the decision of the board whether it wants to do part X but not part Y.

Hon MARTIN ALDRIDGE: Is this approach of giving the board, as the employing authority, the power to delegate consistent with similar or comparable public entities that are board-governed?

Hon SUE ELLERY: I am not sure that I can think of a similar structure in government. That does not mean it does not exist, but I cannot think of one, and I do not have advice at the table about that.

Clause put and passed.

Clauses 46 to 49 put and passed.

Clause 50: Section 114 amended —

Hon MARTIN ALDRIDGE: This clause seeks to amend section 114 with respect to the performance agreements of chief executives. As I understand it, the current arrangement is that performance agreements are required to be entered into upon appointment. This amendment will provide flexibility to allow that to occur within six weeks. Why is this provision necessary?

Hon SUE ELLERY: This change will allow a reasonable time for the performance agreement to be discussed and negotiated after appointment between the department CEO and the chief executive, and, if applicable, the board. That is consistent with the negotiation of performance agreements in practice.

Hon MARTIN ALDRIDGE: I am wondering whether this might present a risk if a chief executive was engaged or potentially re-engaged and there was then some dispute about the performance agreement. In a similar vein to my last question about the employing authority, is this consistent with the way in which other public sector chief executives are treated?

Hon SUE ELLERY: I do not know that I would have advice at the table, but they can check. I can base this on my experience. When I was Minister for Education, I had to put in place a range of performance agreements; for example, for every TAFE managing director. It was not unusual for those agreements to take a while, because they include the things that we want to make a priority. This is not about conflict. It is about getting the understandings right about what the expectations will be.

Hon MARTIN ALDRIDGE: In that example, is the performance agreement between the board and the chief executive, or the minister and the chief executive?

Hon SUE ELLERY: I am advised that it is directly between the CEO of the department and the chief executive. The bit that I read out before was that what goes into it may well be subject to discussion with the board—it does not have to be, but it may well be.

Clause put and passed.

Clauses 51 to 53 put and passed.

Clause 54: Section 121 amended —

Hon NICK GOIRAN: The amendments to section 121 will change the way in which health executives are classified and remunerated. Was Treasury consulted about the possible cost implications of these changes?

Hon SUE ELLERY: I am advised that it reflects current practice and what is in the health executive policy. In respect of whether Treasury was consulted, the bill came to cabinet, and at the stages of approval to draft and approval to print there was an opportunity for Treasury input via the Treasurer.

Hon NICK GOIRAN: Earlier today, the minister tabled a substantive document with respect to delegations and so forth. Does that document outline the tiered structure to which we referred yesterday that guides the authority level for the various delegations?

Hon SUE ELLERY: That is correct.

Hon NICK GOIRAN: Will the changes that will be made to section 121 impact that structure in any way?

Hon SUE ELLERY: No, honourable member.

Clause put and passed.

Clauses 55 and 56 put and passed.

Clause 57: Section 145 amended —

Hon MARTIN ALDRIDGE: It looks as though the amendment to section 145 is just to update a name. The explanatory memorandum states —

> This clause amends section 145 to require a staff member who has had a misconduct finding made against them under the Health Practitioner Regulation National Law …

That almost implies that this is a new requirement. Is that the case?

Hon SUE ELLERY: As it currently stands, a staff member who has a misconduct finding made against them under the Health Practitioner Regulation National Law components that have been adopted in Western Australia must do certain things. This will expand that so that if someone commits an offence and has a misconduct finding made against them in another jurisdiction that is covered by the Health Practitioner Regulation National Law, wherever that applies, they will be treated as if that misconduct finding happened here.

Hon MARTIN ALDRIDGE: I guess there are a couple of things happening. The Leader of the House is probably aware of some of the public commentary and that the federal government has initiated what it calls a "rapid review" into the Australian Health Practitioner Regulation Agency and, I think, some of the colleges that register physicians and other medical practitioners with respect to practitioners who have a finding of misconduct but are still permitted to practice. I think this was as a result of an ABC *Four Corners* report, so we know some of that common history. I guess my initial question is: why is "within seven days" appropriate? Imagine a practitioner—a paediatrician or someone like that—who has a finding of sexual misconduct against a patient, and that patient is a child. Why would seven days be appropriate? Would it not be more appropriate for it to be as soon as practicable or upon receiving notice of the finding? A lot of damage can be done in seven days if somebody has been found guilty of misconduct under the Health Practitioner Regulation National Law. I am just wondering why seven days is appropriate and whether a sooner time frame would be more appropriate.

Hon SUE ELLERY: There was not deliberate consideration of that matter. It may be the case, and I suspect it will be the case, that as a consequence of the things that are happening nationally, a whole range of policy changes might be put in place and recommendations might be made, and it might go to something like that. The period of seven days is there because that is the current arrangement. There was no deliberate consideration that it ought to be changed. That does not mean that it will not change in the future, particularly as a consequence of the rapid review that the honourable member referred to.

Hon MARTIN ALDRIDGE: Just to be clear, if I am a staff member of a health service provider regulated under the Health Practitioner Regulation National Law and I have a finding of misconduct made against me, what happens now?

Hon SUE ELLERY: If someone has been found guilty of misconduct under the provisions that apply in Western Australia, they will report that they have had a finding made against them and that will then trigger the disciplinary procedure that is in place at that time.

Hon MARTIN ALDRIDGE: I guess the subtlety here is that if I am a practitioner and the misconduct finding is made against me in Western Australia, the period is currently seven days and then whatever happens happens. All we are doing here is extending that same time frame, whether that is appropriate or not—that is an argument for another day—to a finding of misconduct in another jurisdiction.

Hon Sue Ellery: Correct.

Clause put and passed.

Clause 58 put and passed.

Clause 59: Section 147 amended —

Hon NICK GOIRAN: This amendment to section 147 of the Health Services Act 2016 will broaden the field of people about whom we might be concerned in the sense of any adverse findings that are made against them. Has any commitment been provided from other jurisdictions to make the relevant information available with regard to any registration suspensions and the like?

Hon SUE ELLERY: I do not have advice at the table or, I am advised, at the back of the chamber about what arrangements, if any, are in place between jurisdictions. It may well be the case that an intergovernmental agreement is in place, but I do not have that advice available to me now. Hang on: I am advised that the employment practice with clinicians who come from another jurisdiction is that as part of the employment process, they need to demonstrate good standing with their clinical registering body. If they had a finding against them, they would not be able to provide an accurate demonstration or certification of good standing. Beyond that, I do not have advice available to me. If it is something that the member is interested in, I do not mind asking the minister whether she will provide him with information outside this process about what arrangements are in place, but I do not have it here with me now.

Hon NICK GOIRAN: I make the observation that there is no point making the amendment to section 147 if we do not get the information. I acknowledge that the Leader of the House just said that one way in which the information could be provided is for a prospective employee to be asked to demonstrate that they have good standing in the place from which they have come. That, in itself, will work only if they have to provide information about all jurisdictions in which they have previously worked. By way of analogy, I will refer to the process for legal practitioners under the new so-called uniform scheme, albeit that it applies to only three states, including Western Australia. We were

told that under the uniform scheme for legal practitioners, there would be some kind of consolidated list of adverse findings made against legal practitioners in Western Australia, New South Wales and Victoria, and that people could access this kind of information from it. I am wondering whether the same will apply under the Health Practitioner Regulation National Law—that there will be one place that we can go to. I acknowledge that the Leader of the House does not have that information available and that it might be provided by the minister on another occasion. How will it work for employees who do not have a registration body? For example, for a social worker working in a health setting, how will the employee's employing authority obtain that information when there is no registration body?

Hon SUE ELLERY: Hon Nick Goiran might be asking that question independent of this section. This section applies only to registered health practitioners. There may be other arrangements in place for non-registered professions. This bit will apply only to those that have a registration body in place.

Clause put and passed.

Clause 60 put and passed.

Clause 61: Section 150 amended —

Hon NICK GOIRAN: These changes are to section 150 of the Health Services Act 2016, which deals with disciplinary or improvement action when registration is suspended or conditional in the case of a serious offence. Will it also include the circumstance when an employee has a prohibition order from the Health and Disability Services Complaints Office?

Hon SUE ELLERY: This section is about the disciplinary steps to be taken when a registration has been suspended or a condition is applied upon it. That can occur only through the registration body. I do not think HADSCO—I do not know if that is what its name still is—is a registration body. It does not, of itself, issue suspensions or registrations. Unless I have misunderstood the honourable member's question, no, this will capture registrations that have conditions applied to them or are suspended by the relevant registration body.

Hon NICK GOIRAN: We passed legislation at the end of last year to deal with those who are not subject to registration bodies. That included the creation of these prohibition orders that could be issued by the Health and Disability Services Complaints Office. They are also working in the health system. I would have thought that they would be of equal concern. Well, clearly they are of concern, because otherwise that legislation would not have been introduced and passed last year. To what extent has this bill considered the implications of that earlier legislation that seeks to capture unregistered health workers?

Hon SUE ELLERY: I am advised that no, the changes that are being made to HADSCO's scope—if you like—were not taken into account during the drafting of this bill. That may be something that needs to be taken into account when the statutory review comes into effect or, if I am not across it, there may be some kind of consequential actions once those changes come into effect—if they have not already.

Clause put and passed.

Clauses 62 to 67 put and passed.

Clause 68: Section 187 amended —

Hon NICK GOIRAN: Clause 68 will amend section 187 of the Health Services Act 2016. It deals with the powers of an inquirer. It appears the inquirer will have the power to enter premises. On entering the premises, they will be able to inspect, generally make any other investigations, examine records, make copies and the like. Is it the case that there needs to be some kind of notice provided prior to any entry to the premises or the removal of records and the like?

Hon SUE ELLERY: No. There is nothing in the provisions about providing written notice to enter premises. I am advised that, as a matter of practice, it will depend on the circumstances. Depending on the nature of the concern it could be that they go through the processes that are set out in existing section 187(1), which is to require attendance or provide notice to provide certain documents. It might be the case if the concerns are of such a serious nature that they go straight to an inspection and copies are made et cetera.

Hon NICK GOIRAN: In terms of that type of inspection without notice, what will happen to the records? I note that in proposed section 187(1B)(d), when referring to the inquirer, it states —

> … make copies of records referred to in paragraph (c) or any part of them and, for that purpose, take away and retain any of those records or any part of them for any time that may be reasonably necessary;

Is that intended to mean the copy of the record or the original record?

Hon SUE ELLERY: I am advised that it would be the power to take the records. I think the member asked as well about —

Hon Nick Goiran: Whether it is the original or the copy.

Hon SUE ELLERY: The original. That is what I am being advised.

Hon NICK GOIRAN: So the inquirer without notice or a warrant can turn up and take original records? That is the position of the government? It is pretty extraordinary that an inquirer can do that. Can we just confirm that that is definitely the intention here?

Hon SUE ELLERY: The power that exists now is very broad. If the member goes back to section 183, it states that the department CEO can conduct an inquiry. That head of power is existing and can enter anything —

Hon Nick Goiran: To inquire, but not to go in and take original records.

Hon SUE ELLERY: Correct. It is acknowledged that a broad power is being added to go into premises to take and copy records et cetera. That is acknowledged, it is deliberate and it is anticipated that that will happen in the most serious of cases.

Hon NICK GOIRAN: I am grateful to the minister for the acknowledgement that this is a new power in the sense of being able to enter into and take the records and so forth. It is what I would describe as an intrusive power, but I acknowledge that the government says that, from its perspective, it is a necessary power. One would hope that it will be used only in rare circumstances. Nevertheless, what is the counterbalance to what I am describing here as an intrusive power? What types of oversights will exist in respect of the inquirer's use of those powers; who will oversee the inquirer in these circumstances; and, if a person is subject to one of these intrusive powers, what recourse will they have?

Hon SUE ELLERY: This is a power to do an inquiry and to enter the premises of a health service provider. Section 193 in the blue bill states —

> (1) As soon as is practicable after completing an inquiry, the inquirer must —
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> (a) prepare a draft … report …
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> (b) give the draft report to each health service provider to which the inquiry relates; …
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> (c) notify the health service provider that the health service provider may provide comments on the draft report … within 28 days after receiving the draft …

It then goes on to include provisions about what the draft report must include.

Clause put and passed.

Clause 69: Section 188 amended —

Hon MARTIN ALDRIDGE: This provision was linked to clause 69 that amends section 188. It states at proposed section 188(2) —

> A person must not, without lawful excuse, refuse or fail to produce a document as required …

Would it be a lawful excuse if they claimed parliamentary privilege?

Hon SUE ELLERY: I do not know. It would perhaps depend on who they are. If they are a member of Parliament, for example, maybe it would be an excuse. I do not think that I can provide the member with a greater answer than that.

Clause put and passed.

Clauses 70 to 77 put and passed.

Clause 78: Section 213 amended —

Hon NICK GOIRAN: Clause 78 amends the terms used in section 213 of the principal act. Here we will change the definition of "health information". Is it the case that if this collection of information relates to an individual, the individual will be able to request a copy of the information that is being collected?

Hon SUE ELLERY: These provisions are about information used by HSPs and shared as needed. In respect of how an individual can get access to information about them or their hospital records—that is the common language that one would use to talk about that—FOI provisions will apply. There is nothing explicit in the provisions before us now that go to how individuals can access information that an HSP might hold about them.

Hon NICK GOIRAN: Will a person be able to access or receive a copy of their personal information that has been collected by a HSP?

Hon Sue Ellery: They will be able to through FOI, honourable member.

Clause put and passed.

Clauses 79 to 82 put and passed.

Clause 83: Part 20 replaced —

Hon MARTIN ALDRIDGE: This clause refers to proposed part 20 titled, "Transitional, saving and validation provisions for the Health Services Amendment Act 2021". Proposed section 262 relates to land transactions. Proposed section 263 is about land as well. Proposed section 264 relates to tax, but proposed section 261 relates to —

> a non-government entity that provides health services under a contract or other agreement entered into with the Premier …

I understand that in an earlier conversation about the bill, Hon Nick Goiran made a reference to the Premier, and this question may well have the same answer, but what is the problem that we are trying to address with proposed section 261?

Hon SUE ELLERY: From time to time, I am advised that it occurs with large contracts entered into by the Premier. I think the earlier example referred to was the Midland Health Campus —

Hon Martin Aldridge: Is it because it is a ceremonial process in which the Premier is there with a pen and he signs the deal?

Hon SUE ELLERY: I do not think so. I do not know why, honourable member, but it is to cover the fact that on occasion the Premier of the day has entered into a contractual arrangement.

Hon MARTIN ALDRIDGE: It is a little peculiar because obviously the Minister for Health has carriage of the Health Services Act, and we now have reference to another minister, not being the health minister. The legislation does not even reference the health minister and it does not say "agreement entered into with the Premier and/or the health minister". It refers to just the Premier, so it is quite specific. I have a catch-all question for clause 83: is the minister aware of any legal action, concern or dispute that we are seeking to address through these validation provisions?

Hon SUE ELLERY: No.

Clause put and passed.

Progress reported and leave granted to sit again, on motion by Hon Sue Ellery (Leader of the House).