HEALTH AND DISABILITY SERVICES (COMPLAINTS) AMENDMENT BILL 2021

Committee

Resumed from 12 October. The Deputy Chair of Committees (Hon Steve Martin) in the chair; Hon Samantha Rowe (Parliamentary Secretary) in charge of the bill.

Clause 28: Parts 3D and 3E inserted —

Progress was reported after the clause had been partly considered.

The DEPUTY CHAIR: I bring members' attention to supplementary notice paper 60, issue 2, in which there are a number of committee recommendations and amendments to clause 28, which the parliamentary secretary will move at an appropriate time. I intend to let debate on clause 28 continue until those amendments are put.

Hon SAMANTHA ROWE: I want to make a brief opening statement. Last night during debate, an issue was taken on notice, as requested by Hon Martin Aldridge, about the lack of a review clause for a public health warning statement. There were two ways of possibly resolving that issue. The government accepts that having the ability to seek a review in the State Administrative Tribunal is appropriate so members will note that there are amendments on the new supplementary notice paper, which we will deal with in due course during this clause 28 debate.

Hon MARTIN ALDRIDGE: I appreciate the parliamentary secretary taking that issue away last night and, indeed, bringing back what will be a very positive result for the bill. We have to work through these amendments in sequence and when we get to this, it will be the fourth amendment that we will consider and we can perhaps have a brief discussion then about its operation. Effectively, yesterday the government presented its argument that it is not intended to issue a public health warning statement without first having an interim prohibition order or a prohibition order in place. That will be the first step. One of those two orders will be in place and there may or may not be a case that warrants a public health warning statement. We must keep in mind that an IPO has been published but the public health warning statement is a discretionary matter for the director to consider separate to those orders. I have reflected on what the parliamentary secretary told us yesterday in proposed sections 52B and 52H. Effectively, proposed section 52B(3) contains two things. It reads —

> The Director must not make an interim prohibition order in relation to a health care worker unless —
>
> (a) either —
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> (i) the Director reasonably believes that the health care worker has failed to comply with a code of conduct … or
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> (ii) the health care worker has been convicted of a prescribed offence;

Let us turn to proposed section 52R "Public health warning statements". Logically, proposed section 52R(1) is effectively a public health warning statement arising from an IPO, and proposed subsection (2) is a public health warning statement arising from a prohibition order. Under proposed subsection (1) the director only has to reasonably believe that the healthcare worker has failed to comply with the code of conduct that applies. My question relates to the two options that the director has in proposed section 52B(3), which is a suspected breach of the code or having committed a prescribed offence. Why has the offence limb fallen away in proposed section 52R(1)(a)?

Hon SAMANTHA ROWE: My advice is that it is the way the bill has been drafted. If there is a conviction, the director may publish a statement under proposed section 52R(2).

Hon NICK GOIRAN: What the parliamentary secretary has said is true, but that is not until such time as an investigation is complete, as I understand it. Under proposed section 52R, the director may issue a statement when the health worker has been convicted of a prescribed offence. I had understood proposed section 52R(1) to be the circumstances in which the director has commenced an investigation and then there may be a publication of a statement, but when they have completed the investigation, he or she will proceed under proposed section 52R(2).

Hon SAMANTHA ROWE: I am advised that under proposed section 52R(2) the director may publish a statement setting out the name of a healthcare worker if —

> (a) either —
>
> (i) after completing an investigation under this Act, the Director is satisfied that the health care worker has failed to comply with a code of conduct applying to the health care worker; or

I think that is the key there—it is either/or.

Hon MARTIN ALDRIDGE: I will make the observation that the construction of proposed section 52R is a bit clumsy. I think it could have been drafted in a clearer way, with or without connection. I would prefer to have it connect with the order scheme. As the parliamentary secretary said, the legislation follows the logical intent that somebody is either under investigation or has been investigated and that therefore warrants a public health warning

statement to be issued. However, under this proposed section, the public health warning statement process and the order scheme will be able to operate exclusively of each other.

Before I move on from interim prohibition orders, I want to ask about proposed section 52B. I noticed in the consultation paper that was released by HADSCO that our scheme is modelled on the Victorian scheme, which is the most recent jurisdiction to implement such reform. From my brief examination of the Victorian legislation, I think that was in 2019. I am interested to know what obligation the director has when exercising the power to make an interim prohibition order in proposed section 52B. Obviously, there is an obligation in proposed section 52C to give notice as soon as possible after placing an IPO on a person. What obligation is there on the director to communicate to the healthcare worker prior to that order being made?

Hon SAMANTHA ROWE: None.

Hon MARTIN ALDRIDGE: Just for clarity's sake, can the director issue an IPO against a healthcare worker if there is no complainant?

Hon SAMANTHA ROWE: Yes, if it is an own-motion investigation.

Hon MARTIN ALDRIDGE: So could we have a situation where the director could issue an IPO against a healthcare worker on the basis of an own-motion investigation and the first that the healthcare worker will be aware of such a complaint or concern is when a notice is issued, pursuant to proposed section 52C?

Hon SAMANTHA ROWE: I am advised that under section 44 of the act, the director is required to give the provider or healthcare worker written notice within 14 days of the commencement of an investigation, including whether it is of a complaint and the details of that complaint. That written notice is separate from them having been advised of an interim prohibition order.

Hon Martin Aldridge: Is that an existing provision?

Hon SAMANTHA ROWE: Yes, it is.

Hon MARTIN ALDRIDGE: I turn to section 44, "Notice of investigation by Director". The parliamentary secretary might have referred to this earlier. It states —

> (2) Within 14 days after commencing an investigation the Director must give to the provider written notice of the investigation, including, if it is of a complaint, details of the complaint.

Will this not necessarily be a requirement? The director has 14 days to give notice, but will it —

Hon Samantha Rowe: No, it is a requirement.

Hon MARTIN ALDRIDGE: Is the parliamentary secretary saying that the director will not be able to exercise a power under proposed section 52B? Will the director be unable to issue an interim prohibition order unless they have first served notice on a person pursuant to section 44?

Hon SAMANTHA ROWE: I am advised that if there is a serious risk to public health and safety, it will be possible to issue an IPO before that 14-days' written notice period.

Hon MARTIN ALDRIDGE: It is my understanding that it will not be a requirement. The director will be able to act quite swiftly if particular circumstances warrant intervention of the sort that requires section 44 to be activated or complied with. The issue I have is that the first time a person will learn of a concern or complaint is when the director issues them with an IPO. I draw to the parliamentary secretary's attention the following. Given that our legislation is modelled on the Victorian experience, I refer to the Victorian Health Complaints Act 2016, section 91, "Matters to be considered for making interim prohibition order". Section 91A suggests that an amendment was contemplated in the course of creating this legislation. This provision, headed "Show cause process", states —

> (1) If the Commissioner —

Victoria has a commissioner —

> proposes to make an interim prohibition order under section 90(1A), the Commissioner—
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> (a) must give a written notice of the proposed order to the person to whom that order is to apply; and
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> (b) must invite the person to make a written or verbal submission to the Commissioner, within the reasonable time stated in the notice, about the proposed order.
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> (2) After considering any submission made by the person in accordance with subsection (1), the Commissioner must decide whether—
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> (a) to take no action in relation to the matter; or
>
> (b) to make the interim prohibition order.

Did the government contemplate implementing a show-cause process prior to the director being empowered to make an interim prohibition order?

Hon SAMANTHA ROWE: I am advised that, yes, the government did contemplate it. A similar provision was not included in the amendment bill for interim prohibition orders, as interim orders are intended to provide immediate protection for the public when a healthcare worker is practising in an unsafe manner and the show-cause process would unnecessarily delay the issuing of an interim order.

Hon MARTIN ALDRIDGE: I can appreciate those matters, but we are implementing what purports to be a nationally consistent scheme and our legislation is based on the Victorian experience. In providing natural justice to the person who would ultimately be subject to an interim prohibition order, I do not think it would be unreasonable to provide them with such a notice, allowing them an opportunity to respond to it prior to the director making a decision. We may differ in view on that point. The parliamentary secretary can take that as a comment or respond to it, but I think it is unfortunate that, in picking up the Victorian model and adapting it to Western Australia, this feature has for some reason been removed.

Hon Samantha Rowe: I note the comment.

Hon NICK GOIRAN: We have a number of matters still to consider under clause 28, not least of all the amendments on the supplementary notice paper, and we now have the second issue before us. Nevertheless, in consideration of clause 1, the parliamentary secretary kindly tabled a document entitled *Consultation report on the national code of conduct for health care workers in Western Australia*, which is now tabled paper 1699. Because of how late that document was provided to the opposition, it took us some time to work through it. The first half deals with general elements across the bill or very specific elements within the bill—or, indeed, not included in the bill at all. The second half could neatly be described as clause 28 issues. During debate on clause 1, I flagged an intention for us to consider those remaining questions. We usefully picked up on some of them yesterday afternoon, including questions 8, 9, 10 and perhaps also 11, which deals with the 28-day time frame to request a review or to lodge an appeal of a decision to issue a prohibition order or interim prohibition order.

On that point, the consultation paper proposed a 28-day period. The majority of respondents—24 of them—said they agreed with that, only five said no, and 13 did not respond. Notwithstanding that, it appears that there is no time frame for seeking a review. Is that right?

Hon SAMANTHA ROWE: I am advised that the period of 28 days comes from rule 9 of the State Administrative Tribunal Rules 2004.

Hon NICK GOIRAN: Whether it is an interim prohibition order, a prohibition order or, in due course—presumably once the government's amendment is agreed to by the house—a public health warning statement, in each of those three scenarios in which the director makes a decision, any aggrieved person must apply to the State Administrative Tribunal within 28 days.

Sitting suspended from 1.00 to 2.00 pm

Visitors — Perth Modern School

The DEPUTY CHAIR (Hon Peter Foster): Welcome back. Just before we return to committee, I would like to welcome the Perth Modern School students who are joining us in the public gallery today. Welcome to the Legislative Council. We hope you are learning lots today and you enjoy your stay with us.

Committee Resumed

Hon NICK GOIRAN: Just prior to the luncheon adjournment we were continuing our consideration of clause 28 and specifically some information that has arisen from the *Consultation report on the national code of conduct for health care workers in Western Australia*, which is tabled paper 1699. To the best of my recollection, prior to the adjournment we were looking at question 11 in the consultation paper, which refers to a 28-day time frame to request a review or to lodge an appeal of a decision to issue a prohibition order or an interim prohibition order. I think it was established by the parliamentary secretary prior to the interval that a 28-day period will apply not necessarily because of the legislation before us or the primary act that it will amend, but because of the rules of the State Administrative Tribunal. We were, I think, seeking confirmation that an aggrieved person has only 28 days in which to seek a review of the three types of decisions that the director can make—an interim prohibition order, a prohibition order or a public health warning statement.

Hon SAMANTHA ROWE: Yes, member; that is correct.

Hon NICK GOIRAN: The consultation paper, if the parliamentary secretary has it handy, deals with this point at page 28. In the final section, titled "Legislative provisions", it states —

- A 28 day cut-off may be applicable for appeals against the initial decision, —

I pause there to reflect on what I think the authors are referring to when they say "appeals". They effectively in this context mean a review by the State Administrative Tribunal. They say that "may be applicable". They then go on to make this important point —

> but a health care worker should be able to ask for a review of the decision at any time —

They then give the following example —

> … if a prohibition order has no end date and is related to a mental health issue which is now resolved, say a year later, the healthcare worker should be able to ask for a review of the decision at this time).

Why has the government chosen not to take that approach?

Hon SAMANTHA ROWE: I am advised that a healthcare worker can ask the director for a variation under proposed section 52L; they can also ask the director for a revocation under proposed section 52M; and they can also ask the State Administrative Tribunal for an extension of the time limit under rule 10 of the State Administrative Tribunal Rules 2004.

Hon NICK GOIRAN: So there is the possibility of an extension beyond the 28-day period, subject to the discretion of the State Administrative Tribunal?

Hon SAMANTHA ROWE: Yes.

Hon NICK GOIRAN: The parliamentary secretary has taken us to a couple of options that are available to them, whether that be the variation provision at proposed section 52L or the revocation provision under proposed section 52M. Will either of those decisions that are made by the director—that is, whether to vary or whether to revoke—also be subject to review by the State Administrative Tribunal?

Hon SAMANTHA ROWE: No, they will not.

Hon NICK GOIRAN: Would the aggrieved person still be able to seek judicial review of one of those decisions?

Hon SAMANTHA ROWE: I am advised that if they met the requirements, yes, they could make a claim to the Supreme Court.

Hon MARTIN ALDRIDGE: Earlier in the debate, I think it was on clause 1, we touched briefly on the application of this bill to individuals only. I think the initial consultation paper that went out anticipated that bodies corporate might also be captured, but that was not the final policy decision of the government. Having said that, why is it that at proposed section 52Q on page 21 of the bill we find penalties for a body corporate?

Hon SAMANTHA ROWE: I am advised that the penalty for a body corporate has been included in this amendment bill as New South Wales has recently implemented a code of conduct for relevant health organisations that will apply to the national code for certain types of health service organisations.

Hon MARTIN ALDRIDGE: I thought we were dealing with a nationally consistent scheme, but the parliamentary secretary has just outlined that in New South Wales at least, its implementation appears to apply to both individuals and bodies corporate. Under the COAG agreement, which is that this scheme is to have interstate application, if a circumstance arises with a body corporate or individual subject to an order in New South Wales, we have to have in our legislation the provision that we find at proposed section 52Q, which provides for penalties. Is that a good summary?

Hon SAMANTHA ROWE: Yes, that is correct.

Hon MARTIN ALDRIDGE: I return to the issue that we briefly took up in debate on clause 1, which is that it was clear from the consultation paper that the Health and Disability Services Complaints Office put out that there was at least the possibility that this legislation would apply to bodies corporate, but that was not the final decision that was taken by government. We have before us a bill that applies to individual health workers only. What limitation, apart from the obvious one, which is that the director cannot direct a body corporate, will this have on the director in assessing complaints when the issue is perhaps more systemic and not just about an individual healthcare worker?

Hon SAMANTHA ROWE: I am advised that the policy decision in most other jurisdictions is that it applies only to the individual, as it does here in Western Australia. The New South Wales implementation is only very recent. This experience, however, might be taken into account at the five-year review.

Hon MARTIN ALDRIDGE: We will come to the review clause in a little while, but I reiterate my concern that when we examine the code of conduct—I am referring to the one contained in the appendix of the report by the Standing Committee on Uniform Legislation and Statutes Review—we see there are elements of that code that could be applied equally to a body corporate and an individual. I think at the time I named four or even five elements, but the three that come to mind are indemnity insurance; record keeping; and financial exploitation, for which there may well be a shared responsibility or, indeed, an exclusive responsibility, with a body corporate that is perhaps an employer of an individual healthcare worker. I think that is where we could see some weakness or vulnerability in terms of what could perhaps become a loophole in the application of this legislation.

I go to the language used in proposed section 52Q(2)(a) and (b). Keeping in mind the penalty provision at the end of proposed subsection (2) is set out for an individual and for a body corporate, proposed subsection (2) says —

> A person commits an offence if —
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> (a) an interstate order is in force in relation to the person; and
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> (b) the person engages in conduct in this State that would constitute a failure to comply with the interstate order if it occurred in the jurisdiction in which the interstate order is in force.

The word "person" is used on three occasions in proposed subsection (2). Is it on advice or a matter of interpretation that when "person" is used in a statute it will also apply to a body?

Hon SAMANTHA ROWE: Yes, that is correct.

Hon NICK GOIRAN: On the issue of penalties and bodies corporate, page 29 of the consultation report refers to penalties needing to be higher than the proposed $60 000 for a body corporate. At least, that was the view of some of the stakeholders who did not support the proposed penalties. They were aware that the proposal was for $60 000, and they did not support it. Admittedly—I use the word "only" carefully—only four people did not support the proposed penalties. We do not know how many of those four held the view that the penalty should be higher than $60 000; obviously, some could have thought that it should be less than $60 000. Let us assume for a moment that all four submissions expressed the view that the penalties should be higher. One can perhaps understand that when we reflect on the penalties in the Health Practitioner Regulation National Law (WA) Act 2010, our uniform legislation incorporated in national law, which has penalties for bodies corporate of $120 000, or double the amount. We can perhaps understand why one or more of those stakeholders thought that the body corporate penalty should be higher because it is $120 000 at a national law level, but why would we make it only $60 000 here? I understand from the engagement the parliamentary secretary had with Hon Martin Aldridge that Western Australia is not even intending to touch bodies corporate, with the exception of these interstate orders. Have the other jurisdictions all implemented a $60 000 maximum penalty for bodies corporate?

Hon SAMANTHA ROWE: I am just trying to find out what the maximum penalty in New South Wales might be. We do not have that information.

Hon Nick Goiran: Are they the only ones who have a penalty for bodies corporate?

Hon SAMANTHA ROWE: We think so, but we are not sure. I cannot definitively say whether $60 000 would be the maximum for the other states because it has been implemented only in New South Wales.

Hon NICK GOIRAN: While that information is being sought and further to the issue of penalties, on page 29 again of the consultation report, a comment was made that penalties should be consistent across jurisdictions. I was asking specifically about the body corporate penalty, and I think that is the only body corporate penalty that is mentioned here, but there are, of course, other individual penalties. For example, proposed section 52N proposes a maximum fine of $30 000 for a person who fails to comply with a prohibition order and commits an offence. That penalty is consistent with the penalty set out in proposed section 52Q(2), which says individuals would be fined $30 000 if they failed to comply with an interstate order. There is obviously consistency within our act, at least, but does the parliamentary secretary have available information about the penalties for individuals in the other jurisdictions?

Hon SAMANTHA ROWE: I can advise the honourable member that Queensland has a set of units. The maximum is 200 penalty units, which ends up being $28 750 for individuals. Victoria has 240 penalty units, which equates to $44 381 and/or two years' imprisonment. In New South Wales, it is 550 penalty units, equating to $60 500 and/or three years' imprisonment. In South Australia, it is $10 000 and/or two years' imprisonment for both interim prohibition orders and prohibition orders.

Hon NICK GOIRAN: What happened to the idea of consistency across jurisdictions? Page 29 of the consultation paper says that penalties should be consistent across jurisdictions, yet not one of the jurisdictions is consistent; in fact, there is quite a range between them. South Australia's, dare I say, is low at $10 000, while the penalty in New South Wales is in excess of $60 000. Obviously, the WA government cannot control what other jurisdictions do in that respect, but I note that a couple of the jurisdictions the parliamentary secretary mentioned, particularly Victoria and New South Wales, open the door for a term of imprisonment. Why was that option not taken in Western Australia?

Hon SAMANTHA ROWE: I have been advised that there was a decision to mirror the fines in the national law at the time, and, when it went to consultation, because the majority of people supported that view, that is the decision that was made.

Hon NICK GOIRAN: Is the parliamentary secretary saying that there was an agreement or proposal at a national level that everyone implement penalties in the —

Hon Samantha Rowe: The same fines?

Hon NICK GOIRAN: There was a proposal that everyone implement the same penalties and that they all be fines, and, at that time, there was no suggestion about terms of imprisonment, and New South Wales and Victoria have just decided to go down that path themselves?

Hon SAMANTHA ROWE: I am advised that the penalties in the national law, on which ours are based, included a $30 000 fine but did not include penalties of imprisonment. Although the majority of the scheme is consistent across jurisdictions, the one area in which it is not is the reference to the different penalties.

Hon NICK GOIRAN: I note that the starting point was to have consistency. On that basis, in 2018, HADSCO asked people whether they generally agreed that it should be consistent. At that time, consistency, at least for an individual, meant a maximum penalty of $30 000 and no imprisonment. The majority of people said they agreed with that. Notwithstanding that, in the intervening period, the government is aware that at least two jurisdictions—the two largest—have said they would leave open the option of a term of imprisonment of two years in Victoria and three years in New South Wales. Did the government consider the option to also include a term of imprisonment, considering that the starting point has really been abandoned by everybody? Nobody has decided to stick with the initial premise. As the parliamentary secretary indicated, the initial fine would be $30 000, but no jurisdiction has done that.

Hon Samantha Rowe: There's Queensland.

Hon NICK GOIRAN: Given that Queensland uses a unit-based system, it has made what I think could best be described as a best endeavour to try to be that precise, noting the inherent difficulties with a unit-based penalty system. In fairness to Queensland, it has used its best endeavours, but Victoria and New South Wales have said, "No, forget that. That's nowhere near severe enough", and South Australia has done something rather peculiar, it would seem, because it has a $10 000 penalty but has also included the imprisonment provisions. The point I make is that it now appears that the majority of jurisdictions have included imprisonment, yet we seem to be left alone, along with Queensland, by not including them. Did the government actively consider including imprisonment; and, if it was considered, why did the government decide not to go down that path? It cannot be that we were trying to achieve national consistency because I think we now know that there is no national consistency.

Hon SAMANTHA ROWE: Honourable member, I am advised that, yes, it was considered, but given there was no national consistency with the penalties, the decision was made to be consistent with the penalties under the national law that apply to registered practitioners.

Hon NICK GOIRAN: Is it not the case that the penalty for an individual at the national level is $60 000, but in the bill it is $30 000?

Hon SAMANTHA ROWE: Honourable member, I am advised that the penalty under the national law for performing a restricted act is $30 000. We are unclear where the stakeholder got that figure from. If the member is referring to the $60 000 penalty in the consultation paper, we are unclear where they have taken that figure from.

Hon NICK GOIRAN: Parliamentary secretary, yes, I am referring to that. If the parliamentary secretary also has page 29 handy, she will see that there is a footnote. The publication begins by saying —

> The majority of submissions supported the proposed penalties for breaching a prohibition order.

It then has footnote 2, which reads —

> During the time period the consultation process was open the *Health Practitioner Regulation National Law (WA) Act 2010* was revised and fines were increased to $60,000 for individuals and $120,000 for a body corporate.

Therefore, I assume that that is where the stakeholder got it from. But, again, my point is: if the policy decision made by the government was, "We don't want to deal with it like the other jurisdictions and include the imprisonment; we'll just stick with the national law penalty", it would seem that the figure in the bill should be doubled for an individual.

Hon SAMANTHA ROWE: I am advised that there were discussions about updating the penalties in the national law, but that has not been updated in Western Australia, so we are still consistent with the national law here in WA.

Hon NICK GOIRAN: To be clear, the explanatory memorandum refers to proposed section 52G, which makes provision for an offence for failure to comply with an interim prohibition order and states —

> This penalty is comparable to the penalty for breaching similar orders under the *Health Practitioner Regulation National Law (WA) Act 2010*.

It is comparable to the penalty for breaching similar orders. The parliamentary secretary's advice to the chamber is that the national law as it applies in WA has a maximum fine for an individual of $60 000. Let us start with that; otherwise, we will be working at cross-purposes. I take the parliamentary secretary to footnote 2 on page 29 of the consultation paper. Is that footnote correct?

Hon SAMANTHA ROWE: I am advised that it is not correct because it has not been implemented here in Western Australia.

Hon NICK GOIRAN: Again, with the greatest respect to the authors of this document, it makes it fairly difficult for the opposition in these circumstances. We were not provided with this information prior to the introduction of the bill; the bill had already gone through the other place. We asked for this document and that request was refused in the first instance. We had the second reading debate and we still did not have the document. We started consideration of clause 1 and Hon Martin Aldridge once again persistently pursued this matter. Thanks to the diligence of the hardworking parliamentary secretary, we eventually got it on, I think, the second day. That is all unsatisfactory, as I have said previously, in terms of process, but now we find out that there is a material error in the document. The document very specifically makes reference to the fines having been revised and increased for individuals, to $60 000. We now find out that that is not the case in Western Australia. Let us just leave that as it is. The accurate information to the chamber is that, in Western Australia, an individual cannot have a monetary penalty for a breach of the Health Practitioner Regulation National Law (WA) Act 2010 of greater than $30 000. That is the advice to the chamber and that is the state of the law in Western Australia at the moment. To be consistent with that, we are maintaining the $30 000 level. Albeit that the entire circumstances to this point have been suboptimal, I think we can agree that there is consistency.

Hon MARTIN ALDRIDGE: I thought I had finished but I want to clarify something. When I asked about bodies corporate, I think the parliamentary secretary said that the reason that we have to have an interstate provision for a penalty is because of New South Wales. I want to check whether there are other jurisdictions, because having looked at Victoria's scheme, it would appear that it applies to bodies corporate. It has issued prohibition orders, interim prohibition orders and public health warning statements against proprietary limited companies. Can I check the parliamentary secretary's response to my question, which was that we need to include bodies corporate in proposed section 52Q because of New South Wales, and clarify whether the regimes of other jurisdictions include bodies corporate?

Hon SAMANTHA ROWE: HADSCO understood that it was not able to, but if what the member said is correct and Victoria is issuing prohibition orders then, yes, that would be correct and Victoria would be able to do so as well as New South Wales. When I referred to New South Wales in my earlier answer, our understanding at that time was that it could not. Did the member refer to the issuing of prohibition orders?

Hon Martin Aldridge: IPOs, POs and public health warning statements.

Hon SAMANTHA ROWE: Then, yes.

Hon MARTIN ALDRIDGE: I would have thought that we would have some clarity on this matter, given that we are implementing a Council of Australian Governments agreement and attempting to implement a nationally consistent scheme, to which there is interstate jurisdictional application. I raised concerns previously at clause 1 and now at clause 28 about the weakness of this bill in excluding bodies corporate and including individuals alone. It would appear, at least from what we have been able to establish today, that New South Wales' regime applies to bodies corporate. To the extent that I have been able to establish here on the floor of the Council, Victoria's legislation applies to bodies corporate, because I am reading a public health warning statement issued by the Health Complaints Commissioner in Victoria against a proprietary limited company offering skin cancer radiotherapy services. That leaves Queensland and South Australia, I guess, in the unknown basket as to whether their schemes apply to individuals or to individuals and bodies corporate. At this point in time, we need to make sure that at least half the jurisdictions in Australia that have implemented the COAG agreement have included bodies corporate. No rational explanation has been provided to the Council on that, although it was clearly the view of HADSCO initially, in consulting and releasing the discussion paper that invited submissions, that potentially this would apply to bodies corporate. Without remaking all the arguments I have already made that typically we would have the benefit of a report of the Standing Committee on Uniform Legislation and Statutes Review because of the nature of the legislation we are dealing with, it is important we understand the extent to which we are implementing a national scheme but, more specifically, the extent to which we are not. We may well be complying with the agreement established in the final COAG report, but it is important and relevant to know whether other jurisdictions have differed from that agreement, because we are giving their laws relevance in our jurisdiction through the interstate application that we find in proposed division 5 of this bill. I do not know whether the parliamentary secretary wants to respond to any of those comments, but it is unfortunate that we are not in a clearer position here today in considering this bill at such an advanced stage.

Hon SAMANTHA ROWE: I will make these final comments on this point. South Australia and Queensland definitely cannot issue a prohibition order to a body corporate. As I have stated, New South Wales implemented these changes only recently. As Hon Nick Goiran correctly pointed out, we are implementing the Council of Australian Governments final agreement, which did not include bodies corporate.

Hon NICK GOIRAN: One further issue that arises from the consultation paper is the possibility of additional sanctions for repeat offenders. Was this issue considered? How will the legislation deal with repeat offenders?

Hon SAMANTHA ROWE: I am advised that the issue of repeat offenders is dealt with in sentencing in court.

Hon NICK GOIRAN: The consultation paper talks about additional sanctions, not to be confused with the discretion of a court to impose a sanction at the higher end of the scale—that already exists. This is talking about additional sanctions. Is there nothing in the bill that deals with sanctions for repeat offences and multiple breaches of a prohibition order?

Hon SAMANTHA ROWE: I am advised, no. A maximum penalty is set and any repeat offending is dealt with in court.

Hon NICK GOIRAN: Because this is an item of discussion across the jurisdictions of Australia, do any other states have special measures for repeat offenders?

Hon SAMANTHA ROWE: I am advised not that we are aware of.

Hon NICK GOIRAN: Deputy Chair, having consulted with my friend Hon Martin Aldridge, and although I have further questions on clause 28, subject to the view of other members, including the parliamentary secretary, this might be a convenient time to move to the committee recommendations on the supplementary notice paper.

The DEPUTY CHAIR (Hon Dr Brian Walker): Members, I draw to your attention supplementary notice paper 60, issue 2, for the Health and Disability Services (Complaints) Amendment Bill 2021 and the amendment at 1/28, which is committee recommendation 1. I move —

> Page 14, after line 10 — To insert —
>
> (3A) An offence cannot be prescribed for the purposes of subsection (3)(a)(ii) unless the commission of the offence —
>
> (a) would involve harm to —
>
> (i) the life, health, safety or welfare of a person; or
>
> (ii) the health, safety or welfare of the public;
>
> or
>
> (b) is capable of giving rise to a serious risk to —
>
> (i) the life, health, safety or welfare of a person; or
>
> (ii) the health, safety or welfare of the public.

Hon DONNA FARAGHER: In reference to prescribed offences, the explanatory memorandum states that it would include offences under the Criminal Code Act Compilation Act 1913 and the Medicines and Poisons Act 2014, among others. Does the government have a full list of acts that would fall within this ambit?

Hon SAMANTHA ROWE: I thank the member for the question. No, there is no full list as yet; consultation is still occurring with stakeholders on what an appropriate list might look like. I have previously mentioned in some of my comments that those stakeholders are the WA Police Force and the Department of Health and Consumer Protection. There could be others as well.

Hon DONNA FARAGHER: I appreciate the parliamentary secretary's response. I am the chair of the committee, but I suppose I speak now as a member of the opposition. The parliamentary secretary is aware of the concerns that were raised by the committee. I saw a few comments in parliamentary secretary's second reading response but I would really like to get a clearer understanding from the government as to why the proposed inclusion through this amendment is deemed not necessary.

Hon SAMANTHA ROWE: I understand that the committee finds that proposed sections 52B(3)(a)(ii), 52H(3)(a)(ii) and 52R(2)(a)(ii) are an inappropriate delegation of legislation-making powers but, taking into account the findings of the committee on these provisions, the government does not intend to retain the existing provisions in the bill. Although these provisions will allow an interim prohibition order, a prohibition order or a public warning statement to be published if a healthcare worker is convicted of a prescribed offence, these powers can be used only if the director of HADSCO is satisfied that it is necessary to make the order or publish the statement to avoid a serious risk to the life, health, safety or welfare of a person, or the health, safety or welfare of the public. This limitation implies that, in order for a conviction for a prescribed offence to be used to justify making the order or publishing the statement, the offence must be capable of giving rise to a serious risk to the life, health, safety or welfare of a person, or the health, safety or welfare of the public. Accordingly, an offence that is prescribed for the purposes of proposed sections 52B, 52H or 52R would be an offence of that nature; therefore, the amendment is deemed unnecessary.

Hon DONNA FARAGHER: I have heard the parliamentary secretary, but I maintain that the position of the committee and the opposition is to agree to disagree with that. I do not think that it hurts to provide greater detail on when those prescribed offences will fall within the ambit of this legislation. I do not think it is offensive; I think it actually adds to the bill so we will have to agree to disagree on this particular point.

Division

Amendment put and a division taken, the Deputy Chair of Committees (Hon Dr Brian Walker) casting his vote with the noes, with the following result —

Ayes (8)

Hon Martin Aldridge	Hon James Hayward	Hon Tjorn Sibma	Hon Wilson Tucker
Hon Donna Faragher	Hon Steve Martin	Hon Dr Steve Thomas	Hon Nick Goiran (Teller)

Noes (19)

Hon Klara Andric	Hon Peter Foster	Hon Stephen Pratt	Hon Dr Sally Talbot
Hon Dan Caddy	Hon Lorna Harper	Hon Martin Pritchard	Hon Dr Brian Walker
Hon Stephen Dawson	Hon Jackie Jarvis	Hon Samantha Rowe	Hon Darren West
Hon Kate Doust	Hon Alannah MacTiernan	Hon Rosie Sahanna	Hon Pierre Yang (Teller)
Hon Sue Ellery	Hon Shelley Payne	Hon Matthew Swinbourn	

Pairs

Hon Peter Collier	Hon Sandra Carr
Hon Neil Thomson	Hon Kyle McGinn
Hon Colin de Grussa	Hon Ayor Makur Chuot

Amendment thus negatived.

The DEPUTY CHAIR: Regarding clause 28, we now come to committee recommendation 2. I move —

Page 17, after line 22 — To insert —

(4) An offence cannot be prescribed for the purposes of subsection (3)(a)(ii) unless the commission of the offence —

(a) would involve harm to —

(i) the life, health, safety or welfare of a person; or

(ii) the health, safety or welfare of the public;

or

(b) is capable of giving rise to a serious risk to —

(i) the life, health, safety or welfare of a person; or

(ii) the health, safety or welfare of the public.

Hon MARTIN ALDRIDGE: We are now dealing with proposed section 52H, which is about prohibition orders found in proposed division 2. This is a further amendment from the wonderful standing committee, which in effect mirrors the amendment that has just been considered. With respect to proposed section 52H(3)(a)(ii), I ask the parliamentary secretary: what restriction will there be on the minister in prescribing an offence?

Hon SAMANTHA ROWE: As the honourable member would be aware, it is the Governor who makes those regulations. Nevertheless, I refer to my previous statement that we do not deem this amendment to be necessary.

Hon MARTIN ALDRIDGE: I appreciate that is the government's position, but that was not my question. My question is: what restriction will there be on the Governor in making a regulation pursuant to proposed section 52H(3)(a)(ii)? This is the power to prescribe offences. Will there be any restriction on the type or nature of offence, or could any offence in the statute book of Western Australia be considered by the Governor as appropriate?

Hon SAMANTHA ROWE: I am advised that ultimately the government can make regulations that are required or permitted by the act to be prescribed. Any regulations would be subject to the scrutiny of the Joint Standing Committee on Delegated Legislation but, obviously, statutory powers need to be applied reasonably.

Hon MARTIN ALDRIDGE: Could an offence pursuant to the Road Traffic Act be prescribed in relation to this provision?

Hon SAMANTHA ROWE: I am advised that the offences prescribed would have to relate to an order that would avoid serious risk to the life, health, safety or welfare of a person, or the health, safety or welfare of the public, otherwise it would be pointless to prescribe the offences.

Hon MARTIN ALDRIDGE: It perhaps might be pointless, but it is possible, which I think is the point that I am making. Literally any offence could be prescribed by the Governor with respect to this provision, which the Standing Committee on Legislation has recommended should be limited. I draw the parliamentary secretary's attention to the following comment on page 24 of the final consultation report —

> The stakeholders that did not support the proposed ground for issuing a prohibition order noted that the grounds could be considered discriminatory for health care workers who have been convicted of a prescribed offence that may bear no relation to the health service they provide. The issuing of a prohibition order to health care workers that have been convicted of an offence, unrelated to their provision of health services, who 'present a risk to public health or safety' is able to be too widely interpreted and may have the consequence of erecting additional barriers for workers and volunteers with a criminal record who already face discrimination when seeking employment.

That is a direct quote from the outcome of the government's consultation on this matter. I put to the parliamentary secretary this very simple question: given the assertions and commitments that the parliamentary secretary has made today, what harm will there be in supporting the well-crafted recommendation of the committee that would limit the offence prescribing power to only offences that would involve harm to the life, health, safety or welfare of a person, or the health, safety or welfare of the public?

Hon SAMANTHA ROWE: For the reasons that have already been stated, the government deems the amendment unnecessary.

Amendment put and negatived.

The DEPUTY CHAIR (Hon Dr Brian Walker): Members, we are now dealing with committee recommendation 3, amendment 3/28. I move —

> Page 23, after line 7 — To insert —
>
> (2A) An offence cannot be prescribed for the purposes of subsection (2)(a)(ii) unless the commission of the offence —
>
> (a) would involve harm to —
>
> (i) the life, health, safety or welfare of a person; or
>
> (ii) the health, safety or welfare of the public;
>
> or
>
> (b) is capable of giving rise to a serious risk to —
>
> (i) the life, health, safety or welfare of a person; or
>
> (ii) the health, safety or welfare of the public.

Hon NICK GOIRAN: I note that this is the third of the committee's recommendations. These recommendations are really part of a package. For our purposes, this recommendation is identical to the previous two recommendations. The parliamentary secretary has already indicated that the government does not support these recommendations, and the chamber has obviously made its decision on the first two matters.

With regard to this third recommendation, albeit that it is identical to the others, the parliamentary secretary might recall that in debate on an earlier clause, we discussed that HADSCO has been left with the responsibility of briefing parliamentary counsel on this bill. I take it that it was a decision of the minister not to accept the committee's recommendation. Who was consulted with respect to the committee recommendation prior to the minister making the decision?

Hon SAMANTHA ROWE: I am advised that there was consultation with the minister and with parliamentary counsel.

Hon NICK GOIRAN: So there was consultation between the Parliamentary Counsel's Office and the minister, as well as with the Health and Disability Services Complaints Office.

Hon Samantha Rowe: Yes, and HADSCO.

Hon NICK GOIRAN: Between the three of them, they have decided that it is unnecessary to agree with the committee's recommendation.

Hon Samantha Rowe: Correct.

Amendment put and negatived.

Hon SAMANTHA ROWE: I move —

Page 24, after line 17 — To insert —

52U. Review of the decision to publish public health warning statement

If the Director publishes a public health warning statement setting out the name of a person, the person may apply to the State Administrative Tribunal for a review of the Director's decision to publish the public health warning statement.

Hon MARTIN ALDRIDGE: I reiterate my earlier remarks and thank the parliamentary secretary for taking this matter on notice last evening. It is certainly not perfect in my view, but I think it is a compromise nonetheless. It is a credit to her that she has been able to take advice overnight and prepare this amendment for the supplementary notice paper today.

This issue was canvassed in the debate yesterday when I became increasingly concerned with proposed section 52R, which provides the power to issue a public health warning statement. Yesterday, we learnt from the parliamentary secretary that it is not intended for a public health warning statement to operate or be issued in isolation of an interim prohibition order or a prohibition order. Nevertheless, the way in which the bill has been constructed would allow for it to operate independently. That issue has not been addressed. The other issue that existed but will be addressed by this amendment, which is effectively to insert a review provision, is that somebody who is the subject of a public health warning statement would be allowed to have access to the State Administrative Tribunal to review that decision. Previously, if a person was subject to an IPO or a PO, they had a right to have that decision reviewed by the State Administrative Tribunal pursuant to proposed section 52P; however, that review provision did not extend to a person subject to a public health warning statement. The provision before us at proposed section 52U will allow a person who is the subject of a public health warning statement to seek a review by the State Administrative Tribunal of that decision. To that end, the amendment has my support.

Amendment put and passed.

Hon NICK GOIRAN: Notwithstanding that, we now have amended clause 28 before us, which in a moment will be passed, what is the situation with the publication of orders by HADSCO? Will it be mandatory that HADSCO publishes these orders or will it be a discretionary matter?

Hon SAMANTHA ROWE: Is the member talking about prohibition orders?

Hon Nick Goiran: Yes.

Hon SAMANTHA ROWE: I am advised that it will be mandatory.

Hon NICK GOIRAN: The *Consultation report on the national code of conduct for health care workers in Western Australia* says, however, that it should not be mandatory. It does not use those words. It proposes that publication should be discretionary, not mandatory. It specifically says that it should not require publication. The report goes on to say —

There may be a reason, as yet unforeseen, where it is not considered appropriate to publish an order.

Why was a decision taken to ignore that recommendation?

Hon SAMANTHA ROWE: I am advised that a central tenet of the scheme is to protect the health and safety of the public by publishing the interim prohibition orders and prohibition orders. That will also apply when they are buried or revoked; they will also have to be published.

Hon NICK GOIRAN: That being the revocation or variation?

Hon Samantha Rowe: Yes.

Hon NICK GOIRAN: It is going to be mandatory for HADSCO to publish the orders. Will it take into account the 28-day period for a SAT review that we referred to earlier?

Hon SAMANTHA ROWE: I am advised that, no, it cannot wait 28 days. It will be done as soon as is practicable.

Hon NICK GOIRAN: That seems to be contrary to what is in the consultation report, which says —

Time of publication should take into account the time for an appeal to be lodged (with SAT).

Why are we doing something different here again?

Hon SAMANTHA ROWE: The member is referring to what was a minority opinion among those who made submissions. It is nationally consistent that interim prohibition orders and prohibition orders are published.

Hon NICK GOIRAN: Can the parliamentary secretary point out to me the information that suggests that is a minority opinion, because I am quoting from "HaDSCO policy/procedure"?

Hon Samantha Rowe: Are you referring to the consultation paper?

Hon Nick Goiran: Yes. Page 30.

Hon SAMANTHA ROWE: In answer to question 13 in the consultation paper, 29 said yes, and two said, no, they did not agree.

Hon NICK GOIRAN: They were responding to an entirely different question. If we look at page 30, question 13 is —

> *13. Do you agree with the proposed approach for publishing information about prohibition orders, including interim orders, issued by HaDSCO?*

Twenty-nine said yes, two said no, and 11 did not respond for whatever reason. The document then goes on to say —

> Stakeholders in support of the proposed approach for publishing information about prohibition noted that:
>
> - Discretion on the part of the Director in determining whether prohibition orders are published may be beneficial.

These are the 29 respondents who are in support. They are in support, and they have noted that discretion may be beneficial. The report goes on to say —

> - Publish relevant information in all free community newspapers.
> - Withhold publishing information in exceptional circumstances.

I am not aware of any provision for that in the bill. Earlier, we were informed that this will be mandatory.

That is for the 29 who were in support. The consultation report says about the two who were not in support —

> The stakeholders that did not support the proposed approach for publishing information about prohibition orders noted that:
>
> - A system that provides for legitimate enquiries about a health care worker's status be established instead, supporting the process of a prospective employer requesting clearance for a health care worker from HaDSCO, would be preferred.
> - Further detail on the types of information to be published was required in order to support the proposal.

Then, having considered the 29 who were in favour and the two who were opposed, the authors of this consultation report go on to set out issues raised by the submissions to consider when finalising policy for implementation. They set the issues out as "Legislative provisions" and "HaDSCO policy/procedure" —

> *Legislative provisions*
>
> - Consider allowing HaDSCO to publish orders, but not require their publication. There may be a reason, as yet unforeseen, where it is not considered appropriate to publish an order.
>
> *HaDSCO policy/procedure*
>
> - Notify the Department of Health and any known employer when a prohibition order is issued against a health care worker.

The authors also say —

> - Time of publication should take into account the time for an appeal to be lodged (with SAT).

When I read all that in context, I do not see that being a minority view in any way. If anything, it seems to be the majority view. The people who seem to suggest that it should be discretionary were the 29 stakeholders, not the two. The two seem to have a different view of the world altogether. The 29 seem to be sufficiently persuasive for HADSCO's policy and procedure unit to issue a recommendation saying that this should be taken into account. In all that context I just ask for a response from government about why it decided to ignore that. Evidently, it cannot be because a minority held that view, because on the plain reading of page 30, that is not the case.

Hon SAMANTHA ROWE: As I said before, the intent of the scheme is to protect public health and safety and to make the public aware when a prohibition order exists by publishing it. It is also part of the national scheme to publish interim prohibition orders and POs and all states are doing that.

Hon NICK GOIRAN: Firstly, have all states have made it mandatory for the publication of their prohibition orders and, secondly, does the publication take place prior to the expiration of the review period?

Hon SAMANTHA ROWE: The first part of the honourable member's question asked whether it is mandatory. Yes, it is. In answer to the second part, to the best of our knowledge, yes, all jurisdictions have a similar type of provision that requires the order to be published shortly after it is made.

Clause, as amended, put and passed.

Clause 29 put and passed.

Clause 30: Part 3F heading inserted —

Hon MARTIN ALDRIDGE: If I could assist the parliamentary secretary, she may want to contemplate the amendment standing in her name.

Hon SAMANTHA ROWE: I move —

Page 24, line 22 — To delete "52T" and insert —

52U

Hon NICK GOIRAN: Respectfully, it is the normal custom and practice for an explanation to be provided when an amendment is moved.

Hon SAMANTHA ROWE: The honourable member is quite right. It is basically an administration amendment, because we added the new review section, proposed section 52U, to clause 28.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 31: Section 52 amended —

Hon MARTIN ALDRIDGE: According to the explanatory memorandum, clause 31 will ensure that section 52 of the amended act will not apply to complaints relating to the national code of conduct or prohibition orders. If I turn to section 52 of the current act, it is titled "Director to stop proceedings in some cases". Proposed section 52(1A) seeks to insert the words —

This section does not apply to a complaint alleging 1 or more of the matters …

Section 52 as it stands starts with the words —

The Director must stop dealing with an issue that arises out of a complaint if the Director …

There is then a series of paragraphs. The first paragraph is —

(a) becomes aware that the provider or user has begun legal proceedings which relate to that issue;

My initial question is: why is it necessary to effectively suspend the operation of section 52 of the act in circumstances in which the director is considering a complaint or a matter pursuant to this bill?

Hon SAMANTHA ROWE: I am advised that investigations should not cease under section 52 because the national code matters may concern a serious risk to public health and safety. If they were stopped, that could potentially affect the issuing of IPOs and POs.

Hon MARTIN ALDRIDGE: What would happen if those legal proceedings related to the actions of the director? We talked earlier about the options available to an applicant outside of the State Administrative Tribunal and about the jurisdiction of other courts in, I think, the civil jurisdiction. How would this amended section operate in the event that a person who is subject to an order or a statement of this bill took the director to the Supreme Court, for example?

Hon SAMANTHA ROWE: Honourable member, I am advised that if the court made an order stopping the proceedings, the director would have to comply; otherwise, the director can proceed.

Clause put and passed.

Clause 32 put and passed.

Clause 33: Section 60 amended —

Hon MARTIN ALDRIDGE: Parliamentary secretary, clause 33 will amend section 60 of the act, and will be retitled, "Power to summons and related powers". Section 60(1)(b) will expand the number of things that the director has the power to summons by inserting the words "or other thing". What "things" does the government have in mind with respect to this power?

Hon SAMANTHA ROWE: Honourable member, I am advised that the inclusion of the expression "or other thing" is consistent with the implementation of the code in other jurisdictions. The relevant acts in Victoria, Queensland and South Australia use the expressions "records and other things" and "document or thing" throughout their acts. As noted in the explanatory memorandum of the bill, the inclusion of the words "other thing" will ensure consistency with the language used in other sections of the act, and will ensure that the application of the director's powers to obtain information will apply to anything that is relevant to investigation—for example, medical records, promotional materials and clinical procedures or equipment.

Hon MARTIN ALDRIDGE: As somebody who has sat through many long years listening to the then Labor opposition debate the insertion of the word "thing" in legislation, because it can mean anything, it is now obvious that Labor members have overcome those difficulties. Given the broad application this bill might have with regard to the discussion we had at clause 3 on the definition of "health care worker", it is probably, in many respects, not

what we would necessarily traditionally consider a healthcare worker to be. How would the director act if she or he were exercising a power pursuant to section 60 and the person made a claim of parliamentary privilege?

Hon SAMANTHA ROWE: That would need to be referred to the Parliament to determine.

Hon MARTIN ALDRIDGE: What would be referred? Can the parliamentary secretary elaborate on what would be referred to the Parliament to determine, if a claim were to be made during the course of the exercise of a power to summons?

Hon SAMANTHA ROWE: I am advised that if a healthcare worker were to make a claim of parliamentary privilege, the director would have to seek legal advice on it. The claim of parliamentary privilege would then be decided by the Parliament.

Hon MARTIN ALDRIDGE: These are existing powers; they are not new powers. We are amending them slightly, but they already exist. How would the director act if a claim of legal professional privilege were to be made?

Hon SAMANTHA ROWE: I am advised that under proposed section 67(1)(a), a person would be able to refuse to answer a question or produce a book, document, record or thing because the answer would relate to, or the book, document, record or other thing contains, information in respect of which the person claims legal professional privilege.

Clause put and passed.

Clauses 34 to 38 put and passed.

Clause 39: Sections 68A and 68B inserted —

Hon MARTIN ALDRIDGE: We are nearly there!

Clause 39 introduces proposed section 68A, "Disclosure of information to other Commonwealth, State or Territory entities" and proposed section 68B, "Disclosure to protect health or safety of users and other persons". I am interested in proposed section 68B, which states —

> (1) This section applies if the Director reasonably believes that —
>
> (a) a provider poses, or may pose, a risk to public health; or
>
> (b) the health or safety of a person or class of persons is or may be at risk because of the provision of a health service by a provider.
>
> (2) The Director may give written notice of the risk and any relevant information about the provider to an entity of this State, another State, a Territory or the Commonwealth that the Director considers may be required to take action in relation to the risk.

Our earlier conversation was about the application of the bill to individuals versus bodies corporate and we are now dealing with language that refers to a "provider". Is that term defined? It does not appear to be defined in the bill, but perhaps it is defined in the act. What relevance does it have to the scheme that we have been considering up to this point?

Hon SAMANTHA ROWE: A definition of "provider" is included in section 3 of the act. It is a wide term that includes both individuals and bodies that provide health services.

Hon MARTIN ALDRIDGE: Is proposed section 68B effectively an amendment that is disconnected from the COAG matters that we have been dealing with up to this point? It seems to be a general authorisation for the director to share information, although in a limited form, with a relevant entity. There is the Australian Health Practitioner Regulation Agency; a registration board; or another entity of the commonwealth, another state or a territory that has functions similar to those of the director, although that may be limited to proposed section 68A. I am just looking at that now. Can this operate in isolation of the IPO, PO and investigation order scheme? Is it a general authorisation that allows the director to provide information; and, if so, to whom?

Hon SAMANTHA ROWE: I am advised that it is wider than just unregistered healthcare workers. The information will be provided to other regulatory organisations that have a role in protecting public health and safety, including police.

Hon MARTIN ALDRIDGE: Having had a moment to reflect, the second paragraph of the explanatory memorandum contains a good example of a registered practitioner who is providing services unrelated to their registration, and a concern arises with respect to the national code of conduct. Equally, that could be applicable to their registration, depending on the type of breach; therefore, the director may see fit to report that matter to the Australian Health Practitioner Regulation Agency because similar concerns are raised about whether someone is registered or unregistered. Another example is contained in the last paragraph of the EM when another jurisdiction issues a prohibition order to a body. With the parliamentary secretary's response and those two examples, I am satisfied with that clause.

Clause put and passed.

Clauses 40 and 41 put and passed.

Clause 42: Section 77A inserted —

Hon NICK GOIRAN: This clause provides for a regulation-making power that will enable more than one code of conduct to be prescribed. Earlier in debate on another clause, the parliamentary secretary indicated there was an intention for only one code of conduct. Why is it deemed necessary to enable the prescription of more than one code?

Hon SAMANTHA ROWE: I am advised that it is the intention to prescribe just the one code, but this is just allowing a little more flexibility.

Clause put and passed.

New clause 42A —

The DEPUTY CHAIR (Hon Jackie Jarvis): I draw members' attention to Standing Committee on Uniform Legislation and Statutes Review recommended amendment 4 on issue 2 of supplementary notice paper 60, and I move —

Page 33, after line 17 — To insert —

42A. Section 79A inserted

After section 79 insert:

79A. Review of amendments made by *Health and Disability Services (Complaints) Amendment Act 2022*

(1) The Minister must review the operation and effectiveness of the amendments made to this Act by the *Health and Disability Services (Complaints) Amendment Act 2022*, and prepare a report based on the review, as soon as practicable after the 5th anniversary of the day on which the *Health and Disability Services (Complaints) Amendment Act 2022* section 42A comes into operation.

(2) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 5th anniversary.

Hon NICK GOIRAN: This amendment arises from the work of the standing committee. In part, it has been touched upon in earlier clauses, particularly our consideration of clause 1. The parliamentary secretary foreshadowed to the chamber that the government intends to support this recommendation. That is welcomed by the opposition and members of this place. However, I draw to members' attention that a curiosity arises here. This is absolutely no criticism of the Standing Committee on Uniform Legislation and Statutes Review because it can only look into the bill that is before it, and even then this standing committee has quite narrow terms of reference—but the government is not so constrained; the government has no constraints with respect to the bill and its consideration as to what might be the best way of amending the Health and Disability Services (Complaints) Act 1995. It was drawn to our attention during consideration of clause 1, as I recall, that some 12 years ago this house passed a provision that the Health and Disability Services (Complaints) Act 1995 be reviewed in a five-year time frame or a review commence as soon as practicable after five years. We have been informed by the parliamentary secretary that some seven years later, commencing this year, that review is in its most infant of stages; in fact, the statutory review is so embryonic that the government is searching high and wide through the state to locate somebody who might be a consultant who will charge the taxpayer several hundred thousands of dollars.

I recall that the government has put aside more than $300 000 in the current financial year and more than $100 000 in the next financial year to enable this review to take place. I have previously asked the government to take on board the possibility of widening the scope of this review that we are about to pass. This review will look at only the amendments in this bill; it will not look at a review of the primary act in its totality. The parliamentary secretary has kindly taken that on board and brought it to the attention of the minister. The minister's computer has said no and there will be no change in this particular matter, as a result. Given that the substantive review has not really commenced yet, can the government provide an assurance to the chamber that by passing this clause, which says that these amendments will be considered in five years' time, it will not pause the existing review and say that it will not get this underway just yet because there is no point and it might as well wait until this particular review comes up in five years' time to enact a whole-of-act review? Can that assurance be provided to the chamber?

Hon SAMANTHA ROWE: I am advised that the intention is to continue with that review that is in its very early stages at the moment.

New Clause 42A put and passed.

Clause 43: Consequential amendment to *Freedom of Information Act 1992* —

Hon NICK GOIRAN: This is the last clause we will deal with in the bill. It is a new clause; it is a clause that has made an appearance because of consideration by the other house. I think I drew to the parliamentary secretary's attention earlier that we are dealing with a bar 2 bill. Can the parliamentary secretary provide an explanation to the chamber about the genesis of this last-minute amendment by the minister?

Hon SAMANTHA ROWE: I am advised that it is a technical amendment to the Freedom of Information Act. Clause 43 makes consequential amendments to schedule 1 of the Freedom of Information Act 1992. Anything said or admitted during negotiated settlement or conciliation—HADSCO's dispute resolution processes—is an exempt matter under schedule 1 of the FOI act. Investigations are not exempt matters. Clause 43 deletes existing clause 14(3)(a) in schedule 1 of the FOI act and replaces it with new clause 14(3)(a). This corrects the reference in schedule 1 of the FOI act to division 3A of the Health and Disability Services (Complaints) Act 1995, which deals with negotiated settlement and conciliation.

Clause put and passed.

Title put and passed.

Bill reported, with amendments.