

**HEALTH PRACTITIONER REGULATION NATIONAL LAW (WA) BILL 2010**

*Committee*

Resumed from an earlier stage of the sitting. The Deputy Chairman of Committees (Hon Helen Morton) in the chair; Hon Simon O'Brien (Minister for Transport) in charge of the bill.

**Schedule 1: Health Practitioner Regulation National Law —**

Committee was interrupted after the amendment moved by Hon Liz Behjat was partly considered.

**Hon SIMON O'BRIEN:** The government is very pleased to agree to this amendment. We share the view exhibited by others in the house that this Parliament chooses to retain its sovereignty, particularly in relation to matters of legislation and subordinate legislation. It is by far the preferable way. Although we willingly join, through this act, in a national system for health practitioner regulation for all the benefits that it will bring, it is important that in so doing we accept the important principle that this Parliament will enact laws that affect this jurisdiction. This amendment ensures that the regulations that are to apply throughout the nation, even though they will be drafted elsewhere—agreed at a ministerial council at which Western Australia will be represented—will be gazetted in another state and Western Australia, through this Parliament, will retain its prerogative, if it so chooses, to disallow those regulations, as we should. I do not anticipate, incidentally, that such a course would need to be followed very often, but should the occasion ever present itself, we will have the power to do that. What is most important about all this is the preservation of the basic principle, even if it is not ever found necessary to be utilised. The government is pleased to support this amendment, and the several that will follow.

**Amendment put and passed.**

**Hon ADELE FARINA:** I refer to Standing Committee on Uniform Legislation and Statutes Reviews recommendation 5/S. I move —

Page 233, lines 8 to 10 — To delete the lines.

This follows the amendment we have just considered. It is a suite of amendments that affects the ability of this Parliament to consider regulations made under the act.

**Hon SIMON O'BRIEN:** The government agrees also with this amendment. We do so with confidence in what we have seen from the attitude of the Committee of the Whole thus far—namely, that we will amend clause 7 to substitute arrangements for the future tabling and disallowance of regulations in Western Australia to complement what happens in Victoria. This was a matter I referred to in my previous remarks and we support this further amendment.

**Amendment put and passed.**

**Hon ADELE FARINA:** I refer to standing committee recommendation 6/S. I move —

Page 233, lines 14 to 17 — To delete the lines.

This follows the amendment we have just considered and passed.

**Amendment put and passed.**

**Hon ADELE FARINA:** I refer now to standing committee recommendation 7/S. I move —

Page 233, line 19 to page 234, line 4 — To delete the lines and insert —

Note: Clause 246 of the *Health Practitioner Regulation National Law* does not form part of the *Health Practitioner Regulation National Law* in Western Australia.

Although the inclusion of "Note:" is uncommon in Western Australian legislation, it is very common in commonwealth legislation, and we will see that elsewhere in this bill. It makes very clear that the application of section 246 in Health Practitioner Regulation National Law does not form part of the law in this state.

**Amendment put and passed.**

**Hon ADELE FARINA:** I refer to standing committee recommendation 8/S. I move —

Page 234, lines 6 to 15 — To delete the lines and insert —

Note: Clause 247 of the *Health Practitioner Regulation National Law* does not form part of the *Health Practitioner Regulation National Law* in Western Australia.

Again this amendment highlights the point that that provision will not apply in Western Australia.

**Amendment put and passed.**

**Schedule, as amended, put and passed.**

**Postponed clause 7: Exclusion of legislation of this jurisdiction —**

The clause was postponed on 12 August after it had been partly considered.

**Hon ADELE FARINA:** This arises from standing committee recommendation 1/7. I move —

Page 4, line 19 — To delete “The” and insert —

- (1) Except as provided in subsection (2), the

This forms part of the suite of amendments we are considering to ensure that this Parliament retains scrutiny of regulations made under the act.

**Amendment put and passed.**

**Hon ADELE FARINA:** This also comes from committee recommendation 2/7. I move —

Page 4, after line 27 — To insert —

- (2) Sections 41 and 42 of the *Interpretation Act 1984* apply to regulations made under the *Health Practitioner Regulation National Law (Western Australia)*.

This too forms part of the suite of amendments in relation to the making of regulations in this state.

**Amendment put and passed.**

**Postponed clause, as amended, put and passed.**

**Hon SIMON O'BRIEN:** We will not proceed with new clause 11A as listed on the supplementary notice paper.

**New clause 13A —**

**Hon ADELE FARINA:** I move committee recommendation 3/NC —

Page 6, after line 21 — To insert —

**13A. Tabling of review under COAG Agreement**

The Minister is to cause a copy of the report of the review conducted under the COAG Agreement clause 14.1 to be laid before each House of Parliament as soon as practicable, and in any event not later than 6 months after the Ministerial Council receives the report.

Members will be aware that clause 13 of the bill provides that the minister undertake a review of the act after five years. However, there is also a review provision in the COAG agreement that requires a review of the operation of the whole of the scheme after three years. The committee's concern is that, as the bill before us is drafted, Parliament will not get an opportunity to see and comment on the COAG review, which is a review of the whole scheme; whereas the review provided under the act in clause 13 of the bill is really just a review of the WA aspects of the scheme and cannot involve a review of the national scheme as a whole. Given the substantial changes that are proposed in this new national scheme, it is appropriate that Parliament be given the opportunity to review the COAG review after three years of operation. I say that particularly given that concerns have been raised by a number of people in the professions that will be covered by this legislation.

The committee therefore recommends that, in addition to the review that will be undertaken of the state act in five years, the minister also cause a copy of the report of the review conducted under the COAG agreement to be tabled in both houses of Parliament, no later than six months after the ministerial council receives the report, so that the Parliament can be informed about whether the national scheme is operating as it was intended to operate.

**Hon SIMON O'BRIEN:** The government has considered this matter carefully. The Minister for Health has respectfully asked the Parliament to note two things. First, under clause 13 of our own bill, there is already a requirement in law for the Minister for Health of the day to table a report in each house of Parliament after carrying out a review of the operation and effectiveness of the act after five years. That review is required to be undertaken by Western Australia from a Western Australian perspective. That review will be far more relevant, I would respectfully submit, than a national review in determining whether our interests have been met. That is already enshrined in the bill, and the Committee of the Whole has already agreed to that.

In relation to reviews of acts, we need to be a bit careful. Quite often a review of an act is seen as being a good idea—particularly occasionally by members of a house of review. However, sometimes a review is not very practical in the time frames that it sets out. This bill allows for a five-year review. That will give us time to get the system up and running, and it will cater for our needs in a realistic time frame. We believe that the review of the act is adequately catered for by clause 13 of the bill.

The proposal from the committee for a new clause 13A, which will make it a requirement that the minister cause a copy of the report of the review conducted under the COAG agreement to be laid before each house of Parliament, is another matter altogether. Such a review might well be of interest. However, when we come as a Parliament to review the effectiveness of the Western Australian act, we will be better informed by the review that is provided for already in clause 13, in my view. The report of the COAG review would, no doubt, be of interest. That is not denied. The question before us, though, is whether we should enshrine in our legislation the requirement that a future COAG report—which is provided to a ministerial council that is remote from this place—be tabled by our minister in this Parliament. I am not sure that that is something that we should enshrine in our legislation. I think it is likely that when that report does become available, the minister will seek to share it freely and probably will table it in the Parliament. I cannot imagine why the minister would not want to do that as part of informing public interest in due course. But I do not think it is necessary for us to enshrine that requirement in law. I think that is overkill, and it trivialises the importance of the review that is already contemplated in the bill.

Secondly, I do not know what the status of the report required by the COAG agreement will be at the time the ministerial council receives it. I also do not know whether that report will be available for our Minister for Health of the day to table in this Parliament. There may be some convention or procedure within the ministerial council that may preclude or constrain the minister of the day from tabling that report in the way that is contemplated by this amendment.

Although I recognise the sentiment expressed by the member in moving this amendment, I do not think this amendment is necessary. I therefore recommend, on the balance of prudent consideration, that members join the government in not acceding to this amendment.

**Hon ADELE FARINA:** The minister seems to misunderstand the provision in clause 13. Clause 13 of the Western Australian bill provides only for a review of the Western Australian act. The review under the COAG agreement is a review of the national scheme. I would have thought that this Parliament would want to be informed of any review that is undertaken of the national scheme, and any issues that might arise as a result of that review, particularly given that our Minister for Health at the COAG table was of the view that this was such a substantial change to the system that it warranted a review by COAG in three years' time. Surely it would be reasonable for the Parliament to be informed of any issues that might arise from the COAG review so that we can consider those issues well before the period of six years has elapsed. Given the minister's comment that it is more than likely that the Minister for Health would table the COAG agreement, I do not see why the government would object to putting this provision in the bill.

**Hon Simon O'Brien:** If you had listened to my remarks you would know, because I have told you.

**Hon ADELE FARINA:** The committee has looked at the COAG agreement in detail. There is nothing in the COAG agreement that would prevent the minister from tabling the COAG review in this house.

**Hon SIMON O'BRIEN:** The honourable member will be reassured to know that I have not misunderstood the intent of the amendment. That is why I went to some pains to point out that I am sure that we, and others, will be interested in seeing that report when it becomes available. There is no disagreement there, or misunderstanding. The question, though, is whether such an onus should be placed upon the Western Australian Minister for Health. I say that because we do not know whether, under the arrangements that may apply at the ministerial council three years from now, the minister will be in a position to make that document public by tabling it in this Parliament. Secondly, does this really need to be enshrined in legislation? I think not.

**New clause put and negatived.**

**Title put and passed.**

**Bill reported, with amendments.**