

HEALTH PRACTITIONER REGULATION NATIONAL LAW (WA) AMENDMENT BILL 2017

Second Reading

Resumed from 15 March.

HON ALISON XAMON (North Metropolitan) [12.35 pm]: I rise again as the lead spokesperson for the Greens on the Health Practitioner Regulation National Law (WA) Amendment Bill. I have previously indicated that the Greens are happy to support this legislation. I will give a summary of what I was speaking about before debate on this bill was adjourned. The bill is attempting to bring paramedics within the national regulations. The Greens have indicated that this is a step in the right direction. One of the matters I mentioned previously was that other professions will need to be looked at and I hope will be looked at in the future to bring them into the national scheme as well. I specifically talked about my concerns around the issues of social workers, psychotherapists and counsellors. As I have indicated, these professions deal with very vulnerable people, and social workers in particular have been calling for inclusion into this scheme for quite some time. I hope that we will see some movement in this area within this term of government, because I think that would be very good for both the professionals who work in this area—certainly people who are professional social workers—and also the people they see.

I specifically want to talk about the issue of psychotherapists and counsellors because part of the problem is that at the moment pretty much anyone can put up a shingle and call themselves a psychotherapist or a counsellor. That can create, and has created in the past, very serious issues for people who go to a counsellor or a psychotherapist and who, by definition, are already in a state of mental vulnerability. If they are not seeing people who really know what they are doing, that can be highly problematic. There are many horror stories about unregistered mental health professionals who effectively wreak untold damage. Psychotherapy counselling and social work are currently classified by the federal government as posing low risk to the community and, hence, they are able to be self-regulated; however, this does not match reality. There are cases of families who have effectively been torn apart because of the actions of rogue practitioners. We need to acknowledge that although some people might be doing a good job and are effective at what they do, without having proper regulation in this area an environment is created whereby people who are effectively engaging in rogue practice are able to abuse the power that has been given to them and can wreak serious damage on a person's sense of self and wellbeing. Members would be aware of documented cases of practitioners implanting false memories of abuse in their clients, which, understandably, results in extreme personal distress, not only for the client but also for the families. I do not think we can understate how dangerous some of these practices can be. The Greens would like to see greater protections put in place for people accessing these health professionals, and for social workers, counsellors and psychotherapists to be afforded the professional support and recognition that registration can bring. We call on the Minister for Health, as I called on the previous Minister for Health, to advocate for these changes through the Council of Australian Governments. I hope that I can work with this government to try to get some movement. It would be terrific to see Western Australia take the lead in this area.

As the Greens spokesperson for consumer protection, I am also pleased to see that the Health Practitioner Regulation National Law (WA) Amendment Bill 2017 contains provisions to allow for boards to intervene quickly and with greater powers when complaints are lodged against registered health practitioners. That can only serve to strengthen the legislation in a positive way and the Greens are happy to see these changes.

I want to make some specific comments about the provisions in the bill relating to nurses, midwives and restricted birthing practices. As a former industrial officer with the Australian Nursing Federation, I have the utmost respect for the professionalism of nurses and midwives. They are amazing professionals and very passionate about the work they do. I am pleased to see that there are provisions in the bill to ensure that a registered midwife or medical practitioner must be present through the three stages of labour. I note that these amendments were recommended by the coroner and by Mr Snowball, and that Western Australia and South Australia are leading the way in ensuring that women are being supported by qualified and reputable practitioners. It is heartbreaking that the impetus for this welcome change in WA was driven by the tragic circumstances surrounding the death of the child known as Baby P, whose mother was under the care of an unregistered midwife.

The Greens will continue, as we always have, to advocate for Western Australian women to have access to free, safe and, importantly, diverse options for pregnancy and childbirth, including homebirth and birth assisted by trained midwives. We see this bill as being completely consistent with that call. We would like to see increased funding for primary maternal health care, with the aim of reducing interventions in labour, including induction and instrumental and caesarean deliveries. This is both cost effective for the system and empowering for women because it means they are safe to birth with minimal intervention. There are many benefits from reducing intervention when appropriate, both for the health of the mother and baby and in reducing costs to the health system.

Accordingly, we believe there needs to be an increase in midwife-based birthing services and women-based services. On that note, I am pleased to hear that another birthing centre will be opened at Fiona Stanley Hospital. I had my three children at the birthing centre at King Edward Memorial Hospital for Women and did not have a doctor present; I had only amazing midwives present, and the experience was a wonderful and empowering one. I received the utmost clinical care, and I know that is the experience for many people. I was, of course, lucky that the midwives assisting me were very highly qualified and really knew what they were doing. One does not necessarily have to have doctors present at birth when there are no complications, but it is really necessary to have midwives who know what on earth they are doing. This bill will help to recognise the level of expertise and professionalism that our midwives possess.

Those were the few comments I wanted to make about this bill. It is a long time coming. We had hoped that this legislation would be passed last year but that did not happen, so I do not wish to hold it up because the sooner we get the scheme in place, the better. The Health Practitioner Regulation National Law (WA) Amendment Bill 2017 is a good piece of legislation and was arrived at after a review process that included extensive consultation. It contains provisions that add paramedics to the list of health professions covered, introduces flexibility around the establishment and amalgamation of national boards, and increases protections for consumers of health services, including birthing mothers.

I can assure members that I will continue for the duration of this term to call for the addition of social workers, counsellors and psychotherapists to the list of health practitioners regulated by this legislation, but notwithstanding that, the Greens will support this bill.

The ACTING PRESIDENT: Members, before we proceed, I would just like to acknowledge the presence in the gallery behind us of former member Hon Liz Behjat.

Point of Order

Hon NICK GOIRAN: I just wanted to check the record to find out whether I have already spoken on this bill or not.

The ACTING PRESIDENT (Hon Robin Chapple): Yes, Hon Nick Goiran, you have.

Debate Resumed

HON MICHAEL MISCHIN (North Metropolitan — Deputy Leader of the Opposition) [12.45 pm]: In that case, Mr Acting President, perhaps I can take the opportunity to do so!

I do not propose to go into the merits of the bill itself, but I think it incumbent upon me to say something about the report on the bill by the Standing Committee on Uniform Legislation and Statutes Review, and the work it did. I commence by thanking my fellow committee members for their contributions to the report that was produced, along with the advisory officer (legal), Ms Felicity Mackie, who was joined at the time by a new trainee advisory officer, Ms Maike Turnbull, and Mr Mark Warner, who is the committee clerk.

There was some discussion about whether it was necessary to refer the bill to us because the principal legislation had emerged out of an intergovernmental agreement and had already been the subject of a report, but this one was sufficiently in advance of what agreements had been made in the past to warrant a further referral and consideration. It quite significantly expands the operation of that earlier legislation. As it happens, there is an element of it, which I will come to, that is very relevant to the privileges and sovereignty of this Parliament and that needs to be addressed. I am pleased to say, without foreshadowing too far in advance what is proposed by the government, that action has been taken to address that issue. It is a longstanding issue that has exercised the minds of both the earlier committee and the current delegated legislation committee.

The Legislative Council referred the bill to the Standing Committee on Uniform Legislation and Statutes Review on 14 September last year and it had until 31 October to report. I do not recall when in October it reported, but it dealt with its work well within the 45-day time limit prescribed for it and, I think, significantly in advance of it, but I may be wrong about that. Nevertheless, the report was done with expedition and I commend the report to those interested in these areas.

There were three elements to the bill that we particularly considered may have infringed on parliamentary sovereignty. One of them was to do with the commencement provisions. Members will see from the report and certainly from clause 2 of the bill that many of the operative elements of the bill are to be operative from proclamation. That is at the discretion of the executive government making a recommendation to the Governor to proclaim those provisions and their operative date. As a matter of course, this house has tended to look critically at whether those sorts of provisions are necessary. They detract from parliamentary sovereignty inasmuch as when the legislation is passed, it receives royal assent, but whether it becomes law is a matter in the hands of the government and its recommendation to the Governor. That can be quite justifiable in many respects. It leaves in the hands of the government of the day the commencement of the legislation that has been passed after due consideration, hopefully, by Parliament. Nevertheless, there are circumstances in which that is quite justifiable and

indeed necessary; for example, if regulations need to be completed, or if further elements need to be brought into play before the bill becomes an operative act of Parliament, and the like. In this case, we looked at the question and weighed up the merits one way and the other and concluded that there was no reason to object to the bill on that basis, it being part of a national scheme, and other elements may necessarily have to fall into place before it can be brought into operation.

When this bill was introduced, there was an awful lot of comment about how urgent it was, and that it needed to be part of the national scheme by September last year. Therefore, the committee turned its mind to resolving the matter as quickly as possible. It is disappointing, I suppose, that this was not one of the bills brought on before Parliament rose at the end of last year in order to be dealt with expeditiously. It is now, of course, significantly later than September, and significantly later than December last year for us to have the opportunity to put in place the ability for Western Australian health professionals covered by the bill to join the national scheme, and for Western Australians to have the benefit of that.

The second element about the bill was the appointment and constitution of national boards to be broadly governed by regulation. Once again, we considered the pros and cons of that element. It leaves it in the hands of ministers and the national body to determine the composition of boards and the like. In the circumstances we considered that, on balance, there was a justifiable purpose for that. Strict criteria in the legislation would govern the manner in which these boards were to be appointed, but their constitution might vary from time to time and some flexibility was warranted. Again, we concluded on balance that that was not a basis for rejecting the bill or requiring any amendment. I add the rider that our recommendations in this respect were not to support the bill and these elements nor to reject it, but simply to have members of the house note our reasoning, conclusions and findings and be able to come to their own decision on whether they think the bill has gone too far or not far enough in this respect. We did not accrete to ourselves the responsibility of saying it should be rejected or accepted on these bases, but simply that our view, on the reasoning that we have set forward, is that there is no basis for opposing the bill. That leaves it to members' own judgement to decide whether there was a significant basis for opposing those particular elements or seeking some further amendment.

A more significant point, in our judgement, concerned Parliament's inability to scrutinise and disallow national regulations, and this takes some explanation. The act that we are dealing with, the Health Practitioner Regulation National Law (WA) Act, essentially consists of two elements. There is an act, to which the regulation national law is a schedule. The Health Practitioner Regulation National Law (WA) Act 2010 itself is a relatively short instrument, consisting of 21 sections. It incorporates, as part of its scheme, the Health Practitioner Regulation National Law, which more or less accords with the law that is applicable in other jurisdictions, although there are a few variations, most of which are not of any moment and have been considered previously by this place. However, there is one variation that is the result of the consideration of the Standing Committee on Uniform Legislation and Statutes Review, in a previous manifestation. The way it works is that the regulation national law was made by the Australian Health Workforce Ministerial Council in June 2010, and it was published by the Victorian government printer on 22 June 2010. Regulations are made under the regulation national law. Regulations made under section 245 of the WA national law were gazetted in November 2010, and were tabled and subjected to the usual disallowance procedures. I draw the attention of members to section 245, which reads —

- (1) The Ministerial Council may make regulations for the purposes of this Law.

I repeat that the law we are talking about is the schedule to the Western Australian act. The section continues —

- (2) The regulations may provide for any matter that is necessary or convenient to be prescribed for carrying out or giving effect to this Law.

The next subsection is a provision that was inserted as a result of recommendations of the Standing Committee on Uniform Legislation and Statutes Review when it first considered this law back in 2010. The committee was trying to ensure, and the government accepted its recommendation, that any regulations would be subject to scrutiny and potential disallowance by this Parliament, as are other regulations made under Western Australian law. The subsection reads —

- (3) Despite section 7(1)(d) of the *Health Practitioner Regulation National Law (WA) Act 2010*, —

Again, we go back to the act to which this particular provision is part of the schedule —

Sections 41 and 42 of the *Interpretation Act 1984* apply to regulations made under subsection (1).

That is, the regulations being made by the ministerial council. We do not need to worry about subsection (4) at this point. A number of other amendments resulted from those recommendations by the then Standing Committee on Uniform Legislation and Statutes Review and, as I have mentioned, the purpose of them was to try to ensure as best as possible that regulations made pursuant to the power contained in the schedule—the regulation national law, as it were—would be able to be subjected to parliamentary scrutiny and disallowance in the same way as any other regulations made by the government of Western Australia. Unfortunately, it did not quite cover the field.

Although the original set of regulations was subjected to scrutiny and disallowance, a provision in those regulations slipped by the Joint Standing Committee on Delegated Legislation, allowing for any amendments made to the master regulations, if you like, gazetted in Victoria from time to time, to also form part of those regulations. The scrutiny provisions incorporated under sections 41 and 42 of the Interpretation Act 1984 were bypassed, and the regulations, by reference to any changes from time to time in the future, incorporated changes made in another jurisdiction as part of the regulation national law becoming the law of Western Australia.

Hon Adele Farina: It did not slip by the committee.

Hon MICHAEL MISCHIN: Maybe I am wrong, but the point is that the original regulations gazetted in 2010 were allowed to stand, and so that mechanism has been in existence since then. If the committee was aware of it, and it was not dealt with, then so be it; I do not know. The point is that it is something that has happened since the master regulations were gazetted back then. Since then, the matter has been drawn to the attention of the government.

Sitting suspended from 1.00 to 2.00 pm

Hon MICHAEL MISCHIN: I should clarify that when I was talking about it having been overlooked that there was, in effect, a Henry VIII clause in our regulations that had been tabled and gazetted and subjected to scrutiny by the Joint Standing Committee on Delegated Legislation, I meant that in no pejorative sense. I do not recall the level of examination the committee gave to that particular provision. It does not much matter, but I was certainly not referring to the Standing Committee on Uniform Legislation and Statutes Review, which in fact had picked up on this problem in the past.

Towards the end of 2016, the then Minister for Health, Hon John Day, had had it drawn to his attention that there was this capacity for changes to the regulations determined by the ministerial council and gazetted in Victoria to be incorporated into Western Australian law without the due process that ordinarily accompanies the gazettal and enactment of regulations in this state. He revealed that, on four previous occasions, amendments had been made to the regulations that had been incorporated into the law of Western Australia on that basis. At that time, he indicated also that the issue would be looked at by the department and that advice would be taken on how to rectify the problem, but he undertook that, in the meantime, any changes to the regulations would be tabled in Parliament so that Parliament would have the ability to scrutinise them. I should add that that is not, by any means, a solution to the problem, because the particular process available under the Interpretation Act allows for not only scrutiny, but also disallowance, and it is questionable whether simply tabling the regulations, and even bringing them to the attention of the delegated legislation committee—assuming that there is a mechanism for that to happen—could result in that being done. Nevertheless, that is where the matter was left before the 2017 election and that is the subject of finding 1 of the 109th report of the Standing Committee on Uniform Legislation and Statutes Review.

Having had that come to the committee's attention, it was one of the elements that we sought the advice of the government on to see just how far the process of rectifying this problem had been addressed. Plainly, the intention of the previous iteration of the uniform legislation and statutes review committee was to have this issue addressed. It had recommended certain amendments to the legislation then before it in order to address the problem, but this was one element of it that had not been foreseen and that seemed to have taken hold through the nature of the regulations that had been gazetted. We were concerned to ensure that as much as possible the government could address the issue and rectify the problem in accordance with what was plainly the Legislative Council's intentions at the time that it was first drawn to the committee's notice and also Parliament's intention insofar as the bill then before the house was amended to incorporate references to sections 41 and 42 of the Interpretation Act 1984. There was an exchange of correspondence with the minister responsible for the bill, the Minister for Health, who informed the committee essentially that it was being looked at and would be resolved as soon as possible. The exchanges of correspondence are mentioned in the committee's report. The committee inquired further of it to ensure that it was being addressed and hopefully could be addressed in the course of the passage of the bill through this place. It seemed to us that a number of options were available. I will not go into those that were debated. One option that I thought could solve the problem would be to have the recommendations —

Hon Alanna Clohesy: You wouldn't talk about what goes on in committee, would you?

Hon MICHAEL MISCHIN: No. I am not revealing any confidences of the committee; this is one of the matters that came to my mind. It could very well be an amendment to require regulations made in Western Australia to come under the act rather than under the schedule to the act, and that would eliminate part of the problem. It would mean that there would be no automatic incorporation of regulations. One would have thought that the government would have sufficient notice of the regulations from time to time to be able to simply copy them into the sort of format that we use and make them part of our law, given that they can be proclaimed almost immediately. That is one possibility. There could be a variety of others.

Nevertheless, I am pleased to say that the government responded and suggested a solution. It told us that upon the enactment of this piece of legislation before the house, the existing regulations would be repealed, one set of

national regulations would be proclaimed or enacted and the new set of national regulations would be tabled in the Western Australian Parliament, and that that would somehow follow the processes under sections 41 and 42 of the Interpretation Act. We sought further clarification of all of that because it was not particularly clear what the mechanisms would be. If the new set of regulations are prepared by the ministerial council and gazetted in Victoria, that set of regulations may, under section 245(3) of the national law, be subject to scrutiny and disallowance by the Parliament. On the other hand, it may be that they will not. It may not solve the problem of whether the regulations can at some point include a similar provision to that which is in place in the current regulations that allows any amendments thereto to be automatically incorporated as part of Western Australian law.

It is a matter that could have been further examined. There is a suggested amendment on the supplementary notice paper that the government proposes to move, and I welcome that and look forward to Hon Alanna Clohesy, the parliamentary secretary representing the Minister for Health, who has the management of this bill, explaining a bit further the mechanisms that are involved and the reasoning behind it. I presume, and the committee has presumed, that the proposed amendment is meant to rectify this issue not only now, but also for the future; that new regulations will take over from the current regulations; that the issue will be regularised and the process will be certain into the future; and that this place can have the assurance that any regulations made under this national law as part of this national scheme will nevertheless be subject to the scrutiny and potential disallowance of the Legislative Council and the Legislative Assembly through the Joint Standing Committee on Delegated Legislation and the problem will be solved. Hopefully, the parliamentary secretary will clarify and confirm that and take us through the mechanisms that will operate in the future.

On that note, we welcome the proposed amendment. We are gratified that the government considered the committee's recommendations and concerns and apparently acted on them. We seek further confirmation that the problem will be addressed definitively so this place can be confident that its sovereignty is not being eroded and that the intentions of this Parliament back in 2010 when it amended the then legislation to introduce a mechanism for scrutiny and disallowance is confirmed.

I hope that members have had an opportunity to consider the committee report. As I indicated, the committee did not consider the policy of the bill in its broader sense or the merits of the individual elements of it. Its concern was strictly within the committee's terms of reference, which was to determine whether parliamentary sovereignty and the privileges of this place and the sovereignty of the state of Western Australia were being respected and not being eroded. I think that the committee did that and did so within the time frame prescribed under the standing orders. I look forward to the government explaining the amendments that touch on the committee's report.

HON ALANNA CLOHESY (East Metropolitan — Parliamentary Secretary) [2.12 pm] — in reply: I thank everyone for their contributions and in particular the parties for their stated support of the bill as indicated in members' contributions to the second reading debate. Firstly, I will respond to some matters raised by members in the second reading debate about the policy content of the bill. I will then respond directly to the Standing Committee on Uniform Legislation and Statutes Review's recommendations and address some of the matters raised in particular by Hon Michael Mischin and Hon Nick Goiran.

I refer, firstly, to the content of the bill. In the most part, the second reading contributions have shown that members are concerned about the heart of the national registration scheme—that is, about protecting public safety. Hon Colin Tincknell noted that adding paramedics to the national scheme will bring them into line with other health professionals, and that that in itself is a worthwhile activity. I think it is also important to recognise that that will result in a whole lot of benefits for paramedics and public safety. It will allow paramedics to cross jurisdictions. As we know in a big state like Western Australia, it is very important that paramedics can practise across other states and, of course, move to other states if they wish to.

Hon Rick Mazza raised an important point about people's expectations about the way professions operate and expectations about public safety and complaints. That is accurate and I think the addition of paramedics to the scheme will do that.

Hon Alison Xamon referred in particular to adding new professions to the scheme. The three professions she mentioned were counsellors, psychotherapists and social workers. I point out that when the scheme first started, it included 10 professions. That increased later to 14 and now, with the addition of paramedics, it will include 15 professions. There is a process in place, through the ministerial council and guidelines, to consider the addition of other professions. However, I will take the member's concerns, which she eloquently described, to the minister and discuss them with him.

I am very pleased that there is no disagreement about the substance of the bill. Most of the contributions to the second reading debate were responses to matters referred to the uniform legislation committee. The government was pleased to refer the bill to the committee to consider those issues. There was never a question that the government did not support parliamentary sovereignty. That was never in doubt.

I thank the committee for its work and its very thorough investigation. I will respond to each of the recommendations. Recommendation 1 addresses concerns that the bill derogates from parliamentary sovereignty. The problem is not with the 2010 act per se or the bill before the house; it is with the regulations and the way the regulations have been updated. There is a phrase contained within the Health Practitioner Regulation National Law (WA) Regulations 2010 that suggests that they will automatically apply the national regulations. Within the national regulations there is a phrase that states “as in force from time to time” in WA. That meant, as Hon Michael Mischin pointed out, that changes could be made to the regulations and they would not have come to the Legislative Council for consideration and disallowance. That is the implementation point—the disallowance. To resolve this, as members know, a supplementary notice paper is circulating that contains a couple of government amendments. One of the amendments addresses that concern. It will delete the phrase “from time to time”. That will mean that those regulations cannot be changed from time to time without coming back to the Western Australian Parliament. It also will include the date 6 December 2017. That will mean that regulation 4 will read —

- (1) The Health Practitioner Regulation National Law Regulation as in force on 6 December 2017 ...
 - (a) applies as a regulation of this jurisdiction; ...

After the WA regulations have been amended as proposed—hopefully, members will consider that amendment and pass it—future amendments to the regulations will be made and tabled and be available to be disallowed by our Parliament.

Recommendation 2 from the Standing Committee on Uniform Legislation and Statutes Review asks for advice on the progress of the new Health Practitioner Regulation National Law regulations. Members will remember that new national regulations are being developed as we speak. In particular, the committee was concerned about when these would be made and whether that would have any effect on them being able to be disallowed. I want to respond to that recommendation and update the house that all participating jurisdictions in Australia have agreed to replace the regulations with new national regulations. That has already been agreed to. The replacement national regulations are currently being drafted to go to the Australian Health Ministers Advisory Council. It is expected that the new national regulations will be finalised sometime in July or August 2018. I am unable to give an accurate date because it will be affected by a number of moving parts. When they are finalised, both the national regulations and the Western Australian regulations will be repealed and replaced by the new national regulations. After those regulations have been replaced, we undertake to make copies available to both the relevant parliamentary committees. The uniform legislation committee also asked for a time line. As I said, the date should be around July or August. I have a table that explains the activities that need to happen, who is responsible for those activities, and the estimated date it is anticipated they will be completed by. I seek leave to table that.

[See paper 1172.]

Hon ALANNA CLOHESY: As I said, some amendments are on the supplementary notice paper and I hope we will go into Committee of the Whole to consider those. I thank members for their consideration of the bill, the content of the bill and the issues surrounding parliamentary sovereignty.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Matthew Swinbourn) in the chair; Hon Alanna Clohesy (Parliamentary Secretary) in charge of the bill.

Clause 1: Short title —

Hon NICK GOIRAN: It is a curious thing in our chamber’s practice that reports of various standing committees often ask for a government’s response, but it is common practice and the custom of this place when a committee—for example, the Standing Committee on Uniform Legislation and Statutes Review—publishes a report with findings and recommendations, it does not necessarily ask expressly for a government response. The unfortunate thing about that practice in our place is that members do not have the benefit of a written response from the government, which we have when we deal with a number of other committee reports. The parliamentary secretary went out of her way in the reply to the second reading debate to touch on the government’s response to recommendation 1 in particular. Can the parliamentary secretary indicate the government’s position on findings 1 and 2 by the committee?

Hon ALANNA CLOHESY: On the government’s response, I checked with the chairman of the committee to see whether he would like a written response so that the committee could put it up on its website alongside the report. The chairman indicated that the report suggested that it could be done, as is usual, during the reply to the second reading debate, which I have done. The second part of the member’s question was about addressing the findings.

Hon Alison Xamon; Hon Nick Goiran; Acting President; Hon Michael Mischin; Hon Alanna Clohesy; Hon
Simon O'Brien; Deputy Chair

Finding 1 goes to recommendation 1—that is, how we will address the problem of the regulations not coming to Parliament in order to be considered or disallowed. That is the basis of the amendments—the insertion of new clause 86A and the amendments to the regulations. Both will be addressed there. The member's point about finding 2 is also that the current bill does not ensure the scrutiny of the amendments. I again point to the way in which the regulations will be addressed.

Hon NICK GOIRAN: I thank the parliamentary secretary. I am keen to know whether the government is in agreement with findings 1 and 2.

Hon ALANNA CLOHESY: As I said before, by providing the amendments, the government would support finding 1. I suppose I addressed it in relation to the recommendations, as distinct from the findings. The amendments on the supplementary notice paper would point to that. What was the second part of the member's question?

Hon Nick Goiran: It is about findings 1 and 2 and the government's position on them and whether it agrees.

Hon ALANNA CLOHESY: As I said in my reply to the second reading debate, the problem is not with the act or the bill per se; the problem is with the regulations. They will be addressed by the amendments that the member has before him.

Hon NICK GOIRAN: In summary, is that to say that the government supports finding 1 but does not support finding 2?

Hon ALANNA CLOHESY: I think I have provided a fairly detailed response to the report. I focused my responses on the recommendations and, in particular, the recommendations on how to fix the problem so that any amendments to regulations, or the new national regulations, can come to this chamber and be debated and disallowed.

Hon NICK GOIRAN: I am not asking about recommendation 1; I am asking about findings 1 and 2. I concede that the parliamentary secretary indicated the government's position on recommendations 1 and 2 in her reply to the second reading debate. Recommendation 1 states —

The Committee recommends that the Government address the deficiencies in the Health Practitioner Regulation National Law (WA) Act 2010 that derogate from Western Australian Parliamentary sovereignty.

My notes indicate that in response to that, the parliamentary secretary advised the house that the problem is not with the act or the bill but with the regulations, and, in particular, that there is a phrase in the current regulations that has automatically applied the national regulations, which in turn contain a phrase along the lines of "as in place from time to time". As I did before, I thank the government for providing that response on recommendation 1. Recommendation 2 states —

The Committee recommends that the Minister for Health advise the Legislative Council about the progress of the proposed new Health Practitioner Regulation National Law Regulation, including any proposed date for tabling in the Legislative Council.

According to my notes, the parliamentary secretary indicated that the new national regulations were being drafted and she anticipates they will be due around July 2018, but that she cannot be precise about that for a number of reasons. The parliamentary secretary then helpfully tabled a paper that sets out some of the steps that have been taken. I have not had the opportunity to digest that at the moment, but, for what it is worth, it is very useful information. However, that is not what I am asking; I am asking for the government's position on findings 1 and 2.

Hon ALANNA CLOHESY: I guess the crux of the matter is what happened in 2010 with the original bill and what the Parliament wanted to happen. We are trying to ensure the scrutiny of amendments, so we are making amendments to this bill to allow the Parliament to consider those amendments. In that sense, it is possible that finding 2 does not go all the way to what the government is now doing; it is taking an extra step.

Hon NICK GOIRAN: Let us take them individually, because it sounds like the government has different positions on finding 1 and finding 2. Does the government agree with finding 1?

Hon ALANNA CLOHESY: I think I have adequately responded to that. Both findings lead to both recommendations. The government has taken those recommendations and acted on them. I addressed that in both my reply to the second reading debate and speaking about the amendments that we will consider.

Hon NICK GOIRAN: Has anyone asked the Minister for Health whether he agrees with finding 1?

Hon ALANNA CLOHESY: I was not present when the minister was briefed, so I cannot adequately respond to that question in a positive way or a negative way.

Hon NICK GOIRAN: We are going to be making pretty slow progress here. The history of this bill is that it has gone to the Standing Committee on Uniform Legislation and Statutes Review. The government was not

enthusiastic about that happening. In fact, I had to move the motion for that to occur. It eventually went to the Standing Committee on Uniform Legislation and Statutes Review, which promptly provided a report. What would normally take place then is that the government would pick up the report, because this will be a key document in the debate that will take place in the Legislative Council, and would you not think, Mr Deputy Chair, that the first place the government would start would be finding 1? It is a bit like saying, “The first thing I will do is open the front cover page and start reading the report.” Once it gets past that stage, the first thing it will see is finding 1 by the Standing Committee on Uniform Legislation and Statutes Review. What might the government position be about that, because it will then inform the rest of the debate? I was hoping to then get a response to finding 2, but it appears, for whatever reason, that the only work that is being done is to ask the minister what his position is on recommendations 1 and 2. I dare not ask what his position is on recommendation 3, because that is four whole findings later. I do not know how we progress at this point, because understandably the parliamentary secretary that says she was not present when the minister was briefed. I do not blame her for that. I wonder whether the parliamentary secretary would be willing to take that on notice and find out from the Minister for Health what his position is on findings 1 and 2?

Hon ALANNA CLOHESY: I think I have made it pretty clear in responding to recommendations 1 and 2. The government has been very clear that there is an acknowledgement that it agrees with the committee that the regulations should be able to be disallowed. In response to that, the government has put forward amendments, which are before members now. That responds to the whole of the committee report, because, if the government did not do that, the government would not support recommendations 1 and 2. It is fairly clear that the work of the committee has been considered in detail by the government because the amendments are in front of us right now for consideration. I look forward to the opportunity to consider those amendments.

Hon NICK GOIRAN: Is that a no, then? The parliamentary secretary will not be getting a response from the minister about his position on findings 1 and 2.

Hon ALANNA CLOHESY: Can we perhaps progress the discussion around the recommendation and the amendments? It is because, as I said before, the government is clear about its response to the committee through the amendments that have been put before the Parliament.

Hon SIMON O'BRIEN: With the greatest respect, I do not think it is clear. The government has come up with what the government has come up with, and that is in the form of several amendments listed on the supplementary notice paper. I am inferring from what we have heard that that is the response to the committee's report. It is not clear, because of the way this complex legislation is constructed, and the question that has been asked is a responsible one. Finding 1 of the committee is a starting point that has to be addressed. The question, “Does the government agree with finding 1 and therefore has done certain things in response?”, is a very important one. Because if the position contrarily is that the government disagrees with the committee's finding and we have to do something else, that is something that the house needs to know. It is not enough to say, “Here's the committee's report and the supplementary notice paper is our response to the committee.” What my colleague has been searching for is some undertaking from the government to say, “We acknowledge and agree with finding 1 of the committee. The committee has accurately identified the problem and therefore we're proposing some amendments to address that problem.” If we cannot answer that question with a simple yes, the committee is going to have great difficulty in ascertaining that the amendments on the notice paper are sufficient to meet its concerns. Conversely, if the government begs to differ from the findings of the committee, it should be able to firstly tell us it differs in its view and describe how the view differs and why. The parliamentary secretary is in a difficult position but she has had a bit of time to contemplate this and seek some advice, so she might like to return to the question, which is quite simple and is not a loaded question. Does the government—I will not even personalise and say, “the minister”—agree with finding 1 or does it have some contrary view? Once we get that established, then we can progress.

Hon ALANNA CLOHESY: I do not know how to be clearer than saying that the government has responded by addressing the recommendations, which in fact are the substance and the action points for this. But in order to progress this, as members might remember, I said that I had offered the chair of the committee a written response to the report and he indicated that that was not necessary. What I may do is provide that offer again and undertake to table that response at the next day's sitting to continue to progress with the debate on the content of the amendments.

Hon NICK GOIRAN: With respect, it is really not satisfactory for there to be some kind of arrangement between the government and the committee. The committee is a committee of the Legislative Council. The bill is now before the Legislative Council and the work of the Standing Committee on Uniform Legislation and Statutes Review, the good work contained in its 109th report, is complete. That is the end of the matter. Now the matter is before the Legislative Council—all 35 voting members in this place. I do not find it satisfactory for the parliamentary secretary to undertake to make an offer to a committee that does not have a bill before it. In fact, I question whether the committee has the power to respond to such a request after the event. Its role is finished and

its role was excellent and we are definitely the better for it. The undertaking that should be provided is to the chamber to ask the Minister for Health what his position is on findings 1 and 2.

The DEPUTY CHAIR: Parliamentary secretary, do you want to respond to that?

Hon ALANNA CLOHESY: I will take that as a statement, thank you.

Hon MICHAEL MISCHIN: I have to be careful about how I put this, but the committee prepared its assessment of the bill within its terms of reference. Ordinarily, committee reports specify that the committee requires a response from the government within a certain time and the like. In cases such as this, it is not unusual that the response from the government is the manner in which it deals with the bill following the tabling of the report. Given the imminence of the listing of this bill for debate, it seemed that the likely response would be that it would be dealt with in the course of the second reading debate and through Committee of the Whole with the presentation of amendments or otherwise. I think I understand the concerns of Hon Nick Goiran and Hon Simon O'Brien. One can infer from the correspondence from the minister, and at one point the acting minister, that is attached to the committee's report that there has been an acknowledgement that findings 1 and 2 have been accepted by the government. I do not think it is a great leap of intuition to suggest that the government has accepted that there is an unintended problem and that it needs to be addressed. Indeed, the exchange of correspondence between the committee and the minister and the acting minister to ascertain whether the government was going to attend to what we had identified and what had previously been identified, and whether it would be corrected, was geared to that end. With respect, I thought it would be uncontroversial to say that yes, the government or minister accepts the committee's findings 1 and 2. I accept that the parliamentary secretary is not responsible for the bill in the same way as the minister and she may be reluctant to make those concessions. I would have thought that they can be made, but that is a matter for the parliamentary secretary.

It would be helpful, insofar as Hon Simon O'Brien has identified, if the amendments that the parliamentary secretary has put on the supplementary notice paper to section 245 and new part 2A, which addresses amendments to the regulations, are geared to addressing this problem that has been found in findings 1 and 2 and addressing the recommendation, that would clarify where we are going and we would then be able to approach them in the spirit of understanding whether they meet the need or fall short of it. I regret that during the course of the parliamentary secretary's reply, I had to leave the chamber on urgent parliamentary business. I very much regret that, because I was looking forward to hearing more about this aspect. I ask the parliamentary secretary to consider the question further, because it helps to direct what we do with those amendments. I agree with Hon Simon O'Brien that these are not loaded questions, certainly not from my point of view. I had assumed—perhaps I was wrong in doing so—that the correspondence sent to the committee inasmuch acknowledged all that. Whether the solution—if the proposed amendments are meant to be a solution to that problem—addresses it is another question.

My understanding is that the government acknowledges—indeed, Hon John Day back in 2016 also acknowledged it—that there is a problem here, and the committee's finding was framed around that and it needs to be fixed. Whether it will be fixed here or in the future is another matter. I sympathise with the parliamentary secretary from the point of view that she is the agent or the proxy for the minister. For my part, I have had to deal with that situation. If the parliamentary secretary would like the comfort of a few minutes to get the stamp of approval from the minister and some clarity, I am sure that that could be arranged. I do not want to put her in a difficult position, but I think it would assist the manner in which the Committee of the Whole deals with the remainder of the amendments on the supplementary notice paper.

Hon ALANNA CLOHESY: It follows that because the government is supporting recommendation 1, finding 1, which is related to that, is being addressed. I am not sure whether the member wants me to say, as I said very clearly in my second reading reply, that the government agrees that there is a problem. The government is acting on finding 2, but not necessarily in the same way that the committee has responded to finding 2. As I said, in the second reading speech and a number of times now, the government believes that there is a problem in making sure —

[Interruption.]

Hon Michael Mischin: Sorry; I cannot hear. Something else is going on.

The DEPUTY CHAIR (Hon Matthew Swinbourn): I think someone is having some technical difficulties, but I think they may have been resolved now.

Hon Michael Mischin: We would normally send them to the cellars for that! I would not ordinarily ask for that, but it is a custom of the house.

The DEPUTY CHAIR: Is it? I will examine the standing orders and see whether there is anything in there later!

Hon Alison Xamon; Hon Nick Goiran; Acting President; Hon Michael Mischin; Hon Alanna Clohesy; Hon
Simon O'Brien; Deputy Chair

Hon ALANNA CLOHESY: I think it follows that because the government has agreed to act and has said very clearly both to the committee and to Parliament that there is a problem and that we are acting on it with our amendments that address the regulations, we have a response to finding 2. It is a “yes, but”.

Hon NICK GOIRAN: The last question that I asked was whether the parliamentary secretary would ask the Minister for Health for his position on findings 1 and 2 and the last response was “yes, but”. However, I do not think that is the response to my question. I think that is the response to a different question. Will the parliamentary secretary ask the Minister for Health for his position on findings 1 and 2?

Hon ALANNA CLOHESY: The government’s position has been made clear by the amendments that are on the supplementary notice paper. I will have a conversation with the minister about the last half hour of debate on this legislation, but the government’s position is very clear in the second reading speech and in the amendments that are before us. I undertake to have a conversation with the minister about the issues raised by the honourable members.

Hon NICK GOIRAN: The strange thing here is that we are on clause 1. My intention for clause 1, according to my notes, was to ask two questions and then to move on to other clauses. Other members may have had other questions, so I expected that we would deal with my two questions within about a minute or two and we would have well and truly progressed by now. I have two questions in my notes, which I had prepared previously. The first question is: what is the government’s position on findings 1 and 2 and recommendations 1 and 2 of the 109th report? The reason I did not ask all of that question is that the parliamentary secretary had already indicated in the second reading speech the government’s position on recommendations 1 and 2. Therefore, I am not going to ask it again. But there was no comment in the second reading reply about findings 1 and 2, so I asked that question. Now we are caught up in some sort of massive complicated issue over whether the government agrees with findings 1 and 2. If the parliamentary secretary does not know, which was one of her earlier responses, because she was not present at one of the briefings, that is fine. No member here would be stressed about that. That is why I asked whether she would take it on notice and ask the Minister for Health. I am not saying that she should drop everything right now to go and do it, but in the fullness of time, she could ask him and let us know. That seems to be an impossibility. I have not even been able to get onto my second question. For what it is worth, the second question that I was going to get to—I would still like to get to it at some point this afternoon—was whether any clauses are redundant or in need of amendment due to the delay in the passage of the bill. That was going to be the end of clause 1, from my perspective. I do not know how many other members wanted to ask questions on clause 1, but we would be moving on to clause 2. I find it very unsatisfactory that we cannot get a commitment that the parliamentary secretary will go to the minister responsible for this legislation and ask him the simple question of whether he agrees with findings 1 and 2. Is that too much to ask of the parliamentary secretary?

Hon ALANNA CLOHESY: It follows that findings 1 and 2 have been acknowledged by the minister because the minister has responded to them by providing Parliament with the amendments. When we get to debate them, the amendments will make it very clear that the problem is not with the bill per se, but with the regulations and the way in which they were developed in 2010. The minister has made every effort to respond to members’ and the committee’s concerns about that, which is demonstrated through the amendments that we are asking Parliament to consider for the bill. That is the government’s response to findings 1 and 2.

The DEPUTY CHAIR: Hon Nick Goiran, I would just caution you that we have asked the question multiple ways and we have got the same answer. I am not sure how much further we are going to be able to take it if we keep asking the question.

Hon NICK GOIRAN: I totally agree. Thanks, Mr Deputy Chair; I could not agree more. It is quite remarkable that the most basic of questions cannot be answered and there is no point. It is clear that the parliamentary secretary is unwilling to pick up the 109th report, go and have a chat to the Minister for Health, open it to page ii, point to findings 1 and 2 and ask the Minister for Health, “What’s your position on these two findings?” The parliamentary secretary is unwilling to do that.

The DEPUTY CHAIR: I must say that I did hear her say that she would talk to the minister. I am not sure whether she did it in precisely the terms that you asked her, but I do recall her saying that at some stage.

Hon NICK GOIRAN: Thank you, Mr Deputy Chair. The parliamentary secretary said that she was happy to go to the Minister for Health to bring to his attention the things that have been discussed in the last half an hour. I do not need the parliamentary secretary to take the Minister for Health the transcript of *Hansard* for the last half an hour—now it is even longer than that. That is not what I want. I just want answers on those two findings. Finding 1 has six lines and finding 2 has four lines, but it is too much. It is not going to happen. There is an unwillingness to do it. I will move on to my second question and maybe it will be a lot quicker. Are any clauses redundant or in need of amendment due to the delay in the passage of the bill?

Hon ALANNA CLOHESY: I am advised not that we are aware of, no.

Hon Alison Xamon; Hon Nick Goiran; Acting President; Hon Michael Mischin; Hon Alanna Clohesy; Hon
Simon O'Brien; Deputy Chair

Hon MICHAEL MISCHIN: I have inferred from the parliamentary secretary's comments, leaving aside the doubts hedged around findings 1 and 2, that recommendations 1 and 2 are accepted by the government; is that correct? The government's response to those recommendations are the amendments that are proposed in the supplementary notice paper at 2/NC86A and 3/NP2A, and by the amendment of the long title.

Hon ALANNA CLOHESY: As I have said before, the government has responded to recommendation 1 by providing the amendments that we have before us. In that sense, those amendments do not address per se the national law; they address the regulations. What I understand the honourable member to be asking is whether the government is going to support the way forward that he suggested in making amendments to the act. It is clear that the government has amendments before us that go to the regulations.

Hon MICHAEL MISCHIN: Perhaps I could clarify. My comments about how the problem might be able to be solved by simply an amendment to the act to require any regulations made under the national law to be effectively made under the act and hence become part of the law of Western Australia and allowed, disallowed and scrutinised, subject to the usual processes in the Interpretation Act and the like, was simply an idea. It might have removed some of the complications that are currently presented by the awkward structure of this legislation, which, sadly, as part of national schemes, is reflected in other legislation that we have had to, and no doubt will continue to, be confronted with. We have an enabling act that basically incorporates something that is of far greater length that has been formulated as a model law or likewise. A series of regulations are then meant to be uniform, which are made under some authority that is not a state authority, but to which the state executive contributes by way of a ministerial council, specialist body or the like. But no, it was not a recommendation of the committee, nor, from my recollection, was it even a suggestion of the committee that that take place. For reference, I think it is worth reading into *Hansard* what we were looking for. Finding 1 states —

The Committee finds that the incorporation into Western Australian law of amendments to the *Health Practitioner Regulation National Law Regulation* without a legislative requirement for them to be published in the *Western Australian Government Gazette*, and without them being subject to Parliament's scrutiny and possible disallowance, is contrary to what the Parliament expected to achieve when passing amendments to the *Health Practitioner Regulation National Law (WA) Bill 2010*.

I would have thought that the answer to that would have been yes, because the whole point back in 2010 of the government accepting recommendations from the Standing Committee on Uniform Legislation and Statutes Review to amend section 245 of the national law by adding another subsection was to ensure that it happened to overcome that problem. There is no clear yes or no to that, but a "yes, but", and so be it. Finding 2 states —

The Committee finds that the *Health Practitioner Regulation National Law (WA) Amendment Bill 2017* —

That is this bill we are debating —

does not ensure the scrutiny of amendments to the *Health Practitioner Regulation National Law Regulation* so far as they apply in Western Australia.

I would have thought the answer to that was "Yes, we agree", because there was nothing in the original bill, the bill that is before us pre-supplementary notice paper, that touched on that at all, and it left the status quo as it was after its passage in 2010, after these problems had been identified over the last several years and as these problems had been identified in the committee report before the correspondence had even taken place with the minister and the acting minister to seek some assistance and their appetite to fix the problem. So, I would have thought that the answer to those two findings was yes. Leaving that aside, we move onto recommendation 1, which states —

The Committee recommends that the Government address the deficiencies in the *Health Practitioner Regulation National Law (WA) Act 2010* that derogate from Western Australian Parliamentary sovereignty.

As I understand it, we are told that that is what the bulk of the amendments, not all, proposed in supplementary notice paper 20, issue 1 are directed to do by the insertion of a new clause 86A into this bill amending the existing section 245 of the national law by inserting a further subsection concerning the regulations, deleting a phrase and substituting a phrase in the regulations themselves. I am sorry for any confusion, because the word "regulation" seems to be used about two or three times in every title of this legislation and it means different things in different contexts, but it is an amendment to the regulations made under the regulation. It is also done by amending the long title of the bill specifically to extend its operation beyond its current long title and policy, also amending the regulations to the regulation. I would have thought that that is where we are going with this. I have heard, in, I suppose, a roundabout way, an acceptance of the recommendation and that these amendments, I think, are aimed to attend to that recommendation.

There are three recommendations, but the other pertinent one is recommendation 2, which states —

The Committee recommends that the Minister for Health advise the Legislative Council about the progress of the proposed new *Health Practitioner Regulation National Law Regulation*, including any proposed date for tabling in the Legislative Council.

That was directed at the comment made by the minister that new regulations would be framed and issued that would repeal current lines, bring everything up to date and be disallowable by this place. I have the document that has been presented, the estimated time line, and I have just a few questions about that in due course. Is my understanding correct that these amendments proposed, with the exception of serial 1/50, are all aimed at fixing the problems identified in findings 1 and 2 and recommendation 1 of the committee report?

Hon ALANNA CLOHESY: Yes.

Clause put and passed.

Clause 2: Commencement —

Hon NICK GOIRAN: We are at clause 2 of the bill and I note that the committee specifically commented and made some findings on this clause in its report. I am interested in knowing the government's responses to findings 3 and 4 of the report.

Hon ALANNA CLOHESY: For the benefit of members, I think the point is that the committee first of all indicated that the executive determine the proclamation date of the bill, and this is a debate that has occurred with other legislation as well. It is not necessary to accept that that is the case across the board, but with this piece of legislation, as the committee has acknowledged in finding 4, there are important reasons for leaving the proclamation to be determined by the executive because a number of factors are at play. One is the date when paramedics will be included, and a number of other factors all have to change at different times. In order to do that, we have suggested that the executive determine some of those provisions. As Hon Michael Mischin acknowledged in his contribution to the second reading debate, there are a number of moving parts in any national mechanism, and this is a good example of that. If it was not necessary to do this, the government would not have done it.

Hon NICK GOIRAN: Does the government agree with findings 3 and 4?

Hon ALANNA CLOHESY: Perhaps noting the inconsistencies between finding 3 and finding 4, it is important, as I said, that the government can have flexibility around the proclamation. I am not entirely sure about the core of the concern, so rather than go around in circles, I would like to say that we will alert Parliament when those key activities are occurring and we undertake to keep Parliament up to date when those activities have happened or are about to happen. I note that we have also provided the table with the estimated dates for the making of the national regulations. That is an example of the way in which it could be done.

Hon NICK GOIRAN: The parliamentary secretary said “noting the inconsistencies between finding 3 and finding 4”. What are those inconsistencies?

Hon ALANNA CLOHESY: On the one hand, finding 3 states that the executive determining the commencement dates erodes sovereignty, but, on the other hand, the committee found that there are sound reasons for leaving the proclamation of some of the provisions to be determined by the executive. In that sense, on the one hand, the committee has said that proclamation by the executive undermines parliamentary sovereignty but, on the other hand, it has found that there are sound reasons for doing so.

Hon NICK GOIRAN: I do not think that that is inconsistent by the committee. I think it is just dealing with two different things. Firstly, the committee is identifying that it finds that it erodes parliamentary sovereignty; and, secondly, it is saying that, notwithstanding that, in this instance, there are sound reasons for doing it. I do not think they are inconsistent at all. I am still not clear whether the government is in agreement with findings 3 and 4.

Hon ALANNA CLOHESY: I think the committee also discussed this at length, but of course the power to proclaim is given to the Governor and the executive in an exercise of parliamentary sovereignty. So the act by Parliament of giving that power to the Governor and the executive is, in itself, a statement of parliamentary sovereignty.

Hon NICK GOIRAN: That does not tell us whether the government agrees with findings 3 and 4, which is the question. Inferring from what the parliamentary secretary has said, it sounds as though she is saying that the government does not agree with finding 3. It is difficult to interpret what she has just said about Parliament having given jurisdiction to others to proclaim laws in any other way than to say that the government does not agree with finding 3. I assume that the government agrees with finding 4, which states —

The Committee finds that there are sound reasons for leaving the proclamation of some provisions of the Health Practitioner Regulation National Law (WA) Amendment Bill 2017 to be determined by the Executive.

I assume that the government agrees with that, but I am just asking the parliamentary secretary to clarify the government's position on finding 4. At this time, I assume that she is saying that the government opposes finding 3 but is supportive of finding 4.

Hon ALANNA CLOHESY: As I said before, it is not ideal, and I think the minister made that clear in his communication with the committee, but it is what we have to deal with. It is not a unique feature. In that sense, in finding 3 the committee indicates that it is not ideal that it is done in this way, but in the same way, the government accepts, as did the committee, that there are sound reasons for doing it. If the member is asking me whether I would set up a national instrument in this way, it is not ideal. As I have said right from the start, the government's intention is not to erode parliamentary sovereignty and, indeed, it has found a way in which it can ensure that Parliament has the opportunity to debate and disallow certain regulations. In that sense, findings 3 and 4 are consistent with the way in which the government has approached this following the report of the committee.

Hon NICK GOIRAN: Has anyone asked the minister what his position is on findings 3 and 4?

Hon ALANNA CLOHESY: I was not present at the minister's briefing on this. However, as I said, I will undertake to have a discussion with the minister.

Hon NICK GOIRAN: To clarify, has the parliamentary secretary undertaken to come back to the chamber and tell us what the minister's position is on findings 3 and 4?

Hon ALANNA CLOHESY: The position of the government and the minister in respect of the amendments presented to the Parliament for consideration is very clear. However, as I said, I undertake to have a conversation with the minister about the content of all the findings. The minister's wishes are very clear in what is being put before this chamber. It should not take away from the amendments that have been put forward. That is a statement of clarity from the minister and the government. As I said, I will undertake to have a conversation with the minister about all the findings.

Hon NICK GOIRAN: Which of the proposed amendments deal with findings 3 and 4?

Hon ALANNA CLOHESY: As the member is well aware, the amendments do not deal with findings 3 and 4; the amendments deal with recommendations 1 and 2. As I said, the government's position on the way it wants to progress this bill is in the form of the amendments and in the form of the second reading reply speech. The government's position on this bill is very clear. I have also said on a number of occasions that this is not an ideal way to progress. I think the minister communicated that very clearly too. It is not an ideal way to progress, but that was done in 2010. We are trying to address that problem now. Hopefully, we will have an opportunity to ensure parliamentary sovereignty when we get to debate the amendments. That is the point I was making about the amendments. When we get to address them, that will be a really good opportunity and a clear statement of the government's position.

Hon NICK GOIRAN: The parliamentary secretary quite rightly identified that none of the amendments proposed by the government address findings 3 and 4. She said that they address recommendations 1 and 2. Can she explain to the chamber how the proposed amendments address recommendation 2?

Hon ALANNA CLOHESY: They do not.

Hon NICK GOIRAN: How urgent is this bill before us?

Several members interjected.

Point of Order

Hon NICK GOIRAN: I think that the Minister for Regional Development is seeking the call.

The DEPUTY CHAIR (Hon Laurie Graham): I do not think she is.

Committee Resumed

Several members interjected.

The DEPUTY CHAIR: Members, order, please!

Hon ALANNA CLOHESY: Queensland has passed the legislation. The Paramedicine Board of Australia has already been established. If this legislation does not progress at a reasonable pace, the Western Australian representative will have to come off that national board. Since the bill was originally introduced, there have been

some changes, including the Queensland election and the South Australian election. All those factors influence the relative urgency of the bill. However, the most important point is that we need to progress this bill to ensure that Western Australia's representative remains on the Paramedicine Board. I am unable to give a fixed date in relation to the urgency of this bill. I cannot say that it has to be done by this date or else because of the moving parts that are contained in the bill. There are a number of factors in relation to that. Therefore, in order to ensure that Western Australia has a representative on the Paramedicine Board, it is important that this bill progresses as quickly as is practicable.

Hon NICK GOIRAN: If the bill passes both houses of Parliament today, is the government in a position to proclaim the legislation immediately upon assent?

Hon ALANNA CLOHESY: As I said, there are a number of moving parts to the legislation, so the bill will not be proclaimed on the same day as it is passed. What will impact on that is, for example, the fact that there are some offences contained in the bill. Once the act is proclaimed, notice must be given that those things are going to become offences. There are other factors, including lining up the paramedics registration date with the other states. They are two examples of why it needs to be staggered.

Hon NICK GOIRAN: The parliamentary secretary mentioned that there are some offences in the bill and that notice must be given. How much notice must be given?

Hon ALANNA CLOHESY: Clauses 1 and 2 in part 1 will commence upon royal assent. There is a cluster for which the trigger will be the other assents—for example, of Queensland—which is part 2, division 1, clauses 3 to 6, and part 2, division 2, clauses 7, 8, 9(1) et cetera. These are not fixed dates. I cannot guarantee fixed dates. Clause 38 will take effect 28 days after royal assent. There are clauses for which I cannot give fixed dates because of different things that need to come into effect. They will be like tranche 2, but they will be at least 28 days after royal assent. Tranche 3 will also be at least 28 days after royal assent and that, in particular, is to make sure that it lines up with Queensland so that it is truly national. Tranche 4 will be around participation day, which is in September 2018.

Hon NICK GOIRAN: The parliamentary secretary indicated earlier that it was very important that the bill pass because otherwise a representative from WA would have to come off the board. Which clause of the bill deals with that issue?

Hon ALANNA CLOHESY: When we get to clause 88, we can talk more fully about the board. I am advised that a board is in place. Because Western Australia is behind the other states in passing this legislation, Western Australia has a nominee on the board in an informal capacity. If this bill is successful, clause 88 will provide the transition arrangements for this and a number of other factors and will, in part, confirm the board and, therefore, confirm Western Australia's position. Someone is acting in an advisory capacity right now. If this bill is not successful, we will not be able to have a representative on the board, which is already functioning.

Hon NICK GOIRAN: Clause 88 is under part 2 of the bill. Clause 2(b) explains when part 2 will come into effect. It lists a whole range of clauses of the bill. One of the clauses that it does not specify is clause 88. It jumps from clause 87 to clauses 89 to 96. Where does clause 88 fit in under clause 2(b)?

Hon ALANNA CLOHESY: It fits under clause 2(b) because it states "Part 2, other than" those sections that follow.

Hon NICK GOIRAN: That is right. Clause 88 coming into effect is the critical one because we do not want our WA representative to have to come off the board.

Hon Alanna Clohesy: That was an example. It wasn't the example. It was one example.

Hon NICK GOIRAN: It was an important example, otherwise the parliamentary secretary would not have raised it.

I do not want the WA representative to have to come off the board because of a delay in the passage of the bill. I just want to make sure that we are clear that clause 88 is the critical clause, which will come into effect as outlined in clause 2(b). Clause 2(b) gives a couple of scenarios. The first one depends on the Queensland legislation. If section 3 of the Queensland legislation comes into operation on or before assent day, clause 88 would commence on the day after assent. Is the parliamentary secretary able to inform the house of the status of section 3 of Queensland's Health Practitioner Regulation National Law And Other Legislation Amendment Act 2017?

Hon ALANNA CLOHESY: It has come into operation.

Hon NICK GOIRAN: This representative from WA who would have to come off the board will be safe one day after the assent of this legislation; is that right?

Hon ALANNA CLOHESY: The position will be formalised, yes.

Hon Alison Xamon; Hon Nick Goiran; Acting President; Hon Michael Mischin; Hon Alanna Clohesy; Hon
Simon O'Brien; Deputy Chair

Hon NICK GOIRAN: That is great news for that person. They will not have to come off the board because, as the parliamentary secretary knows, all the parties represented in this chamber have indicated their support for the bill and the excellent amendment proposed by the government. I do not think that person is in any danger whatsoever of having to come off the board as we now know that their position will be—what was the term?

Hon Alanna Clohesy: Formalised.

Hon NICK GOIRAN: That was a very good phrase. The position will be formalised for that person on the day after this legislation receives royal assent. It does not appear that there is any urgency for this legislation. Last year when the government introduced this legislation and resisted it going to the Standing Committee on Uniform Legislation and Statutes Review, why did it indicate that it was an urgent bill?

Hon ALANNA CLOHESY: Western Australia is lagging behind. All other states have commenced the implementation and are spending money and doing those things that their states require them to do. The urgency is both in terms of our responsibility to paramedics and midwives, and in ensuring that this is implemented at a national level in a consistent way.

Hon NICK GOIRAN: This will not be a question but a comment to conclude on clause 2. Last year, Hon Roger Cook, MLA, Deputy Premier; Minister for Health; Mental Health, wrote me a letter. Interestingly, this letter is undated, but in any case it was from last year. One of the headings in this letter from the Minister for Health is “Urgency in relation to the passage of the Amendment Bill”. As best as I can recollect, this letter was sent to me by the Minister for Health around the time that this bill was introduced into this place, which was in approximately September last year. It was urgent, according to the minister. The minister even took the extraordinary measure of penning a substantial letter to me, with attachments, to say that it was urgent. I note that in the second paragraph on page 2 of the letter he states —

It is important that the WA Amendment Bill is passed as an urgent Bill ...

That was back in approximately September last year. The government did not bring the bill on for debate in December, which makes me wonder how urgent it really was for the government. It could have brought it on in December, but members may remember that the big priority of government in that final week in December was to make sure that we passed legislation to freeze the salary and remuneration of members of Parliament, which had already been frozen by the Salaries and Allowances Tribunal. Apparently, we are lagging behind; the parliamentary secretary has expressed some concern about that. The minister said that the bill was urgent, yet obviously no-one communicated that to the Leader of the House because the Leader of the House brought on the freezing bill as the top priority in December. The Minister for Regional Development has expressed some exasperation about the lack of progress on this bill, but members need to understand that, from the opposition’s perspective, we were ready to go with this legislation in December last year. It is not up to us to bring the legislation forward; with all due respect to government members, it is up to them to bring the legislation forward in accordance with their priorities. If the government decided that the freezing bill was more important than the Health Practitioner Regulation National Law (WA) Amendment Bill 2017, that is fine; that is the government’s priority. However, it should not then whinge to us when the bill eventually comes before the house on 22 March 2018—remember, this is the urgent bill from September last year—and we ask a few simple questions, including whether the government agrees with findings 1 and 2 of the committee report. We went through a big convoluted exercise; I do not even know how long we have been going on with all these things. I now find that things are not all that urgent, because things are happening in other states in any event. In terms of the big concern about the person who might have to come off the board, they are safe anyway, because their position will be formalised the day after this bill receives royal assent.

I said at the outset that I am making a statement; I am not asking a question of the parliamentary secretary. I raise it for this reason: from the opposition’s perspective, we do not want to get letters for the next three years from Hon Roger Cook, MLA, Deputy Premier; Minister for Health; Mental Health, asking us to please pass a bill urgently when it is not urgent. He should not write to us and say that. From now on, every time I get a letter from Hon Roger Cook, I will not know whether to believe it. I will say, “Is this a really urgent bill or is this one of those pretend urgent bills?” I do not want to see that from Hon Roger Cook anymore. I hope this will be the first and last time we have such a display by this minister.

As I said in my second reading remarks, the opposition is happy to facilitate the passage of this bill. However, it is very difficult to facilitate the passage of a bill, which probably should have been done within half an hour, if we cannot even get answers to questions such as whether the government agrees with findings 1 and 2; and, if the parliamentary secretary does not know the answer to that, whether she would ask the Minister for Health what his position is. With those remarks, I encourage members to support clause 2.

Clause put and passed.

Clause 3 put and passed.

Clause 4: Section 4 amended —

Hon NICK GOIRAN: Does the parliamentary secretary have a copy of the explanatory memorandum?

Hon Alanna Clohesy: Yes, of course I do.

Hon NICK GOIRAN: The explanatory memorandum's explanation of clause 4 is somewhat confusing. The parliamentary secretary will see that the explanation for clause 4 is word for word the same as for clause 3, yet we are now talking about clause 4 and not clause 3. Can the parliamentary secretary indicate to the house what is the situation with clause 4 and the explanation for it?

Hon ALANNA CLOHESY: I am advised that the explanatory memorandum is correct. This clause removes section 4(5), (6) and (7) from part 2 to make sure that users of the Western Australian national law can locate the WA-specific amendments.

Hon NICK GOIRAN: The parliamentary secretary has the explanatory memorandum handy. She will see, incidentally and interestingly, that the explanation for clause 4 makes no reference to clause 4, but let us leave that to one side for a moment. It states —

Clause 3(1) provides for the sections in Part 2 Division 1 to apply exclusively to Western Australia.

If the parliamentary secretary looks just above, under clause 3, it states —

Clause 3(1) provides for the sections in Part 2 Division 1 to apply to Western Australia.

Why is there a difference?

Hon ALANNA CLOHESY: The honourable member is quite correct, it should read clause 4(1) and 4(2), and they apply the schedule to Western Australia.

Hon NICK GOIRAN: Earlier, the parliamentary secretary said that the explanatory memorandum was correct. It is not correct. We now find the explanatory memorandum is incorrect. We found this out only because I asked another question and every time I ask a question the Minister for Regional Development gets more exasperated. Now we find out that the document from the government is incorrect. I want to make sure that we have this absolutely right. What should the explanatory memorandum read under clause 4?

Hon ALANNA CLOHESY: It should read, "Clause 4—section 4 amended. Clause 4(1)", and the second paragraph should read, "Clause 4(2)".

Hon NICK GOIRAN: Will the parliamentary secretary be tabling an amended explanatory memorandum?

Hon ALANNA CLOHESY: Yes.

Hon NICK GOIRAN: When will this be done?

Hon ALANNA CLOHESY: I am not sure of the actual process but I will attempt to have it by Tuesday for tabling.

Hon NICK GOIRAN: Mr Deputy Chair, I might just ask you to clarify and maybe provide a ruling on whether we need to have the amended explanatory memorandum provided to the house before the bill passes through the Committee of the Whole phase or not. I simply do not know the answer to that question, so I seek your guidance.

The DEPUTY CHAIR: The ruling I received is that no, we do not.

Clause put and passed.

Clauses 5 to 13 put and passed.

Clause 14: Section 31 replaced —

Hon NICK GOIRAN: The hardworking Standing Committee on Uniform Legislation and Statutes Review, that the government did not want to look at this bill, made reference to clause 14 and I draw the parliamentary secretary's attention to its comments in findings 5 and 6. Does the government concur with the committee's findings 5 and 6?

Hon ALANNA CLOHESY: It is clear that the government supports finding 5 because of the way in which we are going about setting up the new national regulations and the regulations that are a part of this clause. I have also addressed finding 6 in the sense that we have amendments before us, when we get to consider them, that address concerns about the parliamentary sovereignty issues.

Hon Alison Xamon; Hon Nick Goiran; Acting President; Hon Michael Mischin; Hon Alanna Clohesy; Hon
Simon O'Brien; Deputy Chair

Hon NICK GOIRAN: We have been through this exercise a couple of times on some other clauses with regard to the findings. On the last occasion, the parliamentary secretary indicated that she would have a chat with the Minister for Health about those findings. Will she do the same with findings 5 and 6 and report back to the house?

Hon ALANNA CLOHESY: As I said before, I will be having a discussion with the Minister for Health about all the findings in the report.

Hon NICK GOIRAN: I appreciate that. The second part to that question is: will the parliamentary secretary then report to the house?

Hon ALANNA CLOHESY: I indicated before that I would be having a discussion with the minister. The problem is that the government's position is very clear in its response to the recommendations that I have given the member clearly, in both the reply to the second reading and the amendments that are before us for consideration.

Hon NICK GOIRAN: On Tuesday next week, the parliamentary secretary will have to table an amended explanatory memorandum. In order to table the explanatory memorandum she will have to rise, get the call and say a few words. Why would she not then at the same time indicate to the house, "I report back that this was the position of the minister with regard to findings 1 through to 6"? I do not know. I would have thought that that could be done by way of a brief ministerial statement, or I am sure that we could facilitate some few moments of time next week. I would have thought that the Leader of the Opposition and the Leader of the House could have a quick chat about that and organise a few minutes to do it at the same time that she tables the amended explanatory memorandum. Is that something that the parliamentary secretary might be willing to consider?

Hon ALANNA CLOHESY: As I said some time ago, I offered to provide a response to Parliament about the whole of the report, which included, as I said, a discussion with the minister, but I also said some time ago that I would provide a written response. I have not decided the mechanism by which I will do that. With the indulgence of the member, I probably will not decide until tomorrow or after I have had an opportunity to have a discussion with the minister. Other issues might arise. There might be a better mechanism by which to do that than the one that the member suggested. In fact, I think that there probably is.

Hon NICK GOIRAN: I simply say to the parliamentary secretary, through the Deputy Chair, that I think that is an excellent way forward.

Clause put and passed.

Clauses 15 to 49 put and passed.

Clause 50: Section 141 amended —

Hon ALANNA CLOHESY: I move —

Page 22, line 29 — To delete "practitioner; or" and substitute —
practitioner or student; or

Hon NICK GOIRAN: When the government moves an amendment, it is customary to explain what the amendment is all about and why we should agree to it. I would be grateful if the parliamentary secretary would do that.

Hon ALANNA CLOHESY: For the member's benefit, I was waiting for the call. This is a drafting omission regarding a word in section 141. This amendment will insert "student". Members will recall that when this bill was debated earlier, a minor drafting error was identified.

Amendment put and passed.

Committee interrupted, pursuant to standing orders.

[Continued on page 1228.]

Sitting suspended from 4.15 to 4.30 pm