STANDING COMMITTEE ON
UNIFORM LEGISLATION AND STATUTES REVIEW

OCCUPATIONAL LICENSING NATIONAL LAW (WA) BILL 2010

TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
MONDAY, 7 FEBRUARY 2011

Members

Hon Adele Farina (Chairman)
Hon Nigel Hallett (Deputy Chairman)
Hon Linda Savage
Hon Liz Behjat

Hearing commenced at 10.41 am

NEWCOMBE, MR GARY
Director Strategic Policy and Development, Department of Commerce, sworn and examined:

LEE, MR ANDREW
Manager Strategic Policy, Department of Commerce, sworn and examined:

The CHAIRMAN: I am Adele Farina, and I am Chair of the committee; Hon Linda Savage, a member of the committee; Susan O'Brien, the legal adviser to the committee; Hon Nigel Hallett, a member of the committee; and, Hon Liz Behjat, also a member of the committee. As you know, Gary, I have to go through some formal things. Having welcomed you to the meeting, I must ask you to take either the oath or the affirmation.

[Witnesses took the oath or affirmation.]

The CHAIRMAN: Would you please state your full name, contact address, and the capacity in which you appear before the committee?

Mr Newcombe: Gary Newcombe, Director Strategic Policy and Development and Consumer Protection, part of the Department of Commerce, 219 St Georges Terrace. I have overall responsibility for this project, but I am also the instructing officer for this bill.

Mr Lee: Andrew Richard Lee, Manager Strategic Policy, Consumer Protection Division, Department of Commerce, 219 St Georges Terrace, Perth. I am responsible for the conduct harmonisation project, which is linked to this bill, and to assisting Gary with other aspects of occupational licensing legislation.

The CHAIRMAN: You will have signed a document entitled "Information for Witnesses"; have you read and understood the document?

The Witnesses: Yes.

The CHAIRMAN: As you know, these proceedings are being recorded by Hansard, and a transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during course of this hearing for the record. Also, please be aware of the microphones; try to talk into the microphones and try not to cover them with any paper.

I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during the course of today's proceedings, you should request that the evidence be taken in closed session. It is important that you actually ask for that beforehand, because otherwise it will form part of the public record. The committee will then consider that request, and if the committee grants your request, any public and media—who, currently, are not in attendance—will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament, and may mean that the material published or disclosed is not subject to parliamentary privilege. Do you have any questions about any of that?

Mr Newcombe: No; thank you.

The CHAIRMAN: Have you any opening statement that you would like to make?

Mr Newcombe: No, but there was really two things: one, I was going to introduce the other staff; the other thing I do need to note is that in the information that was provided as part of the ministerial memorandum response, there is an error—which is my fault, based on incorrect

information I was given—which is in relation to the status of the legislation in other states. I think it indicates that it had been passed in South Australia by 25 November; that is incorrect. It had gone through the Legislative Council, but it was introduced into the Legislative Council; it has not yet been through the Legislative Assembly, and that is the current status. That may well be, obviously, a question that you ask later, but I just wanted to clarify that that was an error, and that is my mistake.

The CHAIRMAN: That is fine; no problem. Thank you very much for that. I will just start through the questions, and, as I said, we have quite a few questions, so any time you need a break, Gary, just let us know.

The committee has received a submission that the Occupational Licensing National Law is unclear in its identification of the occupations that require licences. This arises from clause 4 specifying multiple occupations, such as property-related occupations and plumbing and gasfitting, as a single licence occupation. The supporting material suggests that it is intended that a nominated licensed occupation be treated as an occupational grouping, and that an occupational licence will, in fact, be issued in respect of only some categories or subgroups of occupations falling within a particular grouping; is this correct?

Mr Newcombe: Yes, look it is. It does capture some licensed occupations, so the national licensing system was, in its development, going to focus on a range of occupational groups. The reason the ones that were included were selected is set out in the consultation, and the decision RIS, which you have, so I will not go through that unless you wish to. But there were some judgements about which ones that might be most effectively dealt with by a national licensing scheme, hence we got this grouping. It is a broad grouping, and the intention is that the definition of licensed occupation will capture the broad groups, and then within that there will be scopes of work that will get a particularly licence. I should say that it is a broad grouping, also, to deal with the fact that these are covered differently in all of the different jurisdictions, so trying to bring together schemes where people currently have a vast difference in the number of licences. In plumbing, I think, in Victoria they have something approaching 12 or 13 different sorts of licence categories that relate to plumbing. In WA, in building we have one building licence; in New South Wales, they have more than 40 trades that are captured by building. The initial cut was to make it as broad as possible so that you could feed all of those inconsistencies into it, and then the process is to develop individual scopes of work that will require a particular licence. I will give you one potential example, and it is one that I am closest to, which is the property-related occupations: what is included within the property-related occupations are settlement—or conveyancing, as it is known mostly in other states, but we know it as settlement—land valuation, and then real estate. But obviously real estate, itself, captures a range of things, and in this state at the moment we have real estate agents and sales representatives, and we also have business agents and their representatives. The work that has been undertaken in the development of the scheme has been left with industry advisory groups, to have a look at the scope of the work that is done in that real estate area and identify what makes a sensible chunk of work that is comparable around Australia and should get a licence. In real estate that work has been completed, at least at the policy level, and the decision there is that there would be a licence for real estate agents; there would be a licence for real estate sales representatives; there would be a licence for business agents and for business agents' representatives; a licence for real estate auctioneers; and also a national license for strata title managers. So in each of the first wave occupations —obviously, national licensing has been introduced in two waves—there has now been published an indication by the national licensing task force of the licence categories that will be provided.

[10.50 am]

I have copies of the communiqués that came out at the end of the year which set out the intention for the different licence categories in the first wave area. It is just an intention, a recommendation,

because that process of settling all the licence categories has to go through a national regulatory impact statement process. The regulations have yet to be developed; that will happen this year. For the second wave occupations, which is building, conveyancing and land valuers, the consideration of what will be the licence categories has not yet commenced. They have just appointed an industry advisory group for the building area, so that will start work quite soon to look at what would be the appropriate categories and scope of work for building. They have yet to appoint industry advisory committees for land valuation and conveyancing. That work has not yet commenced, but it is expected to be undertaken this year. That has been, as you can imagine, quite a lengthy process. It has been based very much on industry input, because the industry members represent the majority of the industry advisory committees, and it has revolved around, as I say, what is the appropriate scope of work that could apply throughout Australia, what areas can be appropriately identified and where there is an appropriate level of risk that would warrant a licence. I appreciate it is complex, and we will obviously come a bit more to the details as we go through, but overall the summary is that there are broad categories of licence occupations so that we can understand what national licensing is going to capture in its most, and then that is being narrowed down to determine individual scopes of work that would warrant an individual licence.

The CHAIRMAN: There is also capacity for a fair bit of confusion within the community if they expect all building occupations to be licensed because of the grouping and then they find out, indeed, that they are not.

Mr Newcombe: Yes, although that will all be worked through. Whilst, at the moment, it is a question of what is captured, probably in those two broader groups—property related and building—that has been the subject of discussion. In Western Australia I have delivered a number of sessions to industry and made it clear that these are all matters that are to be sorted out and need to be resolved. The industry will be part of that process and it will not be finalised until there is a fairly extensive consultation process. As people understand, the difficulty is that Western Australia, basically, has a building licence which entitles people to build anything from a shed to a multi-storey building and we do not licence a lot of individual trades. In the eastern states there is a different approach, particularly in Queensland and New South Wales, where there is a tendency to licence all sorts of trades, and there are also distinctions between commercial and residential building.

The CHAIRMAN: Does that mean that is where we are headed?

Mr Newcombe: That is the process that has to be worked through. Really, I cannot answer that because what will happen is an industry advisory committee will be established for building occupations and there will be discussions by people who are involved in the industry with some of the regulators—that will not be me, but regulators from the building area—and also the national licensing authority, when that is established. All of the participants will have to make some judgements about where they believe licensing best sits. Does it sit at the high level with only a few categories or does it go down to a lot of trades? There is a lot of work to be done in that area, because that is probably the most complicated of the industries that is included within the scope of national licensing. You can see that there are very divergent models, and people will have to work through that process. As I said, having worked through that process, there will be recommendations that will then go out as a consultations document for the broader public to comment on. That happens twice for a consultation RIS and then for a decision RIS. It then has to go through the ministerial council and there is the political argy-bargy about what will be seen as the most acceptable model.

The CHAIRMAN: What is the time line for all of this? It seems a long way down the track.

Mr Newcombe: Again, for building, it is just starting. At the moment the timeline is to have national licensing commence for building as soon as possible after 1 July 2013.

The CHAIRMAN: But at what level?

Mr Newcombe: That is to have all the licence categories resolved and ready to go—ready to commence. Now, it is possible, I believe, that that time line will be brought forward for building. That will be a matter that will be considered at the COAG meeting next week. It is possible that might be brought forward a little. There is a lot of work, and a lot of work was spent last year on the property occupations. It involves a major contribution of work from industry, regulators and others to try and work through the process. We are capable of doing that. My guess is that in building we will end up with some form of compromise arrangement. We probably will not go to all the individual trades that are licensed in New South Wales, but the model might go some way towards it. The point to note is that it is very clear under the system that the fact that a national licence category or a scope of work is created does not oblige this, or any, state to introduce it. For example, if we had a category or scope of work that covered building—we do already licence builders—we would have to include that, and we would comply with the national standard. If, for example, a category was introduced for tilers—we do not currently licence tilers—we are under no obligation under the national licensing scheme to introduce that. It is just that if we chose to, we would have to do it uniformly. The state would be able then to consider what the national model is, and in those areas where we do not currently licence people and where there is a licensed category created under the national model, Western Australia will have to make its own judgement as to whether it wants to do that or not. There is a fair amount of flexibility to prevent us from going to a much more regulatory model, if that is not what Western Australia wants to do.

The CHAIRMAN: We could be in a situation in which the state might require a licence but the other states do not want to have that licence. What happens to those people who are currently licensed when the other states decide not to have a national licence?

Mr Newcombe: If there is no national licence, we can maintain ours.

The CHAIRMAN: So we are going to have a dual system?

Mr Newcombe: I would hope not. In the case of building, I am not sure where there would be a category in which we would licence somebody and nobody else would. It is likely to go the other way.

The CHAIRMAN: Given the number of licences in New South Wales, it is unlikely, but I am asking.

Mr Newcombe: The position is that national licensing is intended to say, where there is a licensed category and jurisdictions do licence that category, that it will be the same. A person who gets a licence in that category in New South Wales will be able to operate in WA, or anywhere else, without having to do any more. What is not intended, and which this does not do—this does cause a bit of confusion for people—it does not introduce standard mandatory national licensing for every category. The fact that there is a licensed category established under the national licensing scheme does not mean that every state and territory has to have that licence

The CHAIRMAN: If there is a national licence for tilers and we decide we are not going to licence our tilers, what does that mean for the transportability of the skill of tilers in Western Australia to another state?

Mr Newcombe: It means if a person in Western Australia does not have a licence and they wish to work in a jurisdiction where there is a licence, they will need to get a licence to work in that jurisdiction. However, in the reverse situation in which we do not licence tilers, that means anybody can do tiling here; that will continue. That is, anybody can come to Western Australia and do tiling. The question is only if you develop your skills in a jurisdiction that does not licence and you wish to relocate or work in a jurisdiction that does licence, you will need to get a licence. But that is exactly the same situation that applies now: if you are a tiler in Western Australia and you want to work in New South Wales, there is a licensing regime in New South Wales and you have to comply with it. The difference under national licensing will be that you will be able to go to New South

Wales and get a licence and for every jurisdiction that requires licensed tilers, you would have done all that is required. You would have got your licence in New South Wales and you would be able to operate anywhere a licence was required, and, equally, you could operate anywhere where a licence was not required.

The CHAIRMAN: I am going to get into trouble from our legal adviser because I have gone way off track from our questions; I will get back to those in a minute. Why have a universal scheme if states can opt out of requiring a licence? I thought the whole point of this was to ensure portability of skills and a common set of training standards that could be relied upon.

Mr Newcombe: It does the latter; it creates common licensing, common standards and common education requirements. It does all of those, but what it does not do —

The CHAIRMAN: But we are not required to enforce them.

Mr Newcombe: No. What it does not do is mandate a licence in every jurisdiction. Politically, jurisdictions were not prepared to do this. As you have noted, in building there is a heck of a lot of work to be discussed as to whether to go to a very regulatory regime or one that is less so.

[11.00 am]

There is a lot of politics involved in that and a lot of industry issues—the view of the industry locally, and it would be the same as the others. I think to try to achieve that, to say that there would have been a national building licence and this is exactly what it will be and everybody will have to do it, even if you do not license, would have been very problematic.

I will give you an example: land valuers are only regulated in three jurisdictions in Australia. If you were to have the argument, say, we are going to have a standard land valuers licence and every land valuer would have to be licensed, you have to convince all of the other jurisdictions that that is a good thing, because they have existed without it. But what you are saying is that where there is licensing for land valuers, at the moment you need to satisfy three different rules about licensing if you are a land valuer if you want to operate around Australia. There are the three jurisdictions that do licences. If you want to operate everywhere in Australia, you have to satisfy those three different ones. What national licensing will say is: "Where there is a licence for land valuers, where people do license them, there will only be one licence. It will be standard, it will have standard educational requirements, standard qualifications." It smooths all of that out, but it does not mandate that there will be a single national licence if jurisdictions do not already license. If they do already license, they are committed to the national scheme, but if they do not currently license, they are not obliged by the system to introduce new regulation.

The CHAIRMAN: Has there been any analysis done of the impact that this might have on apprenticeships in WA? Particularly given what has happened in Queensland at the current time, I would have thought that if you could do an apprenticeship and you would end up with a licence in Queensland, as opposed to not having a licence at the end of an apprenticeship in WA, I know what I would be opting for, because at least then I would have transportability right across the country. How might that actually impact the provision of skilled labour here in WA?

Mr Newcombe: It will only impact on those licensed occupations that are within the scope of the national licensing, first of all, so in terms of apprenticeships its biggest impact is going to be electrical and plumbing. They are nationally licensed, so there will be standards for those. That will be captured. Anybody who does apprenticeships in those will be able to operate in electrical and plumbing occupations. The only one that is really—

The CHAIRMAN: But it might impact on tiling as well, for example, which is the example that we used.

Mr Newcombe: Absolutely, but that is the situation exactly now. It does not change that; there is no difference in that position now. If you do an apprenticeship in tiling now in WA, that does not

assist you in operating in those jurisdictions which currently license. It does not change that system at all. It does not make it worse and it does not make it better.

The CHAIRMAN: It could make it worse if more of the other jurisdictions decide to go the licensing route than is currently the case.

Mr Newcombe: Potentially, in terms of your movement, that is the case. That is a possibility, but that argument is yet to be determined as to what that licensing framework is going to look like. Certainly there is a strong argument that this system is much more closely tied into the national training framework. The qualifications and the skills development is tied very closely to that. There is far greater integration for that where it has been put in place. But, yes, there will be some areas. As I say, the system does not create mandatory national licensing.

The CHAIRMAN: Can I ask, I suppose, the obvious question? Why not sort out all these details about what areas are going to be licensed and which ones are not, before introducing legislation?

Mr Newcombe: The legislation that is introduced is just framework legislation that facilitates the plugging in of all of the detail. Decisions have already been made at the big picture level at COAG that these are occupations that are worthy of the work for national licensing. That big picture work has been done. That is the act. The act facilitates the introduction of all of the detail, but the detailed work then is to be done and that will determine how they fit in. The view was that—and this is why it is split into two waves—you get the facilitating legislation through. You then work, in advance of that, on a fair amount of the detail, so a lot of the detail on the first wave has been done, and then you continue to work on others.

The overall picture is that you might add more licensed occupations to this scheme if it works correctly. So you will continue to add to it. I think the view was, settle the broad framework and then the detail for each occupation requires significant amount of focused work. If you waited for all that to be done, you would probably be 2017 or 2018 before you would make any changes.

The CHAIRMAN: Yes, but we might actually then end up with a piece of legislation that is more clearly understood, because I think part of the problem with the piece of legislation before us is that it is very convoluted and very confusing because terminologies are being mixed throughout the document. What I do not understand is why do you not use the term “licence category” instead of “licence occupation” when you are talking about a group. “Occupation” is being used in a way where it is relating to a group of occupations as well as a single occupation. It just seems to me that it makes the legislation very, very confusing.

Mr Newcombe: I guess part of that is: what is meant by “occupation”? It means different things to different people.

The CHAIRMAN: Well, a definition in the legislation would have been helpful for some consistency.

Mr Newcombe: The definition of “licensed occupation” is there. The licensed occupation is those broad categories that are identified in the definitions section. It is electrical, there is plumbing, there is gas fitting, it is property related and it is building, so there is a definition of “licensed occupation”. What the bill then does is say that within those there will be scopes of work and licence categories. That is what we do now. We have a real estate act, and there are various categories of licence under the real estate act. It is quite a complex thing to come to, but I think when you look at the practicalities of it, it is actually not as bad as it might seem.

I think it is very difficult to just overlay very clear-cut definitions of what is involved, because we are dealing with something that is referred to differently all around Australia. All of the occupations are referred to by different titles all around Australia, so it is very hard to come up with something that will be very clear to any individual anywhere in particular, because people are used to using different terminology wherever they are. We are trying to, in a sense, overlay something over a system that has developed all of this diversity over the whole period of Federation.

The CHAIRMAN: Would you mind just identifying the provisions of the national law that characterised a "licensed occupation" as an occupational grouping within which only some occupations or subgroups will be licensed? Can you actually point those relevant sections out to us?

Mr Newcombe: Obviously the definition of "licensed occupation" is in clause 4 of the schedule. Then there are the provisions in relation to the actual licensing. If we look at part 2, clauses 9 onwards, you will see that—and these are the operating provisions that regulate what people can do—clause 9 provides that an individual cannot carry out work or enter into a contract to carry out prescribed work unless they hold a licence. That is indicating the idea that you must have a licence to carry out the prescribed work, and prescribed work is going to be the individual scope of work. For example, the regulations will be able to set out the requirements. The prescribed work would be, for example, for a real estate agent, they will set out what is the prescribed work for a real estate agent. You will be in breach of clause 9 if you do not have a licence for that prescribed work. They are set by national regulations, so the national regulations provide for the setting of prescribed work, scopes of work.

There are a range of others as well, but that is the consistent theme that is through the legislation. It is a licence, and in some cases there will not be any subcategories. In some cases there will just be, potentially, a licence for that occupation and no breaking down of the licensed occupation. But for the majority there will be subsets where it is seen that there are particular skills. So, again, if you look at real estate, you can be a real estate agent, which requires a particular set of training and skills; you could be a sales rep, which requires a lower set of qualifications and skills to undertake; and you could be a real estate auctioneer, which again requires a different set of skills and training and is a subset of the overall property-related licence category or occupation. The act, I think, is consistent in the way that it is structured around that. The difficulty, I think, that you are looking at the framework act, and at the moment the detail is not there.

[11.10 am]

I appreciate that that is a problem, but that is a deliberate decision of how this is all put together. The committee can look at the work that has been done in identifying the various scopes of work. I think the communiqué has been provided to you; unfortunately, I have only one copy of this.

The CHAIRMAN: Gary, could we just get you to identify the specific clauses? It is our view that there is some change in the way the terminology is used throughout the act, so it will help us if you just have a look at the specific clauses. One of the points that I would like to point out is that it seems odd to me that a fundamental feature of the national law has been relegated to a schedule of a schedule to the bill.

Mr Newcombe: Sorry, what do you mean—a schedule to the schedule?

The CHAIRMAN: It just seems to me that a lot of the detail is in schedule 1 of the national law.

Mr Newcombe: Yes.

The CHAIRMAN: The question the committee has is: why has this fundamental feature of distinguishing the licensing groups and occupations that need to be licensed has actually been relegated to what appears to be a schedule to a schedule of the bill?

Mr Newcombe: You will need to identify what you mean.

The CHAIRMAN: I have skipped a question; if you could just identify the provisions of the national law that characterise a licensed occupation as an occupational grouping, within which only some occupations and subgroups will be licensed.

Mr Newcombe: Okay. This might take a little while. Again, if we go back to clause 4, we have licensed occupation. We also have, in clause 4, a definition of "prescribed work", which is work that, under the national regulations, is within the scope of work that may only be carried out under the authority of a licence. That provides the definition of prescribed work, indicating that that is the

nature of the work that must require a licence. It is only prescribed work, not a licensed occupation, that is the focus of the regulation because again, if we come back to clause 9, it provides that an individual must hold a licence to carry out prescribed work; not the licensed occupation, but to carry out the prescribed work that is a category or subset of the licensed occupation. That is continued through the remainder of those offence provisions, and the obligations to be licensed. If it is not prescribed work, then a licence is not going to be required. You have a licensed occupation, but you need prescribed work to identify the actual nature of the work that is being licensed. Again —

Hon LIZ BEHJAT: Is it not going to be incredibly confusing for the people holding the licences to know whether they need to identify the work they are doing at that particular time, whether it is prescribed or not, and whether they need to have a licence or not?

Mr Newcombe: No, I do not think so. Perhaps we can go to the communiqué document that has just been circulated. This is just for the property occupations. This is a statement of the policy intent of all the work, looking at the detail for property, as to what sort of licences would be required. Without going through all the background, if you have a look at the second page, it refers to proposed licence structures for property occupations. It indicates that, following consideration of a range of options for licensed categories, scopes of work and licence types, the advisory committee has developed this proposal based on six licence categories. They are then set out. This will need to be translated into regulations, but this is the practical end that the people who are dealing with the legislation will ultimately be looking at. You can see there that there is a licence category, estate agent. At the moment we talk about real estate agents, but they will be known as estate agents. There is a description of the scope of work that is involved in that licence category, and if you do that, you will need an estate agent's licence. Equally, there is a strata managing agent. That is the category, and if you do the things that are within the scope of work, you will need that licence, and so it goes on. I think, from a practitioner's point of view, it is actually relatively straightforward, for two reasons: one is that all existing practitioners will be rolled into the new system, so they will automatically be granted the appropriate licence. For new applicants, it will be what scope of work they are doing, and list of categories or licence, so if they are in the area, they will see—for example, if they want to be an estate agent, they will be able to see the scope of work that they do and what licence they need to get.

Hon LIZ BEHJAT: In real estate, people tend not to specialise in just one area; a company will sell real estate and lease it, and it will also do strata management as well as act as auctioneers. Will they need to hold three licences?

Mr Newcombe: Possibly, but in Western Australia at the moment, there is no licensing of strata managers, so that is not required. Equally, at the moment in Western Australia, if you do auctioning, you require an auctioneer's licence anyway. At the moment, if you are a person who does real estate agency work, and you are auctioneer, you require two licences. Under this arrangement, you would still require two licences; you would require the estate agent's licence and you would require an auctioneer's licence, so it would be identical to the current arrangement. One thing that the government needs to consider is whether we would introduce strata manager licensing in Western Australia; if that were the case, and you were doing strata managing, then yes, you would need a separate licence to do strata managing.

Hon NIGEL HALLETT: Gary, what time do you envisage these courses would take; what cost will these licences come out to; and how long are they going to be valid for? I also note that the livestock property agents were opposed to it. I just wondered whether you could give us the reasoning behind that.

Mr Newcombe: Sure, okay. In terms of the length of the licence, the bill provides that the licence can be up to five years. That will be resolved in the detail for each licence as to how long it will be; I would guess that the majority would probably be around three years, which is the current

arrangement. Certainly, no-one is supporting annual licences, because of the imposition, but they could be for up to five years and they can vary; the regulations will set that. As to what the cost of a licence will be, that also has to be set for every licence category. It will be set by the yet-to-be-established national licensing authority, which will be the administering body, and the ministerial council. I can talk a bit more about fees, if you want to, because it is little more complicated. In terms of the qualifications and experience, the standard qualifications and experience will be set for every licence category. It is likely that in this area, for example, it will be a little less than the current requirement in Western Australia, so it will probably be quicker to get because the qualification that they are looking at is a certificate IV rather than diploma level.

Hon NIGEL HALLETT: What is the length of time?

Mr Newcombe: I do not know, off the top of my head. I would have to check that. It is not terribly long. Let me just check and get back to you.

[11.20 am]

The CHAIRMAN: We will just take that as question on notice No 1.

Mr Newcombe: It is no more onerous than would be the current arrangement in Western Australia certainly, because it is actually slightly less. In terms of licence fees—if I can just touch on that; you might want some supplementary questions on this—there is not going to be a standard national licence fee. So, for example, if you are a real estate agent in Western Australia, you may pay a different fee to someone in New South Wales. You might say, "Well, is that the case, and why isn't there a standard licence fee?" The reason that there is not is that some jurisdictions use licence fees now as a tax; they raise revenue out of them. Others set their licence fees to recover costs, which is pretty much what we do in this state, and you do not have to have a separate taxing bill and so on. The politics of it was that those jurisdictions that charge more were not prepared to give away their licence revenue. The only way the compromise was reached was that individual jurisdictions can have different fees. So, the calculation of the exact fee is going to have to be worked out for each jurisdiction and for each actual category. That is part of the process that will be worked through this year for all of the first-wave occupations. That will all be well known before, but it still has not been worked out and it is part of the detail that will have to be sorted out for the regulations for the second wave as well. The fees will be published in the regulations. That is the issue with cost. Now, Nigel, did I miss something?

Hon NIGEL HALLETT: Yes, the last one with the Australian Livestock and Property Agents Association.

Mr Newcombe: Yes. This was an interesting issue and is an example of the considerations that go into what categories of licence you are going to have. In New South Wales and Queensland, there is a separate category of licence for livestock. It is a combination licence, really, in that if you are involved in the sale of livestock and real estate, you have a licensing arrangement. But they are the only two jurisdictions that have it. This was part of the negotiation about should that be a national licence or should it not be. The view was that there was not enough reason to extend two states' requirements to everybody else and that it would be open to those two states, if they still wanted to regulate the auctioning of livestock or the sale of livestock, they would be able to have their own state-based legislation if they wanted to, because there will not be a national licence. So, for those states, they would be able to have it. In Western Australia, auctioning is covered already by the standard general auction legislation, so we did not support the creation of a new category of licence either. That is where it has ended up. It has ended up that it will not be part of the national system; that people who are selling property will require a real estate agent's licence. If they are selling livestock as part of that, it will be up to each state to decide what regulation there is of the livestock selling, but there will not be a combined licence as there is in those two states.

The CHAIRMAN: We have actually got some questions about the whole licensing aspect of it a bit later, but I just want to pick up on one point that you have raised, Gary, in that you say that different jurisdictions can set different licensing fees. How does that impact on transportability?

Mr Newcombe: It is fine, and it leads to one of the questions that you have posed as to why there is a primary-jurisdiction test. Let us say it is a licence that is in place all round Australia, and I will use real estate again as one I am familiar with, and that will be licensed everywhere. If you are resident in Western Australia—this is your principal place of residence—and the system is in place and you are a new person applying, you will apply in WA for a real estate agent's licence and you will pay the fee that is applicable in Western Australia. You will then be licensed. Let us say it is a three-year licence. Without more, you will then be entitled to operate as a real estate agent anywhere in Australia. You will not have to pay another fee. You will not have to register. You will not have to be licensed. It is fully transportable and you have paid your fee. Let us say the licence fee here might be $1 000 for three years. You might compare that with someone in New South Wales who is also starting out as a real estate agent and they live in New South Wales. They will apply for a real estate agent's licence, and it might be that the fee there is $1 500. They will pay the $1 500 and then they will be able to operate as a real estate agent anywhere around Australia without paying more, and they will not get a refund if they come to WA. That is why there is a requirement in the legislation when you apply to nominate what your primary jurisdiction is, which, as an individual, is your principal place of residence, or, as a business, is your principal place of business. It is to stop people jurisdiction shopping to pick up the cheapest fee. That is forced by the policy decision, which is a political policy decision, that governments could not agree on establishing a common fee.

The CHAIRMAN: Linda has got a question that she wants to ask and then I would like to just go back to our standard questions, because some of these issues are going to come up later.

Hon LINDA SAVAGE: Just going back to what was being talked about, for example, that licensing will not necessarily be required in all jurisdictions—I think the example of the tiler was used—in the explanatory memorandum, one of the aims of this bill is to enhance consumer confidence. In fact, under the objectives, there is reference to consumers. Just what thought has been given to how consumers are going to understand, coming from, perhaps, New South Wales, where a tiler would have to be licensed, given how mobile the population is, to Western Australia and trying to find a licensed tiler and ours not being licensed? I think that this will be very confusing, and I just wonder what thought has been given as to how that is going to be dealt with.

Mr Newcombe: Okay. It is no different, of course, from the position now; in fact, the position now is much, much worse because every jurisdiction is different. If you come to Western Australia as a consumer from the eastern states in terms of trades, it is a very different scenario.

Hon LINDA SAVAGE: And I take that point, but this is a piece of legislation that is actually aimed at overcoming some of these difficulties.

Mr Newcombe: I have to say it is not aimed at overcoming that difficulty from a consumer perspective; it is just not. The primary aim is about licensing and mobility. That is where it comes from. It comes out of a skills recognition approach. It includes the need to take into account consumer protection matters, but I have to say to you it is not grounded in establishing common consumer rights around Australia. That is not part of it.

Hon LINDA SAVAGE: And I understand that.

Mr Newcombe: Its intention is about mobility and ensuring that people, when they are licensed, only need to be licensed once in Australia and do not need to move around. But in developing the licensing, obviously regard is to be had to consumer protection matters.

Hon LINDA SAVAGE: Not because of consumer protection but actually understanding that there is not the need for a licence.

Mr Newcombe: Yes. The responsibility for that, as it is now, is with the relevant licensing authority and also the industry. If people are dealing as consumers with tilers in Western Australia, one of the issues would be the industry itself make it clear to people that there is not the licensing regime in this state for tilers, as there is not now. Equally, the licensing authority will have information about who is licensed and will be able to provide educational information, as well as answer queries. But, as I say, that is really exactly the same now, and it is not the intent of the legislation to solve that. The reason I say that is because, in addition, if you can imagine that, there is a whole range of reasons why licensing is different in different jurisdictions. A lot of it is political. A lot of it relates to the views of the industry associations and whether that is supported or not. Some people's view is that the New South Wales system is far too regulatory, far too onerous, and does not work. Other people might have a view that Western Australia is too laissez faire and so on. But those views have been formed politically in each of those jurisdictions.

Hon LINDA SAVAGE: It sort of again begs the question why a lot of this has not been resolved prior to the bill coming in —

Mr Newcombe: I do not think it can be resolved.

Hon LINDA SAVAGE: — given the extent of the time line we are talking about to resolve it.

Mr Newcombe: I do not think it can be is the answer.

Hon LINDA SAVAGE: Okay. Thank you.

The CHAIRMAN: I am just going to try to bring us back to the questions. Gary, could you just explain the difference between the term "prescribed work" as it is used in clause 9 and the terms "categories of licences" and "scope of work" used in clause 161?

Mr Newcombe: "Scope of work" is a subset of the definition of "prescribed work", so the definition of "prescribed work" says it is work within the scope of work. That is where "scope of work" fits in. It is part of the definition of "prescribed work". There is no difference between those two. I think one of your questions that was sent to us in advance asked why there was a reference to "categories of licences, registration and accreditation" in 161 when "licence" is defined to mean those things.

[11.30 am]

And, it is true that there is a duplication: 161 sets out the things that are already included within the definition of licence—it is not inconsistent, I suspect it probably is a bit of a drafting error, but it does not create any issue, because they are not inconsistent. I think it was probably done as a sense of being overly cautious, to explain what the regulations can cover. But, that is talking about the categories of licence, so a licence is defined to mean a licence, registration or accreditation. You can have a category of licence that is not defined, from memory, and a scope of work that relates to the prescribed work they carry out. The term "category of licence" is not defined, but I do not think that it creates any inconsistency, because you have the licence, the scope of work and "category of a licence" is a definition of the, you know, where it would fit. And, you can see from the communiqué that the term "licence category" is used to talk about things like: they are a real estate agent, or you are a strata manager. So, it is a subset of the licence, when we talk about property-related, or the licence categories under property-related are going to be real estate agents, strata titles and so on. So, it is not defined, but 161 gives power in the regulations to create categories of licence, and that is not unusual to do, to create categories of various licensing.

The CHAIRMAN: No, but perhaps it would be helpful if there was a definition in the bill of categories of licence rather than introduce them at clause 161.

Mr Newcombe: Yes, I can understand that it might be, although I think the definition probably, to be honest, would not help you much. I mean, category of licence is a category of licence; it is a category of licence set by the regulations under 161. I think the definition would be a bit circular.

But, I take your point and certainly, it is not defined, but that does not, in my view, limit its legality in any way, and as I say, the indication is there that the regulations will actually carry all that detail; they will set out all the categories, that will all be subject to public consultation.

The CHAIRMAN: Having a look now at clause 12: clause 12 provides that it is an offence for a person, to, without a licence, hold out that they are licensed, to carry out a licensed occupation, as well is it being an offence to, without a licence, hold out that one is licensed to carry out prescribed works.

Mr Newcombe: Well it's an "or".

The CHAIRMAN: I have got a series of questions. Is a licence required for a licensed occupation, when the work performed is not prescribed work?

Mr Newcombe: No, it will not be. If nothing is prescribed, if there is no detail and there is no scope for a prescribed work, then there will not be a licence.

The CHAIRMAN: And, just clarifying again, is a person required to obtain two licences, one for the licensed occupation and one for the prescribed work?

Mr Newcombe: No, the licence will be, again, if I refer to that communiqué, it will be the licensed occupation, as you have seen the definition, again if we look at real estate, is property related, you will not get a property-related licence, you will get one of the ones, which is one of the categories that have been set out, and that will have a defined scope of work. Now, it is possible, because this is a framework piece of legislation, that there might be added to it a licensed occupation where there are no subdivisions at all, it is just clearly defined, then, you would get a licence for that occupation. In part, of the ones that are being dealt with at the moment, all of them, based on advice from industry, are being broken up into recognisable categories. So, it is possible that, going forward, there might be an occupation where you just get a licence for the occupation as it is named. But, at the moment, all of the occupations that are named in the legislation are going to be broken up; the recommendation from the industry group is to break them up. Now, we have not yet got to stage two, so, for example, land valuers: I do not know whether the recommendation there would be that you have prescribed scopes of work, could we just have a land valuer's licence, in which case you would have a land valuer's occupation licence, and that is all you would have, because there would be no subsets. But, most of the ones that have been dealt with, all the ones that have been dealt with to date, there are clearly identifiable subcategories and so scopes of work are going to be prescribed and you will need a licence for that scope of work, and you might need multiple licences as we discussed.

The CHAIRMAN: Okay, but if a licensed occupation does not have any subcategories, then it has to be identified as a licensed occupation and a prescribed work, because the legislation only requires you to have a licence for a prescribed work?

Mr Newcombe: Well, it says "or", so you have a licence for the licensed occupation or, if there are prescribed works, and even for the licensed occupation there will be prescribed work to identify what a land valuer is; there will be a prescribed work for a land valuer. But, you will not have different sorts or subcategories of a land valuer, so everything will have to be defined to make sure you capture what it is that makes you a land valuer. So, you will have prescribed work that will identify what it is that makes you a land valuer, but you may not have any categories of land valuer, so you will just get a land valuer's licence. But, if you had a commercial land valuer's licence and a residential land valuer's licence, you would have different scopes of work for the commercial and for the residential, and if you fitted within one or the other, you would have to get the appropriate licence for what you did. But, if there was only one licence, and it was just a land valuer's, there still would be a scope of work, because it would say, "You are a land valuer if you do this", so there would still be a scope of work and there would be a licensed occupation.

Hon LIZ BEHJAT: And two licences if there were two categories and you did both sorts of work?

Mr Newcombe: And you did both; that is correct.

Hon LIZ BEHJAT: And this is a simplification of the whole process?

Mr Newcombe: Well, I do not know if we are going that way! Well, you see, the argument is, as I say, that it is grounded in making qualifications to be transportable. I am not guaranteeing that makes anything simpler!

The CHAIRMAN: Just moving along, can we just have a look at clause 16(3)(a), which requires a corporate applicant for a licence to nominate, as a nominee for the licence, a person who personally holds a licence for the licensed occupation? Is it intended that that the corporate nominee hold a licence in respect of the particular prescribed work for which the corporate licence is sought?

Mr Newcombe: The answer is yes; you will need to have a nominee who is individually qualified for the licence that the corporation holds.

The CHAIRMAN: But, does not actually have to carry out the work?

Mr Newcombe: No, the idea is that, basically, if you have got a body corporate, you have to have some individual and it is either a director or an employee—the regulations will determine who that is—but some individual who has knowledge and experience in the particular work that the corporation is undertaking. But, equally, each of their employees, if they are carrying out their work, will also have to be qualified.

The CHAIRMAN: Okay. Your answer is effectively, "Yes".

Mr Newcombe: Yes.

The CHAIRMAN: If that is the case, why is the term "licensed occupation" used in clause 16(3)(a), rather than "prescribed work"?

Mr Newcombe: Yes, look, I think it could have been "prescribed work" in that case.

The CHAIRMAN: It would have been clearer if it was?

Mr Newcombe: Yes, look, I think, potentially, that is probably an oversight. I do not think it is inconsistent, but I think it is one of those ones where everywhere else "prescribed work" has been used and there it is "licensed occupations", so, you know, I think that is probably right.

The CHAIRMAN: Various clauses of the national law such as clause 9(2) impose a higher penalty for offences in respect of a specified licensed occupation. Will this specification be at the level of the clause for identification of licensed occupation or at the level of occupation category of licence or prescribed work?

Mr Newcombe: It will depend on the way in which the regulations are drafted obviously, but I suspect that the focus will be tied to the scope of work, because these provisions are intended to limit the offences for which imprisonment is a penalty. So, it is likely that these will be applied to the more serious occupations, and when I say serious, they are things like electrical, where there is potentially life-threatening situation where somebody is doing work and they are not licensed.

[11.40 am]

It uses the term "licensed occupation" that the national regulations have declared. I believe that the national regulations will be able to declare the licence with reference to the scope of work.

The CHAIRMAN: Why does the clause not refer to scope of work rather than licensed occupation?

Mr Newcombe: Again, I can appreciate that this is something that has caused some confusion. The reason for doing that again is that in some cases it will only be a licensed occupation. In some cases it will be a licensed occupation that is defined into subcategories.

The CHAIRMAN: So it becomes a prescribed work?

Mr Newcombe: Yes, but this captures both. If you went to prescribed work and you had a licensed occupation that did not have any subcategories, it would not necessarily capture it but you could have defined it by scope of work. It has not been defined by scope of work. I do not think it presents any legal problem but I take your point that it is one of those occasions in which some differing terms have been used.

The CHAIRMAN: That goes back to our earlier point in that it makes the legislation very confusing.

There are significant variations in the range of occupational groupings. More occupations are captured in property-related occupations than in electrical. Some stakeholders are of the view that electrical and plumbing fall within building-related occupations, which it is intended to prescribe as a separate licensed occupation or prescribed work. What is the criterion that determines prescription of a licensed occupation rather than consideration of an occupation as falling within an existing prescribed grouping?

Mr Newcombe: You slightly lost me in the question. Is the concern that electrical and plumbing —

The CHAIRMAN: We are trying to understand how you have determined what the occupational groupings are. There is clearly already confusion within stakeholders as to why there are some separate categories when they feel that they could belong to another category.

Mr Newcombe: Why are they there? Largely, that is historical. Electrical and plumbing occupations in all jurisdictions are currently licensed outside of the building trade. They all have their own licensing arrangements already. Those people who might be suggesting they could roll in there might have a particular point of view but that is not the industry point of view and it does not reflect the history. Those areas have had long-term independent regulation in plumbing and electrical. Building, however, has been either the act of construction or some related building trades that have not otherwise been licensed. That is the rationale for it. These licensing regimes were already in place in all jurisdictions around Australia. All jurisdictions licensed plumbers, they all licensed electricians and they all separately licensed builders. In the building occupation, there is a difference in the number of trades, but that is the reason they are separate. It represents history and practice to date.

The CHAIRMAN: So there is no criteria set out in the national law to identify what is an occupational grouping. Is it just basically historical and what currently exists?

Mr Newcombe: It is basically any existing licensing regime. There is some discussion, as you will see in the decision, as to why it was picked up but the focus was: who is currently licensed, what are the existing licensing laws around Australia and what changes would enable a person who was licensed in that area now in one state to be able to operate without doing anything else around Australia? It reflects a very longstanding history. There was a political and policy decision as to which occupations would be included and what they were. The act could have included real estate and business or whatever. Personally, I think that might have been better but that was not the national view. In relation to building, the view was that detailed discussion needs to take place to determine the actual scope, how many trades come in and how many do not. The view was that the mechanism that was being set up under this system, which is industry coming together with regulators to work out the scope of work and what is appropriate to reach compromise to take that to a national level, was an appropriate mechanism to sort out the industry and do it as part of this process.

The CHAIRMAN: Clause 132 provides that advisory committees are to be established for each licensed occupation. What is the rationale for having an advisory committee solely devoted to refrigeration and air conditioning and a single advisory committee addressing the range of occupations that constitute building-related occupations?

Mr Newcombe: If you ask the refrigeration people, they would be miffed if you said they could not have an occupation. Part of this is practical. The view is that every group should be treated equally. That is not to say that you will not have a bigger, more sophisticated occupational advisory group with additional resources working for it and so on. The construct was to say that for every industry that is affected, there would be a means for the industry itself to have some input. That is the occupational advisory committee. To say that you do not have one for refrigeration would defeat the purpose of having industry involved. As to the building industry, there are ways of operating the advisory committee to ensure that there is a very appropriate discussion of the range of issues involved.

The CHAIRMAN: It seems to me that the building-related occupations advisory committee is going to cover a wide range of occupations. How are you going to ensure representation on that advisory committee of that range of occupations? You could have an advisory committee of 50 but I do not think it would be very easy to manage or make any relevant decisions.

Mr Newcombe: It is advisory. You do have to make some judgements about who you involve but we do that now. We have a range of licensing boards and so on that have representatives that cover very broad industries that do not have somebody from every single aspect. Membership of the advisory committees is largely going to come from peak bodies. Those peak bodies tend to represent large sections. They have chapters and all sorts of processes for representing the industry. There are many ways in which you can ensure that the people sitting at the table are very well informed. Again, they come from peak bodies and they have this broad-based involvement in the industry. With no advisory group are you ever aiming to have somebody represent every point of view. It is about those people who are best qualified, best able and best connected to the industry to do it. You can establish that. History shows that you can establish an appropriate advisory committee that has a very broad scope of issues. One would expect that the refrigeration group would not meet as often. We do not licence refrigeration air conditioning mechanics in this state. That is another example of one we are not proposing to introduce. They would operate in an entirely different way to the more sophisticated one. The building one will be connected to the Master Builders Association, the HIA and all those people who have very strong connections to those sorts of trades. That is how some of the broader regulators have to operate in New South Wales and Queensland as they cover a whole pile of trades. They have to reflect on that. Even in WA, the Builders Registration Board is all about building but it still has to know and understand what is going on with all the trades because they are all covered by the activities of their builders. We have models that have all of this various input but they do not necessarily have a committee of 50 people to make sure they have got it.

The CHAIRMAN: Let us look at clause 4 and the definition of licensed occupations. There is a note to that clause stating that it is envisaged that the prescription of an occupation or occupational group by regulation will require amendments to existing legislation by Parliament. This is repeated in the explanatory memorandum to the bill. Could you identify the provisions of the national law or application provisions of the bill that it is envisaged will require amendments on prescription of an occupation?

Mr Newcombe: It is not in this bill. It is a consequence of this bill. The reality is that this bill introduces the national scheme and the licensing arrangements but we already have state legislation that provides for the licensing of these occupations so we have to amend those pieces of legislation to remove the obligation of a licence under the Real Estate and Business Agents Act, for example. A second bill will be coming forward, which will have those consequential changes. If we were to add a new one—let us say this was in place and we added strata title managers as a new occupation—we would have to introduce legislation to say what it means to be regulated because this would say you are licensed as a strata manager but we would have to have conduct rules in a piece of legislation somewhere, so we would have to enact new legislation.

[11.50 am]

The CHAIRMAN: Okay, so it is not the case that the adding of an occupational group by regulation would be considered as an amendment before the Parliament?

Mr Newcombe: No.

The CHAIRMAN: It will just be considered as a regulation in the normal way that regulations —

Mr Newcombe: It will just be a regulation and there will have to be separate amending legislation to deal with all of the consequential changes because it is either already regulated by an act or we would have to introduce an act to establish all of the ground rules for that particular new occupation.

The CHAIRMAN: The explanatory memorandum to the bill states that national regulations will be directed at —

> … operational aspects and industry specific issues that are likely to need frequent amendment —

And, again, this is a quote —

> … cover mostly administrative type matters …

Specification of a licensed occupation does not fall into these categories. What is the rationale for prescription of a licensed occupation by way of regulation rather than amendment to the national law?

Mr Newcombe: Okay, as you would no doubt have noted, that list of licensed occupations is actually reduced from the one which is in the IGA, because land transport and maritime were originally in the scope of national licensing. They are still within the scope of the IGA but have been removed because there are separate COAG reform projects for the licensing of both of those. So the view was they have got their own projects, there is no point in bringing them into national licensing. But equally the argument is that this is a framework piece of legislation; it is what I describe as sort of a Lego that you can add additional things to over time. If you wish to, it is intended that you could add an additional occupation without actually otherwise having to amend the act because it is a whole framework about how the licences are. You would have to establish new regulations for that occupation, but you would not have to amend the act. So, if you were to add, let us say, motor vehicle dealers, what you would have to do is pass an amending bill, which would be two lines; you would amend the definition of "licensed occupation" to include "motor vehicle dealers". That is the only amendment you would need. So, the argument is that that is far more suitable for regulations. The regulations are still subject to scrutiny and, as you know, ours are slightly enhanced over the national model. The prospect of getting a two-line bill through is pretty well impossible. So that is really it; it is the flexibility. It is still subject to accountability, but the idea is that you would add to this by regulation. It would enable you to expand the national licensing system on a flexible basis but it does not require you to formally amend that definition. It is very clear, I know the committee is not going to be enamoured by that model —

Hon LIZ BEHJAT: You think?

Mr Newcombe: But that is very clear, the policy decision, that this would be a framework bill, the substance of which would be in regulations. That is the policy decision. You have seen an existing model and Parliaments past have modified the existing model to be almost identical and, doubtless to say, you will probably see a few more because that has become the standard law.

The CHAIRMAN: Now, it has been suggested to the committee that painters will not be licensed under the licensing scheme in WA as they are currently not licensed at —

Mr Newcombe: No, as they are currently licensed—is it, or they will not continue to be licensed? Is that what —

The CHAIRMAN: No, my understanding is they are currently not licensed —

Mr Newcombe: No, painters are.

The CHAIRMAN: — and they will not be licensed.

Mr Newcombe: Painters are licensed in WA. That is one of the few states that do.

The CHAIRMAN: Sorry, you are saying that painters in WA —

Mr Newcombe: Are licensed; the Painters' Registration Act and there is a Painters Registration Board.

The CHAIRMAN: So they are registered and licensed.

Mr Newcombe: Yes, it is called registration but it is licensing for all intents and purposes. Yes, there is confusion about the use of the term "registering" or "licensing". That is why "licence" is defined in this act to include accreditation, licensing, registration and so on. There is different terminology used to constitute what is meant by "licence", so some acts talk about registration—our Builders' Registration Act is a builders registration act—but by any assessment it is licensing. The definition of "licence" in the act is that of licence, registration or accreditation, so it captures all of those existing arrangements.

The CHAIRMAN: Okay, I think that deals with the submission that we have received and the query raised in that submission.

Will the occupation of painter be captured by prescription of building and building-related occupations as a licensed occupation or will it require separate prescription as a prescribed work pursuant to clause 161 of the licensing law?

Mr Newcombe: Well, there are a couple of elements to that question. The first is a judgement is going to have to be made as to whether there will be a licence for painters nationally because it is the exception rather than the rule around Australia that painters are separately licensed. So, firstly a judgement will have to be made and then it would follow the model that is set out, again, in that communiqué for property. If it was, it would be a category of licence under the building occupations; there would be a licence for a category called "painting" and there would be a scope of work defining what painting was. But no decision has been made on any of the building matters because, as I say, they have not even started looking at that yet. That will be this year's bulk of work, so I could not tell you whether painting is going to be in or out.

The CHAIRMAN: Look, we have had a similar issue raised in another submission in relation to strata titles managers, which are currently unlicensed in WA, and the query is: would they be captured in the prescription of property-related occupations or will it require prescription as a prescribed work or under clause 162 as a licensed occupation? I suppose basically the same answer, all of that needs to be worked out yet. Even if strata titles managers are a prescribed work, it does not necessarily mean that we will require licensing in WA.

Mr Newcombe: That is correct and equally for strata titles if we introduced an obligation to be licensed, we would then—because this bill does not deal with all of the conduct requirements; what does it mean—have to enact that legislation. What I think I can probably say to you is that the minister has endorsed a public consultation process on determining whether Western Australia should introduce strata title manager licensing. Mr O'Brien has only just authorised that; we are in the process of putting together a process to come out publicly asking for people for their views on it. There has been a lot of lobbying for the introduction of strata title licensing.

Hon LINDA SAVAGE: And it exists in other states, is that what you are saying?

Mr Newcombe: In a couple of states.

Hon LINDA SAVAGE: So, presumably what our licence would require would be —

Mr Newcombe: It would have to be identical.

Hon LINDA SAVAGE: Identical because otherwise we are just really defeating the purpose of —

Mr Newcombe: Well, no, what would happen—and this is a good example of how national licensing works—so the starting point is: if you introduce a category under the national licence, those jurisdictions that do not already license do not have to introduce it. However if you do introduce it, you must be consistent and you would enable portability of anybody where there is licensing of strata title managers, they would all be the same, the qualification requirements would be the same, and they would all be able to operate within those licensed jurisdictions. Where there is the potential for some difference is the conduct rules, not what it is to be licensed and get a licence, but what you have to do—what are your trust account obligations, what are your reporting obligations. All of those sorts of things would have to be in either a separate strata title managers' bill or we could add them to the real estate act or find a spot for it. But it would be no good just creating a licence because then you would require the licence but there would be no regulation of what you have to do.

The CHAIRMAN: It is going to be very interesting because, as I understand it, under the strata titles manager legislation in Queensland, for example, because their zoning laws are very different to ours, they can actually have mixed residential and tourism happening in the same building, so the strata title managers need to have an understanding of both forms of business, whereas in WA we do not have that mixed arrangement; it is either a tourism building or it is a residential building.

Mr Newcombe: Yes, it is complicated. There are commercial stratas and residential stratas and then there are issues about small stratas where people should be able to manage themselves, and so it is just another one of our little projects.

The CHAIRMAN: Okay. This is a similar question but I need to ask it to have your answer on the record in relation to the submissions I did receive. With the occupation of tiler, will that be captured when the building and building-related occupations are prescribed as a licensed occupation?

Mr Newcombe: And, again, the answer there is whether that will be determined as a category of licence under building-related. It is in some jurisdictions—I think I am correct in saying it is Queensland and New South Wales only—but there has been lobbying in this state over a long period of time to add tilers to the list.

[12 noon]

That will need to be, firstly—like all of them—subject to an internal discussion between industry, and then you have to establish, through a regulatory impact statement, that the benefits outweigh the costs of introducing licensing of tilers. In Western Australia, the argument has always been that, in many circumstances, tilers are subcontractors to builders, and that the builder is responsible for all of the work of all of their subcontractors, so there is an argument that there is no need to separately licence. There are cases where people directly engage tilers and do not work through that arrangement, but it is a very difficult thing to establish, that the cost of a regulatory regime for that small section is outweighed by the benefits.

The CHAIRMAN: To, again, just put this clearly on the record: even if the tiler is identified as prescribed work, it will not necessarily be followed that they will be required to be licensed in WA; that is a separate decision?

Mr Newcombe: That is correct; that is a decision for the Western Australian government.

The CHAIRMAN: What is the reason for provisioning clause 161, for regulations to be made providing for different scope of work in respect of licences, registration and accreditation, when clause 4 defines "licence" to include registration and accreditation?

Mr Newcombe: I think I actually answered that question a little earlier. I think there is no particular reason; what has happened here is that the definition of licence—I believe in the drafting process,

from memory—was expanded to capture accreditation and registration, to make it clear that it applied everywhere to those things. I think there was not a supplementary change in the model in this provision, and there is another provision—I cannot remember which—where the full definition of "licence" is restated. The answer is, it is not necessary; it is totally consistent, however, with the definitions. I do not believe it creates any issues; it is just that it was not necessary. It would have been possible, in clause 161(1)(a), to address the different categories of licence, and not have stated registration and accreditation. But, as I say, that is entirely consistent with the definition of licence, so I do not believe there is an inconsistency. I think it is just one of two things. It is, potentially, just an oversight not picked up when the definition of "licence" was changed; also, it is being slightly overly cautious in trying to explain what regulations can be made, so that people understand that, again, registration is captured and accreditation is captured, and it is not just restricted to licence.

The CHAIRMAN: So throughout the whole of the national law, wherever the word "licences" appears, it captures registration and accreditation?

Mr Newcombe: That is correct. Again, that reflects that this is a system that is applying to a multiplicity of arrangement, and people use all sorts of language for no apparent reason. I mean, there is no apparent reason why you talk about builders registration when, if you look at all of the criteria for what makes a licensing system, it is a licensing system. There are technical definitions of registration and licensing; from a policy point of view you can say what a registration scheme is, and it is different to licensing, but in most circumstances in Australia, "registration" has been used when it actually is a licence.

The CHAIRMAN: I think you have already answered this previously, but I will ask the question again. How will a member of the public determine whether a particular occupational subgroup requires a licence in their jurisdiction?

Mr Newcombe: The primary responsibility, obviously, will rest with the national occupational licensing authority, which will be the administering body of the national scheme. The model that is being put in place is a delegated model, so those functions will be delegated back to, largely, the Department of Commerce in this state. There are a couple of ways. There will be a national register of licensed persons, so that will be directly searchable through the web. Equally, there will be educational information, which will be provided by the regulators, as to what areas are captured, what categories of licence there are, and what scope of work. All of that will be available in hard copy and web form in Western Australia through the Department of Commerce, and nationally through the national occupational licensing authority.

Hon LINDA SAVAGE: And nationwide advertising, perhaps, to tell consumers that you can never know, from one state to another, whether a type of work requires a licence. I do not mean to be deliberately difficult, but that, from the consumer's point of view, will be an issue, will it not?

Mr Newcombe: Again, we do not do it now, so, no, I would not say we would do it exactly the way you have portrayed it. But I think what certainly needs to happen, with the introduction of national licensing, are some clear statements about which categories are licensed. In Western Australia, we would be looking to make some very clear statements about, "This is what you're required to be licensed to do in Western Australia", and make that very clear and up-front, and what we do not require to be licensed, and that if you have moved jurisdiction, yes, certainly you do not.

Hon LINDA SAVAGE: So national licensing does not mean national licensing?

Mr Newcombe: No.

Hon LINDA SAVAGE: It means licensing across some categories, but not others?

Mr Newcombe: Licence portability, really, is what it does mean. Yes; it is national licensing in one context, but it is not mandatory national licensing.

The CHAIRMAN: The committee has noted that the Ministerial Council for Federal Financial Relations may make decisions by correspondence, and, also, we have looked at the website and we note that the website does not contain any communiqués in respect to meetings. What processes of the ministerial council ensure publicly available information on the following range of things: that a proposal to prescribe an occupation is under consideration; that a decision to prescribe has been made; whether the decision to prescribe was unanimous or by a majority; and, if by majority, the jurisdictions comprising that majority; and, that the WA minister consented to prescription of previously unlicensed work? It just seems to me that there is a lot of stuff that is going to be happening behind closed doors, and there does not appear to be any way that the public can get information about what is being considered, what stage it is at, and the position of the WA minister.

Mr Newcombe: In responding to that, in terms of that ministerial council itself, it does operate a particular way. I do not know that it deals, normally, with a lot of policy matters, but there are a lot of other steps in that process that have to be undertaken that are very public. When we have the system in place—let us hope we have the system in place—the consideration of proposals for the prescription and scope of work, or the addition of any new category, is a matter that, firstly, will be the subject of advice by the National Occupational Licensing Authority. Its primary role is to provide policy advice to the ministerial council on all of those matters. The National Occupational Licensing Authority is required to consult—obviously it has its internal groups, the occupational licensing groups that represent industry and consumers and so on—so there is a consultation process. They also have an obligation, as far as is reasonable, to consult with stakeholders outside of that. They have to produce an annual report that discloses their policy matters and their level of consultation. All of that process has to happen. Any proposal for new regulation has to satisfy COAG's best practice regulation requirements, which means there has to be a consultation RIS on the proposal that has to be publicly released. There has to be a consideration, then, of submissions; there has to be a decision RIS that has to explain the rationale and what is to be decided. That all has to be public and it has to be published on the COAG website, and it will be published on the National Occupational Licensing Authority website. That whole process goes through a very public consultation process. In terms of the actual voting of the ministerial council; as far as I understand it, no, they do not disclose the arrangements. However, if Western Australia is to adopt, then the minister clearly has to say so and the regulations have to be tabled in the Western Australian Parliament; they are disallowable, and there is a discussion about that, so there is an accountability process there and it cannot be done secretly. The minister, himself, is answerable to Parliament—well, in this case it would be the Treasurer—in relation to his participation in the ministerial council. The ministerial council as a body does not have as many processes as many others do, and the Ministerial Council for Consumer Affairs is a very different process, but I guess what I am saying is that there are a whole lot of steps along the way that have to be complied with and that are set out in the act and are also set out in the IGA, that mean that that process is pretty public. The voting arrangements is probably the one bit that is not mandated anywhere, but indeed for most ministerial councils it is not mandated, but they disclose.

The CHAIRMAN: Does the law not require a voting majority or prescription of an occupation?

[12.10 pm]

Mr Newcombe: It requires the ministerial council to reach a decision. In the developmental stages, the ministerial council must be unanimous—up to the point it is introduced, it must be unanimous. Beyond that, it is for the ministerial council to determine its voting arrangement. But the act and the IGA also provide that you cannot introduce a new requirement in a state unless that state has voted for it. Basically, the ministerial council itself can determine its voting arrangements. My experience with the ministerial council is that it very rarely votes; it is a matter of discussion and consensus in the general sense of the word. The ministerial council process is not constrained by legislation.

The CHAIRMAN: So there is no requirement for communiqués from ministerial council meetings to be published, not even under the COAG best standard?

Mr Newcombe: Not that I am aware of. There is a COAG compendium on ministerial councils. I would have to go back and reflect on that; it is not my bedtime reading, I have to say.

The CHAIRMAN: I thought that would have been necessary for the legislation coming up!

Mr Newcombe: I do know from experience that a number do not. Best practice probably suggests that you do. One of the other things is that this is new work for the Ministerial Council for Federal Financial Relations. One expects that they will adapt to it. Certainly, the original proposal is that it is for the introductory period that this will vest with the Ministerial Council for Federal Financial Relations; it might move. There was initially some consideration that this would have gone to MCCA, but ultimately the decision was made it would go to the Ministerial Council for Federal Financial Relations. Part of that reasoning is because not all of this fits within the jurisdiction of consumer agencies around Australia, and the other is that there is a number of financial issues that are very closely tied to COAG reform. It may not stay with that ministerial council. As I say, I think they might have to just have a look at the way they operate, because this is new business for them.

The CHAIRMAN: I have been asked to have a five-minute break, but if lunch is available I wonder whether we might take a lunch break, given that we have been going for a couple of hours now. I think we will break for 20 minutes and resume at 12.30 pm.

Proceedings suspended from 12.12 to 12.40 pm

The CHAIRMAN: We will resume the meeting. I indicated that some of these questions will relate to the flow chart. I point that out to members, as they might want to have that handy.

Mr Newcombe: I have another chart that I might circulate—you can never have enough charts; that is my view! The reason for the second chart is that the chart you were provided with relates to the system when national licensing is in place; this one that I knocked up this morning is to try to explain the current arrangements, the interim arrangements, so it might be of some relevance to you.

Hon LINDA SAVAGE: So this is the current situation?

Mr Newcombe: This is the arrangement before things are settled; for example, there is no national licensing authority. The chart that you have is what the system will look like when it is functioning. As I say, you will appreciate that a lot of the functions are vested in the national licensing authority, which is not yet up and running, so there are some interim arrangements to deal with it.

Hon LINDA SAVAGE: So that is a future flow chart?

The CHAIRMAN: I do not know that it is, because it says the first flow chart is the pre-parliamentary legislation-making process.

Mr Newcombe: That means before it gets to the state Parliament, but this system does not apply until the national licensing authority is established. This is the process that you go through before any legislation gets to Parliament; it is just the prep work.

The CHAIRMAN: Clause 95 provides that the ministerial council is responsible for the effective implementation and operation of the licensing scheme. Clause 160 provides that the ministerial council to make the national regulations. Ministerial council is defined in clause 4 as being the council nominated by COAG and published on its website as a responsible council. I have a series of questions. Why is the ministerial council not specified in the national law?

Mr Newcombe: The answer to that is that ministerial councils vary over time. There is, in fact, a separate COAG review of ministerial councils which is underway at the moment. Two things: firstly, as I indicated before the break, there was some difference of opinion as to which ministerial council it would be. A decision was then made that it would be the Ministerial Council for Federal Financial Relations on an interim basis; it is not a firm decision by COAG or the constituent

jurisdictions that it will stay there. If you name ministerial councils in legislation, it is very inflexible because of the way in which they change. It is a COAG-related project. Every government is a participant member of COAG. Projects are allocated to ministerial councils all the time by administrative and political decisions, so it is not at all inconsistent with that and it is not inconsistent with a lot of other legislation that provides for ministerial councils but does not say which one it will be.

The CHAIRMAN: On what basis is it considered appropriate for Parliament to designate its law-making privileges to an unidentified body?

Mr Newcombe: That is a policy question. It is very clear that the decision has been made. I really cannot answer that any more.

The CHAIRMAN: And it will be made independently by the Parliament in due course.

Mr Newcombe: Yes.

The CHAIRMAN: The department has advised the committee that the current ministerial council is the Ministerial Council for Federal Financial Relations. What is the web address for the nomination of that particular ministerial council by COAG? We cannot find it.

Mr Newcombe: I do not know.

The CHAIRMAN: Would you take that as question on notice number 2?

Mr Newcombe: Certainly. I do not think there is one. Are you specifically looking for a web address or something that identifies COAG has appointed that?

The CHAIRMAN: Yes, the COAG communiqué.

Mr Newcombe: I believe it is in a communiqué. That will not be in place yet because the legislation is not formally in place. I believe the nomination will ultimately be the New South Wales parliamentary website, but I will confirm that for you.

The CHAIRMAN: Which ministerial council will make regulations subsequent to 1 July 2013?

Mr Newcombe: I do not know.

The CHAIRMAN: The bill was introduced to the WA Parliament by the then Minister for Commerce, yet the Treasurer is the WA ministerial council representative who will make decisions in respect of the national law and the national regulations. Again, I have a series of questions. Which WA minister is responsible to the WA Parliament for the national law and licensing scheme?

Mr Newcombe: There will be two—in fact, potentially there are three, because the Premier is a representative on COAG and it is a COAG project as well. The Treasurer will be responsible for the decision making within the ministerial council. At the moment, the assumption is that the minister with day-to-day responsibility will be the Minister for Commerce, but as you know, acts are not committed to ministers until after they are passed and it has a matter for the government to decide. But, as this scheme currently operates, all of the occupations that are to be licensed fall within the portfolio of the Minister for Commerce. On a day-to-day basis, in terms of its administration—the actual legislation and so on—it would be the Minister for Commerce, but the Treasurer does have accountability for the ministerial council.

The CHAIRMAN: To which minister does the Department of Commerce currently report in respect of the licensing scheme?

Mr Newcombe: It is an interesting arrangement. We report to our minister, the Minister for Commerce. However, we also report at an officer level to Treasury. Treasury was the lead agency in this process. They negotiated the IGA, for example. We were not involved in the negotiation process early on. A decision was made along the way that really the bulk of this was in our portfolio and we were seen as having the capacity to implement it, so we were allocated the task of

implementing legislation. Treasury represents the state in relation to the BRCWG and COAG, and it is also the representative on the national licensing steering committee. We report at a ministerial level only to our minister, but we also report at an officer level to Treasury, which is responsible for advising its minister about progress on implementing the COAG decision.

The CHAIRMAN: Exactly where in that arrangement does the decision making lie?

Mr Newcombe: The policy decision making at the moment is with our minister, but there is obviously consultation with the Treasurer as well. If central agencies have any particular point of view, that is obviously factored into the advice that is provided. Our minister has taken the matter to cabinet—or, our ministers, because it has been three.

The CHAIRMAN: To which minister will the Department of Commerce report in respect of its delegated functions under the licensing law?

Mr Newcombe: We will continue to report to the Minister for Commerce in relation to the discharge of all of our functions. As far as the minister is concerned, obviously in relation to the actually delivery of the delegated functions, we will be reporting to the national licensing authority as well, because we will be the delegate, but we will be reporting to our minister.

The CHAIRMAN: In relation to that reporting arrangement that you have indicated that you report to your minister, you also report to the Department of Treasury at an officer level. I am a bit unclear as to what happens if the Department of Treasury, after receiving your report, provide different advice to the Treasurer when the Treasurer is the ministerial representative from WA on the ministerial council.

Mr Newcombe: That is a political matter to sort out; that is not uncommon. There are plenty of examples where matters are dealt with in ministerial councils and responsibility rests in other ministers' officers and it is a matter of consultation. Government sorts those things out. We have got that at the moment with credit. Although there has been referral of power for credit, there are still a lot of day-to-day issues on credit policy. We deal with that in the Department of Commerce; the minister responsible is the Attorney General through the Ministerial Council for Corporations. I have been involved in many examples because ministerial councils do not necessarily cover the arrangement. That is the same with our own Ministerial Council for Consumer Affairs, which often deals with matters that impact on other ministers; it is a matter to consult with and determine the position. If there is a major issue of policy, it would normally be taken to cabinet and the matter would be resolved at a political level.

[12.50 pm]

But, overall, it is matter for ministers to resolve if there is a dispute or a difference of opinion. Obviously at an officer level, their intention is to avoid a dispute.

The CHAIRMAN: Is there a memorandum of understanding between the department and Treasury about your respective roles in relation to the scheme?

Mr Newcombe: No.

The CHAIRMAN: Is there intended to be one?

Mr Newcombe: Not at this stage, no. Again, we see it administratively as a relatively straightforward process, not one that is out of the ordinary. It is something to consider, but at the moment, no, there has been no discussion on the need for one.

The CHAIRMAN: Will the Department of Commerce be responsible to the National Occupational Licensing Authority in respect of the exercise of delegated functions under the national law?

Mr Newcombe: Yes, as a delegate. The national licensing authority's prime responsibility is to set licensing policy. This model is delegated administration. So the idea is that the actual licensing functions will continue to be delivered by the people who do it now. But one of the problems you

have, obviously, in a national scheme if you delegate is that people start running their own game, and uniformity is lost. The primary role of the national licensing authority is to ensure that the law is applied uniformly throughout Australia, that the policies are met, and that individual regulators do not start introducing new little requirements and so on. So we will be required to ensure, as all delegates will be, that we are acting in accordance with the delegation.

The CHAIRMAN: And you do not see any capacity for there to be a conflict between your responsibility to the National Occupational Licensing Authority and your responsibility and accountability to the state minister?

Mr Newcombe: There is always the potential for that to occur. But I do not see that as unusual or incapable of any resolution. I think most of those issues are relatively straightforward. We know what our state obligations are. We are still subject to all of the state law. The fact that we are an administering authority and administering on behalf of another agency is not unusual. For example, we administer consumer affairs laws in the Cocos and Christmas Islands. We do that under an arrangement with the commonwealth government. There are processes in place. We know what we are answerable for. Also, there are mechanisms for dealing with a dispute. If we have an issue, the first port of call obviously would be with the national licensing authority itself to identify that there is a matter of concern that it should look at. But, ultimately, that is what the ministerial council is there for. The ministerial council has our minister on it. He is quite capable of presenting the position of the Western Australian government. As I say, you can never say never. I think things will pop up. But I also expect that there will be very clear guidance in relation to the delegations from the national licensing authority and ourselves. So while I said in relation to Treasury that there will not be a memorandum of understanding, I expect that there will be a very clear delineation of responsibilities in relation to our delegated functions once the national licensing authority is up and running.

The CHAIRMAN: Clause 5 of the licensing IGA states that the licensing board has reporting obligations to the ministerial council. But clause 99 of the national law imposes on the licensing authority an obligation to report. What is the reason for the alteration in respect of the entity that must report?

Mr Newcombe: Well, I actually do not think there is a distinction in the entity. Clause 104 of the bill provides that the licensing authority's affairs are controlled by the board. This is a very common thing. A licensing authority is a corporate entity. Of itself, it does not have a mind. It is the board that controls the day-to-day operations of the licensing board. In controlling its affairs, the board has to have regard to all the other provision of the act. So it has to make sure that all the functions of the licensing authority are carried out. So I do not think it has any import at all. It is quite natural to establish that a corporate authority has some board that actually is responsible for the day-to-day administration; and the authority reports through the board.

The CHAIRMAN: Is the licensing board intended to be independent of the ministerial council?

Mr Newcombe: Well, it is independent to the extent that it is subject to the ministerial council's directions that are set out in the act. The ministerial council can issue directions on policy to the licensing authority, but it cannot issue directions on specific matters. It is an independent statutory authority. The board is responsible for the independence of that statutory authority, but it is subject to some areas where the ministerial council can direct it. So it is always answerable to the ministerial council.

The CHAIRMAN: Can you identify the provisions of the licensing law that provide for resolution of a circumstance when the licensing board and the ministerial council provide different instructions to the licensing authority?

Mr Newcombe: It is just not going to work in that way. The directions to the licensing authority will be through the board. The board is responsible under the act for managing the affairs of the

authority. So, directions from the ministerial council will be to the board, and the board will implement those directions that have been made to the authority.

The CHAIRMAN: What will happen if the board does not agree with a ministerial council direction?

Mr Newcombe: Well, if it is a lawful direction from the ministerial council, the board has no choice; the board must implement it. The board then is faced with the standard provisions: if people do not like it and they have objected, they can resign. But if it is a lawful direction from the ministerial council, they must respond to it.

The CHAIRMAN: Clause 103 provides for appointment of members to the licensing board by the ministerial council. But clause 107(1)(c) provides that a member may be removed by the chairperson of the ministerial council alone. What is the rationale for the power to remove a board member being conferred on the chairperson alone?

Mr Newcombe: I think the view was that there might be circumstances in which it was appropriate to act. There are relatively constrained provisions for a removal. I think it is just a practical administrative matter. The chairperson is ultimately answerable to the ministerial council as well. I think it has, again, just been a policy decision about the way in which the ministerial council itself would operate. One would assume, obviously, in a practical sense that the chairperson would be involved in consultation with the ministerial council. But clearly that is not an essential requirement of the act.

The CHAIRMAN: The supporting material suggests the separation of the policy functions, which are to be retained by the authority, from the licensing, investigation and enforcement functions, which are to be delegated back to the state and territory entities by the licensing scheme. Will the Department of Commerce retain any policy advice function in relation to the licensing of occupations?

Mr Newcombe: In the broader context, yes. Well, it is twofold, in fact, as to how much we have and how much Treasury has. But the state will retain a policy role, because clearly there is advice to the Western Australian government in terms of its participation in the ministerial council. The normal procedure for these matters is that when proposals are put up to ministerial councils, they come back to the state for commentary. We would expect to be providing advice to the minister and to Treasury on policy proposals that go to the ministerial council. That is consistent, as I say with matters like credit now, where the formal function for credit has actually been referred to the commonwealth government, but we still provide advice to the state government on policy proposals at a national level—advice as to whether we support it or otherwise. We also engage in local stakeholder comment to ensure that local stakeholder issues are put forward at a national level.

[1.00 pm]

The formal responsibility will vest with the national licensing authority, which provides advice to the ministerial council, but members of the ministerial council are not prohibited from taking advice from any other source, and we would expect to be providing advice to the government in terms of its contribution. There are also other things, such as the impact of licensing decisions—for example, the question about whether a licensing requirement would be extended to Western Australia. We would very much expect to be involved in that, if it was something within our portfolio. It might be somewhere else, but we would very much expect to be involved in that process.

The CHAIRMAN: The flowchart provided by the department on 27 January 2011 in respect of the pre-parliamentary legislation-making process does not refer to the national occupation licensing scheme steering committee or the COAG business regulation and competition working group, both of which are interested in the licensing scheme. To which entities on the chart do these entities report, and in respect of what matters?

Mr Newcombe: Okay, this is the reason for the second chart. The national licensing task force will disappear once the system is in place, and it will be replaced by the national licensing authority. I will try my best to give you an idea. As I indicated, there are two. The one that I have issued today is what I call the national licensing pre-commencement policy process. This is what has been underway for the last 12 to 18 months, to develop the system for its implementation. You will see down the bottom that there are three groups that are responsible. There is a national licensing legislation committee, which is chaired by the national licensing task force, which appears in this box. The national licensing task force is made up of officers from the commonwealth Department of the Prime Minister and Cabinet. That is the group that has been charged with getting this in place. It chairs the legislation committee, and there are various members from the states and territories on that; I represent Western Australia on that legislation committee. There are interim occupational advisory committees; as you will note, these are going to be established permanently, but there is one established for every one of the first wave occupations. The chairs of those groups are independent people that have been engaged to do the chairing, and the membership is made up of industry people where it is relevant, union people, some consumer representatives and some regulator reps. The Department of Commerce is represented on each of the relevant ones, and I am the representative on the real estate one. Then there are interim regulator working groups that have been established. These are chaired by the national licensing task force, and these are just groups of regulators that get together to look at proposals. What happens for licensing is that the national licensing task force has overall responsibility. It will first come to the interim regulator working group to talk to regulators about proposals because of the experience involved. The interim regulator working group will maybe make some recommendations about how the licences should look for, let us say, real estate. It will provide advice to the interim occupational advisory committee, which is where industry and everybody else then has a go. It then formulates recommendations that go through the task force to the national licensing steering committee, which is the primary policy decision-making body before you get to the ministerial council. That national licensing steering committee is made up of representatives of Treasury and the Department of the Premier and Cabinet.

That is how the policy has been developed, and that communiqué that I gave you on property is a consequence of that lower-level process. There was an interim regulator working group working on it, providing advice to the occupational advisory committee and also some advice from the legislation committee, going to some recommendations that have now been made in the form of a communiqué from the task force. The BRCWG is involved—for Hansard, that is the Business Regulation and Competition Working Group—and that is a working group reporting to the Council of Australian Governments, and it is responsible for a particular stream of the Council of Australian Governments' reforms in, as its name suggests, business and competition regulation. It does not have a direct role in the way in which the licensing scheme is developed, but it sets the parameters. The intergovernmental agreement has been signed off, and it has a monitoring role to ensure that the scheme is developed in accordance with the IGA and on time lines. The states received payments according to the implementation of the scheme on the time lines. Both the ministerial council and the steering committee effectively report through to them on progress and there are regular reports at BRCWG meetings on progress, and then there is an annual report to the BRCWG and COAG on the implementation of the range of projects. Over on the other side there is that one box that refers to the participating jurisdictions and gives the example of us as a state. Although we are not formally connected in that process, once these decisions are made, we have to implement them, so we have responsibility for developing the legislation based on the model we contributed to the policy development, and each jurisdiction reports to COAG on its overall progress on all of the matters. So that is as clear as mud! These things always look very complicated, but in practice they are not actually that difficult. As I say, this is done as an interim because we do not have a national licensing authority, which will take over responsibility for policy development and will see the legislation committee disappear, because that will be the responsibility of the national licensing

authority. The interim occupational advisory committees will become permanent and have a statutory role, and the interim regulators' working group will disappear as well, because it will become the responsibility of the national licensing authority. The national licensing task force will disappear because it will be subsumed by the national licensing authority.

The CHAIRMAN: I am just looking at the flowchart that deals with the national occupational licensing scheme pre-parliamentary legislation making process, provided by the department on 27 January. Gary, would you please explain how the decision-making process set out in this flowchart will result in a less bureaucratic process than currently applies to occupational licensing, and the cost savings for licences?

Mr Newcombe: Do I detect some cynicism there? If I mapped out the current system, you might be equally shocked! I think part of your consideration is coloured by the fact that we have put before you a chart that shows what it is going to look like, and we have not mapped out the current arrangements. Any national system is going to be more complicated, because you have to take into account all those national considerations that we do not necessarily have to do at a state level. Any national system is a trade-off between the state being able to do exactly what it wants to do within some constraints and, by doing so, creating costs in the national economy; or, going to a national system that compromises that but tries to ensure uniformity and the benefits that come from people being able to operate around Australia. If I were to say what is more complicated, we are going to have to deal with a national occupational licensing authority that we do not know yet; it has not yet been appointed and we do not know the individuals involved. There will be obviously have to be some issues about the relationship, particularly as delegates, so we are going to have to put some effort into the delegation process. We do not have to do that at the moment; that is a slight complication, but at the moment we are dealing with a whole pile of independent boards within the Department of Commerce. There are lots of different boards and politics that have to be dealt with in terms of developing legislation now; that is almost as complicated as this. Equally, this sets out the occupational licensing advisory committee as a more formal consultation process. We have a very complex consultation process now in developing legislation. We even have to come to parliamentary committees on legislation!

We also report to ministers and minister's offices. That is the replacement here. We have the delightfully named HOTS committee, but within consumer protection on legislation we often report on matters that are relevant to us as well. We have a ministerial council instead of a minister and cabinet, but ministers and cabinets can be pretty complex as well. It is a bureaucratic process, hence it is bureaucratic. It is so because it has to answer to a range of politics that we have to deal with and a lot of interests of stakeholders who are very complicated and very vocal. The local domestic process is pretty complicated as it is; we try to make it look smoother. This is more complicated because it is uniform, but it is no more complex than most other uniform schemes that have operated.

[1.10 pm]

Now, if I come to cost, I cannot tell you that there are going to be cost savings in this scheme at all. What the scheme does introduce is a new layer of bureaucracy in the National Occupational Licensing Authority, which we do not pay for at the moment. The scheme is to be paid for by participants; that is, jurisdictions will have to pay for the operation of this scheme. Western Australia to date has made a contribution to the operating of the scheme for its introduction—the policy development work and so on—and there is money in a national fund which has been drawn down. Ongoing, as you know, the legislation provides for a fund to be established. The states and territories will contribute to that. The question is: where are the states going to get that money from? At the moment, the state funds its licensing regimes from licence revenue—not totally. We do not have full cost recovery across the field but the general policy is to move towards full cost recovery. If that continues, one would expect licence fees would go up, not down. There is likely to be a loss

of revenue to the state in any case because a number of people who currently pay licence fees in Western Australia will no longer be required to, because they live in other states and they fly in. Western Australia is more affected by that than anybody else, except the ACT, where we have a lot of fly in, fly out tradespeople. We have a number in the electrical field in particular who will cease to pay licence revenue in Western Australia. Licence revenue probably will drop because of the number of people who have to pay for a licence. The costs will probably go up, and therefore the government will be faced with a decision as to how it funds that.

The CHAIRMAN: How much money has the state to date contributed to the scheme?

Mr Newcombe: I knew you would ask me that question. We have contributed as at the 2010-11 year $504 000. What has happened is the National Licensing Steering Committee undertook some preliminary costings to try to work out what it would be. Their costings were in 2009–10, $2 million total; 2010–11, $5 million; 2011–12, $13.2 million; and 2012–13, $13.2 million. Those costs, it has been agreed, will be shared on a per capita basis. WA is paying just over 10 per cent of those costs. The costs beyond then are to be determined by the ministerial council once the full costs of running the scheme are known. There are costs that are unknown at the moment; for example, the IT system has not yet been resolved.

The CHAIRMAN: Gary, just to clarify, has the money paid to date been paid by the Department of Commerce budget or out of Treasury?

Mr Newcombe: It has been paid out of Treasury—effectively paid out of COAG progress payments. The commonwealth has paid us money for doing COAG projects and we have put some of that money back. But the position going forward is, firstly, those COAG payments cease. Certainly, we have provided advice that this will require resolution of how the costing is to be met.

The CHAIRMAN: In terms of—I cannot remember the date; I think it was 2013—once the scheme is in place, the ministerial council will reconsider the contribution by each of the jurisdictions. Does that mean that it may even reconsider the formula on which that payment is made?

Mr Newcombe: Technically, that is possible. That is very unlikely. It is very traditional that it is a per capita contribution by jurisdiction. That is very common. If governments agree, they could agree to change it, but I would be very surprised if that was the case.

The CHAIRMAN: Looking at the same flow chart, there is a function of identification of need for regulatory change right at the bottom of the flow chart. Stakeholders are not listed amongst those that might identify a need. What entity is the stakeholder to approach with a suggestion for improvement of the licensing law?

Mr Newcombe: There is a range: firstly, the jurisdictional regulator—that is, us. Just to diverge slightly on this, Minister Buswell, when he was Minister for Commerce, established an interim property advisory committee to provide industry advice on this, as well as board reforms. That has been in place for some time. As part of board reforms that went through as the Acts Amendment (Fair Trading) Bill, which the committee looked at, that committee becomes permanent and one of its tasks will be to provide advice on national licensing as it relates to the property area. There is a formalised process established there. But the Department of Commerce will be constantly engaged with its stakeholder groups. Equally, the occupational licensing advisory committees will have representatives of the peak industry bodies on them, so anybody who is a member of an industry group would have the opportunity of lobbying their industry association to have those views put forward at the occupational licensing group. Equally, of course, every stakeholder has the opportunity to lobby the minister, which people do very, very regularly, about all sorts of licensing issues. I think there actually are plenty of mechanisms. What I would say is this chart, which we provided, has come from the commonwealth and their focus is more on the sort of technical side of things. We would see the primary point of contact actually is us, because we will be delivering the service, so we are the interface. If things are not going terribly well, we are the ones who are going

to have to cop the criticism and try to explain that to the national licensing body. We have got a real vested interest in trying to work with groups and make sure that they put forward proposals. But, equally, if people are proposing new regulation, historically what they do is they go straight to the minister. That has been around—as I mentioned, tilers and others have been arguing their case for a very, very long time.

The CHAIRMAN: The next couple of questions look at the role of the commonwealth in this scheme. Given the advice that the commonwealth is a member of the ministerial council, the MCFFR, that decisions in respect of the licensing law must be unanimous until July 2013 and that the effect of clause 162 is that the commonwealth may veto prescription of a licensed occupation, what is the basis for the statement in the explanatory memorandum of the bill that —

> It is important to note that no Commonwealth legislation is involved in these reforms. The Commonwealth does not directly regulate the licensing of occupations. This is a matter for the States and Territories.

Then, also having a look at the COAG agreement, the commonwealth has no legislative role in the establishment of the new system.

Mr Newcombe: Yes. That is absolutely true; there is no commonwealth legislation involved in this scheme. They are participants in the decision-making process, but there is no commonwealth legislation involved in the licensing arrangement. There is no commonwealth licensing law. There is no "Occupational Licensing Law (Commonwealth)". They do not have legislation, so I argue that that statement is true. They are participants in the decision-making process.

The CHAIRMAN: Do you know what the rationale was in providing the commonwealth with a veto?

Mr Newcombe: Sorry; which provision are you referring to when you are talking about the veto?

The CHAIRMAN: The commonwealth may veto prescription of a licensed occupation.

Mr Newcombe: Only as a voting member of the ministerial council. Which provision are you exactly referring to?

The CHAIRMAN: It is clause 162.

Mr Newcombe: Yes?

The CHAIRMAN: I am just curious as to why the commonwealth is being given a power of veto.

Mr Newcombe: Where is the veto power in 162?

[1.20 pm]

The CHAIRMAN: The veto comes up in that there needs to be a unanimous agreement of the ministerial council, and that the commonwealth, if it were not to agree, could veto a decision being made that the states and the other jurisdictions want to proceed with.

Mr Newcombe: In that case you will need to look at 162(4). Clause 162(3) says that if you unanimously agree, then you can introduce it, but if you cannot get unanimous—if a majority of the members of the ministerial council agree, then the majority can introduce it, and the ones that do not agree do not have to. So, the commonwealth does not have a right of veto. The commonwealth is not actually going to be introducing the legislation anyway, so if the commonwealth votes against it, but there is a majority in favour, then it can all proceed. And, if the commonwealth voted against it and was the only one, then, you know, everybody could proceed. So, it is entirely up to the states to decide; I would not agree that that includes the right of veto.

The CHAIRMAN: Just having a look at clause 139, which authorises disclosure of information to a jurisdiction or regulator or another commonwealth state or territory entity, does the licensing law authorise prescription of the commonwealth entity as a jurisdictional regulator?

Mr Newcombe: No, because the commonwealth is not a participating jurisdiction within the definition of a participating jurisdiction. The question is, if you are asking, "Does this allow the disclosure of information to the commonwealth?" the answer is yes. But, it would not be as a jurisdictional regulator, it would be to a commonwealth entity under 139(b), and that is deliberately intended, because we currently have the capacity to disclose information to other regulators. I mean, the people like the Australian Securities and Investments Commission, Australian Competition and Consumer Commission, the Federal Police, the bankruptcy commissioner, and we have got a classic example here: the state used to regulate finance brokers, ASIC now regulates finance brokers. There are many issues that could come up in this area, because finance brokers are very tightly related to land valuation and real estate. There are many issues that could come up to a licensing regulator that need to be disclosed to ASIC. The act says that it must be within the functions of ASIC, if they are going to get it, but if it did not have it, you would go back to the silo arrangement, where states would know something that is really important and you are saying you cannot provide it to the commonwealth because you do not have the authority.

The CHAIRMAN: Just having a look now at clause 48: what is the rationale for the authorisation in clause 48 for description of contravention of an act or regulation of the commonwealth and failure to pay a fee or another amount required to be paid under a law of the commonwealth as a basis for disciplinary action against a licensee under the licensing law?

Mr Newcombe: Well, again, regulation of the field is split between states and the commonwealth, so the commonwealth regulates bankruptcy, corporate insolvency—the Commonwealth Criminal Code covers a whole range of offences. So, there are many offences that were committed under commonwealth law, which would be directly relevant to a person's carrying out of a licensed activity. Bankruptcy is the classic one, but also under corporations law. So, if you did not have these provisions, again, there could be a massive failure by licensed person to comply with commonwealth law, which is directly relevant, but you could not take any disciplinary action against them, which would seem to be extraordinary. Again, it reinforces this old silo arrangement. So, the point of that is to ensure that there is not that silo; that where there is a relevant commonwealth offence you are able to take account of that. Whilst I think all people are rather bemused by the fact that you can take disciplinary action for failing to pay fees of any sort, nonetheless, the fees are important to staying licensed or doing other things, and again under commonwealth act, there may be requirements that you have commonwealth licences that are necessary or relevant for your state-based activities, and if you have not got those, you could be subject to disciplinary action.

The CHAIRMAN: So, the commonwealth can indirectly regulate the licensing of occupation?

Mr Newcombe: No, not really. I mean, the commonwealth can directly regulate occupations through its commonwealth laws, because they affect everybody. This requires a vote by the ministerial council, not the commonwealth. So, it requires a determination by the whole ministerial council as to whether it is an appropriate provision to prescribe. So, it is not the commonwealth acting alone. So, again, the commonwealth is participating in the decision-making process, but it is not the decider and I do not believe it can regulate standing alone.

The CHAIRMAN: Clause 143 provides for payment into the authority fund moneys appropriated or directed by the commonwealth. Does the licensing law permit moneys to be paid from the fund to the commonwealth?

Mr Newcombe: Absolutely, if that is an appropriate payment, and there are many grounds on which there might be. You will notice also that the commonwealth can pay into that fund under 143. But, two immediate examples are the secondment of staff, which is most likely to happen, the National Occupational Licensing Authority will probably second staff, so the payment of salaries for those seconded staff. Equally, the National Occupational Licensing Authority might rent premises off the commonwealth or might engage the commonwealth to provide services. So, as

long as it is a lawful amount, then, absolutely, they can pay anybody. That fund is just the operating fund of the National Occupational Licensing Authority, so has to pay its debts, and those debts could be to the commonwealth, legitimately.

The CHAIRMAN: So, there is no capacity for the commonwealth simply to direct the authority to pay funds to consolidated revenue or the commonwealth?

Mr Newcombe: No, because, again, the commonwealth alone cannot direct.

The CHAIRMAN: Now, would you briefly explain the role of the commonwealth in the licensing scheme?

Mr Newcombe: I think that the flowcharts indicate—I mean, the commonwealth initially has taken a lead role through the National Licensing Taskforce in setting up the scheme. Because it is a COAG project, there was a view that they were resourced to do it and, to be honest, the commonwealth offered the funding and the people to do it, so I think that the states were quite happy for that to happen. So, they have been heavily involved in the initial development of the policy, with a lot of input from state/territory and stakeholders. So, they are involved in that process; going forward, they will be simply participants in the scheme. They will be participants through the ministerial council, but they will not be implementers in terms of legislation and regulations; it remains a state-based scheme in that regard. The commonwealth will have an overriding interest as well through the COAG participation, because it is seen as one of the major reforms. So, it will continue through that role, but really it will just be a participant at a policy level.

The CHAIRMAN: The supporting material suggests that while the MCCA is working on a proposal to harmonise regulation of conduct of occupational licensees, regulation of conduct will be left to the various jurisdictions. On what criteria will the matter be determined to be one of conduct, as opposed to discipline?

Mr Newcombe: Well, the disciplinary provisions are those that are set out in the act relating to a person's performance in regard to their licence. So, that is again: Have they maintained their licence? Have they maintained their qualifications, the experience and the insurance? Anything that is directly attached to their licence. But, when we talk about conduct, it is their obligations around the day-to-day way in which they run their business, which is not necessarily connected to their licence. So, a classic example for real estate and others is the trust account operation, what you must do in terms of keeping your trust account, recording your trails, monitoring transactions, all of that. It is not connected to the licence. A breach of that might, which is why this act ties into other laws, but that is, a sort of, conduct thing. There is a question about what processes you have for control of your day-to-day business, all of those sorts of things, are conduct related. So the real test is: is it tied to the actual licence, the qualification for the licence, the maintenance of the licence and the doing of work that the licence enables? But other than that, it is conduct.

The CHAIRMAN: So there is no capacity for a person to find themselves in the position where they are in contravention of state conduct regulation, and also in contravention of grounds that would constitute disciplinary action under the licensing law?

[1.30 pm]

Mr Newcombe: Absolutely. It is intended that that would be the case because that is what happens now. It is all combined. I am sorry for using this example because it looks as if I am picking on real estate agents but if you breach the trust account requirements, that should be absolutely relevant to whether you keep a licence. In this case the two are being separated under two different acts. Discipline will still primarily remain our responsibility in one case as a delegate and in one case primarily. Absolutely, that was a relevant consideration.

The CHAIRMAN: You mentioned that the conduct would be regulated. Would that be regulated under regulations or under acts; and, if so, under what acts?

Mr Newcombe: Regulation under acts will continue. For the moment the Real Estate and Business Agents Act will continue and the Land Valuers Licensing Act will continue. All of them will continue. They regulate the conduct. As I indicated before, we need a consequential act, which Andrew and Dean are working on, to take out of the licensing provisions but leave the conduct provisions. The intention is very much that it will remain statute based.

Mr Lee: Including the subsidiary legislation under our act; that is, the real estate regulations, the real estate agents code of conduct and so on.

The CHAIRMAN: Clause 6 of the applications provisions of the bill provides that various state accountability, transparency and interpretation laws will either not apply to the Occupational Licensing National Law (WA) or will only apply to the extent functions are being performed by a state entity. State or territory entity is defined in clause 5 of the licensing law. I will not read the definition but you have it there. What functions of the licensing authority will be delegated to the Department of Commerce?

Mr Newcombe: I will refer to my notes because there has been some discussion of this in the decision making rules. I will give you a list. The model that is proposed is a delegated model but the legislation is consistent with a centralised scheme as well. The intention to date is that the national licensing authority will keep policy. Indeed, it cannot delegate its policy function. I refer you to page 39 of the decision making regulation impact statement. It sets out what is contemplated. The following functions will be delegated: licence issuing and renewal; compliance enforcement and investigation; disciplinary arrangements and their review; appeal mechanisms; maintaining a jurisdictional licence register; consumer remedy processes; consumer complaints handling; and education and information dissemination. In a nutshell, we will continue to do pretty much everything that we do now as the jurisdictional regulator but we will be doing it in accordance with common policy procedures that will be set by the national licensing authority. From a stakeholder point of view, there will almost be no change. They will basically report to the same address and deal with the same people.

The CHAIRMAN: Will any functions of the licensing authority be delegated to any other state entity?

Mr Newcombe: This is a decision of the national licensing authority, which is not yet established. It is not currently intended because, as I indicated, all of the occupations are currently within the Department of Commerce. Our working assumption is that we would request and obtain a delegation to the director general of the Department of Commerce. The bill provides that power can be subdelegated so that the director general would subdelegate the powers to the relevant licensing authorities. For example, in the Department of Commerce the Commissioner for Consumer Protection is the licensing authority, or will be from 1 July, and the licensing authority for real estate settlement and conveyancing. At the moment we have a Builders Registration Board. There are a range of entities that are the day-to-day regulator. I would expect one delegation to Commerce and then some subdelegation, but at the moment because we have taken out land transport and maritime there is no agency outside the Department of Commerce that is involved in the administration of these schemes. Equally, departments do not stay put all that long so if there was any restructuring, we would have to take account of that.

The CHAIRMAN: Is the rationale for the power to subdelegate because you have these various other bodies that do the day-to-day activities?

Mr Newcombe: Absolutely. In every state there are a range of complications about the regulation. There is a view that it is preferable that one person is answerable overall at a state level. In this case, it would be the director general but the director general can delegate in his capacity of managing the department. If you went straight down to the lowest level possible, the senior management in the department would potentially be cut out of that process, which would not be very good and a range of different approaches might be taken within the department that are not effective. The

subdelegation is unusual but it is a very effective way of ensuring an appropriate level of state involvement and state accountability. The director general reports to the minister very directly, but at the same time, there are adequate controls over who is the delegate.

The CHAIRMAN: What is the rationale for exclusion of the Public Sector Management Act 1994?

Mr Newcombe: This is for the national licensing authority. If we did not exclude it, the national licensing authority would be subject to eight Public Sector Management Acts because the national licensing authority is created under an act of each state and territory, although the bill says for legal purposes it is one entity. If you did not do that, you would be answerable to the Public Sector Management Act or its equivalent in every single jurisdiction. That is just untenable.

The delegates will still be answerable. We are not exempted from the Public Sector Management Act by this bill. We are still bound by it but the national licensing authority itself is not and there are provisions in the bill that deal with staffing. This same argument applies to the auditing and so on. Again, if you did not exclude it, you would be subject to eight different regimes.

The CHAIRMAN: What law will govern the department officers performing functions delegated under the licensing law?

Mr Newcombe: The Public Sector Management Act.

The CHAIRMAN: It has been put to the committee that the licensing authority and delegated state entities will both be involved in collecting and recording information for the purposes of the licensing law but the licensing law does not provide any clear direction as to which records will be governed by the State Records Act and which records will be governed by the commonwealth Archives Act. How will application of the particular legislation governing particular records be determined?

Mr Newcombe: This is an issue that is not just restricted to the state Archives Act because both the Privacy Act and the Freedom of Information Act are in the same boat. The reason the commonwealth legislation was chosen was again that they have to be subject to some, but which ones will it be? You cannot have people subject to every single state and territory. There was a bit of a reaction from stakeholders in applying the Victorian law because the view was that it was not all Victorian legislation and this is going to be a Victorian takeover. There was some reaction to it.

Hon LIZ BEHJAT: You would not like that!

Mr Newcombe: Well understood. The provisions of the legislation provide that the commonwealth legislation applies to the system as it is administered by the national licensing authorities but not by the delegates. Wherever it is administered by the national licensing authority, the relevant bit of the commonwealth legislation will apply. Does this potentially create some practical issues? It might from time to time but none of these are impossible to deal with. It is a day-to-day management responsibility. The national licensing authority will be pretty clear in what it is doing. Its primary responsibility is the national register and publishing the national register so wherever you are, you can find out who is registered. That will very clearly be one of their functions. Most of the day-to-day work will rest with us because of the scope of the functions that are delegated. Any record that we have will be covered by the state Archives Act. If there are some areas that are not quite clear—doubtless something will pop up—that is the job of management to sort out. They have people to go to—the state archives people and the commonwealth archives people—for advice on it. Primarily, that would be for the national licensing authority to sort out as the key office holder. Our position would be pretty clear. The starting point would be that if we have the record, it is state legislation.

[1.40 pm]

The CHAIRMAN: But if the state legislation is creating the national licensing authority, then would it not be the case that the state records act would apply?

Mr Newcombe: Well, it would be, except if we go to the archives provision —

The CHAIRMAN: I think it is section 140.

Mr Newcombe: Clause 141 says —

> … the Archives Act does not apply to the national licensing system to the extent that functions are being exercised under this Law by a State or Territory entity.

So, the reality is it applies to the functions as they are being discharged by the national licensing authority. That is why I say if the functions are delegated to us, the records will be captured by clause 141(2) and that will mean that they are subject to the state records legislation.

The CHAIRMAN: Okay, given that there is to be a national register of licences but that licences are issued by state entities and investigations and prosecutions are undertaken and disciplinary and offence proceedings determined by state entities, which freedom of information act will apply to documents held by state entities in respect of the licensing law?

Mr Newcombe: Well, again, clause 137 provides that the commonwealth FOI act will apply to the national licensing system and the operations of the national licensing authority, but will not apply to the functions of the jurisdictional regulators, so the state freedom of information act will apply as it does now to the functions which we are discharging.

The CHAIRMAN: It will be very confusing for people lodging the FOI.

Mr Newcombe: No, I do not think so, because the reality is the obligation is on the organisation to sort that out. We would have a responsibility to transfer the FOI application if it was believed that it was a national licensing authority matter.

The CHAIRMAN: Where does that responsibility —

Mr Newcombe: That is under state FOI legislation, so if we receive —

The CHAIRMAN: But it only applies to a state body.

Mr Newcombe: Yes, but NOLA is also a state body. It is established under state legislation, so the commonwealth FOI legislation applies to NOLA as it is issuing, but what I am saying is the state freedom of information act applies to us. So if we get a freedom of information application and we form the view that it is not captured, it is our obligation to advise the applicant, so the applicant would then be advised that it is covered by the commonwealth Freedom of Information Act. I do not think it is necessarily confusing. Again, there are areas where a piece of information might potentially be captured by both, but that happens again now where states have commonwealth documents; they are dealing with the commonwealth over a range of things. Again, I gave an example of where we deliver functions to the Indian Ocean Territories on behalf of the commonwealth. Elements of that are subject to the commonwealth Freedom of Information Act because it is a commonwealth function, but we are also bound because we have documents and within the meaning of the state FOI act it is our act, so these are not things that we are not used to dealing with.

Hon LIZ BEHJAT: Are you saying, though, on the FOI thing, that if a person makes an application to you as a state body and it is NOLA that should be dealing with it, you would then inform them of that and they would then have to make a second application to NOLA?

Mr Newcombe: No, we would transfer the application.

Hon LIZ BEHJAT: You would transfer that.

Mr Newcombe: If there were fees involved—is that the question?—we would not take a fee for ours, because we are not delivering anything, so there might be a fee but it would only be one.

The CHAIRMAN: So, Gary, are you saying that it will not be necessary for a person to make an application under both freedom of information acts, state and commonwealth?

Mr Newcombe: Well, in certain circumstances it might be, depending on the scope of the information which they wish to obtain, so I cannot tell you that. But what I would imagine is that the bulk of the information will be available under one or the other because of the nature of the functions which are being discharged. This is just my general experience about FOI; it is largely about finding the background for why something has happened to an individual, and in most circumstances that will relate to the functions that have been delegated to the state level, because we will be the administrator of the system. However, if a person wanted to know that and then also, for example, wanted to know the background to the policy development of a position, they may well have to apply under two—they may well, yes.

Hon LIZ BEHJAT: And they do not bottle your experience and hand it out to people to use!

Mr Newcombe: Well, having dealt with FOI in my past —

The CHAIRMAN: Moving along, clauses 135(3) and 136(3) and (4) are Henry VIII clauses authorising modification of commonwealth privacy and FOI acts for the purposes of the national law. Submissions made to the committee expressed concern at the proposal that the privacy and freedom of information standards applicable to the licensing law are not expressed in the primary legislation but are left to the discretion of the ministerial council. Which provisions of the commonwealth Privacy Act will require modification, and what is the rationale for each modification?

Mr Newcombe: Gee, you found that provision; I am surprised. "I do not know" is the answer. They will be developed through the national regulations. There has been no work done on that at the moment; it is a matter that needs to be developed as part of the regulations, so that is in this year, again. It is part of that whole scope of detail that needs to be developed by regulation. That is my first answer: I do not know, there is advice being sought on that, but I cannot answer the question. As to why it is so, and why the Henry VIII clauses have been included, it is a policy decision.

The CHAIRMAN: I suppose your answer to the following questions will be the same: which provisions of the commonwealth Freedom of Information Act will require modification, and what is the rationale for each of the modifications?

Mr Newcombe: You are correct, it is the same; I do not know and the work has not yet been done.

The CHAIRMAN: What I continue to struggle with is why the modifications are not effected through the provisions of the licensing law, and why they are continually being left to regulation, given the substance of the modifications.

Mr Newcombe: Look, as I say, I think in another context I knew you would be concerned about this and I am not being flippant when I say it is a policy decision. As I indicated to you, the IGA was something which we did not have any involvement with and you will see this act very closely replicates the IGA. The IGA is quite detailed in terms of the way in which the act will be constructed. So the intention all along was that this would be framework legislation with detail provided by regulations. As I have said to you as well, it is the new national model. The health regulation bill, which came to this committee, was the first example of that. I know you had an interesting time with that bill, but what I can say to you is that it represents the model. It is the model that is proposed by the national parliamentary counsel's committee, and has been endorsed at political levels as the model for dealing with national schemes. The general argument is that with national schemes, if you are requiring legislation, it is very difficult to get legislation through eight Parliaments in any form of timely manner, and very complicated, so that to be efficient and effective and obtain the advantages of a national scheme, it is appropriate to put more detail into regulations than would be normal. That is my potted summary of the rationale, but I cannot advance it any more to tell you right, wrong or indifferent.

The CHAIRMAN: What is the rationale for exclusion of application of the Auditor General Act 2006 and the Financial Management Act 2006 from the licensing law?

Mr Newcombe: Again, as I said before, if they were not excluded because the national licensing authority is a creature of statute in every jurisdiction, it would be subject to the Auditor General's act in every jurisdiction and separate financial management legislation. So the act itself sets out provisions in relation to financial controls, and you will see those in part 9, clauses 142 onwards; clause 146 sets out financial management duties and clause 147 sets out annual reporting duties, which includes the obligation to have financial statements audited and for those financial statements to be in the annual report, which must be tabled in every state and territory, and the provision for the national regulations to require Australian accounting standards to be met. I think it is a practical response to this issue that if you are establishing a national body, in this case cooperatively rather than the commonwealth just setting it up, then you have two options: you leave that authority subject to eight different laws, or you make a decision as to one common standard. In this case, the common standard, rather than applying any individual one, has been to say that there will be some provisions in the bill and some detail to be sorted by the ministerial council.

[1.50 pm]

The CHAIRMAN: Clause 5 provides that amendment of the primary legislation is to be made by way of order made by the Governor. Is there any rationale for this proposal beyond that provided for in the equivalent clause in the Fair Trading Bill 2010?

Mr Newcombe: No, and I think as you will have seen foreshadowed in Minister Moore's second reading speech, the government intention is to delete clause 5.

The CHAIRMAN: Just having a look at clause 136, which provides for national regulations to be published in New South Wales, and clause 8, which provides for WA to disallow particular national regulations, what provisions does the bill make for publication of the national regulations as they apply in WA?

Mr Newcombe: It does not make any. The national model was very much around this idea that, in fact, the regulations would only be disallowable if a majority of jurisdictions disallowed it. That was a matter that, from day one, we indicated was not going to be successful in Western Australia. But the model legislation is developed around a particular proposal, and that involves publication in New South Wales. The practical arrangement will be that the Department of Commerce will publish the regulations. The hope, of course, is that they will actually be identical to the national regulations; any divergence is a matter that is going to have to be looked at very closely. If there is no divergence, then we will just link to the national publication, but if there is any variation, the department will publish them. My expectation, and our advice, will be that the national licensing authority will separately do so.

The CHAIRMAN: I am just concerned that there is not going to be anything in the bill that sets out how the regulations in WA are going to be published, and I think that is necessary.

Mr Newcombe: Okay.

The CHAIRMAN: I am just wondering if the department could have a look at that and perhaps provide some advice to the committee as to where that might most appropriately be placed in the bill, because I do not think we can leave it to a situation where you will do the right thing, because, Gary, while I accept that you will do the right thing, tomorrow you may move on to bigger and better things, and I do not know if your replacement will do the right thing.

Mr Newcombe: Look, I do not think there is any problem with that.

The CHAIRMAN: It is one of those things you just cannot leave to chance, and I think it really needs to be embedded in the legislation.

Mr Newcombe: I think the application provisions could probably include that. Certainly we discussed the matter with parliamentary counsel; they will not be published under the normal

processes, so we have made the commitment that we would do that, but I am happy to take that on board.

The CHAIRMAN: At the very least, I would have thought you would probably need some provision in the act that excluded that provision in the national law as applying in WA.

Mr Newcombe: I think we might want both.

The CHAIRMAN: Yes.

Mr Newcombe: Because the reality is, there is one central point, and we would like to facilitate that and not discourage that. I think it might be just an addendum in application provisions that, in addition to the requirements of publication, either the department or the minister will arrange for the publication. As I say, hopefully there will not be a divergence.

The CHAIRMAN: Clause 8 does not apply section 42(4) of the Interpretation Act 1984, permitting the amendment or substitution of regulations. What is the rationale for not applying this section to the national law?

Mr Newcombe: I do not know how this will fly, but I will tell you the reason. It is pleasing to note that South Australia is going to adopt the same arrangement for disallowance, as, I believe, is the Northern Territory, and possibly the ACT, to ensure that state Parliaments can disallow the regulations. The difficulty with section 42(4) is that it enables, during that process, the amendment or substitution or creation of a new regulation, which can be done quite quickly, because, in fact, it can be done through just that simple process. This is not meant to be a reflection on Parliament at all when I say this, but because they are national regulations, they have to be extremely complex in terms of the interaction. Any amendments to those regulations that take us outside the scope can do two things: they can make us a non-participating jurisdiction if they go to a certain extent; or they can have the potential for creating very significant difficulties for occupations that, all of a sudden, have to try to comply with something in this state. The movement for disallowance could produce a number of things: firstly, the disallowance might identify a major failing that, in fact, all the other jurisdictions would agree to, so the motion for disallowance should be then taken back and discussed within the national system and they would say, "In WA they have identified this problem; you really need to fix it", and everybody else might agree, even though the regulations have gone through. There is that need to have a discussion about it. Secondly, there might be a major concern, but it might be one that the other jurisdictions are not prepared to accept. Then we have a consideration as to what the impact is going to be, and is that going to make us a non-participating jurisdiction and is it going to have a significant impact on occupations. Again, I think it is something that needs to be taken away and talked about. It might be a very insignificant matter that can be accommodated, but, equally, it might be an insignificant matter that might require a separate state regulation; something that we might need to fix up.

The position is that it would be preferable for disallowance to go forward, if necessary, and the ultimate power to completely disallow it, but that to have amendments or substitutions done in a short space of time, without the benefit of the full consultation process that has taken you there, and because these are intricately involved in a whole range of national things, that it would be better not to have that substitution or amendment take place. If there was a major concern, either the disallowance is flagged and they are withdrawn because everybody thinks it is a good idea and they need to fix it; or if that cannot be resolved, Parliament proceeds with the disallowance and it is taken away completely. But trying to add to a national scheme at a local level, without consultation with all of the parties, could, potentially, be very damaging, and the outcome could be achieved without doing that. That is the rationale for it.

The CHAIRMAN: Yes, but the rationale could actually result in a situation where the disallowance, rather than some minor substitution or amendment, actually creates a bigger problem in the interim than the substitution would.

Mr Newcombe: Well, two things for that: you will not know without the discussion.

The CHAIRMAN: Yes, but one would expect that the minister would have that advice for the debate in Parliament, and be able to present that advice in Parliament, which he would be required to do on a disallowance motion, in any event.

Mr Newcombe: Yes. I guess what I am saying is, I do not think you would get full discussion in time for that to be done. The mere moving of a disallowance motion is enough to ensure that the national scheme has to deal with this issue, because disallowance of a regulation in one jurisdiction is going to be a significant matter, potentially terminating the scheme. Just by virtue of giving the disallowance, you do not necessarily have to carry that through. As you know, you can move the disallowance motion and there might be a decision—"Yes, okay this has identified a problem"—and then action can be done to ensure that the response is fully coordinated and considered and —

The CHAIRMAN: That will not be able to be achieved within the disallowance time period.

Mr Newcombe: Well, no —

The CHAIRMAN: If you are saying a minister is unlikely to be able to produce a full argument against substitution within the time frame, well then it is unlikely that the national authority is going to have an opportunity to consider, in all the other jurisdictions, the issue and come back with a solution to prevent the disallowance. What will actually happen is that the WA Parliament will be told, "Well, yes, in theory you have a power to disallow; but if you disallow, everything will burn and the sky will fall in, so you can't actually exercise that power."

Mr Newcombe: That is going to happen anyway, depending on what you are moving. I mean, the amendment would be the same arrangement, the scope of it.

The CHAIRMAN: Not necessarily. I think if you retain that power to amend or substitute, you actually may be able to avoid all the fire and brimstone because it may just be something very minor that does not actually threaten the whole national scheme, but deals with whatever the problem is that has been identified.

Mr Newcombe: I agree that that is one potential; I think there are plenty of others. No-one is going to die in a ditch over this, but I think there are very significant potential problems with that.

The CHAIRMAN: I am just conscious of the time. I indicated to the committee that we would break at two o'clock for a short time, for the committee to meet in private to consider how much longer we want to deliberate today. Given that we are entering another section, I might just take this opportunity to adjourn the hearing for five minutes, and we will resume the hearing at two o'clock, at which time I will be able to report back on the committee's deliberations with respect to that. Before you go, Gary, would you like to make a submission to the committee in terms of your preference, as to whether you would like to continue today; and, if so, for how long?

Mr Newcombe: I think as you probably know, I am happy to keep going. It is easier for me because I have the whole day blocked out; the rest of the week is a bit tricky, but I will just adjust to whatever you want.

The CHAIRMAN: Thank you very much.

Proceedings suspended from 2.00 to 2.17 pm

The CHAIRMAN: Clause 7 of the bill provides that for the purposes of clause 13—issuing an injunction in the event of proposed or continuing contravention of the licensing law—each of the Supreme Court, Magistrates Court and State Administrative Tribunal is a relevant tribunal or court. What is the rationale for providing a range of venues from which an injunction may be sought?

Mr Newcombe: It is actually not providing a range of venues. The issue is that clause 13 provides for injunctions. It just says that you must do so from a relevant tribunal or court. The definition of "relevant tribunal or court" covers a range of things, such as where hearings might be for

disciplinary matters and so on. Included within that is SAT, the Magistrates Court and the Supreme Court. But in terms of injunctions, SAT can only issue injunctions in relation to matters that are currently before it, such as disciplinary matters. The normal procedure is that all injunction applications go to the Supreme Court. So clause 13 does not provide for a whole variety of people who can issue injunctions. It just says that when you want to get an injunction, you have to apply to the relevant tribunal or court. In Western Australia, "relevant tribunal or court" is a group of things, but for injunctions it is narrowed down to the Supreme Court, unless the matter is already in SAT. That is consistent with current process.

The CHAIRMAN: You may not know the answer to this, because it is just outside this legislation, I think, but where is it specified that the State Administrative Tribunal can only issue injunctions dealing with disciplinary matters?

Mr Newcombe: The injunction provision in SAT is restricted to matters that are before SAT. I do not have the wording of the provision in front of me, but SAT is constrained to certain matters. It does not have general jurisdiction in relation to injunctions.

The CHAIRMAN: The explanatory memorandum states —

> It is currently intended that the State Administrative Tribunal will be declared a 'disciplinary body' by regulations made under this provision.

Given that clause 4 defines a "disciplinary body" to mean, among other things, a tribunal or court of a participating jurisdiction, why is it necessary to make a regulation declaring SAT a disciplinary body?

Mr Newcombe: "Disciplinary body" is defined in clause 4 of the national law as a tribunal or court. We want to make it clear that it is SAT that is the disciplinary body. It is not the courts. We want to make it clear that SAT is the appropriate body—which it is now. So we want to continue with the current arrangement.

The CHAIRMAN: So the intention is to make a regulation declaring SAT?

Mr Newcombe: Yes. Clause 9(2) of the application provisions says that a person or body to be a disciplinary body for the purposes of the definition can be declared in the regulations. It is intended to use clause 9(2) to declare SAT. The definition of "disciplinary body" talks also about another person or body. But the view is that in order to make it clear that it is SAT that is the disciplinary body, we would declare that.

Hon LIZ BEHJAT: Then why would you not put that in the definition?

Mr Newcombe: Well, because it might change. There might be other circumstances. At the moment, all of these fall within SAT. It is expected for WA that that will be the case. Again, we are following the model. That is not the case in other jurisdictions; the disciplinary bodies are quite varied in other jurisdictions. So we have tried to stay as close as possible to the model legislation. It is capable of being dealt with either by just relying on the definition, or, to make it clearer, by setting out a regulation. But, either way, it does not change the arrangement that we currently have.

The CHAIRMAN: Is there any ambiguity as to whether SAT will be declared a disciplinary body?

Mr Newcombe: No, not in this state.

The CHAIRMAN: So that is the clear intention?

Mr Newcombe: Absolutely. We have been consulting closely with SAT. Consumer Protection meets with the president of SAT at least twice a year, and we have been going through this. Equally, we have consulted with the chief magistrate about each of these provisions; and, yes, there is no intention of any variation.

[2.24 pm]

The CHAIRMAN: SAT currently performs other disciplinary functions under other legislation, doesn't it?

Mr Newcombe: Yes, it does. SAT is the primary disciplinary body for licensing in this state. It may not be the initial disciplinary body, but it is the review body for all of the occupations affected by national licensing.

The CHAIRMAN: Clause 9(2)(c) provides for state regulations declaring a law to be a corresponding prior act for the purposes of section 21 of the licensing law. Which WA acts will be declared as corresponding prior acts?

Mr Newcombe: The concept of corresponding prior act is to capture the acts that people are currently licensed under. Once the new scheme is in place, though, you can capture any activity and disciplinary action that has been dealt with there. This depends obviously as we move through the two waves, but the intention initially is it will be the Real Estate and Business Agents Act 1978; Water Services Licensing Act 1995, which is plumbers and gas fitters; and Electricity Act 1945, which is electricians. Stage 2 would be the Land Valuers Licensing Act 1978 and the Settlement Agents Act 1981. For building it is a little uncertain because, as you are aware, there is a whole building licensing reform package that is currently in Parliament, so they will replace all of the existing building legislation, so we will not know unless and until they are passed as to which of the acts it would be, whether it is the existing building legislation or it is the revised ones. That will include the regulations, not only the acts, as well.

The CHAIRMAN: Why must this declaration be made by way of regulation rather than application provisions contained in the bill?

Mr Newcombe: We could do it for a bunch, but equally that example of the building ones is one that we do not know what they are. You could put them in. They would have to be amended again, and again we might be looking at trying to get a bill through to amend three lines of the national licensing act. I can tell you, whilst it might not seem an issue, the smaller it is, the harder it is to get a spot on the legislative program. If you wanted to, you could have those amended for the first wave, but we could not enumerate the second wave.

The CHAIRMAN: Gary, frequently this committee considers omnibus bills, which are bills that amend a number of bills, and they usually contain minor amendments, which is why they can be included in the omnibus bill. There is always a capacity for a small amendment to be part of an omnibus bill.

Mr Newcombe: Do you know when the last one of those went through?

The CHAIRMAN: Yes, there is one currently before the Parliament.

Mr Newcombe: I am not trying to be facetious, but that option has been very, very limited in the last five years.

The CHAIRMAN: The point that I am making is that in the consideration of those omnibus bills this committee has often discovered errors where they propose to delete certain statutes. We have found that if they proceed with that deletion, there are going to be consequences which were not picked up, were unforeseen or they might have got something technically wrong in the provisions of the bill. My concern is if that sort of error occurs in a regulation, it may not be that easily picked up or it may result in some other problems during the period of disallowance before the regulation is disallowed. The institute of Parliament is there to make laws and to amend laws. This is not directed at you—I am just getting on my soapbox—but the reality is that parliamentary counsel and government agencies are moving more and more to try to remove anything from Parliament and deal with it all in regulations. It is not something that the Parliament looks favourably upon. It has a whole lot of potential issues associated with it, which are continually downplayed. I just put that on the record. I am not persuaded by the argument that it takes a long time to get an amendment bill through Parliament, because at the end of the day the government controls the parliamentary agenda

and if they consider a matter of sufficient importance, they just raise it up on the parliamentary business agenda and it can be dealt with quite quickly.

A bill of that nature would not actually take that much time for the Parliament to consider in any event. I take your answer, and I will just move on once I have found where I am on my question sheet.

Does the declaration of a corresponding prior act in any other jurisdiction have potential to render persons currently operating under a valid occupational licence in WA unable to obtain a licence under the licensing law? I am happy for you to take that question on notice, because it does actually require some consideration of legislation of other jurisdictions. I think it is probably a bit unfair to expect you to have the answer to that question.

[2.30 pm]

Mr Newcombe: If I can, I will have a think about it. I do have a response, but I think I would prefer to think about it. There are a range of "what-ifs" built into that, but it would be useful if we went through.

The CHAIRMAN: We will take that as number 3, and there are two other components to that question: if not, how is this outcome avoided; and, if so, what is the rationale? Susan will email that question through to you after the hearing today.

Clause 9(2)(d) provides that state regulations may declare part 3, division 4, or part 3, division 5 apply to licences for licensed occupations. However, clauses 51 and 57 of the licensing law provide that the licensing authority can only commence disciplinary proceedings if an act of the participating jurisdiction declares the relevant divisions to apply to participating jurisdictions. The explanatory memorandum states that it is currently intended that part 3, division 5 be declared in regulations to apply in WA. This does not appear to meet the requirements of clause 57. Do you agree?

Mr Newcombe: The answer to that is that it is arguable, because it says "an act", but clause 9(2)(d) is part of an act and it does provide a process for the declaration, so the written advice we had was that it was nonetheless permissible because it is contained in an act—it is contained in this act itself—and that clause 57, whilst it provides that if an act of a participating jurisdiction has declared it, then a provision in the act enabling it to be declared by regulation satisfies that test. All I am saying is that we have had advice that that is okay.

The CHAIRMAN: Perhaps you could just explain to the committee the basis on which the department believes that the application of part 3, division 5, can be affected by way of regulation.

Mr Newcombe: We are not saying that. The reason for saying that is because clause 9(2)(d) says so, and that is an act, so it is another provision of the same act that clause 57 does not override. There is an argument that the two are inconsistent, but clause 9 is express.

The CHAIRMAN: What is the rationale for delegating the application of part 3, division 5, to the executive rather than dealing with this important matter by way of primary legislation?

Mr Newcombe: I think we have traversed that ground. Equally, that again would simply not be a die-in-the-ditch issue, if the committee was of the view that that should not be the case. It is not going to be of great concern.

The CHAIRMAN: Is it intended that part 3, division 5 will apply to some occupations, but not to others?

Mr Newcombe: No, the intention is that the show cause process will not apply, and we will go direct to the disciplinary tribunal for all of them.

The CHAIRMAN: Division 5 is not actually the show cause; it is the disciplinary proceedings before a tribunal or a court provision.

Mr Newcombe: Yes, that is right, but there are alternatives, and you choose the alternatives. You either use the show cause or you go to the disciplinary tribunal; you do not do both. You select which one is going to apply; whether it is part 3, division 4, or part 3, division 5. There are alternatives.

The CHAIRMAN: What is the rationale for having an alternative?

Mr Newcombe: Because this is model legislation, and some jurisdictions have show cause and were not prepared to move away from it. To sustain the model, the two options were made available to jurisdictions. Domestic criminal law and disciplinary policy is quite specific to jurisdictions; it was not seen as being absolutely fundamental to licensing, because it is taking it forward, and the view was that jurisdictions should be able to continue with the model that they had in place.

The CHAIRMAN: Okay, so the rationale for part 3, division 4 for the show cause provisions in the licensing law is due to the fact that some other jurisdictions have them and do not want to move away from them.

Mr Newcombe: That is correct.

The CHAIRMAN: Okay. Is it intended that the show cause provisions will apply in WA?

Mr Newcombe: No.

The CHAIRMAN: Why not?

Mr Newcombe: Because they are not seen as being very good. I can go through a range of reasons. Firstly, it adds significantly to party's costs, in that if a department is forming a view that it might take action against you, it has to tell you and you have to get advice; you might present all sorts of arguments and you might still end up in court. It is an extra process. It is a delay; the department cannot take action for a minimum of 14 days, and it is actually quite a bit longer, so it cannot take action in important cases. As a matter of prosecution policy, unless it is an absolutely urgent situation, anybody who you are going to take action against should always be given the opportunity to present their side of events, because if you do not do that and you proceed with the prosecution, you get absolutely hammered by the courts and the tribunals. People are always given an opportunity to provide evidence that explains their actions. The other information that is provided in the show cause process is always provided as part of the prosecution case in any case, so there are very few advantages. There is no evidence, not only in the consultation on this process, but in consultation on consumer protection law over the past 14 years. We have never been asked to introduce a show cause process by stakeholders in this state. There was no support for this when I conducted stakeholder consultation.

Hon LIZ BEHJAT: I am just a little bit confused. You are saying that we will not use show cause. Why, in clause 52(1), does it provide that the authority must give the licensee a notice under that section?

Mr Newcombe: It is covered by clause 51. That is the point; it is an option. Clause 51 gives you the option to use these provisions only if they have been declared as applicable, so we are not going to declare division 4.

The CHAIRMAN: The regulations will declare them.

Mr Newcombe: Division 4 is not going to apply in WA. You then go to the next part, which is division 5, clause 57, and beyond, which refers to taking matters to the tribunal or court.

Hon LIZ BEHJAT: So why have it in the legislation?

Mr Newcombe: As I say, the reason it is there is that it is very much a model bill.

The CHAIRMAN: Because there is a view in the world that the bills must be absolutely consistent as possible between jurisdictions, even though each jurisdiction is implementing —

Mr Newcombe: We think we can explain to people that those sections are optional and do not apply; I am not sure that that is too much to ask of people. The explanatory material —

The CHAIRMAN: There might be some people who might wonder why Parliament cannot just make up its mind about which process it prefers to implement in this jurisdiction.

Mr Newcombe: Because Parliament itself and the government might, in the future, change the position on show cause, and might want to use it.

The CHAIRMAN: They could then move an amendment to the law.

Mr Newcombe: Why do that when you have an option you can choose?

The CHAIRMAN: Okay. We have an additional question here: why does the application part of the bill not state that part 3, division 4, does not apply?

Mr Newcombe: Is that not the issue? We have just said that it is currently provided for by regulations, and the preference of the committee would be to have that provision in there. The answer is: the reason it is in there by regulation is because of the flexibility argument, and that is not one that is very persuasive to the committee.

The CHAIRMAN: The inclusion of an objective of worker safety in clause 3 of the national law has been criticised on the basis that it may result in regulations duplicative of, or in conflict with, more appropriate occupational health and safety legislation. The committee notes that clause 4(2)(c) of the licensing intergovernmental agreement provides that the national law is to comply with the principle that licensing arrangements do not duplicate legislative protections contained under other laws, in particular competition law, consumer protection law, or occupational health and safety law. Why is this caveat not replicated in the national law?

[2.40 pm]

Mr Newcombe: I do not think it is necessary would be the answer. The objective in the legislation simply makes worker safety one consideration to be taken into account when settling licensing policy. It is not a separate head of power. It does not give a head of power to make work safety laws.

The CHAIRMAN: Or regulations?

Mr Newcombe: Or regulations. It is not a head of power. That is what happens now. It would be very strange if you had any licensing legislation which did not say as part of it you should take account of consumer issues and work safety, because if you are talking about electrical and plumbing, you have to when you are setting the licensing laws—what is reasonable in the licensing law, is it consistent with principles of work safety and so on. It is a relevant consideration, but that is all it is. You could keep going. You could have the act saying that it does not apply to all sorts of things. The IGA also expressly says in clause 4.4 that it does not apply to employment issues, and so parties have expressly stated that. If there is any question of interpretation, you have access to the explanatory memorandum, and the IGA is extrinsic material to evidence the intention. As I say, it just does not give a head of power. There are some interest groups who have a particular line with that, but I just simply do not believe it is necessary. It is an appropriate, relevant consideration and that is all the act makes it.

The CHAIRMAN: Clause 3.5 of the licensing IGA provides for building and building-related occupations, maritime occupations and certain land transport occupations to be part of the licensing scheme. The explanatory memorandum to the bill advises that maritime occupations and certain land transport occupations have not been specified as licensed occupations in the licensing law due to considerations of other COAG initiatives. When is a decision likely to be made as to whether maritime occupations and land transport occupations will form part of the licensing scheme, or has that decision already been made?

Mr Newcombe: It has not formally been made. My hope is that it will be signed off at the COAG meeting, which is next week—appropriately, Valentine's Day. The decision, to all intents and purposes, has been made but COAG actually has not met as frequently as it was meeting so it has not been signed off. No-one is working on the principle that they will be included. There are quite complex, separate programs for the complete rewrite of licensing both those areas.

The CHAIRMAN: Why have building and building-related occupations not been specified as a licensed occupation in clause 4?

Mr Newcombe: This is the "e" bit. What has been left in expressly is the first wave. Now, I know, because I have had the advantage of the question, that there is some degree of cynicism about wave 2. But, again, I think all will be revealed at the next COAG meeting. That was the rationale. They decided that it would be more appropriate to expressly identify those with wave 1 because they were more advanced; there was a direct commitment to them. There has not been any wavering as far as I am aware from building. In fact, I would say to you two things: one of the major drivers of national licensing accelerating it was cyclone Larry in Queensland, when there was a massive amount of destruction and builders from Victoria and New South Wales went to Queensland and could not practise. They could not get licensed and it was a huge kerfuffle. The Howard government then really accelerated this, even though there was a whole lot of other stuff. We have just seen obviously the very same issue, and I believe that will actually be a stronger push and there is some suggestion that the commencement date could —

The CHAIRMAN: But this bill is not going to actually address that problem because they are not listed.

Mr Newcombe: No, but the regulations that are very flexible will enable that to be done without having to come back to Parliament.

The CHAIRMAN: But not within the time frame required by the poor people of Queensland.

Mr Newcombe: The bill would not do that either; in effect, you just slowed it down. But what I am saying is it will provide initiative, I think, for that. I think, if anything, it is likely that the COAG meeting will accelerate the commencement of the building wave, and it has been indicated that they might commence by 1 January 2013 rather than after July 2013. But I cannot guarantee you one way or tother.

The CHAIRMAN: I will restrain myself from getting back on my soapbox!

You may not know the answer to this, but I will ask it anyway, and feel free to advise whether it is outside your scope. How do the Building Bill 2010, the Building Services (Registration) Bill 2010 and the Building Services (Complaint Resolution and Administration) Bill 2010 currently before the Legislative Assembly relate to the proposed licensing of building and building-related occupations?

Mr Newcombe: Very generally, they relate very directly because they replace the state-based licensing regime for builders, establish the building commission model and, I believe, also provide for the licensing of building surveyors that are currently not licensed in Western Australia. That is a very long-term reform project that I think started under the previous Labor government and has been continued by the current government. It is progressing through Parliament. However, it would require amendment to comply with national licensing. The people involved are well aware of that. They are part of our department, although a different division than my own, but they are involved very closely in the discussion. They have looked at identifying the issues. I think it is fair to say the government is committed to pushing ahead with those important reforms and they see a lot of other things that are built in there that are not national licensing related and that it is appropriate to push ahead with the package as a whole. On the basis that national licensing at the last formal arrangement for building was July 2013, it was not appropriate to wait and so it will proceed. The government will have to make a judgement as to whether it is modified and what happens with the time frame. It is really just focused on the state-based system.

The CHAIRMAN: I will just ask this question for clarification, although I think you have already provided the answer. Are these bills that I have just mentioned part national law scheme and part not?

Mr Newcombe: No, they are state.

The CHAIRMAN: Clause 16(2)(a) provides that an application form for a licence must require an applicant to provide a declaration about their primary jurisdiction. What is the purpose of this requirement? I think you have covered this already.

Mr Newcombe: Yes. It is jurisdiction shopping because the fees will vary.

Hon LIZ BEHJAT: Explain how that would work, though, in terms of a national or even international company. Large real estate firms do not have a primary jurisdiction because they practise in every jurisdiction. Would they not, then, just choose to nominate the cheapest jurisdiction as their primary jurisdiction?

Mr Newcombe: The definition is principal place of business. It will be pretty unlikely—in fact, it will not be possible—to nominate all because the tests of principal place of business include things like where your head office is, where your board meets and all sorts of things like that, which will not be in eight jurisdictions. They will be required, with some criteria, to identify a principal place of business and they will have one. They could choose to move their principal place of business—that is certainly the case—and take advantage, but, really, I doubt the fees are going to be that much to warrant that sort of disruption.

The CHAIRMAN: Could you identify the provisions of the licensing law which actually impose the requirement that the application must be made in your primary jurisdiction?

Mr Newcombe: It is there somewhere but whether I can find it now is another matter.

The CHAIRMAN: Okay. Shall we take it as question on notice 4?

Mr Newcombe: If you like. I should know that, but I cannot find it.

The CHAIRMAN: You can come back to me. That is fine. I have been impressed by what you have done so far; do not worry. We will just take that as question on notice 4 and continue to proceed.

Is there any requirement to notify, in addition to the primary jurisdiction, any other jurisdictions that the person intends on operating in?

[2.50 pm] 2:49:24 PM

Mr Newcombe: Not as yet, but the expectations will be dealt in regulations. There are some practical considerations about enabling people to come and operate in different jurisdictions; they relate to compliance activity, access to fidelity funds and other things. That is a matter that has been identified—that we would look to have some means of saying, "We are licensed but, by the way, we are now operating in Western Australia". Exactly what that would be is not clear yet.

The CHAIRMAN: Gary, I actually think you have answered this next question, but I will ask it again so we have it clearly on the record. Clause 4 identifies and defines "primary jurisdiction" as the jurisdiction in which an individual's principal place of residence is located or the jurisdiction in which a corporation or partnership's principal place of business is located. What is meant by a corporation's principal place of business? Is this its registered office or its main business premises?

Mr Newcombe: A couple of things about this: the expectation is that, firstly, it will be a declaration, so it will be a self-assessment arrangement. The second is that the expectation is that there will be some correct criteria provided for determining it. But, in essence, the normal definition of "principal place of business" is a fairly complex one that looks at a range of things, and no, it is not necessarily a registered office. It is actually the principal place where they carry out business and that covers things like the work that they undertake; where, potentially, the majority of their

contracts are entered into; where they meet; and a whole range of criteria. The expectation is that the national licensing authority will identify some criteria, and you will have to say that you need these and that this will make it your principal place of business.

The CHAIRMAN: How is an applicant up for a licence to determine the primary jurisdiction, in the event that the principal place of business is overseas?

Mr Newcombe: Well, they will have a principal place of business in Australia nonetheless, if they are carrying on business in Australia, for the purpose of the definition. Their headquarters may be overseas, but that does not mean that they will not have a principal place of business in Australia. If they are carrying on business in Australia, they will be able to establish a principal place of business somewhere.

The CHAIRMAN: What if they are fly in, fly out workers, such as we have—workers from Asia flying in and flying out, and conducting business? How are they going to meet the requirements of clause 16(2)(a)?

Mr Newcombe: Are you talking about individuals?

The CHAIRMAN: Yes.

Mr Newcombe: There is bit of an issue. I do not think that it is huge. Obviously, for general fly in, fly out, which is around Australia, the position will be that you will have a principal place of residence. Now, it might be, depending on how your fly, in fly out arrangements are constructed, that it is actually where you are living at the work site, because that might be where you do all your actual living. But, for somebody who does not meet that, but is nonetheless carrying out work here, and the majority of these things would not be something that they would fly in to Australia and work for an hour on and then fly out for—they would be people working on construction sites, mine sites, or other things—then there is nothing to prevent that site being their principal place of residence in Australia. It will be their principal place of residence. So, "principal place of residence" does not mean that it is your only place of residence, nor does it mean that you are there for any particular period of time, but if you are residing in Australia, you will have a principal place of residence.

The CHAIRMAN: The committee has noted a different application in terms of where the definition of some terms lie. Is it possible for you to explain the rationale for defining some terms that are used in one clause in the bill under clause 4, but also in other instances, where the definition only applies to the clause and the definition actually appears in the clause? We are just a bit curious as to why that different application has been provided. Normally, the definition is upfront because the term appears a number of times throughout the bill, and when it is specific to a clause only, then it appears in that clause.

Mr Newcombe: Sorry, are you saying that you believe that there are defined terms that only appear once, but are in the front?

The CHAIRMAN: Yes.

Mr Newcombe: Do you have an example?

The CHAIRMAN: Some of the definitions applicable only to clause 65 are found in clause 4—I think that is a relevant place—and others are actually defined in clause 65 itself, such as "home" and "public place", rather than in clause 4.

Mr Newcombe: Certainly, "home" and "public place" are only in clause 65. I will take your word that that relevant place is only in clause 65. It is certainly fundamental to clause 65.

The CHAIRMAN: Would you like to take this question on notice?

Mr Newcombe: I do not think it matters, it is just a drafting matter. I do not think I can give you any wonderful explanation for that. It is possible that at the time when the Parliamentary Counsel

was putting it together, the view was that the relevant place might have broader application, and it has turned out that it is only in one. I am not sure what turns on it, to be honest, wherever it might be. I do not think I will be able to explain that. If we find anything more I will let you know, but I do not think there is going to be any scientific explanation for that.

The CHAIRMAN: Current licensing requirements in respect of some occupations to be regulated by the licensing law are links to reward or other valuable consideration, not performance of work per se and, as an example, section 23 of the Land Valuers Licensing Act 1978. What is the rationale for clauses 9 and 10 linking the requirements for a licence to performance prescribed work rather than performance of work for reward?

Mr Newcombe: The view is that if something warrants a licence, it warrants a licence whether you do it for reward or whether you volunteer, so whilst land valuers might seem somewhat less relevant, you can imagine building. If you said it was linked to reward then I could volunteer as a builder and build a 20-storey building. The argument is that you need to license the conduct and it does not matter whether a person decides to do it for money or not. Whilst it is in some older provisions, it does not really reflect current views about this because equally, with land valuing, that is an issue. If somebody does it, not for reward, but other persons rely on that valuation, that is a significant problem. So, if that valuation is not being done by a qualified person, it is a problem; it should not matter whether they are being paid for it or not.

The CHAIRMAN: Does this link have potential to require persons undertaking their own work or charity work to obtain licences in circumstances where such licences are not currently required?

Mr Newcombe: It would, if they were not exempted, and certainly that is the intention. You have a classic example of owner–builder licensing; I am sure you have all dealt with owner–builder licensing! And so, that is a matter that is licensed and you would expect that to continue. But the provisions of clause 9 and so on include exemption provisions, and they are intended to capture the capacity of people in certain circumstances to do their own work, but not in many, like electrical and plumbing and so on, and also some exemptions that might capture charitable work as well. They are included within the scope of exemptions.

The CHAIRMAN: The explanatory memorandum to the bill states in respect of clause 10 —

> The intent of this provision is to capture employees of the body corporate or partnership rather than any sub-contractual arrangements that may exist. For example a builder who enters into a contract with a consumer to build a house and then subsequently sub-contracts to another body corporate, partnership or individual all of the plumbing and electrical work for the house is not required to hold either a plumbing or electrical licence in relation to the sub-contracted work.

Clause 10, however, provides that a body corporate or a partnership must not enter into a contract to carry out prescribed work unless the body corporate or the partnership holds a licence or is exempt. Explain how the advised intent is consistent with the requirement in clause 10 for a licence to enter into the head contract to carry out the prescribed work.

[3.00 pm]

Mr Newcombe: I will have to return to the explanatory memorandum.

The CHAIRMAN: It is on pages 24 and 25 of the EM. The EM appears to be saying that a builder who enters into a contract to build a house but then subcontracts the plumbing and electrical work for the house is not required to hold a plumbing or electrical licence. However, clause 10 appears to be saying that a body corporate or partnership must not enter into a contract to carry out prescribed work unless the body corporate or partnership holds a licence or is exempt. Therefore, a builder who is a body corporate cannot enter into a contract to build a house unless he has all the relevant licences.

Mr Newcombe: I think the argument is that it is not the case in which it has been subcontracted because there is an additional contract involved. The initial contract is to build the property as a builder. They must have a building licence for that. They might be entering into a contract with the clients to do the plumbing or electrical work. Those contracts are being entered into between the plumbing subcontractor, the electrical subcontractor and the builder. They are not with the consumer. In those circumstances, the subcontracting party has to have the appropriate licence.

The CHAIRMAN: I am a bit confused now because earlier today, in answer to another question, you indicated that some occupations are not licensed in WA and there is a view in some sectors that there does not need to be a licence because it can be caught by the builder's obligations to the consumer.

Mr Newcombe: Yes, but that is not a contract requirement. The builder's obligations under the licence include the responsibility for the building but they are not entering into a contract to do the electrical work or the plumbing work. They are entering into a building contract and they require a licence for building. The builder who has entered into that head contract in WA is liable to the Builders Registration Board for the way they carry out their functions as a builder and that includes supervisors and subcontractors. It does not include the technical liability for those subcontract contracts because, equally in WA, we do licence electricians and plumbers and so on so those subcontractors in WA are answerable to the Plumbers Licensing Board and the Electrical Licensing Board but if a tiler does the work for a builder, the whole building contract says things have to be provided and the building has to be complete. If there is a failure in the building, the builder could be answerable for that.

The CHAIRMAN: The builder is answerable for some failure by a tiler but not by an electrician.

Mr Newcombe: No. I am saying that they are not contracting to do the subcontracted work. The subcontracted work is a contract between the builder and the subcontractor.

The CHAIRMAN: Yes, but the builder would have a subcontract with the tiler as well.

Mr Newcombe: That is right. I said previously "under the arrangements we have at the moment". Under the arrangements we have at the moment there is no licensing of tilers so tilers are not subject to any regulation licensing arrangement. One of the arguments for saying that you do not need to licence every sub trade is that builders have a responsibility under our legislation for their final product, so they are answerable for the final product. When they contract, they are not contracting with the consumer; that is, they are not entering into a contract to carry out the prescribed work. They are contracted to carry out the prescribed work, which is building. A subset of that is separately licensed and they are subcontracting with the subcontractor of that licence.

The CHAIRMAN: I am not clear. Clause 10 requires a contract with the consumer.

Mr Newcombe: They have to carry out the work. It does not say "consumer" but when I contract with an electrical subcontractor's builder, I am not going to carry out the work; you are, so that is the contract. The contract is to carry out the work. If I cannot enter a contract to carry out prescribed work, as the builder, I am not entering a contract to carry out the prescribed work. You as the subcontractor, the electrician, are entering the contract to carry out the prescribed work.

The CHAIRMAN: But as a builder I am not entering into a contract to do the tiling either because I do not know how to do tiling.

Mr Lee: This is where prescribed work has an important function in the legislation. "Prescribed work" as defined in the regulations will describe what it means to do tiling work versus doing building work versus doing electrician work.

Mr Newcombe: One of the arguments as to why you do not have to introduce licensing of tilers in WA now under this scheme and you are comparing that against the new scheme is that if you look at the new scheme completely and let us say tilers are required to be licensed, there is no different

arrangement. As a builder, I am entering a contract with you to build you a house. I am not entering a contract with you to do the electrical work or the plumbing work. I am entering a contract with Andrew as the subcontractor.

The CHAIRMAN: But you might.

Mr Newcombe: If I do, I may well be caught but that is your choice.

The CHAIRMAN: Does not the head contract by necessary implication indicate that you are undertaking the electrical work whether you are doing it yourself or subcontracting it out to another person? You still entered into a contract to deliver the electrical and plumbing work as part of building a house.

Mr Newcombe: The argument is you are not entering the contract to carry out the work. That is the distinction. Some companies might choose to do that because they might employ in-house people and not subcontract and they would be required to comply.

The CHAIRMAN: Given that electrical work and plumbing work is going to be a prescribed work and a licence is required, do builders who are entering into building contracts need to specifically state in those building contracts that they are not personally going to undertake the electrical and plumbing work and therefore exclude —

Mr Newcombe: They need to make their own judgement about how they want to comply with the licence.

Mr Lee: That is a matter for them to decide, as it is now, how they describe —

Mr Newcombe: We should bear in mind that there is no difference now. If you are doing electrical and plumbing work, you need a licence in WA now. It is no different. It is a contract to carry out. That would be my distinction.

The CHAIRMAN: Your argument is that clause 10 only applies when the body corporate itself is actually physically carrying out the work.

Mr Newcombe: It is contracted to carry out that work, yes.

The CHAIRMAN: The committee has received submissions expressing concern that clauses 9, 10(2) and 14 operate so as to impose an obligation on an employee of an licensed employer or individual subcontractor to themselves obtain a licence in circumstances in which this is not currently required. Is this correct?

Mr Newcombe: Has anybody identified an example in their submissions to you?

The CHAIRMAN: Can we access that quickly enough?

Mr Newcombe: We have had no feedback to that effect.

The CHAIRMAN: An employee of a licensed employer carrying out plumbing work still needs to have a plumbing licence.

Mr Newcombe: Absolutely.

The CHAIRMAN: An individual subcontractor carrying out plumbing work needs to be licensed.

[3.10 pm]

Mr Newcombe: Absolutely.

The CHAIRMAN: I am not sure what the issue is. Just let us see if we can identify the submission.

Mr Newcombe: No, I mean, I would need to get an example, because the intention is that any person who is carrying out the work is licensed if they are an employee and they are doing it, otherwise you have got massive problems. Certainly, that is the intention and I am not aware that that is different to the current arrangement.

The CHAIRMAN: Does that have any implication for apprentices because they would not yet be licensed but the reality is that a lot of them would be carrying out work, would they not?

Mr Newcombe: Well, that is the capacity to deal with in terms of exemption regulations and so on for apprenticeships, yes. There are conditions that can be imposed on entire classes of licence, so you could have a condition to allow for apprentices to do work under supervision so, yes, it can cater for that. But in general, the position is that if you engage a company and they send somebody along, that person is competent to do that work.

Mr Lee: But, if I may, as for this bill requiring people who are not required to have a licence now to be licensed, we do not believe that is the case because the fundamental principle in the legislation is that if a jurisdiction such as Western Australia is not licensing an occupation at the moment, it is not required to do so merely because of the introduction of the national occupation licensing scheme. There would have to be an additional decision by government or governments to add a new occupation.

Mr Newcombe: Without disclosing the submission, has it come from a particular industry?

The CHAIRMAN: I am just having a look. I have a note here that was—actually I am not supposed to disclose submissions—from a legal body, a submission, raising concerns that the bill needs to deal clearly with the position of individuals who are carrying out prescribed work in the ordinary course of their employment by a licence.

Mr Newcombe: Well, they should be licensed. That is the intent, so it is not a concern to us.

The CHAIRMAN: Although I do think that it is an issue in relation to the apprenticeships.

Mr Newcombe: Well, as I say, yes, but that is certainly acknowledged; it is part of the training program. Obviously, the qualification process that sits into the licensing is directly tied in to the national training arrangements which provides for apprenticeships, so that whole training on the job is very much built in to the qualification process that sits underneath here, so this is very tied in to apprenticeships. So that issue is relatively easily dealt with and will be very publicly dealt with. Putting that to one side, in terms of individuals, yes, it is the intent that they should be licensed. I do not believe that is any different and in the absence of any example to the contrary, I would say that that is not correct.

The CHAIRMAN: Okay. The other component of the example I have got is that Corporations Law regulating conduct of a financial services business provides for exemptions for employees from the requirement to hold a licence under the act. But I would have thought that is a bit different to trades.

Mr Newcombe: My response is: so what?

The CHAIRMAN: Right, moving along, looking at clause 11(1)—sorry, I have just had pointed out that it is 10 past three and we need to move on. Rather than start this section, noting the time, I might just terminate the hearing at this point and thank you very much for your assistance to the committee. It is much appreciated and, as always, Gary, it is very considered and detailed and we are very grateful for that. I just confirm that Susan will email you with those questions on notice together with advising you of the date by which a response is needed, which would probably be sufficient for the next inquiry hearing date, which will be determined following consultation between the parties.

Mr Newcombe: I am wondering if out of that latter consultation some thought could be given to what additional extension might be required if the committee could not have a hearing on the following Wednesday, if that is possible, just so that we can —

The CHAIRMAN: Even with the hearing the following Wednesday —

Mr Newcombe: You think there is going to be an extension.

The CHAIRMAN: Well, there would need to be an extension because there is already a delay of a week, so I would be thinking that the end of March would be the earliest under those circumstances, but I need to check the parliamentary sitting weeks. If we go beyond a hearing next Wednesday due to your availability, I think we would be looking at a date into April, but we can provide some advice once we have had a chance to look at those dates. Thank you very much.

Mr Newcombe: Thank you.

Hearing concluded at 3.14 pm