THIRTY-EIGHTH PARLIAMENT

REPORT 52

STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW

REPORT ON THE HEALTH PRACTITIONER REGULATION NATIONAL LAW (WA) BILL 2010

Presented by Hon Adele Farina MLC (Chairman)

June 2010

STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW

Date first appointed:

17 August 2005

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

"**8. Uniform Legislation and Statutes Review Committee**

8.1 A *Uniform Legislation and Statutes Review Committee* is established.

8.2 The Committee consists of 4 Members.

8.3 The functions of the Committee are -

(a) to consider and report on Bills referred under SO 230A;

(b) of its own motion or on a reference from a Minister, to consider or review the development and formulation of any proposal or agreement whose implementation would require the enactment of legislation made subject to SO 230A;

(c) to examine the provisions of any instrument that the Commonwealth has acceded to, or proposes to accede to, that imposes an obligation on the Commonwealth to give effect to the provisions of the instrument as part of the municipal law of Australia;

(d) to review the form and content of the statute book;

(e) to inquire into and report on any proposal to reform existing law that may be referred by the House or a Minister; and

(f) to consider and report on any matter referred by the House or under SO 125A.

8.4 For a purpose relating to the performance of its functions, the Committee may consult with a like committee of a House of the Parliament of the Commonwealth, a state or a territory, and New Zealand and similarly, may participate in any conference or other meeting."

Members as at the time of this inquiry:

Hon Adele Farina MLC (Chairman)

Hon Nigel Hallett MLC (Deputy Chairman)

Hon Liz Behjat MLC

Hon Linda Savage MLC

Staff as at the time of this inquiry:

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Government Response

This Report is subject to Standing Order 337:

> *After tabling, the Clerk shall send a copy of a report recommending action by, or seeking a response from, the Government to the responsible Minister. The Leader of the Government or the Minister (if a Member of the Council) shall report the Government's response within 4 months.*

The four-month period commences on the date of tabling.

CONTENTS

FINDINGS AND RECOMMENDATIONS

1 Findings and Recommendations are grouped as they appear in the text at the page number indicated:

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Recommendation 1: The Committee recommends that clause 7 of the Health Practitioner Regulation National Law (WA) Bill 2010 be amended in the following manner:

Page 4, line 19 - To delete 'The' and insert -

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

Page 4, after line 27 - To insert -

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

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Recommendation 2: The Committee recommends that clause 245 of Schedule 1 of the Health Practitioner Regulation National Law (WA) Bill 2010 (that is, the Health Practitioner Regulation National Law) be amended in the following manner:

Page 233, after line 7 - To insert

(3) Despite section 7(1)(d) of the *Health Practitioner Regulation National Law (WA) Act 2010*, sections 41 and 42 of the *Interpretation Act 1984* apply to regulations made under subsection (1).

Page 233, lines 8-10 - To delete the lines

Page 233, lines 14-17 - To delete the lines

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Recommendation 3: The Committee recommends that clause 246 of Schedule 1 of the Health Practitioner Regulation National Law (WA) Bill 2010 (that is, the Health Practitioner Regulation National Law) be amended in the following manner:

Page 233, after line 18 - To insert

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

Page 233, lines 19-32 - To delete the lines

Page 234, lines 1-4 - To delete the lines

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Recommendation 4: The Committee recommends that clause 247 of Schedule 1 of the Health Practitioner Regulation National Law (WA) Bill 2010 be amended in the following manner:

Page 234, after line 5 - To insert

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

Page 234, lines 6-15 - To delete the lines

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Recommendation 5: The Committee recommends that the responsible Minister advise the Legislative Council of the reason(s) for there being no requirement, legislative or otherwise, in the National Law that the Ministerial Council, National Boards, State or Territory Boards and Advisory Council publish agendas and minutes of meetings on the website, in view of the guiding principle that the National Scheme is to operate in a transparent and accountable manner.

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Recommendation 6: The Committee recommends that the responsible Minister give an undertaking that he will raise at the next meeting of the Ministerial Council for its consideration the proposition that registration fees should be prescribed in National Law regulations, in addition to being published on National Board websites.

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Recommendation 7: The Committee recommends that the Health Practitioner Regulation National Law (WA) Bill 2010 be amended in the following manner:

Page 6, after line 21 - To insert

12A Tabling of review under COAG Agreement

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

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Recommendation 8: The Committee recommends that the responsible Minister advise the Legislative Council why the National Law provides for specialist recognition as well as endorsement of areas of practice, in what circumstances the National Scheme will consider one preferable to the other and the distinction between specialist recognition and endorsement of areas of practice.

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Recommendation 9: The Committee recommends that the responsible Minister advise the Legislative Council of the reasons for the Psychology Board of Australia's decision to prefer endorsement of areas of practice in favour of specialist recognition for the psychology profession.

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Recommendation 10: The Committee recommends that the responsible Minister advise the Legislative Council of the reasons for the Ministerial Council's decision to not approve community psychology and health psychology as endorsed areas of practice for the psychology profession.

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Recommendation 11: The Committee recommends that the responsible Minister advise the Legislative Council of the reasons for the Psychology Board of Australia's decision to establish a South Australian and Western Australian Board of the Psychology Board of Australia (Regional Board) rather than two separate State Boards and detail the expected cost savings, if any, from the establishment and operation of the Regional Board.

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Finding 1: The Committee finds that the Bill is consistent with the national scheme as agreed in the Intergovernmental Agreement.

CHAPTER 1
INTRODUCTION

REFERRAL

1.1 In January 2010 Hon Dr Kim Hames MLA, Minister for Health (**Minister for Health**), referred the Health Practitioner Regulation National Law (known as the **National Law**), which is the Schedule to the Health Practitioner Regulation National Law (WA) Bill 2010 (**Bill**), to the Committee for inquiry in order to expedite the passage of the Bill through Parliament when it was tabled.[1] The Committee did not receive a copy of the Bill at this time but was provided with a copy of the National Law contained in the *Health Practitioner Regulation National Law Act 2009* (Queensland) (**Queensland Act**).

1.2 The National Law was referred to the Committee pursuant to the Committee's term of reference 8.3(e), which provides that the Committee may inquire into and report on '*any proposal to reform existing law that may be referred by the House or a Minister*'.

1.3 The Bill was introduced to the Legislative Council on 20 May 2010 by Hon Simon O'Brien MLC,[2] six weeks before the scheme the Bill proposes to enact comes into operation.

1.4 Following its Second Reading Speech, the Bill was referred to the Standing Committee on Uniform Legislation and Statutes Review pursuant to Standing Order 230A, which requires the Committee to report to the Legislative Council within 30 days of referral. The reporting date for the Bill is effectively 22 June 2010.

PURPOSE OF THE BILL

1.5 The purpose of the Bill is to create a single national registration and accreditation scheme for 14 health professions. The Bill, if enacted, will legislate a major overhaul on how health professions are regulated and replace the present State based systems.[3]

1.6 The Bill consists of two parts - clauses 1 to 166 which contain Western Australian specific provisions and amendments to State legislation (**front part of the Bill**) and

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1 Letter from Hon Dr Kim Hames MLA, Minister for Health, 12 January 2010, p1. The letter advised that it was proposed that the Bill would be introduced into the Parliament of Western Australia during the first sitting week of the year commencing on 23 February 2010.

2 Hon Simon O'Brien MLC, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 20 May 2010, p3071.

3 There are State registration boards for each of the ten professions joining the national scheme at its inception (see paragraph 2.25). There are also State registration boards for occupational therapists and medical technologists, who will join the scheme on 1 July 2012.

the Schedule to the Bill, the *Health Practitioner Regulation National Law*, consisting of 305 clauses and seven schedules (**National Law**).[4]

1.7 The National Law sets out the structure and functions of the new National Registration and Accreditation Scheme for the Health Professions (**National Scheme**). The National Scheme will replace the current system of State based regulatory regimes.

1.8 The National Law establishes bodies that will govern the National Scheme and provides the framework for the regulation of health practitioners in relation to registration, accreditation, complaints and conduct, performance, and privacy and information sharing and other matters.

1.9 The Bill provides for ten health professions to join the National Scheme from 1 July 2010, with a further four professions joining on 1 July 2012.

INQUIRY PROCEDURE

1.10 The Committee's inquiry into the National Law was advertised in *The West Australian* on Saturday, 6 February 2010.

1.11 On 12 March 2010, the Committee wrote to the stakeholders listed at Appendix 1 inviting submissions. Details of the inquiry were also published on the Committee's website. The Committee received 74 submissions. A list of submissions received is attached at Appendix 2.

1.12 The Committee held several hearings with representatives from the Department of Health and further hearings with representatives from psychology organisations.

1.13 On 5 May 2010 and 10 May 2010, the Committee held hearings with:

- Mr Steve Ashburn, Acting Director, and Mrs Anne Cooper, Acting Principal Policy Officer, Legal and Legislative Services, Department of Health.

1.14 On 24 May 2010, the Committee held a hearing with:

- Mr Kim Snowball, Acting Director General, and Mrs Anne Cooper, Acting Principal Policy Officer, Department of Health; and
- Mr Chris Robertson, Director, National Board Services, Australian Health Practitioner Regulation Agency (**AHPRA**).

1.15 On 17 May 2010, the Committee held a hearing with:

[4] The National Law the Minister for Health referred to the Committee in January 2010, being the schedule to the Queensland Act, and the National Law that is the Schedule to the Bill are exactly the same.

- Professor Lyn Littlefield, Executive Director, and Mr David Stokes, Senior Manager, Professional Practice, The Australian Psychological Society Ltd.

1.16 On 24 May 2010, the Committee held a further hearing with:

- Dr Jennifer Thornton, Presiding Member, Psychologists Registration Board of Western Australia.

1.17 The Committee thanks all witnesses and submitters for their assistance during the course of the inquiry.

SUPPORTING DOCUMENTS

1.18 The Department of Health provided the Committee with a copy of the Bill (the version tabled in the Legislative Assembly) on 28 April 2010.[5]

1.19 The Minister for Health or the Department of Health provided or referred the Committee to the following documents in support of the Bill:

- Explanatory Memorandum to the Bill. (The Explanatory Memorandum to the Western Australian Bill includes, by reference, Queensland's Explanatory Memorandum to the National Law (**Explanatory Memorandum to the National Law**));

- The Queensland Act and *Health Practitioner Regulation National Law Bill 2009* (Qld);

- Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions dated 26 March 2008 (**Intergovernmental Agreement**);

- Council of Australian Governments (**COAG**) Communiqué of meeting on 26 March 2008;

- Australian Health Workforce Ministerial Council Communiqué dated 8 May 2009 (**Ministerial Council Communiqué dated 8 May 2009**);

- Australian Health Workforce Ministerial Council Communiqué dated 27 August 2009;

- Australian Health Ministers' Advisory Council, *Regulatory Impact Statement for the Decision to Implement the Health Practitioner Regulation National Law*, 3 September 2009; and

[5] The version of the Bill tabled in the Legislative Assembly differs slightly from the version tabled in the Legislative Council.

- Australian Health Ministers' Conference Extract from Communiqué dated 4 September 2009.

1.20 The Department of Health also provided further documents produced by National Scheme bodies in response to Committee questions and requests.

1.21 The Committee also considered:

- Parliament of Australia, The Senate, Community Affairs and Legislation Committee, *National registration and accreditation scheme for doctors and other health workers*, August 2009 (**Senate report on the National Scheme**); and

- Australian Government, Productivity Commission, Research Report, *Australia's Health Workforce*, 22 December 2005.

DIFFICULTIES IN OBTAINING INFORMATION

1.22 The Committee is required to review the Bill and report to the Parliament within 30 days. This is an extremely short period of time within which to review a Bill (especially a complex Bill), identify, obtain and review supporting documents such as Intergovernmental Agreements, communiqués, related legislation, call for submissions, review submissions and explore issues raised (especially when a large number of submissions are received), hold hearings, review transcripts and answers to questions taken on notice and draft a report.

1.23 The Committee seeks to assist this process by providing witnesses (in particular, department officers) with draft questions to give them an indication of the areas and issues to be examined. It is expected that departmental officers with carriage of the Bill will be across the issues.

1.24 Ministers and Departments are required to provide the Committee with all relevant documents and to answer questions in a full, and in a timely manner. Ambiguous statements about what the officer expects will or may happen if a Bill is enacted are neither helpful nor appropriate. Information requested should be made available without the Committee needing to request it a number of times or in a number of different ways. In a number of instances the Department referred the Committee to the Australian Health Workforce Ministerial Council (**Ministerial Council**) (a National Scheme body) for answers to questions and for access to documents. This is not helpful and is inappropriate. Further, the Department of Health was not able to answer a number of questions at the hearing which needed to be taken on notice, delaying the Committee's review of the Bill while it waited on this information.

1.25 In this instance, the Committee acknowledges the early referral by the Minister for Health of the National Law to the Committee and is grateful to the Minister for this

courtesy. However, the Committee was not provided with a copy of the Western Australian Bill until 28 April 2010 and some other information was not made available to the Committee until early to mid June 2010, limiting the early review that could be undertaken by the Committee and holding up the finalisation of the report to Parliament. Also, the Committee had to review and report on nine other Bills during the period in which it intended to review the Health Practitioner Regulation National Law (WA) Bill 2010. The ability to review more than one or two bills at any time is impossible due to a lack of staff resources.

1.26 The Committee acknowledges that the problems it experienced in accessing information were in part due to the nature of the National Scheme itself and the level of uncertainty that surrounds its operation. The Bill contains only the skeletal legislative framework. Significant detail is left to be determined administratively by the wide functions and discretion the National Law provides to the Ministerial Council and the National Boards. In the rush to commence the National Scheme, significant detail is yet to be determined. The Committee accepts that on occasions the Department of Health was therefore unable to answer some questions. However, the Committee also felt at times that the Department of Health and AHPRA's approach to the Committee was patronising. The implication was that the Ministerial Council had already made the decisions about the National Scheme and the Committee should just get on and rubber stamp its approval.

1.27 There is an increasing trend for the Executive to approve national schemes which provide only a skeletal legislative framework, with much of the detail to be determined administratively with little or no opportunity for scrutiny by the Parliament of Western Australia. State Ministers and departments need to justify to the Committee and ultimately Parliament why such a national scheme is necessary and why it is in the best interests of the Western Australian public to enact the legislation implementing or giving effect to the national scheme.

UNIFORM LEGISLATION

1.28 The establishment of a committee to scrutinise uniform legislation arose from the concern that the Executive is, in effect, exercising supremacy over a State Parliament when it enters agreements that, in practical terms, seeks to bind a State Parliament to enact legislation giving effect to national uniform schemes or intergovernmental agreements.

1.29 Due to the limited information available to the Parliament in respect of negotiations for a uniform scheme, the purpose of the Committee is not only to identify any provisions of uniform legislation that detract from the powers and privileges of the Parliament but (to the extent necessary and possible within the limited time available for its inquiry) provide the Parliament with the rationale for, and practical effect of, the uniform legislation.

1.30 National legislative schemes implementing uniform legislation take a variety of forms. Details of the National Scheme are set out at paragraphs 2.12 to 2.16 of this report.

1.31 When scrutinising uniform legislation, the Committee considers various 'Fundamental Legislative Scrutiny Principles'. These principles are set out in Appendix 3.

1.32 The following Fundamental Legal Principles are relevant to this inquiry:

- Principle 1 — Are rights, freedoms or obligations, dependent on administrative power only if sufficiently defined and subject to appropriate review?

- Principle 2 — Is the Bill consistent with principles of natural justice?

- Principle 3 — Does the Bill allow the delegation of administrative power only in appropriate cases and to appropriate person? Sections 44(8)(c) and (d) of the *Interpretation Act 1984*. The matters to be dealt with by regulation should not contain matters that should be in the Act not subsidiary legislation.

- Principle 13 — Does the Bill sufficiently subject the exercise of a proposed legislative power (instrument) to the scrutiny of the Legislative Council?

- Principle 16 — In relation to uniform legislation where the interaction between states and federal powers in concerned: Does the scheme provide for the conduct of Commonwealth and State reviews and, if so, are they tabled in State Parliament?

STRUCTURE OF REPORT

1.33 Chapter 2 of this report sets out key features of the Bill and National Scheme.

1.34 Chapter 3 deals with sovereignty issues and details the Committee's concerns about the regulation provisions in the National Law.

1.35 Chapter 4 sets out issues arising out of particular National Law provisions and National Scheme structures.

1.36 Chapter 5 deals with the concerns raised by the psychology profession.

1.37 Chapter 6 deals with the uniformity of the Bill.

CHAPTER 2

THE BILL AND NATIONAL SCHEME

OBJECTIVES OF THE NATIONAL SCHEME

2.1 The Bill proposes to implement the National Scheme which represents a fundamental change in how health professions will be regulated in Western Australia. This section provides background to the Bill and National Scheme and reports on the objectives of the legislation.

2.2 In 2005 the Australian Government asked the Productivity Commission to undertake a research study to examine issues impacting on the health workforce including the supply of, and demand for, health workforce professionals and to propose a solution to ensure the continued quality of healthcare over the next ten years. The Productivity Commission's report, *Australia's Health Workforce*, recommended that the Australian Health Ministers' Conference establish a single national registration board for health professionals and a single national accreditation board for health professional education and training.[6]

2.3 In July 2006 COAG agreed to establish a single national registration scheme. On 26 March 2008 Western Australia signed the Intergovernmental Agreement, thereby agreeing to participate in the National Scheme.

2.4 The Minister for Health stated in the Second Reading Speech:

> *One objective of the national law is to protect the public … The national law seeks to deliver real improvements to the quality and safety of Australia's health care system …*[7]
>
> *The national law contains measures designed to protect both the public and practitioners and to facilitate greater workforce flexibility and mobility. The regulatory framework provides support for standards of excellence in the delivery of services in the WA healthcare system.*[8]

2.5 The movement of professionals across State borders appears to be a major driver of the reform. Under the National Scheme, registered health practitioners in any

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6 Australian Government, Productivity Commission, Research Report, *Australia's Health Workforce*, 22 December 2005, Recommendation 6.1, pxxxix and Recommendation 7.2, pxl.

7 Hon Dr Kim Hames MLA, Minister for Health, Western Australia, Legislative Assembly, *Parliamentary Debates (Hansard)*, 5 May 2010, p2471.

8 Ibid, p2473.

jurisdiction in Australia will pay a single registration fee and their registration will entitle them to work throughout Australia.[9] Up to ten per cent of health practitioners are currently registered in multiple jurisdictions.[10]

2.6 The Acting Director General, Department of Health, commented when asked about the legislation:

> *I can commence by saying just how important this legislation is for health, not only in this state, but nationally in terms of achieving national registration of health professionals and credentialling of health professionals* … [From the] *perspective in how we attract and retain people from overseas—and they are certainly a significant part of our workforce—it would be far easier for us and for those candidates to actually be able to register once …*[11]

> *When you have someone brand-new about to embark on an adventure of practising medicine or nursing in another country, they are surprised, to say the least, that we require them to register and meet different eligibility criteria across the same country. No-one else does it …*[12]

> [Overseas professionals are] *a significant source of our health workforce. In rural Western Australia, for example, over 50 per cent of doctors are overseas-trained doctors. Of our recruitment into the country, year in, year out, 60 per cent of them are from overseas, so there is no question that this is a major issue for Western Australia in terms of our ability to bring overseas practitioners, and from other states as well.*[13]

2.7 The Acting Director General, Department of Health, also noted the advantages of building a level of consistency and standardisation of assessment of registration for health professions.[14] The Department of Health further added:

> *the effect of the National Scheme will be consistent regulation across all jurisdictions, the elimination of unnecessary or poorly designed*

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9 Clause 222 of the National Law requires each professional board to establish a public National Register, except the Nurses and Midwives Board of Australia which will establish two registers - a Register of Nurses and a Register of Midwives.

10 Answers to Questions on Notice, Department of Health, 14 May 2010, p6.

11 Mr Kim Snowball, Acting Director General, Department of Health, *Transcript of Evidence*, 24 May 2010, p2.

12 Ibid p3.

13 Ibid, p7.

14 Ibid, pp2 and 7.

regulation, reduction of excessive compliance costs on business, elimination of restrictions on competition and transparency of registration requirements for all health professions.[15]

2.8 Clause 3(2) of the National Law provides that the objectives of the National Scheme are:

(a) to provide for the protection of the public by ensuring that only practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered; and

(b) to facilitate workforce mobility across Australia by reducing the administrative burden for health practitioners wishing to move between participating jurisdictions or to practise in more than one participating jurisdiction; and

(c) to facilitate the provision of high quality education and training of health practitioners; and

(d) to facilitate the rigorous and responsive assessment of overseas-trained health practitioners; and

(e) to facilitate access to services provided by health practitioners in accordance with the public interest; and

(f) to enable the continuous development of a flexible, responsive and sustainable Australian health workforce and to enable innovation in the education of, and service delivery by, health practitioners.

2.9 The Department of Health advised that a '*fundamental aspect*'[16] of the review of the National Scheme after three years of operation (provided for in the Intergovernmental Agreement) would be whether the above objectives were being achieved. However, the Department of Health could not advise what benchmarks these objectives would be measured against, in particular objectives (e) and (f).[17]

2.10 Clause 3(3) of the National Law states that the guiding principles of the National Scheme are:

(a) the scheme is to operate in a transparent, accountable, efficient, effective and fair manner;

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15 Answers to Questions on Notice, Department of Health, 5 May 2010, p2.

16 Answers to Questions on Notice, Department of Health, 24 May 2010, p9.

17 Ibid. Paragraphs 4.104 to 4.110 of this report discuss review issues.

(b) fees required to be paid under the scheme are to be reasonable having regard to the efficient and effective operation of the scheme;

(c) restrictions on the practice of a health profession are to be imposed under the scheme only if it is necessary to ensure health services are provided safely and are of an appropriate quality.

2.11 It is not clear to the Committee how the standardisation of registration and accreditation systems across Australia will produce a more robust regulatory system and enhance public protection. No evidence was presented to the Committee suggesting that any Western Australian health regulation board was not providing robust and effective regulation in this State.

LEGISLATIVE FRAMEWORK OF THE NATIONAL SCHEME

2.12 The legal implementation of the National Scheme involves three Bills:

- The *Health Practitioner Regulation (Administrative Arrangements) National Law Act 2008* (Qld) (known as Bill A). This was passed by the Parliament of Queensland (effective from 25 November 2008). Bill A set up the interim administrative arrangements for the National Scheme.

- The *Health Practitioner Regulation National Law 2009* (Qld) (the Queensland Act, known as Bill B). This was passed by the Parliament of Queensland (effective from 3 November 2009). Bill B superseded Bill A and contains the full details of the implementation arrangements for the National Scheme.

- *Adopting* or, in the case of Western Australia, *corresponding* legislation (known as Bill C) introduced into each State and Territory's Parliament to fully implement the National Scheme. The Commonwealth will also make consequential amendments to Commonwealth laws.

2.13 The Parliament of Queensland, with the passage of the Queensland Act (Bill B), passed the substantive or enacting legislation to give effect to the National Scheme for all other States and Territories except Western Australia.

2.14 As at 5 May 2010, Queensland, New South Wales, Victoria and the Australian Capital Territory had enacted adopting legislation to become operational on 1 July 2010 and South Australia had reintroduced its bill following a State election.[18] Tasmania, which

[18] Answers to Questions on Notice, Department of Health, 5 May 2010, p1. As at January 2010, uniform legislation consistent with the Bill had been introduced into Parliament of the Northern Territory: Letter from Hon Dr Kim Hames MLA, Minister for Health, 12 January 2010, p1.

recently had a State election, reintroduced its bill into Parliament on 5 May 2010.[19] The Department of Health advised that as at 24 May 2010 all other jurisdictions appeared to be on target to enact their legislation by 1 July 2010, the National Scheme's commencement date.[20]

2.15 In the Intergovernmental Agreement, Western Australia agreed to '*enact corresponding legislation, **substantially similar*** [Committee emphasis] *to the agreed model*'.[21] The Bill is corresponding, not adopting, legislation. This means that the National Scheme will not have effect in Western Australia unless the Bill is passed. Also, amendments proposed to the National Law must be introduced and passed by the Parliament of Western Australia in order to become law in Western Australia. This differs from the situation in all other jurisdictions. Other jurisdictions passed legislation that 'adopted' the National Law in the Queensland Act (in some cases with amendments). Unlike the situation in other jurisdictions, the law in Western Australia will not automatically change as a result of amendments to the Queensland Act.[22]

2.16 Regarding Parliament's capacity to amend the Bill, a distinction should be made between the front part of the Bill (before the National Law) and the National Law (the Schedule to the Bill). Amendments to the front part of the Bill that do not directly impact on the operation of the National Law in Western Australia can be amended without undermining or compromising the operation of the National Law or Western Australia's participation in the National Scheme. Amendments to the National Law (the Schedule to the Bill) may undermine or compromise the effect and/or operation of the National Law and/or Western Australia's participation in the National Scheme. This issue is further discussed at paragraphs 3.17 to 3.24 of this report.

National Law Regulations

2.17 Clause 245 of the National Law provides that the Ministerial Council may make regulations for the purposes of the National Law and clause 246 sets out, to a limited degree, how a regulation may be disallowed. The Committee is extremely concerned about the regulations provisions in the National Law which abrogate State sovereignty. This report recommends amendments to the Bill to address serious inadequacies in the legislation. The regulation provisions in the National Law are discussed at paragraphs 3.25 to 3.78 of this report.

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19 The Health Practitioner Regulation National Law (Tasmania) 2010 was tabled in the Parliament of Tasmania's Legislative Assembly on 5 May 2010 and its Legislative Council on 8 June 2010: http://www.parliament.tas.gov.au/bills/3_of_2010.htm (viewed on 15 June 2010).

20 The Department of Health advised that no jurisdiction had indicated that it would be joining the National Scheme after this date: Answers to Questions on Notice, Department of Health, 24 May 2010, p2.

21 Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions, 26 March 2008, p4.

22 Answers to Questions on Notice, Department of Health, 5 May 2010, p3.

Alternative legislative frameworks

2.18 The legislative framework to implement uniform scheme objectives is a matter for the Executive. However, the Executive should always have regard to the sovereignty of State Parliament and choose a legislative framework which least abrogates State sovereignty. The Committee notes for the information of the Parliament the views expressed in submissions to the Committee about the legislative framework adopted in this instance.

2.19 The Australian Medical Association (Western Australia) (**AMA**) submitted that a mutual recognition legislative structure would have been its preferred option:

> [An] *alternative approach using mutual recognition legislation could have been utilised based upon the "Drivers Licence model" to achieve national registration that the Association supports.*[23]

> [A mutual recognition system is a] *far simpler, less bureaucratic approach which would achieve the stated objectives in a more appropriate way*.[24]

2.20 The New South Wales Health Minister's Proposal 'National Registration and Accreditation Scheme - Way Ahead' (2009) noted that '*a single register for each profession covered by the scheme will automatically achieve national portability, one of the key objectives of the IGA* [Intergovernmental Agreement]'.[25]

2.21 The Australian Dental Association (WA Branch) Inc (**Australian Dental Association**) also submitted on the issue of a national register that:

> *The Australian Dental Association (WA Branch) (ADAWA) has no objection to a National Register of Dentists. The original proposals (Ministerial Communiqué 2004) expounded a model which would require less red tape, be transportable across State boundaries and involve less bureaucracy. We are of the opinion that no element of that original premise has been adequately fulfilled.*[26]

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23 Letter from Professor Gary Geelhoed, President, Australian Medical Association (Western Australia), 3 March 2010, p1.

24 Ibid, p2.

25 Attachment to Submission No. 66 from Australian Medical Association (Western Australia), 3 March 2010, p1.

26 Submission No. 41 from Australian Dental Association (WA Branch), 26 February 2010, p1.

OUTLINE OF THE BILL AND NATIONAL SCHEME

2.22 The Bill proposes to:

- repeal 13 State Acts and State regulations, codes of practice and rules (clauses 14 and 15 of the Bill). The Bill will repeal the following Western Australian Acts (and applicable regulations): *Chiropractors Act 2005*, *Dental Act 1939*, *Dental Prosthetists Act 1985*, *Medical Practitioners Act 2008*, *Medical Radiation Technologists Act 2006*, *Nurse and Midwives Act 2006*, *Occupational Therapists Act 2005*, *Optometrists Act 2005*, *Osteopaths Act 2005*, *Pharmacy Act 1964*, *Physiotherapists Act 2005*, *Podiatrists Act 2005* and *Psychologists Act 2005*;

- make consequential amendments to 51 State Acts (Part 5, clauses 22 to 166 of the Bill); and

- apply the *Health Practitioner Regulation National Law* (the Schedule to the Bill - the National Law) (clause 4 of the Bill) and establish the National Scheme in Western Australia.

2.23 The National Scheme provides the framework for the regulation of health practitioners that will apply across Australia in relation to registration, accreditation, complaints and conduct,[27] health and performance, and privacy and information sharing, and prescribes offences for unregistered practitioners of the regulated professions.

2.24 The main National Scheme bodies recognised and/or established by the National Law are:

- The Ministerial Council (Australian Health Workforce Ministerial Council) (clauses 11 to 15), comprised of Ministers from the governments of participating jurisdictions and the Commonwealth. The Ministerial Council is the most powerful body in the National Scheme and has extensive powers. The Ministerial Council is further discussed at paragraphs 4.2 to 4.13 of this report.

- The Australian Health Workforce Advisory Council (**Advisory Council**) which provides independent advice to the Ministerial Council (clause 19). See paragraphs 4.14 to 4.18 of this report for further information on the Advisory Council.

[27] With the exception of New South Wales, which will join the National Scheme but retain its current complaints management regime.

- The Australian Health Practitioner Regulation Agency (**AHPRA**).[28] AHPRA's functions include providing administrative assistance and support to the National Boards, State Boards and developing and administering procedures for the efficient and effective operation of the boards (clause 25). AHPRA has established State offices. AHPRA's head office is based in Melbourne. AHPRA is likely to employ 400 to 500 staff nationally.[29]

- The Australian Health Practitioner Regulation Agency Management Committee (**Agency Management Committee**) which controls the affairs of the national agencies (clause 30).

- A National Health Practitioner Board (**National Board**) for each health profession covered by the National Law (clause 31). National Board functions include registering persons in the health profession[30] and imposing conditions if necessary and developing or approving standards, codes and guidelines for the professions (clause 35). National Boards are further discussed at paragraphs 4.19 to 4.22 of this report.

- State and/or Territory Boards with functions delegated by the profession's National Board (clause 37). A National Board '*may*' establish a State or Territory Board for a participating jurisdiction (clause 36).

HEALTH PROFESSIONS TO BE REGULATED UNDER THE NATIONAL SCHEME

2.25 The National Law provides that the following ten health professions will be regulated under the National Scheme from 1 July 2010:

- chiropractic;

- dental;

- medical;

- nursing and midwifery; [31]

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28 AHPRA is referred to as '*the National Agency*' in the National Law.

29 Mr Chris Robertson, Director, National Board Services, Australian Health Practitioner Regulation Agency, *Transcript of Evidence*, 24 May 2010, p15.

30 The National Law provides for the following types of registration: general registration, specialist registration, provisional registration, limited registration, non-practicing registration and student registration.

31 Nursing and Midwifery will have separate registers and have been considered two distinct professions. For example, the Australian Health Workforce Ministerial Council communiqué dated 22 April 2010 refers to the 'nursing and midwifery professions' and the New South Wales Health Minister's Proposal 'National Registration and Accreditation Scheme - A Way Ahead' states that ten boards will be established for 11 professions.

- optometry;
- osteopathy;
- pharmacy;
- physiotherapy;
- podiatry; and
- psychology.

2.26 The National Law provides that the following four health professions will enter the National Scheme from 1 July 2012:

- Aboriginal and Torres Strait Islander health practice;
- Chinese medicine;
- medical radiation practice; and
- occupational therapy.

THE IMPACTS OF WESTERN AUSTRALIA NOT JOINING THE NATIONAL SCHEME ON 1 JULY 2010

2.27 The National Law must be enacted by 1 July 2010 for Western Australia to become part of the National Scheme at its inception.

2.28 The Minister for Health informed the Committee that it is '*imperative that Western Australia (WA) joins the scheme on the implementation date*'.[32] However, on 5 May 2010 the Minister for Health advised the Legislative Assembly that there was a '*fallback position*' of joining in October 2010 and this had been discussed with the Ministerial Council.[33]

2.29 A late joining date will be determined by AHPRA in consultation with Western Australia if it becomes clear that the 1 July 2010 date will not be met and the date of proclamation of the National Law in Western Australia has become more certain.[34]

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32 Letter from Hon Dr Kim Hames MLA, Minister for Health, 29 September 2009, p1.

33 There '*is a fallback position in October. I discussed this at the ministerial council meeting, particularly in front of all the ministers, saying that we were having trouble and that it was our fault that the timing was bad*': Hon Dr Kim Hames MLA, Minister for Health, Western Australia, Legislative Assembly, *Parliamentary Debates (Hansard)*, 18 May 2010, p2783. Despite having conducted hearings with Department of Health officers before this statement was made in Parliament, this was the first time the Committee was made aware of this option.

34 Answers to Questions on Notice, Department of Health, 24 May 2010, p2.

The Department of Health advised that although October 2010 has been mentioned other dates may be possible.[35]

2.30 When asked if there will be any penalty imposed if Western Australia does not enter the National Scheme by 1 July 2010, the Department of Health advised:

> *There will be no specific penalty – financial or otherwise – except that WA will not participate in the scheme and WA health practitioners will need WA registration. The likely outcome will be:*
>
> *Policy: WA will not necessarily participate in policy development at Ministerial Council or national board level*[36] [and]
>
> *WA Workforce: Registrants in WA will be required to pay registration fees in WA and to the National Board if they wish to practise across the WA State border.*[37]

2.31 The Department of Health advised that if Western Australia does not join the National Scheme (at any time) it will incur the costs associated with establishing AHPRA's State office (leasing payments of $54 520 per month) but that this cost may be offset if the accommodation is sublet or the lease transferred.[38] Also, the State may not be reimbursed the cost of the AHPR State office fit out, being $259 830. This would be recovered if Western Australia, in time, joined the Scheme.[39]

2.32 The Department of Health advised that late entry into the National Scheme will result in '*likely negative impacts on registrants, regulatory authority staff and increased transition costs*'.[40] No evidence was presented to the Committee to support this statement. If Western Australia enters the National Scheme after 1 July 2010 health professions will continue to be registered under current State legislation until the Bill is enacted. Some administrative issues would arise for National Scheme administrators, such as the need to rework National Scheme data and advise Western Australian health professions about the status of their registration.[41] When asked about the effect on staff who would otherwise transition to the National Scheme if Western Australia does not enter the Scheme, Mr Robertson, AHPRA, advised:

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35 Ibid.

36 Answers to Questions on Notice, Department of Health, 14 May 2010, p4.

37 Answers to Questions on Notice, Department of Health, 24 May 2010, p2.

38 Ibid, p3.

39 Ibid.

40 Answers to Questions on Notice, Department of Health, 28 May 2010, p3.

41 Letter from Mr Peter Allen, Chair, Agency Management Committee, Australian Health Practitioner Regulation Agency, to Hon Dr Kim Hames MLA, Minister for Health, 18 May 2010, p2.

> *if Western Australia does not join the scheme on 1 July or a later date, those staff will not be part of the national agency—they will not be part of the Australian Health Practitioner Regulation Agency—so there will not be a staffing liability ...*[42]

2.33 The Department of Health initially raised the issue about the adverse impact on international medical graduates (**IMGs)** if Western Australia did not participate in the Scheme at its inception.[43] However, the Department of Health later advised that the '*potential effect is that IMGs who are not currently registered will not apply for registration in WA if it requires separate registration*', but that the Medical Board of Western Australia '*will consider and may well adopt the approach of waiving the registration fee for IMGs if they have already registered under the National Scheme and wish to work in WA*'.[44]

THE PHARMACY BILL 2010 - RELATED LEGISLATION

2.34 The Pharmacy Bill 2010 was tabled in the Legislative Council on 25 May 2010.

2.35 The Pharmacy Bill 2010 must come into operation at the same time as the Bill to ensure that pharmacy premises continue to be licensed in Western Australia. This is necessary because, clause 14(j) of the Bill repeals the *Pharmacy Act 1964* which regulates '*pharmaceutical chemists*' and pharmacy premises. While most matters concerning the registration of pharmacists will be transferred to the National Law, the National Scheme does not address the regulation of pharmacy premises and the ownership of pharmacy businesses. The Pharmacy Bill 2010 provides for the registration of pharmacist and licensing of pharmacy premises.

2.36 The Pharmacy Bill 2010 was referred to the Committee on 25 May 2010 pursuant to Standing Order 230A.

2.37 The Committee will table a separate report on the Pharmacy Bill 2010.

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42 Mr Chris Robertson, Director, National Board Services, Australian Health Practitioner Regulation Agency, *Transcript of Evidence*, 24 May 2010, p16.

43 Answers to Questions on Notice, Department of Health, 5 May 2010, p1. The Medical Board of Western Australia registered 519 IMGs between April 2009 and April 2010: Answers to Questions on Notice, Department of Health, 14 May 2010, p7.

44 Answers to Questions on Notice, Department of Health, 24 May 2010, p4.

CONSULTATION ON THE NATIONAL LAW

2.38 In the Second Reading Speech, the Minister for Health advised that the National Law had '*been developed following an inclusive process that saw high-level involvement from regulatory bodies, practitioners and the public*'.[45]

2.39 The Senate Report on the National Scheme also noted that '*there was a considerable reduction in the objections or concerns about the design of the Scheme between the initial consultations and the release of the exposure draft of the Health Practitioner Regulation National Law Bill*'.[46]

2.40 Despite the amendments to the National Scheme as initially proposed, it is clear that some concerns and objections to scheme arrangements continue to exist.

45 Hon Dr Kim Hames MLA, Minister for Health, Western Australia, Legislative Assembly, *Parliamentary Debates (Hansard)*, 5 May 2010, p2471. The Minister for Health outlined the history of consultation and the resultant changes to the National Scheme during debate in the Legislative Assembly: Hon Dr Kim Hames MLA, Minister for Health, Western Australia, Legislative Assembly, *Parliamentary Debates (Hansard)*, 18 May 2010, p2780-83. The Australian Health Workforce Ministerial Council communiqué dated 8 May 2009 notes changes to the National Scheme since it was originally proposed: http://www.ahmac.gov.au/site/media_releases.aspx then select 'Australian Health Workforce Ministerial Communiqué - 8 May 2009' (viewed on 21 May 2010).

46 Parliament of Australia, The Senate, Community Affairs and Legislation Committee, *National registration and accreditation scheme for doctors and other health workers*, August 2009, p47.

CHAPTER 3
SOVEREIGNTY ISSUES

3.1 An issue that the Committee examines in considering uniform legislation is whether, in practical terms, the intergovernmental agreement or uniform scheme to which a bill relates derogates from the sovereignty of the State.

3.2 In a sense, all uniform legislation has this effect. As the Standing Committee on Uniform Legislation and General Purposes pointed out in its Report 19:

> *It is observed that the Executive is, in effect, exercising supremacy over a State Parliament when it enters into agreements that, in practical terms, bind a State Parliament to enact legislation to give effect to national uniform schemes or an intergovernmental agreement.*
>
> *Where a State Parliament is not informed of the negotiations prior to entering the agreement and is pressured to pass uniform bills by the actions of the Executive, its superiority to the Executive can be undermined.*[47]

3.3 Particularly pertinent to the Bill, that Committee observed:

> *there may be pressure not to amend or reject uniform bills for the sake of achieving national unity.*[48]

3.4 The Standing Committee on Uniform Legislation and Intergovernmental Agreements explained how this undermines the Parliament's raison d'etre:

> *The fundamental premise of responsible government is its accountability to the Parliament and hence the people … This occurs by providing the forum within which, amongst other things, members publicly debate the issues of the day and exercise constant scrutiny over the Government and its legislative program. However, the procedures for drawing intergovernmental agreements are conducted in a manner that avoids recourse to the Parliament. This failure to bring such matters before the Parliament means that the public*

47 Legislative Council, Standing Committee on Uniform Legislation and General Purposes, Report 19, *Uniform Legislation and Supporting Documents*, 27 August 2004, p11.

48 Ibid.

> *exposure and discussion initiated by it does not occur. Accordingly, there are very limited opportunities to improve the legislation*.[49]

3.5 Other related uniform legislation processes that derogate from State Parliament sovereignty include fiscal imperatives to pass uniform legislation, limited time frames for consideration of uniform legislation, a tendency for legislation to provide only a skeletal framework with the details to be specified in regulations or administrative processes that are not available to the Committee at the time they are considering the Bill and the Committee having access to limited information only, which inhibits Members formulating questions and performing their legislative scrutiny role.[50] (This is not an exhaustive list of the ways in which State sovereignty might be impinged upon by uniform agreements or schemes.)

3.6 The Committee also examined whether any provision in the Bill itself derogates from the sovereignty of the Parliament (see, for example, Fundamental Legal Principles 1, 3 and 12 to 16 in Appendix 3). Such provisions may be a requirement of the intergovernmental agreement or uniform scheme arising from template or mirror legislation but may also arise from the particular legislative terms in which the Executive chooses to give effect to more generic 'consistent' or 'harmonisation' structures of uniform legislation.

3.7 Again in its Report 19, the Standing Committee on Uniform Legislation and General Purposes said:

> *it is important to take into account the role of the Western Australian Parliament in determining the appropriate balance between the advantages to the State in enacting uniform laws, and the degree to which Parliament, as legislature, loses its autonomy through the mechanisms used to achieve uniform laws.*
>
> *2.8 The Committee, while prevented by the standing orders from examining the policy behind a uniform law, is in a position to alert the Council to the constitutional issues associated with particular forms of uniform laws as they are introduced.* [51]

3.8 The Bill impinges on the sovereignty of the State, and its Parliament, in both process and substantive senses.

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49 Legislative Assembly, Standing Committee on Uniform Legislation and Intergovernmental Agreements, Report 10, *Scrutiny of National Scheme Legislation and the Desirability of Uniform Scrutiny Principles*, 31 August 1995, pp15-16.

50 Ibid.

51 Legislative Council, Standing Committee on Uniform Legislation and General Purposes, Report 19, *Uniform Legislation and Supporting Documents*, 27 August 2004, p10.

LIMITED TIME FRAME FOR CONSIDERATION

3.9 As previously noted, the Bill was tabled in the Legislative Council on 20 May 2010, six weeks before the National Scheme becomes operational on 1 July 2010. There was considerable delay between the signing of the Intergovernmental Agreement (in March 2008) and the tabling the Bill in the Legislative Assembly on 5 May 2010.[52]

3.10 The late tabling of the Bill has the practical effect of diminishing Parliament's capacity to scrutinise the Bill and may inhibit Parliament's capacity to amend the law.

3.11 Western Australia may join the National Scheme after 1 July 2010, either in October 2010 or at any other agreed date (see paragraphs 2.28 and 2.29 of this report).

THE NATIONAL LAW OUTLINES ARRANGEMENTS AND LACKS DETAIL

3.12 The Bill does not contain the same level of detail as that contained in the State Acts which it replaces. The Bill provides a skeletal legislative framework only, with much of the detail to be determined administratively through the wide discretionary powers provided to the Ministerial Council and National Boards. How that discretion is to be exercised is largely not detailed in the Bill. Also, there is no requirement in the Bill for this detail to be prescribed in regulations. This has the effect of excluding the State Parliament entirely from any oversight of, and involvement in, the National Scheme.

3.13 National Scheme bodies, particularly the Ministerial Council and National Boards, have broad functions and extensive discretionary powers (see Chapter 4) on matters previously legislated. Matters that are regulated under current State law will be determined by National Scheme bodies and information will be posted on National Scheme websites. The effect of the Bill is the transfer from a legislative framework to a more administrative framework.

3.14 For example, section 29 of the *Psychologists Act 2005* provides that the Board is to register an applicant as a specialist in a branch of psychology prescribed by the regulations as a specialty if satisfied of specified matters, whereas clauses 13 and 98 of the National Law provide for 'specialist recognition' and an 'endorsement' for approved area of practice (a psychologist's registration is 'endorsed') which the Ministerial Council ultimately approve. The Ministerial Council can also decide to revoke previous decisions on these matters. Specialties and endorsed areas of practice are not prescribed in National Law regulations.

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[52] In the Legislative Assembly, the Minister for Health noted that Western Australia is '*lagging behind*' in tabling the Bill and accepted that '*it is our fault that we are a bit late*'. The Minister for Health stated that some delay was due to administrative issues. The Minister also outlined the changes he promoted that were made to the National Scheme after he became Minister for Health (in September 2008). These changes may have delayed the drafting of the Bill: see Hon Dr Kim Hames MLA, Minister for Health, Western Australia, Legislative Assembly, *Parliamentary Debates (Hansard)*, 18 May 2010, pp2780-81.

3.15 Section 30(1)(b) of the *Medical Practitioners Act 2008* provides that registration fees shall be prescribed in regulations, whereas clause 26 of the National Law provides that AHRPA must enter into an agreement with a National Board that makes provision for fees and that each National Board must publish these fees on its website. There is no requirement to prescribe fees in the National Law regulations. The *Medical Practitioners Act 2008* also provides that branches of medicine that are specialties are to be prescribed in regulations (section 37) and contains more detail on Board Membership (for example, by stating the size of the Board, a maximum of 12 members: section 7 of the Act) than what is provided for in the National Law. The AMA advised of their concerns as follows:

> *The AMA (WA) is deeply concerned that the legislation does not address a number of issues relating to standards, basic rights, the insecurity of temporary delegations and other matters which have been raised with the State Government over many, many months.*[53]

3.16 The consequence of this is that the Committee (and the Parliament) have not been provided with the detail of the proposed regulatory system, leading to uncertainty about the practical effect of the Bill. This limits the Committee's ability to scrutinise the National Scheme and comment on concerns raised in submissions, such as concerns about specialities, substantial registration fee increases and the operation of National Scheme bodies. As the Chairman noted during a hearing:

> *The way this bill is written, with so much of the detail being left to administrative processes and procedures, there is a real fear that the intent will not actually be carried out and there is no capacity for the Parliament to scrutinise whether the intent of the bill is actually being enforced. Because after we pass this, we do not see it again, because it is not being prescribed in regulation to come back for us to disallow. We are setting up a board that is going to be able to make all these decisions and Parliament does not get to scrutinise whether they are appropriately implementing the provisions of the bill or, in fact, the intent of the bill. I know you cannot comment on that. It is just a statement that we are saying we believe that there are some real deficiencies in the way the bill is currently drafted and we have some real concerns. If you are able to persuade us that that concern is not a valid concern because there is some other provision in the bill that addresses that, that would be great, but in the absence of that I think it is a significant deficiency.*[54]

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53 Letter from Professor Gary Geelhoed, President, Australian Medical Association (Western Australia), 28 April 2010, p1.

54 Hon Adele Farina MLC, Chair, Standing Committee on Uniform Legislation and Statutes Review, during a hearing with Department of Health officers, *Transcript of Evidence*, 5 May 2010, p17.

PARLIAMENT'S ABILITY TO AMEND THE BILL AND NATIONAL LAW

3.17 The front part of the Bill (prior to the Schedule) provides for the National Scheme to operate in this State. Amendments to the front part of the Bill that do not directly impact on the operation of the National Law in Western Australia can be amended without undermining or compromising the operation of the National Law or Western Australia's participation in the National Scheme.

3.18 Amendments to the National Law (the Schedule to the Bill) may undermine or compromise the effect and/or operation of the National Law and/or Western Australia's participation in the National Scheme. As a result, amendments to the National Law must be carefully considered on a case by case basis to determine the impact of any amendments on the National Scheme and National Law and any unintended consequences.

3.19 An example of an effective amendment to the front part of the Bill is the Legislative Assembly's deletion of (what was) clause 13 in the front part of the Bill, which proposed to legislate controls on the sale of contact lenses in Western Australia. This did not form part of the National Scheme and its deletion did not impact on the National Scheme or National Law.

3.20 Amendments to the National Law may be effective and not affect Western Australia's participation in the National Scheme. New South Wales, for example, enacted legislation adopting the National Law passed by the Queensland Act but excluded Part 8, Divisions 3 to 12 of the National Law to effectively exclude the complaints management system prescribed in the National Law from operating in New South Wales (New South Wales will retain their present complaints management system).[55]

3.21 Jurisdictions frequently make amendments to national scheme legislation without it being terminal to their participation in the relevant national scheme. The Parliament of Western Australia has effectively amended uniform legislation in the past (see paragraphs 3.65 to 3.69 below).

3.22 The Committee rejects the Department of Health's response that the Bill and National Law can not be amended at all. For example, when the Department stated that:

> *In order for the scheme to operate at a national level the schedule to the Health Practitioner Regulation National Law Bill (Western Australia) 2010 would need to be passed in its current form. If the*

[55] Section 6 of the *Health Practitioner Regulation (Adoption of National Law) Act 2009* (NSW) declares that New South Wales '*is not participating in the health, performance and conduct process provided by Divisions 3–12 of Part 8 of the Health Practitioner Regulation National Law*'.

> *schedule to the WA Bill is amended then this could render the scheme unworkable in WA.*[56]

3.23 In the Committee's view, the suggestion that any amendment to the National Law could remove Western Australia from the National Scheme is unduly alarmist as evidenced by the New South Wales example above.

3.24 It is worth reiterating at this point that in the Intergovernmental Agreement Western Australia agreed to enact corresponding legislation '*substantially similar'* to the model agreed by other jurisdictions.[57]

NATIONAL LAW REGULATIONS

3.25 The National Law provides for the Ministerial Council to make regulations on any matter '*that is necessary or convenient to be prescribed for carrying out or giving effect to this Law*' (clause 245(2)).

3.26 Pursuant to the Intergovernmental Agreement, Ministerial Council decisions are made by '*consensus*'.[58]

3.27 The process for the making of regulations, as set out in the Bill, abrogates Parliamentary sovereignty. The Committee has a number of serious concerns with the process which are detailed below.

Regulations have effect in Western Australia on being published by the Victorian Government Printer and there is no requirement to inform the Parliament of Western Australia of regulations published

3.28 The National Law provides that regulations published by the Victorian Government Printer have effect in Western Australia on the date, or dates specified in the regulation regardless of whether or not the Western Australian Parliament and community have been informed of the publication of the regulation.

3.29 Clause 245(4) of the National Law provides that a regulation commences on the day or days specified in the regulations but not earlier than the date it is published.

3.30 Clause 245(3) of the National Law provides that regulations made by the Ministerial Council '*are to be published by the Victorian Government Printer in accordance with the arrangements for the publication of the making of regulations in Victoria*'. The Department of Health advised:

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56 Answers to Questions on Notice, Department of Health, 14 May 2010, p5.

57 Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions, 26 March 2008, p4.

58 This is specified in the Intergovernmental Agreement, not the National Law. Paragraph 4.12 discusses the meaning of '*consensus*'.

> *The arrangements for the publication of the making of the National Law Regulations in Victoria will be:*
>
> - *once made by the Ministerial Council, the national law regulations will be formally lodged with the Victorian Government Printer who will make arrangements for publication;*
> - *the Victorian Government Printer will publish a notice that the national law regulations have been made; and*
> - *the national law regulations will be accessible electronically on the Victorian legislation website and also will be available in hard copy*.[59]

3.31 When the Committee asked the Department of Health how the Parliament of Western Australia will be notified of a regulation published in Victoria, the Department advised:

> *Parliament can ensure it is notified* [of regulations] *by subscribing to an electronic alert subscription service provided by the Victoria Government Gazette.*[60]

3.32 This suggestion reflects the lack of attention that has been given to the practical application of the National Law. The Committee felt the flippant response by the Department of Health reflected a disregard for the authority of the Parliament and, by extension, the people of Western Australia.

3.33 The Department of Health suggested that the Committee can gain some comfort from the knowledge that the Minister for Health is a member of the Ministerial Council and will therefore be aware of regulations that are made.[61] This illustrates a concerning lack of understanding of the separation of powers between the Executive and the Parliament, and in particular, the role of the Parliament in scrutinising the Executive and guarding the Western Australian public against the abuse of executive power by the Government.

3.34 The Department of Health informed the Committee that on communicating the Committee's concerns to the Minister for Health, the Hon Dr Kim Hames had undertaken to notify the Parliament of Western Australia of any regulations made, amended or repealed through the Ministerial Council.[62] This highlights, rather than

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59 Answers to Questions on Notice, Department of Health, 28 May 2010, p2. See also section 17 of the *Subordinate Legislation Act 1994* (Victoria).

60 Answers to Questions on Notice, Department of Health, 28 May 2010, p2.

61 The Department of Health advised the Committee of the Minister for Health's involvement in making the regulations in response to concerns raised by the Committee: Answers to Questions on Notice, Department of Health, 28 May 2010, p2.

62 Ibid.

addresses, the inadequacy of the legislation. A commitment made by a current Minister does not and cannot bind a future Minister even if the future Minister were aware of the undertaking. It does not provide the certainty of legislation and is not enforceable at law.

3.35 If the Bill is enacted, National Law regulations will not be tabled in the Houses of the Parliament of Western Australia because the National Law does not prescribe that regulations shall be so tabled and clause 7(d) of the Bill provides that the *Interpretation Act 1984* does not apply to the National Law. This has the effect of not applying sections 41 and 42 of the *Interpretation Act 1984* which mandate that regulations shall be published in the Gazette and laid before each House of Parliament within six sitting days of the House following publication in the Gazette.

3.36 The National Law does not provide for regulations to be tabled in Parliament despite statements in the Explanatory Memorandum to the National Law that provisions have been included in the National Law to deal with matters excluded by clause 7 of the Bill. The Explanatory Memorandum to the National Law states:

> *Clause 7 provides that a number of Acts that generally apply to … legislation do not apply to the* …[National Law] *or instruments, including regulations, made under that Law. In particular, Acts dealing with the interpretation of legislation, financial matters, privacy, freedom of information, the role of the ombudsman and matters relating to the employment of public servants will not apply to the* [National Law] …. *Instead, provisions have been included in the National Law to deal with each of these matters ensuring that the same law applies in relation in each jurisdiction that adopts the National Law.*[63]

3.37 An important consequence of the regulations not being tabled in the Houses of the Parliament of Western Australia and published in the Government Gazette is that regulations will not be subject to the scrutiny of Parliament of Western Australia and scrutinised by a Parliamentary committee.[64]

3.38 No explanation was provided to the Committee as to why it is necessary for Western Australia to rely solely on the publication in Victoria for notification of the making of regulations under clause 245 of the National Law.

3.39 The National Law should require regulations to be tabled in both Houses of the Parliament of all participating jurisdictions thereby enabling the Parliaments of the

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63 Explanatory Memorandum to the National Law, p20.

64 The Gazettal of a regulation causes the regulation to be referred to the Joint Standing Committee on Delegated Legislation.

participating jurisdictions to scrutinise the regulations which will have effect in that jurisdiction.

Right to disallow illusory

3.40 Clause 246(1) of the National Law provides that a regulation made under the National Law may be disallowed by a House of the Parliament of the participating jurisdiction:

- in the same way that a regulation made under an Act of that jurisdiction may be disallowed; and
- '*as if*' the regulation had been tabled in the House on the first sitting day after the regulation was published by the Victorian Government Printer.

3.41 There is therefore a deeming provision in respect of tabling, not a requirement that the regulations be tabled.

3.42 While the National Law appears to allow for a regulation to be disallowed by a participating jurisdiction, on closer examination this power is so heavily qualified that for all intents and purposes it is illusory.

3.43 The National Law provides no mechanism for:

- notifying the Parliament of Western Australia that a regulation has been published by the Victorian Government Printer; and
- the regulation to be laid before both Houses of Parliament.

3.44 In the absence of these mechanisms, the Parliament of Western Australia is unlikely to become aware of the regulation and will therefore be denied the opportunity to exercise its right to disallow the regulation.

3.45 In addition, the Parliament has established the Joint Standing Committee on Delegated Legislation to subject subsidiary legislation to a more detailed review than that provided by the Parliamentary process. While under its terms of reference a regulation stands referred to the Committee on publication, the Committee will experience the same difficulty as the Parliament in identifying regulations published and reporting within the time permitted for disallowance.

3.46 The National Law provides that the clock starts running on the period for disallowance on the first sitting day after the regulation is published by the Victorian Government Printer regardless of whether:

- the Parliament of Western Australia has been notified that the regulation has been published; or

- the regulation has been laid before both Houses of Parliament.

3.47 It is very likely that the period for disallowance will run out without the Parliament of Western Australia being aware that a regulation has been published, much less that the clock has started and finished to run on the period for disallowance. The lack of these mechanisms effectively denies the Parliament of Western Australia the opportunity to exercise its rights under the National Law to disallow a regulation.

3.48 No real explanation was provided to the Committee as to why no provision was made for regulations to be tabled in the Parliaments of the various jurisdictions. When the Chair noted during a hearing the '*massive problems that have not been envisaged in the drafting of this legislation*',[65] including there being no requirement to table regulations in Parliament, Mr Robertson, AHPRA, commented:

> *With respect, that is in some respects why the model is as such, so it does present an opportunity for having a consistent national law regulation, because it would not make sense as far as I understand it to have a national law regulation operating in one state.*
>
> *Chairman: Why not develop a national scheme that says a regulation comes to effect once it has been allowed or passed through every jurisdiction in Australia? That would give you the effect to still make national regulations; it would give you the effect of allowing the state Parliaments to still have their role and responsibility respected and their state sovereignty respected; and it will still give you a national law at the end of the day.*
>
> *Mr Robertson: That is one model that could have been used, I am sure. It was not the one that the Parliamentary Counsel's Committee put forward as being a model to be used under this national law.*[66]

A majority of jurisdictions must disallow a regulation for a regulation to cease to have effect and the absence of a mechanism to effect disallowance

3.49 The National Law further provides that a regulation that has been disallowed by a House of Parliament of a participating jurisdiction does not cease to have effect in that jurisdiction, or any other participating jurisdiction, unless the regulation is disallowed in a majority of the participating jurisdictions and ceases to have effect on the date of its disallowance in the last of the jurisdictions forming the majority (clauses 246(2) and (3)).

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65 Hon Adele Farina MLC, Chair, Uniform Legislation and Statutes Review Committee, *Transcript of Evidence*, 24 May 2010, p31.

66 Mr Chris Robertson, Director, National Board Services, Australian Health Practitioner Regulation Agency, *Transcript of Evidence*, 24 May 2010, p31.

3.50 In the event that the Parliament of Western Australia does disallow a regulation (despite all the problems identified in paragraphs 3.28 to 3.48), the disallowance has no effect unless and until a majority of participating jurisdictions disallow the regulation.

3.51 However, there is no mechanism in the National Law for notifying jurisdictions that another jurisdiction has disallowed the regulation. In the absence of this information, jurisdictions will be led to believe that disallowing the regulation will have no effect because it requires a majority of jurisdictions to disallow the regulation for the disallowance to have effect. Therefore there is little value in disallowing the regulation, making it self-perpetuating that the regulation will not be disallowed.

3.52 There is no effective capacity to disallow a regulation if jurisdictions are not notified that a regulation has been published.

3.53 Also, under the National Law the question put by the Speaker or President of the Houses of the Parliament of Western Australia would be along the lines that 'the regulation is disallowed subject to the provisions of the National Law', which is a nonsense.

3.54 The disallowance would be subject to the National Law and procedures in other jurisdictions over which it has no control. The Gazettal of the decision could also prove problematic as its effect would be subject to matters beyond the control of the State and of which the State may never be notified.

3.55 What appears to be certain is that the regulation making provisions and the disallowance provisions under the National Law will result in confusion among health professionals as to whether or not the disallowance by the Parliament of Western Australia results in the regulation ceasing to have effect and the date on which it ceases to have effect.

3.56 The effect of the National Law is that a decision of the Ministerial Council to make a regulation overrides the authority of the Parliament of Western Australia to disallow a regulation unless and until a majority of the participating jurisdictions disallow the regulation.

3.57 The disallowance process provided in the National Law clearly erodes Parliament's sovereignty to make and disallow regulations. As noted during the Department of Health hearing:

> *The Chairman:* … [If we] *were to disallow those regulations, would that disallowance be effective in WA?*
>
> *Mr Ashburn: No, not unless the majority of the jurisdictions disallow it.*

> *The Chairman: So in adopting this scheme, we are undermining the sovereignty and the power of the WA Parliament to make its own decisions about the laws and regulations that will govern Western Australians.*
>
> *Mr Ashburn: The law proper, no, because we do not adopt law. In the case of the regulations, it is a majority adoption process.*
>
> *The Chairman: So the answer to my question is "yes".*
>
> *Mr Ashburn: I think it probably is, yes.*[67]

3.58 The view that a disallowance process '*clearly is available*'[68] in the National Law is at best misconceived given the massive practical problems that arise as a result of the regulation provisions.

3.59 The National Scheme aims for consistency among jurisdictions but a requirement for consistency through a majority decision does explain the deficits in providing the Parliament with the information it needs to decide whether or not to disallow.

3.60 Other Parliaments have taken issue with the National Law regulation provisions. For example, correspondence from the Scrutiny of Legislation Committee of the Parliament of Queensland to Hon Paul Lucas MP, Queensland's Deputy Premier and Minister for Health, regarding section 7 of the Queensland Act[69] and sections 245 to 247 of the National Law noted that there is no mechanism to inform the Legislative Assembly that the Ministerial Council has made regulations despite the comments made in the Explanatory Memorandum regarding clause 7 of the Queensland Act.[70]

3.61 There appears to be no real opportunity for regulations to be disallowed.

3.62 The AMA expressed the view that the National Law providing that '*regulations can only effectively be disallowed by a majority of States is unacceptable*'.[71] The Australian Dental Association submitted that clause 246 '*seems to run counter to State*

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67 Mr Stephen Ashburn, Acting Director, Legal and Legislative Services, Department of Health, *Transcript of Evidence*, 5 May 2010, pp6-7.

68 Mr Chris Robertson, Director, National Board Services, Australian Health Practitioner Regulation Agency, *Transcript of Evidence*, 24 May 2010, p30.

69 Section 7 of the Queensland Act provides that the *Acts Interpretation Act 1954* (Qld) does not apply to Queensland's National Law.

70 Letter from Jo-Ann Miller MP, Chair, Scrutiny of Legislation Committee, Parliament of Queensland, to Hon Paul Lucas MP, Deputy Premier and Minister for Health, Government of Queensland, 8 June 2010, p1. Scrutiny of Legislation Committee forwarded this letter to the Joint Standing Committee on Delegated Legislation, Parliament of Western Australia. The letter also states that it was copied to Chairs of other Parliamentary committees with relevant responsibilities and to all Queensland Government Ministers and to the Queensland Parliamentary Counsel '*to ensure legislation, including nationally consistent legislation, provides appropriate procedures after the making of subordinate legislation*'.

71 Submission No. 66 from Australian Medical Association (Western Australia), 3 March 2010, p3.

rights and may raise matters of legal principle'.[72] The Committee concurs with these views.

Amending the Bill

3.63 The Parliament may amend the Bill to address the inadequacy of the regulation provisions. The Parliament has made such amendments in the past and these amendments have proven to be effective.

3.64 As previously noted, not all amendments to the Bill will be fatal to Western Australia's involvement in the National Scheme. An amendment to the regulation provisions in the National Law is one such amendment that can be effected, as is illustrated by the Consumer Credit (Western Australia) Amendment Bill.

Amendments to the Consumer Credit (Western Australia) Amendment Bill 2002

3.65 The Parliament of Western Australia amended the Consumer Credit (Western Australia) Amendment Bill 2002, which implemented a national scheme, to require the Minister to provide the Clerks of each House of the Parliament of Western Australia with a copy of a bill or regulation that amends the Consumer Credit Code or regulation (which is deemed to have the effect of tabling the bill or regulations in both Houses of the Parliament), to require the bill or regulations to be referred to a Committee of Parliament and to provide Parliament with the power to amend the regulations. A copy of sections 6 and 6B of the *Consumer Credit (Western Australia) Act 1996*, which prescribe the above, is attached at Appendix 4.

3.66 The Consumer Credit (Western Australia) Amendment Bill 2002 originally provided that regulations passed by the Parliament of Queensland would apply to Western Australia and did not allow for scrutiny or amendment by the Parliament of Western Australia.

3.67 During debate on the Consumer Credit (Western Australia) Amendment Bill 2002, Hon Barry House MLC expressed the then Opposition's concerns and reasons for opposing the bill (as initially tabled) in the following terms:

> *The Opposition opposes the Consumer Credit (Western Australia) Amendment Bill 2002. In saying that, I indicate that the Opposition supports the principle of uniformity and some aspects that follow on from that, but we cannot support this legislation because of the process used to implement it. Our opposition is raised because this legislation uses template legislation originating from the Queensland Parliament, of all places, to impose laws on the State of Western*

[72] Submission No. 41 from Australian Dental Association (WA Branch), 26 February 2010, p2.

Australia. Uniform code regulations will be imposed throughout Australia simply by an Act of the Queensland Parliament …

That is the way this Government elects to impose rules and regulations on the State of Western Australia. Once it is implemented by the Queensland Parliament, that is the end of the story. No scrutiny of the legislation takes place anywhere in Western Australia …

The bottom line in all this is that there will be no role whatsoever for the Western Australian Parliament in determining Consumer Credit Code changes. We are completely removed from the legislative decision-making process. In addition to that, there is no accountability. There is no requirement whatsoever for the Government to notify changes in the Government Gazette. The only oblique reference to accountability in the minister's comments is that the Government might adopt the policy of making a statement on the proposed changes to the Parliament. It may be a policy position that the Government of the day, through the minister, might deign to regard changes to the Consumer Credit Code as so important that it might make a statement to Parliament. It might, but then again it might not. That treats the Western Australian Parliament and community with contempt. The Tasmanian Parliament, as I understand it, has adopted a "halfway house" situation under which it insists on the details of changes at least coming to the Parliament by way of motion so that they can be debated in the Parliament and voted on. That is still an inadequate response, but it is better than nothing. At the very least, the Government of Western Australia should be looking at something like that. These changes should be made by uniform legislation rather than by template legislation through one House of Parliament in Australia. That was the process adopted by the Liberal Party when in government, and we still support that process …

The first reason the Opposition does not support template legislation, and supports uniform legislation to achieve changes like this, is the sovereignty of the Western Australian Parliament, which is paramount. It is a total abrogation of the responsibilities and rights of this Parliament to agree to changes to Western Australian laws affecting the community in Western Australia being made in some way-off Parliament in which we have no representation and no input. In turn, that Parliament has no responsibility to us. That is a totally foreign concept for the Liberal Party …

> *In summary, the Opposition opposes this Bill because of the use of template legislation. It relies on the Queensland Parliament. The process and method is wrong. We should use uniform legislation to enshrine the need for uniformity in these areas across the board in all Australian States. That is what the Liberal Party supports to protect the sovereignty of our Parliament. We are elected to this Parliament. We do not elect people to the Queensland Parliament to enact laws on our behalf. That is the basis of our opposition to this Bill.* [73]

3.68 Hon Dee Margetts MLC agreed with the Opposition:

> *I am in agreeance with the Liberal Party on this issue. My jaw dropped when I received a briefing on this Bill. I said that I did not think that the fact the ministerial council had made a decision and a Bill was put through one Parliament that does not have a House of Review was sufficient to provide checks and balances for our democratic process.*[74]

3.69 Hon Murray Criddle MLC added during the Committee debate on the bill:

> *I am not in favour of falling into line with other States in matters that are ticked off by the ministerial council without the opportunity of this Parliament having an input.*[75]

Reasons for amending the Bill

3.70 The Committee endorses the views (expressed above) that:

- The sovereignty of the Parliament of Western Australia is paramount.
- It is the responsibility and right of the Parliament of Western Australia to make laws and regulations for the people of Western Australia and this responsibility and right should not be abrogated in favour of a Parliament of another jurisdiction.

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73 Hon Barry House MLC, Legislative Council, *Parliamentary Debates (Hansard)*, 7 May 2003, pp7139-41. See also Legislative Council, *Parliamentary Debates (Hansard)*, 24 June 2003, pp9043-47, where the Consumer Credit (Western Australia) Amendment Bill 2002 and the Government amendments to that Bill is discussed in Committee. Hon Barry House MLC stated that the '*amendments will provide the Western Australian Parliament with an opportunity for some scrutiny*': Hon Barry House MLC, Legislative Council, *Parliamentary Debates (Hansard)*, 24 June 2003, p9043.

74 Hon Dee Margetts MLC, Legislative Council, *Parliamentary Debates (Hansard)*, 7 May 2003, p7141.

75 Hon Murray Criddle MLC, Legislative Council, *Parliamentary Debates (Hansard)*, 24 June 2003, p9042.

- Laws and regulations which are to have effect in Western Australia should be subject to the scrutiny of the Parliament of Western Australia and should be notified in the Western Australian Government Gazette.

- National Schemes should not abrogate Parliamentary sovereignty and completely remove the Parliament of Western Australia from the legislative decision making process.

- National Schemes should not treat the Western Australian Parliament and community with contempt.

Recommendations

3.71 The Committee is of the view that the regulation provisions of the National Law should be amended so as to preserve the sovereignty of the Parliament of Western Australia to make, disallow and repeal regulations.

3.72 The effect of the proposed amendments would be that the usual regulation making powers as specified in the *Interpretation Act 1984* will apply. In particular:

- A regulation made by the Ministerial Council will have effect in Western Australia on the date or dates specified in the regulation.

- The regulation must be laid before both Houses of the Parliament of Western Australia.

- If the regulation is disallowed by the Parliament of Western Australia it will immediately cease to have effect in Western Australia regardless of what other jurisdictions decide.[76]

3.73 The purpose of Recommendation 1 is to apply sections 41 and 42 of the *Interpretation Act 1984* to regulations made under the Bill. This will apply the usual law applying to regulations to National Law regulations, including the requirements that:

- Regulations be published in the Gazette and come into operation on the day of publication or another day specified, subject to the disallowance provisions in section 42 (section 41(1) of the *Interpretation Act 1984*).[77]

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[76] Under the proposed amendments, the Parliament of Western Australia, when considering whether to disallow a regulation will no doubt be informed of and consider the effect, if any, of the disallowance on the National Scheme and Western Australia's participation in the scheme. The Parliament will then decide whether disallowance is in the interests of Western Australia having considered all issues.

[77] National Law regulations made by the Ministerial Council would be published in the same way that regulations made by the Executive are published. Publishing the regulations in the Gazette will trigger the regulations being considered by the Joint Standing Committee on Delegated Legislation.

- Regulations shall be laid before each House of Parliament within six sitting days of the House following the publication of the regulations in the Gazette (section 42(1) of the *Interpretation Act 1984*).

- Regulations can be disallowed by either House of Parliament passing a resolution disallowing any regulation in the manner set out in section 42 in the *Interpretation Act 1984* (sections 42(2) to 42(4) of the *Interpretation Act 1984*).

Recommendation 1: The Committee recommends that clause 7 of the Health Practitioner Regulation National Law (WA) Bill 2010 be amended in the following manner:

Page 4, line 19 - To delete 'The' and insert -

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

Page 4, after line 27 - To insert -

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

3.74 The purpose of Recommendation 2 is to ensure that the Bill and the National Law are consistent. Recommendation 2:

- Deletes National Law provisions that require regulations to be published by the Victorian State Printer and defines Victorian Government Printer (clauses 245(3) and 245(5)).

- Inserts a National Law provision, proposed section 245(3), which provides that sections 41 and 42 of the *Interpretation Act 1984* apply to regulations made under subsection (1).

3.75 The Committee acknowledges that there is an argument that inserting proposed section 245(3) may be redundant if Recommendation 1 is adopted as it essentially repeats what Recommendation 1 proposes to insert into section 7 of the Bill. However, in the Committee's view it is desirable for clarity reasons to insert a provision stating that sections 41 and 42 of the *Interpretation Act 1984* apply to National Law regulations in the regulation part of the National Law, as well as in section 7 of the Bill. A casual reader of the National Law may not notice that section 7 of the Bill is relevant to National Law regulations.

Recommendation 2: The Committee recommends that clause 245 of Schedule 1 of the Health Practitioner Regulation National Law (WA) Bill 2010 (that is, the Health Practitioner Regulation National Law) be amended in the following manner:

Page 233, after line 7 - To insert

(3) Despite section 7(1)(d) of the *Health Practitioner Regulation National Law (WA) Act 2010*, sections 41 and 42 of the *Interpretation Act 1984* apply to regulations made under subsection (1).

Page 233, lines 8-10 - To delete the lines

Page 233, lines 14-17 - To delete the lines

3.76 The purpose of Recommendation 3 is to delete clause 246 of the National Law, which provides that a National Law regulation can only cease to have effect if the regulation is disallowed in a majority of the participating jurisdictions (and other related matters). The effect of implementing this recommendation (with Recommendations 1 and 2) is that Western Australian laws applying to regulations will apply to National Law regulations, as outlined in paragraph 3.72 above.

Recommendation 3: The Committee recommends that clause 246 of Schedule 1 of the Health Practitioner Regulation National Law (WA) Bill 2010 (that is, the Health Practitioner Regulation National Law) be amended in the following manner:

Page 233, after line 18 - To insert

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

Page 233, lines 19-32 - To delete the lines

Page 234, lines 1-4 - To delete the lines

3.77 The purpose of Recommendation 4 is to delete clause 247 of the National Law, which prescribes the effect of disallowance of regulations made under the National Law. Clause 247 must be deleted if Recommendations 1 to 3 are adopted as these recommendations delete the National Law regulation provisions and replace these provisions with Western Australian regulation mechanisms.

3.78 If Recommendations 3 and 4 are adopted, the headings to clauses 246 and 247 will remain in the National Law. The Committee understands that this is consistent with Parliamentary Counsel's Office practice in regulations based on model laws when

particular regulations are not adopted by Western Australia. If Parliamentary Counsel's Office is of the view that the headings should not be retained, the headings can be deleted.

Recommendation 4: The Committee recommends that clause 247 of Schedule 1 of the Health Practitioner Regulation National Law (WA) Bill 2010 be amended in the following manner:

Page 234, after line 5 - To insert

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

Page 234, lines 6-15 - To delete the lines

THE STATE'S ABILITY TO WITHDRAW FROM THE NATIONAL SCHEME

3.79 Clauses 16 of the Intergovernmental Agreement provides that the parties agree that withdrawal from the Scheme '*will be a measure of last resort*' and a party that proposes to withdraw from the agreement will notify each of the other parties by giving at least 12 months written notice.[78]

3.80 It is relevant to note that Intergovernmental Agreements are not legally binding, that is, one government can not sue another government for breaching the terms of an intergovernmental agreement and if Western Australia withdrew from the National Scheme the registration and accreditation of health professions would revert to Western Australia.

[78] Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions, 26 March 2008, p8.

CHAPTER 4

ISSUES ARISING OUT OF THE NATIONAL LAW AND NATIONAL SCHEME STRUCTURES

4.1 The Committee's consideration of the National Law (the Schedule to the Bill) raised a number of concerns about National Scheme bodies and particular provisions of the National Law.

AUSTRALIAN HEALTH WORKFORCE MINISTERIAL COUNCIL

4.2 The Ministerial Council, which is comprised of Ministers from the governments of participating jurisdictions and the Commonwealth, has pre-eminent, wide ranging and largely unfettered powers.

4.3 In the Committee's view, many questions and concerns remain about how the Ministerial Council will operate. Certainty regarding the procedures adopted by the Ministerial Council is particularly important in determining the effect of the National Law given the Ministerial Council's pivotal role in the National Scheme.

4.4 The powers of the Ministerial Council are outlined in the National Law (in particular, Part 2, clauses 11 to 17) and in clause 7.5 of the Intergovernmental Agreement. Clause 7.5 of the Intergovernmental Agreement notes that the Ministerial Council will be responsible for a number of matters including (this list is not exhaustive):

- providing policy direction;
- agreeing on the inclusion of new professions in the National Scheme;
- proposing legislative amendments through processes of governments;
- appointing members of boards and the Advisory Council;
- approving profession-specific registration, practice, competency and accreditation standards and continuing professional development (**CPD**) requirements provided by the boards;
- requesting boards to review approved profession-specific registration, practice, competency and accreditation standards and CPD requirements; and

- maintaining a reserve power to intervene on budgets and fees, with any intervention to be transparent.[79]

4.5 The National Law provides that the Ministerial Council may give policy directions on a broad range of matters (see clause 11(3)) and may give direction to AHPRA (the National Agency) and National Boards about the policies to be applied by them in exercising their functions.[80] Clause 12 of the National Law further provides that the Ministerial Council approves registration standards (central to regulation under the Scheme). The Ministerial Council is also responsible for approving '*specialist recognition*' (clause 13), approving an endorsement for an area of practice (clause 98) and making regulations (clause 245).

4.6 Despite these wide powers, clause 16 of the National Law provides almost no prescription on how the Ministerial Council will exercise its functions. Clause 16 provides that the Ministerial Council is to give a direction or approval, or make a recommendation, request or appointment, for the purposes of a provision of the law by resolution of the Council passed '*in accordance with procedures determined by the Council*'.

4.7 Unlike other National Scheme bodies, the Ministerial Council's basic procedures are not outlined in a Schedule to the National Law.[81] Committee inquiries regarding the operation of the Ministerial Council were not productive. When asked about Ministerial Council procedures Mr Robertson, AHPRA, advised '*If you are asking me how the ministerial council operates specifically, I do not attend most of their meetings so I cannot answer you specifically about that*'.[82]

4.8 The procedures of the Ministerial Council are not specified in the National Law. With the exception of the limited procedures set out in the Intergovernmental Agreement, the Ministerial Council has a wide discretion to determine its own procedures.

4.9 Regarding the frequency of meetings, the Intergovernmental Agreement provides that the Ministerial Council will meet from time to time as required.

4.10 Clause 7.3 of the Intergovernmental Agreement states that the '*relevant quorum requirements will be that all jurisdictions should be represented by the Minister responsible for health*'.[83] This provision appears to have the effect that the absence of

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79 Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions, 26 March 2008, pp5-6.

80 Functions of National Boards are noted at paragraph 4.19 of this report.

81 The National Law, which is the Schedule to the Bill, contains seven schedules.

82 Mr Chris Robertson, Director, National Board Services, Australian Health Practitioner Regulation Agency, *Transcript of Evidence*, 24 May 2010, p38.

83 Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions, 26 March 2008, p5.

one Minister at a Ministerial Council meeting may result in the meeting not proceeding due to a lack of quorum. It is likely that due to other commitments, including elections, occasions will arise when one or more ministers are unable to attend Ministerial Council meetings. Pursuant to clause 7.3 of the Intergovernmental Agreement, this will result in no meeting for want of quorum. Given the primary role of the Ministerial Council and that fact that it meets infrequently, this could be problematic for the effective functioning of the National Scheme. When the Committee asked the Department of Health about the effect and intent of this provision, they advised that they had '*No knowledge*'[84] of what was intended by this clause.

4.11 Clause 7.4 of the Intergovernmental Agreement provides that '*Agreement by the Ministerial Council for the purpose of decisions relating to this scheme will be by consensus*'.[85] When the Ministerial Council cannot reach a consensus, the Advisory Council will undertake a transparent process of review.[86] The Intergovernmental Agreement further provides that the Ministerial Council must take into account any advice provided by the Advisory Council.[87]

4.12 However, the Committee is unsure if '*consensus*' means that there must be a unanimous decision or a majority decision. Mr Robertson, AHPRA, advised the Committee that his understanding was that consensus meant that all members of the Ministerial Council must agree. That is, that a decision has to be unanimous.[88] However, the Macquarie Dictionary Online defines '*consensus*' to mean '*1. general agreement or concord. 2. majority of opinion*'[89] and *The New Shorter Oxford English Dictionary* defines '*consensus*' to mean '*Agreement or unity of or of opinion, testimony, etc; the majority view, a collective opinion*'. [90] On this point, Mr Rockliff MLA commented in the Legislative Assembly of the Parliament of Tasmania '*Mr Speaker, I remind members that under the terms of the intergovernmental agreement,*

84 Answers to Questions on Notice, Department of Health, 14 May 2010, p5. Mr Chris Robertson, Director, National Board Services, Australian Health Practitioner Regulation Agency, could not assist on what this provision meant when asked during hearing: *Transcript of Evidence*, 24 May 2010, p38.

85 Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions, 26 March 2008, p5.

86 Ibid.

87 Ibid, p11.

88 Mr Chris Robertson, Director, National Board Services, Australian Health Practitioner Regulation Agency, during the following exchange, appeared to state that consensus meant a unanimous vote - '*Robertson: It requires consensus across ministerial council to make a regulation, is my understanding. Chair: So it requires a unanimous vote? Robertson: A consensus, yes. Chair: So if they cannot all agree, then a regulation will not be made? Robertson: That is my understanding, yes*': *Transcript of Evidence*, 24 May 2010, p27.

89 http://www.macquariedictionary.com.au (viewed on 5 June 2010).

90 *The New Short Oxford English Dictionary*, 1993 edition, p484.

unanimous decisions by the ministerial council are not required. Rather, decisions will be made by consensus or the majority'.[91]

4.13 Despite the requirement in the guiding principles of the National Scheme that it operate in a transparent and accountable way, there is no requirement, legislative or otherwise, that agendas and minutes of Ministerial Council meetings (as well as National Boards, State or Territory Boards and Advisory Council meetings) be made available on its website or be published. The Ministerial Council (and National Boards) publish communiqués which advise of decisions made and matters the Ministerial Council chose to publish. The Committee is of the view that this falls short of the guiding principle that the operation of the National Scheme be transparent and accountable.

Recommendation 5: The Committee recommends that the responsible Minister advise the Legislative Council of the reason(s) for there being no requirement, legislative or otherwise, in the National Law that the Ministerial Council, National Boards, State or Territory Boards and Advisory Council publish agendas and minutes of meetings on the website, in view of the guiding principle that the National Scheme is to operate in a transparent and accountable manner.

AUSTRALIAN HEALTH WORKFORCE ADVISORY COUNCIL

4.14 The Advisory Council provides advice to the Ministerial Council about matters referred to it by the Ministerial Council, matters for review where the Ministerial Council has not been able to reach a decision by consensus and any other matter it considers appropriate and is consistent with the objects of the legislation (clause 19). The Advisory Council consists of seven members appointed by the Ministerial Council (clause 22).

4.15 While a Western Australian is currently a member of the Advisory Council, there is no legislative requirement that at least one member of the Advisory Council be from Western Australia. The Committee is of the view that this should be a legislative requirement in order to ensure Western Australian interests are represented on the Advisory Committee.

4.16 The Committee is concerned about the lack of detail prescribed in the National Law as to how the Advisory Council will make decisions.

4.17 The constitution and procedures of the Advisory Council are set out in Schedule 1 of the National Law. Clause 7 of Schedule 1 of the National Law provides that the procedure for the calling of meetings of the Advisory Council and that the conduct of business at those meetings are to be as '*determined by the Advisory Council*'. A

[91] Hon Jeremy Rockliff MLA, Parliament of Tasmania, Legislative Assembly, *Parliamentary Debates (Hansard)*, 8 June 2010, p52.

quorum is a majority of the members (Schedule 1, clause 8 of the National Law). The National Law does not state whether decisions of the Advisory Council need to be unanimous or whether a majority decision will suffice. In relation to transactions of business outside meetings, a resolution in writing approved by a majority of members is taken to be a decision of the Advisory Council (Schedule 1, clause 10(1) of the National Law).

4.18 The Committee notes that the Ministerial Council must have regard to advice provided by the Advisory Council. However, it is not clear whether the Advisory Council must reach a unanimous decision in relation to the advice provided to the Ministerial Council or whether a majority decision will suffice. Also, it is not clear whether a dissenting view will be presented to the Ministerial Council from the Advisory Council to ensure the Ministerial Council is fully informed before making decisions. In response to questions regarding this issue, the Department of Health advised:

> [There] *is no provision for how the Advisory Council will reach agreement, or the action a member may take if they dissent with a majority decision. The IGA* [Intergovernmental Agreement] *does not cover this aspect and the National Regulations have not been drafted.*[92]

NATIONAL BOARDS

4.19 The National Law provides that a National Board is established for each health profession covered by the National Law (clause 31). National Board functions include registering persons in the health profession[93] and imposing conditions if necessary, deciding the requirements for registration or 'endorsement' of registration, developing or approving standards, codes and guidelines for the profession and approving accredited programmes of study (clause 35). The National Law provides that a National Board '*may*' establish a State or Territory Board '*for a participating jurisdiction*' and that a State or Territory Board may consist of more than one State or Territory (clause 36, see paragraphs 4.23 to 4.30). Further, a National Board may delegate any of its functions to the State or Territory board. Schedule 4 of the National Law sets out the constitution, functions, powers and procedures of National Boards.

4.20 Ten National Boards are currently operating with a Western Australian member on each Board.[94] As a large participating jurisdiction, Western Australia is entitled to

92 Answers to Questions on Notice, Department of Health, 14 May 2010, p5.

93 The National Law provides for the following types of registration: general registration, specialist registration, provisional registration, limited registration, non-practicing registration and student registration.

94 National Board websites note the members of the boards. National Boards currently have between nine and 12 members, including community members.

have at least one 'practitioner member' on a National Board (clause 33).[95] However, the Minister for Health only recommends the Western Australian member but the appointment is made by the Ministerial Council[96] which, the Department of Health advised, gives '*very significant weight to the views of the Minister from the relevant jurisdiction*'.[97]

4.21 The National Boards for the professions of optometry, pharmacy, chiropractic, osteopathy[98] and podiatry have not established State Boards in Western Australia. The Minister for Health advised the Legislative Assembly that Western Australian practitioners in these professions have not objected to this arrangement.[99]

4.22 The AMA took issue with the 'top down' approach of the Scheme and considered that a better approach to the Scheme would be been a 'bottom up' approach demonstrated by the Chair of State Boards being members of the National Board. The Department of Health acknowledge that '*the national framework is a top-down approach (bearing in mind that all the States are participants in the top level) rather than a bottom-up approach. Building National Boards from State Boards is not consistent with this approach*'.[100]

STATE AND 'REGIONAL' BOARDS

4.23 The National Law provides that a National Board '*may*' establish a State or Territory Board '*for a participating jurisdiction*' (clause 36). Establishing a State Board is not mandatory, even for a '*large participating jurisdiction*' such as Western Australia (clause 33(11)).[101]

4.24 The National Board may delegate a number of its functions to the State or Territory Board (clause 37). The Minister for Health appoints a person to a State Board (clause 36).[102]

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95 Clause 33 of the National Law sets out other National Board requirements, including at least half but not more than two thirds of members must be appointed as '*practitioner members*', at least two of the members must be appointed as community members and at least one member must live in a regional or rural area.

96 Clause 33(3) of the National Law provides that the Ministerial Council may determine the size and composition of a National Board.

97 Answers to Questions on Notice, Department of Health, 24 May 2010, p8.

98 Mr Kim Snowball, Acting Director General, Department of Health, *Transcript of Evidence*, 24 May 2010, p18.

99 Hon Dr Kim Hames MLA, Minister for Health, Western Australia, Legislative Assembly, *Parliamentary Debates (Hansard)*, 5 May 2010, p2786.

100 Ibid.

101 Clause 33(11) of the National Law provides that the other '*large participating jurisdictions*' are New South Wales, Victoria, South Australia and Queensland.

102 Answers to Questions on Notice, Department of Health, 14 May 2010, p7.

4.25 As at late May 2010, if Western Australia enters the National Scheme, Western Australia will have four Western Australian only State Boards, being State Boards for the medical, dental, physiotherapy and nursing and midwifery professions.[103]

4.26 The National Law also provides that a National Board may establish a State or Territory Board consisting of more than one State or Territory. The Psychology Board of Australia has established a South Australian and Western Australian Board of the Psychology Board of Australia consisting of six members (three from each State).[104] This is often referred to as a 'Regional' Board.[105]

4.27 A National Board may delegate any of its functions to the State or Territory board. This may differ from one State to another State and from one profession to another.

4.28 The Committee is not aware of the detail of how the State Boards will operate under the National Scheme. The National Law does not prescribe matters that would usually be prescribed in regulation legislation. For example, the National Law lacks detail on the structure and membership of State Boards. A maximum number of members and terms of appointment are not prescribed.[106] Clause 36 only provides that at least half but not more than two thirds of board members must be practitioner members and at least two members must be community members. The National Law does not prescribe how many members from each State will be on a 'Regional' Board or how this board will operate. The Committee's ability to inform Parliament of the full effect of the National Law is limited by this lack of detail. The Committee is of the view that the details of the procedure and membership of State Boards should have been prescribed in the Schedule to the National Law and, as this is not the case, it should be prescribed in the regulations.

4.29 Regarding what functions are delegated to State Boards, the Committee is aware that the Medical Board of Australia has determined that any matters relating to an individual practitioner will be dealt with by the State boards and that matters of a policy nature will be dealt with by the National Board.[107] The Psychology Board of Australia has delegated to State Boards the responsibility for all matters relating to

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103 Mr Chris Robertson, Director, National Board Services, Australian Health Practitioner Regulation Agency, *Transcript of Evidence*, 24 May 2010, p18.

104 Communiqué of the Second Meeting of the Psychology Board of Australia, 15 and 23 October 2009, p2: http://www.psychologyboard.gov.au/documents/ and select 'Second meeting of the Psychology Board of Australia' (viewed on 7 June 2010).

105 For example, Mr Kim Snowball, Acting Director General, Department of Health, discussed the psychology regional board in evidence: *Transcript of Evidence*, 24 May 2010, pp18, 22 and 23.

106 The term of appointment will be specified in the instrument of appointment: Answers to Questions on Notice, Department of Health, 24 May 2010, p8.

107 Mr Chris Robertson, Director, National Board Services, Australian Health Practitioner Regulation Agency, *Transcript of Evidence*, 24 May 2010, p20. These details are also provided on the Medical Board of Australia website: http://www.medicalboard.gov.au (viewed on 7 June 2010).

individual registered psychologists and will rely on the State Boards to make decisions on applications for registration and on notifications (complaints).[108]

4.30 The lack of legislative detail about the procedure and membership of State or Territory Boards is of particular concern in relation to how the South Australian and Western Australian Board of the Psychology Board of Australia will operate and serve the needs of Western Australian psychologists. These concerns are discussed at paragraphs 5.48 to 5.55 of this report.

INCREASED BUREAUCRACY AND FEES

4.31 Concern has been expressed that the effect of the National Law will be the introduction of a more bureaucratic regulation scheme resulting in practitioners paying significantly higher registration fees.

4.32 Essentially, for most professions, the Bill imposes a two tiered regulation structure – a National Board (together with a new National Agency (AHPRA)) and State Boards. This two tiered structure replaces a State based regulation regime. For other professions, the Bill replaces a State based regulation regime with a national based regulation regime. The Committee has been presented with no evidence of how this results in a more efficient and less bureaucratic regulation regime.

4.33 The AMA submitted that they are not convinced that the National Scheme will reduce red tape. They are concerned that the scheme will increase bureaucracy while at the same time reducing the State's role,[109] and consider that the Bill '*seeks to enshrine Political and Bureaucratic control*'.[110]

4.34 Regarding a potential increase in fees, the AMA advised that despite the arguments of increasing efficiency and reducing costs used to partially justify the legislation, the National Scheme will impose '*significant increases*'[111] in fees. The AMA stated that it understands that the increase in registration fees proposed for medical practitioners is '*in the order of 70 percent*'.[112]

4.35 The Australian Dental Association submitted that the expense of registration might more than triple:

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108 Communiqué of the Sixth Meeting of the Psychology Board of Australia, 26 March 2010, p1: http://www.psychologyboard.gov.au/documents/ and select 'Sixth meeting of the Psychology Board of Australia' (viewed on 7 June 2010).

109 Letter from Professor Gary Geelhoed, President, Australian Medical Association (Western Australia), 3 March 2010, p1.

110 Submission No. 66 from Australian Medical Association (Western Australia), 3 March 2010, p3.

111 Letter from Professor Gary Geelhoed, President, Australian Medical Association (Western Australia), 28 April 2010, p1.

112 Ibid.

> *We are of the opinion that no element of that original premise* [for the Scheme, they noted that the early model was for the scheme to require less red tape, be transportable across State boundaries and involve less bureaucracy] *has been adequately fulfilled; however the expense of registration will have more than tripled.*[113]

4.36 The Psychologists Registration Board of Western Australia refutes any argument that the South Australian and Western Australian Board of the Psychology Board of Australia is required for cost savings reasons. The Board asserts that this argument is not supported by the fact that the current Board is self-funded by a relatively modest fee of $300 per year, whereas they believe that the National Scheme will be far more expensive[114] (*proposed* fees suggest that this may be the case: see paragraph 4.43).

4.37 As noted at paragraph 2.10, clause 3(3)(b) of the National Law provides that a guiding principle of the National Scheme is that '*fees required to be paid under the scheme are to be reasonable having regard to the efficient and effective operation of the scheme*'.

4.38 Clause 26(1)(a) of the National Law provides that the AHPRA and National Boards must enter into a health profession agreement that makes provision for the fees that will be payable under the National Law by health practitioners and others in respect of the health profession for which the board is established. Clause 26(2) provides that if the parties are unable to agree, the Ministerial Council may give directions to the parties about how the dispute is to be resolved. Clause 26(3) provides that each National Board must publish on its website the fees set out in the health profession agreement.

4.39 The Acting Director General, Department of Health, added that registration fees '*really they are set on the basis of recommendations from the national boards*'.[115]

4.40 Under the current State registration regime in Western Australia, registration fees for the professions must be prescribed by regulation, providing an opportunity for the Parliament to scrutinise the fees to ensure the fee set covers the cost of administering the system only and is not a revenue raising tax. Under the National Law this check and balance will be lost, the Parliaments of all participating jurisdictions will not be able to scrutinise the fees set for each profession.

4.41 Initial inquiries by the Committee about the registration fees to be charged for each profession proved unsuccessful. The Committee was informed that the registration

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113 Submission No. 41 from Australian Dental Association (WA Branch), 26 February 2010, p1.

114 Submission No. 37 from Psychologists Registration Board of Western Australia, 3 March 2010, attachment, p3.

115 Mr Kim Snowball, Acting Director General, Department of Health, *Transcript of Evidence*, 24 May 2010, p20.

fees had not yet been set despite the fact that the National Scheme is set to commence on 1 July 2010. However, after further pursuing the matter, the Committee did obtain a copy of the *proposed* registration fees dated May 2010.

4.42 As at 17 June 2010, fees under the National Scheme have not been set. Fee issues were due to be considered by the Ministerial Council at its meeting on 17 June 2010.

4.43 Based on the *proposed* fees dated May 2010, the registration fees for all Western Australian health practitioner professionals to be covered under the National Scheme (except osteopathy) will increase. (Under the proposed fee schedule, the registration fee for the medical profession will increase from $385 to $650 and for the psychology profession will increase from $300 to $390).[116] However, this is not the case for all professions in all participating jurisdictions, in some cases the registration fees will decrease. (For example, the registration fee for a chiropractor in South Australia will decrease from $600 to $495 and the registration fee for an osteopath in Queensland will decrease from $878 to $480).[117]

4.44 The Committee was informed that as at 13 May 2010, the following method was used to calculate fees:

- Detailed estimates of costs in 2010-2011 were developed, informed by analysis of future requirements and previous costs of operating boards. While some costs were directly attributable to National Boards, other costs shared between National Boards (for example, staff and accommodation costs) were attributed to boards using agreed proportionate shares, based on the previous proportionate costs of supporting the professions throughout Australia.

- It was agreed with National Boards that one-off costs and contingencies would be covered by reserve funds, so as to avoid inflating recurrent costs and fees. One-off costs include costs associated with implementation in 2009-2010 and costs associated with completing the implementation and decommissioning of existing State boards.

- Costs were divided by the estimated number of registrants.[118]

4.45 When the Committee asked the Department of Health why the National Scheme will be more efficient and simpler than the existing arrangement, the Department of Health advised that they believed that the National Scheme would result in efficiencies and economies of scale for the reasons noted below. However, this is not apparent in the

116 Answers to Questions on Notice, Department of Health, 9 June 2010, Appendix to Attachment 1 of response, p1.

117 Ibid.

118 Answers to Questions on Notice, Department of Health, 9 June 2010, pp2-3.

registration fees that have been set, in particular for Western Australian professionals to be covered by the National Scheme. The Department of Health advised:

> *There will be efficiencies as a result of managing all professions by a single agency – the Australian Health Practitioner Regulation Agency (AHPRA). Currently in WA the Nurses & Midwives Board, the Medical Board and Pharmacy Council all manage their business independently and have individual corporate structures and staff to support their activities. Seven of the professions use accounting firms on a contractor basis to provide a secretariat and corporate support services.*
>
> *AHPRA will be run from a single state office and have the critical mass of work to realise efficiencies – ie there will enough legal work to employ a lawyer and not have to seek legal support from commercial law firms.*
>
> *The national board will delegate functions and roles to the state board. These delegations are currently being developed. It is anticipated that the state board will be delegated to manage notifications and registration. This is an efficient system as it recognises that for the larger professions there needs to be local decision making at state board level and there is no intention for the state board to duplicate activities carried out by the national board.*[119]

4.46 The Committee is concerned that under the National Scheme the Parliament of Western Australia (and the Parliament's Joint Standing Committee on Delegated Legislation) is denied the opportunity to scrutinise the registration fees to ensure that the registration fees are set in accordance with the guiding principles under the National Scheme.

Recommendation 6: The Committee recommends that the responsible Minister give an undertaking that he will raise at the next meeting of the Ministerial Council for its consideration the proposition that registration fees should be prescribed in National Law regulations, in addition to being published on National Board websites.

[119] Answers to Questions on Notice, Department of Health, 14 May 2010, p5.

FINANCIAL ARRANGEMENTS (TRANSFER OF ASSETS, FUNDS AND LIABILITIES TO NATIONAL BOARDS)

4.47 The National Law provides for the transfer of State Board assets and liabilities to the National Scheme (clause 295). The State Board assets and liabilities are to be transferred to the National Board for that profession.

4.48 The AMA, in their submission to the Committee, objected to Medical Board of Western Australia's funds of $2 million being ceded to the National Board for use as it sees fit, '*rather than being retained by the WA Board for use within Western Australia … the Association believes this is fundamentally inappropriate*'.[120]

4.49 Clause 295(1) of the National Law provides:

> *From the transfer day for a participating jurisdiction—*
>
> *(a) the assets and liabilities of a local registration authority for a health profession in a participating jurisdiction are taken to be assets and liabilities of the National Agency and are to be paid into or out of the account kept in the Agency Fund for the National Board established for the profession;*

4.50 On 5 December 2008, the Ministerial Council agreed to a number of financial principles including that assets transferred from existing State Boards would be aggregated at the national level of that profession only and transferred to the National Board.[121] Further, on 25 May 2009 the Advisory Council agreed that State Boards will transfer to the National Board:

> *an amount equivalent to the operating budget of a board in the year to 30 June 2009 (or equivalent) or the balance of their realisable assets, whichever is the lesser to cover*
>
> *i. liabilities in relation to staff and cases, and*
>
> *ii. any wind down costs.*[122]

4.51 The Committee inquired as to the relevant 12 months operating costs of the State Boards of Western Australia, which State Boards were likely to have funds in excess of those required to be transferred to the National Boards and what would happen to the excess funds not transferred to the National Boards. The Committee also inquired

120 Letter from Professor Gary Geelhoed, President, Australian Medical Association (WA), 28 April 2010, p1.

121 Minutes of the Australian Health Workforce Ministerial Council meeting on 5 December 2008, p2.

122 Minutes of the Australian Health Workforce Advisory Council meeting on 25 May 2009, p2.

as to which State Boards would not have a shortfall in the funds required to be transferred to the National Boards and how this shortfall would be met.

4.52 The Committee was informed that in the event that a State Board has a shortfall in funds required to be transferred to the National Board, the State would have to fund the shortfall.[123] The Department of Health advised that no State Board has a shortfall of funds.[124]

4.53 In the event that a State Board has more funds than required to be transferred, the options are:

- *excess funds will be placed in trust for the purpose of benefiting WA registrants; or*
- *excess funds will be transferred to the* [National Board]*… for the purpose of ensuring a sound financial foundation for the national board.*[125]

4.54 The Department of Health advised that the Physiotherapy Registration Board and Optometrists Registration Board are likely to have 'residual' assets of approximately $118 000 and $116 000 respectively. The Department of Health advised that preliminary reports indicate that the Medical Board of Western Australia will not have any surplus funds.[126]

4.55 The Department of Health advised that the Minister of Health has approved the Optometrists Registration Board's request that $100 000 of their surplus funds be transferred to the Optometrists Association Australia (WA Division) before 1 July 2010 to be used to fund optometrists in Western Australia attending training courses in prescribing ocular therapeutic drugs. The Board's remaining funds will transfer to the National Scheme. The Physiotherapy Registration Board is planning to transfer any residual funds to the Physiotherapy Board of Australia.[127]

HEALTH PROFESSIONAL'S CRIMINAL CHARGES AND SPENT CONVICTIONS

4.56 The National Law provides that a health professional must disclose any charge that has been preferred but has not proceeded to a conviction and any spent conviction when they apply to register as a health professional.

123 Mr Chris Robertson, Director, National Board Services, Australian Health Practitioner Regulation Agency, *Transcript of Evidence*, 24 May 2010, p11.

124 Answers to Questions on Notice, Department of Health, 28 May 2010, p1.

125 Answers to Questions on Notice, Department of Health, 24 May 2010, p1.

126 Answers to Questions on Notice, Department of Health, 9 June 2010, p1.

127 Ibid.

4.57 Clause 77 of the National Law provides that a person must disclose their '*criminal history*' when applying to a National Board for registration. Clause 79 provides that a National Board must check an applicant's criminal history when a person applies for registration.

4.58 Clause 52 provides that a person is eligible for general registration in a health profession if, among other matters, the person is a suitable person to hold general registration in the profession. Clause 55(1)(b) provides that a National Board may decide that a person is a not suitable person to hold general registration if:

> *having regard to the individual's criminal history to the extent that is relevant to the individual's practice of the profession, the individual is not, in the Board's opinion, an appropriate person to practise the profession or it is not in the public interest for the individual to practise the profession.*

4.59 Under the National Law an applicant must disclose every charge preferred against them because '*criminal history*' is defined to include '*every charge*'. Clause 5 defines '*criminal history*' as follows:

> *(a) every conviction of the person for an offence …*
>
> *(b) every plea of guilty of finding of guilt by a court…*
>
> *(c) every charge made against a person for an offence …*

4.60 A charge may not proceed to conviction if the prosecution withdraws the charge because there is not a prima facie case with reasonable prospects of success or a person is found not guilty at a contested trial.

4.61 Under the National Law a person must disclose spent convictions when applying for registration because clause 77(4) and the definition of '*criminal history law*' in clause 5 have the effect of providing that the *Spent Convictions Act 1988* does not apply to the National Law. Therefore, an applicant must disclose spent convictions when asked to disclose their '*criminal history*'.

4.62 The Explanatory Memorandum to the National Law states that the requirement to disclose charges is one of the functions and processes in the National Law that will '*protect the public and enhance the Australian health workforce*'.[128] The Explanatory Memorandum adds that a criminal history does not necessarily mean that a practitioner will be considered to be unsuitable to practise.[129]

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128 Explanatory Memorandum to the National Law, p5.

129 Explanatory Memorandum to the Bill, p4.

4.63 The Australian Psychological Society objected to the '*extraordinary clause*' requiring a person to disclose charges:

> *This is a highly questionable clause which denies the registrant natural justice … This is an extraordinary clause, given, that even in the criminal justice system a person's criminal history can be quarantined from being presented as evidence in the prosecution of a current charge, let alone past charges.*[130]

4.64 Regarding the requirement to disclose spent convictions, the Department of Health advised that the purpose of this is:

> *to ensure that persons that are not suitable to be registered as a health practitioner do not hold registration if they have been convicted of certain offences, eg sexual misconduct. This enables a National Board to impose conditions on their registration if required.*[131] [and]
>
> *Mr Ashburn: … It is consistent with the working with children law in Western Australia, which has similar obligations. And the obligations reflect the potential seriousness of outcomes if these things are not declared.*[132]

4.65 Submitters also objected about the exclusion of the *Spent Convictions Act 1988*.[133] The AMA advised that 457 visas (Temporary Business (Long Stay) Standard Business Sponsorship visas), most commonly used for medical practitioners, do not require information on spent convictions.[134] The AMA expressed the following view:

> [The proposed] *legislative right to require information on Spent Convictions and take them into account annually contradicts normal rights and general prohibition of double indeed ongoing double jeopardy … If the conviction is spent it is spend and practitioner has paid the penalty* (sic). *Issue is current suitability to practice* (sic) … *the Medical Act should be consistent with normal legal rights and be no more onerous than visa requirements.*[135]

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130 Submission No. 38 from The Australian Psychological Society Ltd, 3 March 2010, p4.

131 Answers to Questions on Notice, Department of Health, 5 May 201, p10.

132 Mr Stephen Ashburn, Acting Director, Legal and Legislative Services, Department of Health, *Transcript of Evidence*, 5 May 2010, p10.

133 For example, Submission No. 38 from The Australian Psychological Society Ltd, 3 March 2010, p4.

134 Submission No. 66 from Australian Medical Association (Western Australia), 3 March 2010, p6.

135 Ibid, pp5-6.

4.66 It is not possible for Western Australia to amend the National Law so as not to require disclosure of charges and spent convictions. If Western Australia were to do so, it would mean that Western Australian health practitioners could not registered under the National Scheme and Western Australia would effectively not be part of the National Scheme. In order to effect a change to this provision it would need to be agreed to by the Ministerial Council and effected in all participating jurisdictions.

4.67 The National Law provides that if a National Board is proposing to refuse to register an applicant or to register the applicant subject to conditions, the National Board must give the applicant written notice of the proposal, stating the reasons and inviting the applicant to make a written or verbal submission to the National Board (clause 81).

4.68 Clause 84 provides that if a National Board decides not to register an applicant or decides to register an applicant in a type of registration other than the registration applied for or subject to condition, the Board must give notice to the applicant of the decision within 30 days. The notice must state the reasons for the decision, that the applicant may appeal against the decision and how an application for appeal may be made and the period within which the application must be made.

4.69 The effect of clause 199 is to give a right of appeal to Western Australian health practitioners to appeal to the State Administrative Tribunal of Western Australia[136] (**SAT**) against a decision of a National Board to refuse to register, to register with conditions or to register in another type of registration other than that applied for.

4.70 The Committee is of the view that the National Law observes principles of natural justice and provides aggrieved applicants with appropriate avenues of appeal against a National Board decision to deny the registration sought because of the applicant's criminal history.

4.71 The Committee notes that the requirement for disclosure of criminal history including spent convictions and criminal charges has previously been approved by the Parliament of Western Australia in the Working with Children (Criminal Record Checking) Amendment Bill 2009.

ACCREDITATION STANDARDS

4.72 The National Law establishes a process for developing and approving accreditation standards applying to regulated health professions. Accreditation standards are extremely important in any regulatory system. Clause 12 notes that an accreditation standard for a health profession is a standard used to assess whether a program of study and the education provider that provides the program, provide persons who

[136] Clause 199 of the National Law refers to the '*appropriate responsible tribunal*'. Clause 6 of the Bill declares that the State Administrative Tribunal is the '*responsible tribunal*' for Western Australia for the purposes of the National Law.

complete the program with the knowledge, skills and professional attributes to practise the profession in Australia.

4.73 Clause 47(3) provides that a National Board for a health profession approves accreditation standards.[137] The National Law provides that a National Board must determine whether an accreditation function for the health profession for which the Board is established is to be exercised by an external accreditation entity or a committee established by the board (clause 43(1)). Further, an accreditation standard may be established by an external accreditation entity or an accreditation committee established by the National Board established for the health profession (clause 46).

4.74 The National Law provides that the Ministerial Council may issue directions to a National Board about the policies to be applied by the National Board in exercising its functions under the National Law (clause 11(2)). A direction may be in relation to a particular accreditation standard or an amendment to a particular accreditation standard for a health profession (clause 11(3)(d)).

4.75 Clause 11(4), however, limits this power in providing that such a direction may be given only if the proposed accreditation standard or amendment will have a substantive and negative impact on the recruitment or supply of health practitioners and the Council has first given consideration to the potential impact of the Council's direction on the quality and safety of health care.

4.76 Further, clause 17(2) of the National Law provides that a Ministerial Council direction to the National Board (pursuant to clause 11(3)) must be given to the Chairperson of the Board, include reasons for the direction and be published by the National Board on its website as soon as practicable after being received by the Chairperson.

4.77 The Committee received a number of submissions strongly objecting to the Ministerial Council's power to direct a National Board on an accreditation standard.

4.78 The AMA considers that this power amounts to a '*diminution in the independence of professional regulation for both registration and accreditation functions*'.[138] The Australian Dental Association '*strongly protest this additional power to override the rightful authority of the accrediting body in setting standards for the profession*'.[139]

4.79 The Senate Report on the National Scheme also noted concern about potential government interference in accreditation processes. The report stated:

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137 Clause 47(3) of the National Law. The National Board can either have an external accreditation body or a subcommittee of the board to develop accreditation standards: See definitions of '*accreditation authority*', '*accreditation committee*' and '*external accreditation entity*' in clause 5 of the National Law and clause 47(3) of the National Law. The National Board must publish an accreditation standard on their website: clause 47(6) of the National Law.

138 Submission No. 66 from the Australian Medical Association (Western Australia), 3 March 2010, p1.

139 Submission No. 41 from the Australian Dental Association (WA Branch), 26 February 2010, p2.

> *a majority of submitters and witnesses expressed concern that there remained the potential for government interference of influence in accreditation processes, through the power given to the Ministerial Council to issue directions to the National Agency and/or National Boards in relation to accreditation standards, in circumstances where a standard may have a substantive and negative impact on the recruitment or supply of health practitioners to the workforce.*[140]

4.80 The Minister for Health raised the issue of accreditation standards in the Legislative Assembly:

> *The accreditation functions of the national boards will be independent of government. Accreditation standards will either be developed by an independent accrediting body or by the accreditation committee of the national board for the relevant health profession. The final decision on whether the accreditation standards, courses and training programs are approved for the purposes of registration will be the responsibility of the national boards. The national law clearly sets out the relationship between an accrediting body and a national board to ensure that this relationship works in a fair and effective way.*
>
> *The ministerial council, however, will have the powers to appoint the external accrediting body for a profession when that profession first joins the national scheme. It will also have the capacity to act when, for instance, it believes that changes to an accreditation standard will have a significantly negative effect on the recruitment or supply of health practitioners. In exercising these powers, however, the ministerial council must first consider the potential impact of its decisions on the quality and safety of health care.*[141] [and]
>
> *We* [Ministers] *wanted some ability for the ministers to say that certain things are not acceptable or reasonable …*
>
> *When I was arguing the case that the boards must be totally independent, the New South Wales health minister asked me a question: what would happen if, for example, a group of podiatrists suddenly decided to accredit themselves to do hip surgery and there was no power of direction or no powers for the minister to say that that is not reasonable and that hip surgery is to be done only by*

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140 Parliament of Australia, The Senate, Community Affairs and Legislation Committee, *National registration and accreditation scheme for doctors and other health workers*, August 2009, p48.

141 Hon Dr Kim Hames MLA, Minister for Health, Western Australia, Legislative Assembly, *Parliamentary Debates (Hansard)*, 5 May 2010, p2472.

orthopaedic surgeons? We have to have a power that will allow the ministerial council to direct.[142]

4.81 State Acts for the health professions to be registered under the National Law currently provide that the Minister may, after consulting with the health profession's Board, give directions in writing to the Board with respect to the performance of its functions either generally or in relation to a particular matter, and the Board is to give effect to any such direction. The various State Acts limit the Minister's direction powers in that a direction cannot not apply to a particular person, particular qualification or a particular application, complaint or proceeding.[143] The National Law provides a similar limitation (clause 11(5)).

4.82 The various State Acts for the health professions to be registered under the National Law also provide that the text of a direction given by a Minister must be laid before each House of Parliament within 14 sitting days of that House after the direction is given and be included in the annual report submitted by the Board.[144] The National Law provides that a Ministerial Council direction to a National Board must be given to the Chairperson of the National Board. If a direction is given under clause 11(3)(d), it must be published by the National Board on its website as soon as practicable after being received by the Chairperson and is to be published in the annual report of the National Agency (AHPRA) (clauses 17(2) and (3)).

4.83 Under the National Law, there is no requirement that a Ministerial Council direction be laid before each House of Parliament in each of the participating jurisdictions. This removes from the Parliament of Western Australia the ability to scrutinise whether Ministerial Council directions are being appropriately issued within the provisions of the National Law and to guard against the concerns raised by submitters about political interference in the accreditation standards.

MANDATORY REPORTING

4.84 The National Law introduces a mandatory reporting regime.

4.85 Clause 141 provides that a health practitioner who, in the course of their profession, forms a reasonable belief that another health practitioner has behaved in a way that constitutes '*notifiable conduct*' must, as soon as practicable after forming the reasonable belief, notify AHPRA (the National Agency) of the other health practitioner's conduct. Clause 140 defines '*notifiable conduct*' to mean that the practitioner has:

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142 Hon Dr Kim Hames MLA, Minister for Health, Western Australia, Legislative Assembly, *Parliamentary Debates (Hansard)*, 18 May 2010, p2781.

143 For example, section 14 of the *Medical Practitioners Act 2008* and section 13 of the *Nurses and Midwives Act 2006*.

144 Ibid.

> *(a) practised the practitioner's profession while intoxicated by alcohol or drugs; or*
>
> *(b) engaged in sexual misconduct in connection with the practice of the practitioner's profession; or*
>
> *(c) placed the public at risk of substantial harm in the practitioner's practice of the profession because the practitioner has an impairment; or*
>
> *(d) placed the public at risk of harm because the practitioner has practised the profession in a way that constitutes a significant departure from accepted professional standards.*

4.86 In the Second Reading Speech the Minister for Health stated:

> *There will be a requirement that practitioners and employers, such as hospitals, report a registrant who is placing the public at risk of harm …*[145]

4.87 The Committee received submissions from individual practitioners and professional health organisations expressing concern about the mandatory reporting provisions. The Australian Psychological Society submitted that '*there are instances where mandatory reporting may actually increase risks to the public rather than decrease it*'.[146] The society argues that the reporting requirement will result in practitioners being reluctant to seek help voluntarily from their professional peers and other health practitioners for fear of being reported. Further, a mandatory reporting requirement may result in a potential breach of professional trust between a practitioner and their patient and might compel a practitioner to act on hearsay information.[147]

4.88 The Committee, whilst not making any recommendations in regard to mandatory notifications, notes concerns raised that over reporting may result from mandatory reporting requirements.[148] Health professionals' desire to avoid possible sanctions for not reporting may result in over reporting and it is essential that the National Scheme is adequately resourced to enable a thorough and timely response to notifications. Over reporting may result in an increase in fees.

4.89 The AMA considers that the mandatory reporting requirements should be refined to limit reporting within a profession (not across health professions) and to include

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145 Hon Dr Kim Hames MLA, Minister for Health, Western Australia, Legislative Assembly, *Parliamentary Debates (Hansard)*, 5 May 2010, p2471.

146 Submission No. 36 from the Australian Psychological Society Ltd, 3 March 2010, p5.

147 Ibid.

148 Submission No. 66 from the Australian Medical Association (Western Australia), 3 March 2010, p19.

exemptions for health practitioners' spouses, treating practitioners and other professional support services including Doctors Health Advisory Services, college and employer performance support, assistance programs and peer review processes.[149]

4.90 The Department of Health advised in response to concerns raised:

> *It is "reasonable belief" in the bill, not hearsay. … A person has to work with the other health practitioner. They have to be in the same practice. They cannot be somebody who knows the person socially or at home, say, the person's spouse, who is aware of something. The person must work in the same practice. They deal with fairly serious matters, such as sexual misconduct where the person could come to harm. I do not believe that they are items that are considered something of a very low standard. They are quite serious matters. If the second health practitioner sees it, they are asked to report it to the board. I do not see why that would be a problem.*[150]

4.91 The Committee takes no issue with the mandatory reporting requirements in the National Law. While acknowledging the concerns expressed, the Committee notes that increasingly mandatory reporting is becoming a feature of this type of legislation and is justified on the reasonable grounds of 'protection of the public'. For example, similar provisions were included in the Working with Children (Criminal Record Checking) Amendment Bill 2009 recently passed by the Parliament.

COMPLAINT MANAGEMENT

4.92 The National Law provides for a complaints management system for health professions covered by the National Law, except New South Wales which has opted out of the National Law complaint management system in favour of a State based complaints management system.

4.93 State Boards, under delegation from the National Boards, will deal with matters that relate to unsatisfactory professional performance and unprofessional conduct, as well as matters that are regarded as professional's '*health issues*'.[151] As previously noted, the Committee has been advised that the Medical Board of Australia and Psychology Board of Australia will delegate matters relating to individual practitioners to State Boards (see paragraph 4.29).

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149 Ibid.

150 Mrs Anne Cooper, Acting Principal and Policy Officer, Legal and Legislative Services, Department of Health, *Transcript of Evidence*, 10 May 2010, pp9-10.

151 Hon Dr Kim Hames MLA, Minister for Health, Western Australia, Legislative Assembly, *Parliamentary Debates (Hansard)*, 5 May 2010, p2471.

4.94 It is important to note that the discretion to delegate any of its functions rests solely with the National Board. This means it is open to a National Board to revoke, at any time, any delegation of its functions. There is no certainty that State Boards which have been delegated the function of handling the complaint management system will retain this function in the future.

4.95 Mr Robertson, AHPRA, informed that Committee that even if a profession does not have a State Board, a complaint will be taken to AHPRA in Western Australia where it will be registered. The complaint will then be taken to the National Board. It is likely that there will be relevant people who are advising on the complaint, professional people from the board, who will deal with it through a committee of the National Board.[152] Mr Robertson, further advised that if a hearing into a complaint is required, a panel will be established to hear the matter and that the hearing will take place in the State in which the complaint resides and the practitioner practises. [153]

4.96 The AMA strongly opposes removing existing complaints management systems in Western Australia and is concerned that the National Board delegation can be removed at a future date.[154] The AMA recommends:

> *That the Minister exercise his right under Section 6.8 of the IGA* [Intergovernmental Agreement] *and determine that the State Medical Board will manage complaints with either specific State legislation being retained/enacted, or Part 8 being amended to provide for the State Board to manage complaints on an ongoing, as distinct for a delegated basis.*[155]

4.97 As noted in paragraph 4.92, New South Wales has opted out of the complaints system enacted by the National Law and will retain its State based complaints management system managed through the Health Care Complaints Commission (**HCCC**). The Department of Health advised that if a complaint was made in New South Wales against a Western Australian practitioner the matter must be referred to the HCCC.[156]

4.98 In Western Australia, more serious matters will be dealt with by SAT. The Bill provides that the National Board must refer matters that constitute '*professional misconduct*' (as defined in clause 5 of the National Law) to SAT as SAT is the

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152 Mr Chris Robertson, Director, National Board Services, Australian Health Practitioner Regulation Agency, *Transcript of Evidence*, 24 May 2010, p19.

153 Ibid.

154 Submission No. 66 from the Australian Medical Authority (Western Australia), 3 March 2010, p18 and attachment to letter from Professor Gary Geelhoed, President, Australian Medical Association (Western Australia), 28 April 2010, p2.

155 Attachment to letter from Professor Gary Geelhoed, President, Australian Medical Association (Western Australia), 28 April 2010, p2.

156 Answers to Questions on Notice, Department of Health, 14 May 2010, p6.

'*responsible authority*' in this State (clause 6 of the front part of the Bill). SAT will have jurisdiction to hear appeals against decisions made by the National Boards, health panels and performance and professional standards panels.[157] The National Law at Part 8, Division 13 and clause 199 in particular, provides that decisions relating to registration, including the refusal to register or to endorse a registration, revocation or suspension of registration and imposition of conditions on registration, may be appealed.

WESTERN AUSTRALIAN PARTICIPATION IN THE NATIONAL SCHEME

4.99 The National Law proposes a fundamental shift in the regulation of Western Australian health professionals covered by the National Scheme from the current State based regulation system, where State interest is paramount, to the National Scheme, where Western Australia is only one of a number of States determining how health professions are regulated.

4.100 The Committee inquired into how the National Scheme would enable Western Australians to effectively contribute and participate in the National Scheme bodies and processes. The Committee also inquired into how Western Australians can contribute to the development of professional standards, codes and guidelines.[158] A number of submissions raised concerns about these issues.

4.101 The Department of Health advised that Western Australians can contribute and participate in National Scheme:

> *by being involved in the consultation process on registration standards etc. This is an open and transparent process - all documents are available on the National Board's website. WA has representatives on the Agency Management Committee (Professor Con Michael), AHWAC (DoH representative), and State Agency Office WA appointments have been made and include Adjunct Assoc Professor Robyn Collins and Ms Pamela Malcolm from the Nurses and Midwives Board and the Medical Board of WA respectively.*[159]

4.102 When asked if there is any concern that Western Australians will not be effectively involved in the development of National Registration Codes, Guidelines and Standards, the Department of Health advised that all documents will be available on

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157 Explanatory Memorandum to the Bill, p3.

158 The terms of registration standards, codes or guidelines are particularly important as they are admissible in disciplinary proceedings: Clause 41 of the National Law.

159 Answers to Questions on Notice, Department of Health, 5 May 2010, p4.

the National Board's website for consultation processes and comments will be sought from all professions stakeholders and interested persons.[160]

4.103 Whether or not this is achieved and the extent to which Western Australian health practitioners will feel that they are able to participate in a meaningful way remains to be seen.

REVIEW OF THE BILL AND NATIONAL SCHEME

4.104 Clause 13 of the Bill (in the front part of the Bill, before the National Law) provides that the Minister is to carry out a review of the operation and effectiveness of the Act as soon as is practicable after 5 years have elapsed since the Act comes into operation. Clause 13(2) provides that this review is to be laid before each House of Parliament as soon as is practicable the report is prepared and, in any event, not later than 12 months after the requirement for the review arose. It is not clear whether the review of the Western Australian Act can and will incorporate a review of the National Scheme and the National Law and if it does, the extent to which it can effectively review these.

4.105 The Intergovernmental Agreement at clause 14.1 provides for a review of the National Scheme following three years of operation. There is no requirement that the Intergovernmental Agreement review of the National Scheme be tabled in both Houses of the Parliaments of participating jurisdictions. In the absence of such a requirement, the Parliaments of participating jurisdictions are denied an opportunity to scrutinise the review and determine whether it is in the best interests of that jurisdiction to continue to participate in the National Scheme.

4.106 It is not clear whether the Intergovernmental Agreement review of the National Scheme will involve a detailed review of the National Law. The Department of Health advised that whether the objectives of the National Scheme are being met will be a '*fundamental aspect*' of the review.[161] The Department of Health could not advise what benchmarks these objectives would be measured against, in particular objectives (e) and (f), other than to state that '*Benchmarks will be determined as part of the review process*'.[162]

4.107 There is no legislative requirement in the National Law for a review of the National Law and for the tabling of the review report before both Houses of the Parliaments of participating jurisdictions for scrutiny by participating jurisdictions. The Committee is of the view that this is a serious deficiency in the National Law that should be corrected.

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160 Ibid.

161 Answers to Questions on Notice, Department of Health, 24 May 2010, p9.

162 Answers to Questions on Notice, Department of Health, 5 May 2010, p4.

4.108 The Department of Health advised the Committee that the Minister for Health, in response to the Committee's concerns, had undertaken to table the Intergovernmental Agreement review in Parliament.[163] In the Committee's view, this demonstrates the inadequacy of the Bill as this requirement should have been legislated for, particularly given the National Scheme's guiding principles of transparency and accountability.

4.109 While welcoming the Minister's efforts to address the Committee's concerns on this important issue of State sovereignty, the Committee is of the view that such an undertaking is inadequate. The Minister may not be the Minister for Health at the relevant time and his undertaking does not bind a future Minister for Health. This demonstrates the need for this requirement to be enshrined in the legislation.

4.110 It seems to the Committee that the National Law falls short in many respects in delivering on the National Scheme's guiding principle of transparency and accountability.

Recommendation 7: The Committee recommends that the Health Practitioner Regulation National Law (WA) Bill 2010 be amended in the following manner:

Page 6, after line 21 - To insert

12A Tabling of review under COAG Agreement

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

STATE RECORDS LAW WILL APPLY TO NATIONAL SCHEME BODIES IN WESTERN AUSTRALIA

4.111 The State Records Office provided a submission to the Committee asking which records law would apply to National Scheme bodies created by State law. The State Records Office noted that the Bill does not include any provision that, expressly or by implication, stated whether the State Boards established under the National Law are subject to any record keeping legislation (such as the *Archives Act 1983* (Cwth)).[164] The State Records Office supported applying Commonwealth legislation.

163 Mr Kim Snowball, Acting Director General, Department of Health, *Transcript of Evidence*, 24 May 2010, p29.

164 Submission No. 72 from State Records Office, 29 March 2010, p1.

4.112 The Department advised that State records law will apply to National Scheme bodies in Western Australia.[165]

SPECIALIST RECOGNITION AND ENDORSEMENT UNDER THE NATIONAL SCHEME

4.113 The National Law provides two separate processes that recognise further study and training undertaken by registered health professionals. Clause 13 of the National Law provides that registered health professions may obtain 'specialist recognition' (and professions in a field with 'specialist recognition' may be eligible and qualified to hold 'specialist registration') and clause 98 provides that a health professional may obtain an 'endorsement for approved area of practice' (where a professional's registration is 'endorsed'). The terms of clauses 13 and 98 are noted in paragraphs 5.13 and 5.14 of this report.

4.114 The Psychology Board of Australia has recommended, and the Ministerial Council has approved, an Area of Practice Endorsements Registration Standard endorsing seven areas of practice for the psychology profession.[166] The Psychology Board of Australia did not recommend specialist recognition for the psychology profession.

4.115 Uncertainty about the effect, operation and distinction between specialist recognition and endorsement under the National Law appears to be causing concern among specialist psychologists. One view is that endorsement may be considered to be of a lower status or standard than specialty recognition and may be appropriate when a health professional has undertaken short term study or training (such as a course), whereas specialist recognition is appropriate when a profession has a recognised field of expertise that requires extensive further training (see Chapter 5 of this report).

4.116 Despite Committee inquiries, it remains unclear to the Committee why the National Law provides for specialist recognition as well as endorsement of areas of practice. The Committee is also uncertain in what circumstances the National Scheme will consider one preferable to the other and the distinction between them.

Recommendation 8: The Committee recommends that the responsible Minister advise the Legislative Council why the National Law provides for specialist recognition as well as endorsement of areas of practice, in what circumstances the National Scheme will consider one preferable to the other and the distinction between specialist recognition and endorsement of areas of practice.

165 '*The State Records Act has not been excluded from the Bill and it is understood that the State Office of AHPRA intends to follow retention and disposal procedures in accordance with the State Records Act of WA*': Answers to Questions on Notice, Department of Health, 5 May 2010, p4.

166 Australian Health Workforce Ministerial Council, Teleconference Final Decisions and Actions Arising, 31 March 2010, p2. As at May 2010, the Committee understands that the qualifications for endorsement have not been approved.

CHAPTER 5
THE PSYCHOLOGY PROFESSION

5.1 A majority of the submissions received by the Committee were submitted by psychologists and overwhelmingly by clinical psychologists

5.2 The submissions were primarily concerned with the loss of the psychologist specialist title registration under the National Scheme and the potential for this to lead to the lowering of standards for specialist psychologists. The issue of specialist title is an '*extremely controversial*' issue in Western Australia.[167]

5.3 Specialist title registration is currently legislated for under the *Psychologists Act 2005* and *Psychologists Regulations 2007* which the Bill, if enacted, will repeal. The National Law provides for 'specialist recognition' and 'endorsement' of areas of practice (where a professional's registration in 'endorsed').

5.4 As a result of intense lobbying on this issue, there has been some movement to address the concerns since the submissions were received by the Committee. On 31 March 2010, the Ministerial Council approved the endorsement of seven areas of practice in psychology. However, the Psychology Board of Australia has not proposed, and the Ministerial Council has not approved, 'specialist recognition' in the psychology profession. Psychologists remain concerned about the impact of the National Scheme on their profession.

5.5 While the Australian Psychological Society has indicated its general support of the National Scheme, it has raised a number of concerns with the Bill, including that the expressed intention that no profession will be worse off under the National Scheme was not being upheld.[168]

SPECIALIST TITLES

Specialist title registration in Western Australia

5.6 The issue of specialist titles registration is particularly contentious in Western Australia because this is the only jurisdiction in Australia which has, and has had for approximately 30 years, a legislated regime of specialist title *registration* for psychologists.[169] (However, the Committee noted that other jurisdictions currently use

167 Letter from Mr Kim Snowball, Acting Director General, Department of Health, to Queensland Health, 18 March 2010, p1.

168 Submission No. 38 from The Australian Psychological Society Ltd, 3 March 2010, pp1 and 6.

169 Submission No. 37 from Psychologists Registration Board of Western Australia, 3 March 2010, p2 and attachment to submission, p1.

specialist psychologist titles such as 'Clinical Psychologist' and provide post graduate specialty courses accredited by a national body).[170]

5.7 Pursuant to section 29 of the *Psychologists Act 2005* and regulation 7 of the *Psychologists Regulations 2007* the following seven areas of speciality are prescribed:

- clinical psychology;
- clinical neuropsychology;
- counselling psychology;
- educational and developmental psychology;
- forensic psychology;
- organisational psychology; and
- sports psychology.

5.8 To obtain specialisation in Western Australia under the current system, a psychologist must complete an accredited post graduate degree in the specialty of not less than two years duration, a further two years of supervised practical experience and be working in the area of the specialty.[171]

5.9 There are 840 specialist psychologists in Western Australia and a further 140 psychologists are undertaking supervision to attain a specialist title.[172] Most specialist psychologists advertise themselves in their area of specialty, for example, 'Clinical Psychologist' and 'Sports Psychologist' and do not specifically use the term 'specialist'.[173]

5.10 The Psychologists Registration Board of Western Australia advised that the current system of specialist title registration has the following effect:

> *There are no particular protections afforded those who have the title, nor is there any exclusion on practice afforded by reason of having*

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170 An Internet search for other jurisdiction's psychology board members notes psychologists identifying themselves as 'specialist' psychologists such as 'Clinical Psychologist': for example http://www.psychologymelbourne.com/psychologists.html (viewed on 9 May 2010). Other Internet information about psychologists records interstate psychologists using specialist titles: for example http://melbourne-psychologist.com.au/psychologists/index.html (viewed on 13 June 2010). Submission No. 76 from Dr Jillian Horton, 10 June 2010 at p1 stated that Masters programs in specialist areas of psychology in Australian jurisdictions have to be accredited by the same national body, the Australian Psychology Accreditation Council (APAC), and that many psychologists in other jurisdictions have been very upset for a long time that their higher training has not been formally recognised or protected.

171 Regulation 8 of the *Psychologists Regulations 2007*.

172 One hundred and forty is an approximate number. Submission No. 37 from Psychologists Registration Board of Western Australia, 3 March 2010, attachment, p1.

173 Professor Lynn Littlefield, Executive Director, Australian Psychological Society Ltd, *Transcript of Evidence*, 17 May 2010, p3.

> *the title; that is, not having the specialist title does not prevent a person practising in a particular area …*
>
> *In essence … specialist title in this State enables a psychologist to publicly demonstrate, by use of the title, that they possess advanced training and skills in a particular recognised area. It allows the public, employers and others to seek out and identify psychologists with the advanced skills and training. It also enables certain employers … to provide a structured career path by which specialist title registrars are supported in the attainment of their specialist title and are ultimately able to access high level employment opportunities in their specialist area.*[174]

National Law transitional provisions for specialist psychologists

5.11 Clause 281 of National Law provides that a specialist psychologist in Western Australia will transition across for three years and during this period specialist psychologists can continue to use the specialist titles.[175]

National Law provisions providing 'specialist recognition' and 'endorsement'

5.12 The National Law provides that specified registered health professions may obtain 'specialist recognition' (clause 13) or an 'endorsement for approved area of practice' (clause 98). These are two distinct processes under the National Law.

5.13 Clause 13(1) of the National Law establishes specialist recognition and clauses 57 and 58 prescribe the eligibility and qualification criteria for specialist registration. Clause 13(1) provides:

> ***Approvals in relation to specialist recognition***
>
> *(1) The following health professions, or divisions of health professions, are health professions for which specialist recognition operates under this Law —*
>
> *(a) the medical profession;*
>
> *(b) the dentists division of the dental profession;*

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174 Submission No. 37 from Psychologists Registration Board of Western Australia, 3 March 2010, pp1-2.

175 Mrs Anne Cooper, Acting Principal Policy Officer, Legal and Legislative Services, Department of Health, *Transcript of Evidence*, 5 May 2010, pp11 and 15-16. While this may be the effect of clause 281, the clause indirectly achieves this effect. Clause 281 provides that a person holding a specialist registration in a health profession in that jurisdiction who does not obtain specialist recognition under the National Law '*does not commit an offence*' during a three year transition period if they take or use the title '*specialist health practitioner*' or another title the person was entitled to use in their jurisdiction before the jurisdiction joined the National Scheme.

> *(c) any other health profession approved by the Ministerial Council, on the recommendation of the National Board established for the profession.*[176]

5.14 On the other hand, clause 98(1) of the National Law provides for an endorsement of registration. The Ministerial Council approves endorsement (clause 15). Clause 98(1) provides:

> ***Endorsement for approved area of practice***
>
> *A National Board established for health profession may, in accordance with an approval given by the Ministerial Council under section 15* [see below], *endorse the registration of a registered health practitioner registered by the Board as being qualified to practise in an approved area of practice for the health profession if the practitioner —*
>
> *(a) holds either of the following qualifications relevant to the endorsement —*
>
> *(i) an approved qualification;*
>
> *(ii) another qualification that, the Board's opinion, is substantially equivalent to, or based on similar competencies to, an approved qualification; and*
>
> *(iii) complies with an approved registration standard relevant to the endorsement.*

The Ministerial Council has approved area of practice endorsement for the psychology profession

5.15 On 31 March 2010, the Ministerial Council approved an Area of Practice Endorsements Registration Standard endorsing seven of the nine areas of practice for psychology proposed by the Psychology Board of Australia, to take effect on 1 July 2010.[177]

5.16 Clause 35(k) of the National Law provides that it is a function of a National Board to make recommendations to the Ministerial Council about the operation of specialist recognition and the approval of specialities for the profession. The Psychology Board

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176 The Australian Health Practitioner Regulation Agency publication 'Transition to a new registration type under the National law', undated, notes under 'Specialist Registration' that there are 23 specialties in medicine, 13 specialties in dentistry and also one specialty in podiatry.

177 Australian Health Workforce Ministerial Council, Teleconference Final Decisions and Actions Arising, 31 March 2010, p2. The Committee understands that the qualifications for endorsement have not been approved.

of Australia did not propose specialist recognition, only endorsement. The Minister for Health was unable to explain why the Psychology Board of Australia did not recommend specialist recognition for psychologists. [178]

5.17 The Ministerial Council approved the following seven areas of endorsement:

- clinical psychology;
- clinical neuropsychology;
- counselling psychology;
- educational and developmental psychology;
- forensic psychology;
- organisational psychology; and
- sports and exercise psychology.[179]

5.18 The Ministerial Council did not approve the following areas of endorsement for psychologists proposed by the Psychology Board of Australia:

- community psychology; and
- health psychology.

5.19 The Department of Health, Australian Psychological Society and Psychology Board of Australia supported the recognition of nine approved areas of practice, rather than seven.[180]

5.20 The Ministerial Council recorded that the seven approved categories '*are consistent with local and international categories for the psychology profession, such as branches of psychology in Western Australia, and the recently recognised domains of practice in the United Kingdom*'.[181] The Australian Psychological Society, however, advised the Committee that the Ministerial Council's view that the two areas of practice, community psychology and health psychology, were not included in the United Kingdom as specialist areas was '*completely wrong*'. The Australian

178 Hon Dr Kim Hames MLA, Minister for Health, Western Australia, Legislative Assembly, *Parliamentary Debates (Hansard)*, 18 May 2010, p2793. The Minister for Health's comments on specialist recognition are noted in paragraph 5.35 of this report.

179 This category slightly differs from the specialist areas in the *Psychologists Regulations 2007* which prescribed the specialty of '*sports psychologist*', not '*sports and exercise psychologist*'.

180 Letter from Mr Kim Snowball, Acting Director General Department of Health to Mr Michael Reid, Director General, Queensland Health, 18 March 2010, p1. It is understood that the Psychology Board of Australia will keep resubmitting their proposal for nine areas of endorsement: Dr Jennifer Thornton, Presiding Member, Psychologists Registration Board of Western Australia, *Transcript of Evidence*, 24 May 2010, p3.

181 Letter from Hon John Hill MP, Minister for Health, South Australia, and Chair, Australian Health Workforce Ministerial Council, to the Psychology Board of Australia, 31 March 2010, p2.

Psychological Society sees '*huge problems*' arising as a result of the decision to not approve endorsement in these two areas of practice. The Society advised the Committee that '*our worldwide counterparts regard these two specialties very highly, and as specialists in different areas of the world. I actually think it* [the decision] *makes us look rather foolish*'.[182] Further, on 17 June 2010 Hon Alison Xamon MLC tabled a petition in the Legislative Council opposing the decision of the Ministerial Council to not endorse community psychology and health psychology as '*specialist practices*'. The petition states:

> *Both specialists are recognised world-wide as having an increasingly vital role in advancing positive health and well-being as well as in ameliorating mental health problems, and will be essential in reducing the increasing acute costs of health care as indicated in the Healthy Future for All Australians report (2009).*[183]

5.21 To be eligible for endorsement a registered psychologist must have an accredited doctorate[184] in one of the approved areas of practice and a minimum of one year of approved supervised full-time equivalent practice with a Board approved supervisor, or an accredited Masters in one of the approved areas of practice and a minimum of two years of approved supervised full-time equivalent practice with a Board approved supervisor, or another qualification that, in the Board's opinion, is substantially equivalent to either of the above.[185]

5.22 The Minister for Health considers that the endorsement system does not lower psychologists' standards.[186]

5.23 The Committee notes that the endorsement accreditation requirements are at least the same level of qualification required under regulation 8 of the *Psychologists Regulations 2007*.

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182 Professor Lynn Littlefield, Executive Director, Australian Psychological Society Ltd, *Transcript of Evidence*, 17 May 2010, p4.

183 Parliament of Western Australia, Legislative Council, 'Petition in relation to the endorsement of community psychology and health psychology as specialist practices under the national Registration and Accreditation Scheme', 17 June 2010, Tabled Paper No. 2133.

184 Courses are accredited as an approved course by an accreditation body under the National Scheme. This will ensure courses in different jurisdictions meet the same standard: Mrs Anne Cooper, Acting Principal Policy Officer, Legal and Legislative Services, Department of Health, *Transcript of Evidence*, 10 May 2010, p5.

185 Psychology Board of Australia, Area of Practice Endorsements Registration Standard, p1: http://www.psychologyboard.gov.au/documents/ and select 'Area of practice endorsements.pdf' (viewed on 7 June 2010).

186 Hon Dr Kim Hames MLA, Minister for Health, Western Australia, Legislative Assembly, *Parliamentary Debates (Hansard)*, 18 May 2010, p2784.

The effect of endorsement and the difference between endorsement and specialisation

5.24 The Committee inquired into what was the practical difference between endorsement and State specialist title registration, and endorsement and specialist recognition under the National Scheme.

5.25 Under the endorsement system, endorsed psychologists will be able to continue to use the terms 'Clinical Psychologist', 'Forensic Psychologist' and so forth.[187]

5.26 The Australian Psychological Society informed the Committee that the psychologists would prefer specialist recognition to endorsement for the following reasons:

> *The psychologists would certainly prefer to be under the specialist registration rather than endorsement of areas of practice. One of the reasons for that is we feel it is much clearer to the public that that group of psychologists with the appropriate qualifications and experience are specialists. It also tells the public what areas of specialty they have. The fact that if they were registered as specialists, they would be on a specialist register, it would then be clearer to the public that they have those higher levels of qualifications and expertise and can use that specialist title. We feel that endorsement is not so clear and does not really give to the public a clear idea of what an endorsed area of practice means. We are unsure about the protection of the public. We know that under the national law if you have a specialist registration, there are specific offence provisions that prohibit people from holding them out to be a specialist, and we are unsure whether it is exactly the same. I know that there are specialist offence provisions in the national law for endorsement, but we are unsure whether exactly the same level of protection is afforded for a specialist.*[188]

5.27 Uncertainty about how the National Law and National Scheme operates (due in part to the administrative nature of the Scheme) and concern that endorsement is less certain, has a lower status and is perhaps less prestigious than specialist recognition, may lower standards and could change at any time, appear to be causing concern among psychologists.[189] Some may consider that endorsement implies only some extra training (such as attending a course) and this is not the case. Specialist psychologists

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187 Mrs Anne Cooper, Acting Principal Policy Officer, Legal and Legislative Services, Department of Health, *Transcript of Evidence*, 10 May 2010, p7.

188 Professor Lynn Littlefield, Executive Director, Australian Psychological Society Ltd, *Transcript of Evidence*, 17 May 2010, p2.

189 Ibid. Also, '*We do not know for sure the outgrowth of this and we have to make a decision by 1 July*': Professor Lynn Littlefield, Executive Director, Australian Psychological Society Ltd, *Transcript of Evidence*, 17 May 2010, p9.

train for a minimum of four years after completing their psychology degree to become a specialist.[190] A recent petition tabled in the Legislative Council (see paragraph 5.40) demonstrates that psychologists remain very concerned about losing specialist title.

5.28 The Psychologists Registration Board of Western Australia has expressed the view that National Scheme 'endorsement' provides an '*equivalent benefit*'[191] to the current specialist regime:

> *It appears to the WA Board that the WA specialist title system is equivalent to the endorsement system provided for under the national law, but with an important added protection, being the creation of a legislative protection for endorsement so that a psychologist is prohibited from saying they have a particular endorsement which they do not have …*[192]
>
> *The Board does not take the view at this time that it is appropriate to move to form specialist registration as envisaged under the national law.*[193]

Title protection

5.29 The Australian Psychological Society is concerned that endorsed practitioners may not be afforded the same level of protection under the National Law that practitioners afforded specialist recognition are provided.[194]

5.30 Part 7 of the National Law provides protection of the use of titles. Clause 115 provides protection on the use of specialist titles and is clearer in its terms than clause 119, which essentially prohibits a registered health practitioner from claiming to hold an endorsement of registration that they do not hold. Parliamentary Counsel's Office advised (through the Department of Health) that a person who was not registered as a psychologist, and therefore not endorsed, who held themselves out to be endorsed as a clinical psychologist '*would appear*' to breach clause 116(1)(c) of the National Law.[195] Further, a person was registered as a psychologist but was not endorsed,

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190 For example, see Submission No. 76 from Dr Jillian Horton, 10 June 2010, p2.

191 Submission No. 37 from Psychologists Registration Board of Western Australia, 3 March 2010, p2. Also '*when we come to look at it point by point, we could not see that endorsement was causing any loss and, in fact, it provided one additional protection-that is, third party protection, within our understanding*': Dr Jennifer Thornton, Presiding Member, Psychologists Registration Board of Western Australia, *Transcript of Evidence*, 24 May 2010, p2.

192 Submission No. 37 from Psychologists Registration Board of Western Australia, 3 March 2010, attachment, p3.

193 Ibid, p2.

194 Professor Lynn Littlefield, Executive Director, Australian Psychological Society Ltd, *Transcript of Evidence*, 17 May 2010, p10.

195 Answers to Questions on Notice, Department of Health, 14 May 2010, pp3-4.

'*would appear*' to breach clause 119(1)(a) of that National Law.[196] Both clauses carry significant maximum fines - $30 000 in the case of an individual causing the breach or a fine of $60 000 in the case of a body corporate.

Other concerns

5.31 An important difference between National Scheme endorsement and the State based specialist regime is that endorsement does not provide the certainty and reassurance that the present legislation based State specialist title regime does. Endorsement is a result of a decision of the National Board and Ministerial Council, and these bodies may approve, and may remove, endorsement at will. Further, there is a risk that National Scheme bodies could lower 'endorsement' standards without this being subject to any Parliamentary scrutiny.

5.32 Related to this point, submissions raised concerns that the National Scheme regime may result in bureaucratic pressures influencing decision-making. For example, chief executive officers of Health Departments may influence the training and qualification standards of specialities within professions for their own purposes and health departments may influence training and qualifications by accepting or rejecting proposals for specialist recognition of the professions.[197] The Australian Psychological Society advised that it cannot discount the possibility that professional standards will be adjusted to grow the workforce.[198]

Specialist recognition under the National Law may be pursued in the future

5.33 The reason for the Psychology Board of Australia's decision to prefer endorsement of areas of practice in favour of specialist recognition for psychologists is not clear to the Committee.

5.34 The Australian Psychological Society commented that it was informally advised that psychologists did not get specialist recognition because it '*is just a general trend or thrust to having as little legislation as possible, yet have a required level of protection. Unless legislation is absolutely necessary for protection, we have been advised that it will not be put into place*'.[199] This explanation, however, does not sit well with section 13(1)(c) of the National Law which provides that specialist recognition operates under the National Law for any other health profession approved by the Ministerial Council, on the recommendation of the National Board established for the profession. Additional legislation is not required to establish specialist recognition for psychologists.

196 Ibid, p4.

197 Submission No. 38 from The Australian Psychological Society Ltd, 3 March 2010, p3.

198 Ibid.

199 Professor Lynn Littlefield, Executive Director, Australian Psychological Society Ltd, *Transcript of Evidence*, 17 May 2010, p10.

5.35 The Minister for Health has indicated his support for specialist recognition of psychologists and has undertaken to work with the Ministerial Council and the Psychology Board of Australia to this end. The Minister for Health stated in the Legislative Assembly:

> *why not call them specialists, as we do here in Western Australia? Why not have that as part of the national standard that lifts everyone else to do that? That is still the proposal I intend to follow. It needs to be changed under national law.*[200]
>
> *We need to work on the issue that the psychologists have, which comes from the national board, not specifically from the legislation. We need to work in that forum and with the other ministers to achieve change …*
>
> *I think they deserve to be recognised as specialists having done that amount* [of training].[201]

The consequences of not providing specialist title registration or a similar system

5.36 In submissions to the Committee psychologists objected to the potential loss of specialist title registration (or its equivalent) for the following reasons:

- Removing specialist titles will lower standards (including educational standards and psychological expertise) and result in a 'dumbing down' of psychology. The Committee notes that a logical outcome of not having specialist title registration is that a person registered as a psychologist under the National Scheme would have no incentive to embark on additional years of study or training if there was no or limited benefit in undertaking this additional study and training. There would be no or limited benefit to the psychologist if their specialty was not recognised and they were not able to hold themselves out or advise the public of their expertise.

- The public will not be able to identify psychological expertise and this will increase public risk. As the Australian Psychological Society advised, the '*rejection of specialist titles for psychologist places member of the community at serious risk as they are no longer able to identify those psychologist with additional training, qualification and experiences in their specialist practice areas. This represents a downgrading of the protection to the public*'.[202] A

200 Hon Dr Kim Hames MLA, Minister for Health, Western Australia, Legislative Assembly, *Parliamentary Debates (Hansard)*, 18 May 2010, p2771.

201 Ibid, p2793.

202 Submission No. 38 from the Australian Psychological Society Ltd, 3 March 2010, p3.

system without specialist titles does not reflect the higher training Western Australian specialist psychologists undertake.

- There is a risk that the profession of psychology will be viewed as one homogenous group providing similar services.[203]

5.37 Based on the evidence presented to the Committee, it appears that the qualifications for specialist registration in Western Australia are comparable to the qualifications required for the endorsed areas of practice, although the Committee notes that many Western Australian psychologists continue to express concerns about the loss of specialist registration.

Recommendation 9: The Committee recommends that the responsible Minister advise the Legislative Council of the reasons for the Psychology Board of Australia's decision to prefer endorsement of areas of practice in favour of specialist recognition for the psychology profession.

Recommendation 10: The Committee recommends that the responsible Minister advise the Legislative Council of the reasons for the Ministerial Council's decision to not approve community psychology and health psychology as endorsed areas of practice for the psychology profession.

The option of retaining the State regime of specialist title registration

5.38 The Committee inquired into the option of Western Australia participating in the National Scheme while also maintaining a State system for specialist title registration.

5.39 The Australian Psychological Society advised that Western Australian psychologists feel so strongly about retaining specialist title that they are prepared to consider a double registration system where they are registered under the National Law but the State retains a capacity to continue to register them as specialists. However, they consider that it is far better to have specialist registration across Australia.[204]

5.40 On 27 May 2010, a petition with 281 signatures was tabled in the Legislative Council seeking the establishment of a Specialist Psychologists Registration Board for Western Australia. The petition seeks the establishment of this board when Western Australia enters the National Scheme. The terms of the petition are:

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203 Ibid, pp1-2.

204 Professor Lynn Littlefield, Executive Director, Australian Psychological Society Ltd, *Transcript of Evidence*, 17 May 2010, p6.

> *We the undersigned ask for the establishment of a statutory board in the state of Western Australia to oversee the registration of specialist psychologists and monitor the continuing education and supervision of specialist psychologist registrars. We ask that this Specialist Psychologist's Registration Board be functional as soon as Western Australia moves into the National Registration Scheme for Health Practitioners.*
>
> *We ask this in response to moves to replace Western Australia's current specialist title registration process with endorsement, following the establishment of the Psychology Board of Australia (PBA). We have been informed that the PBA intends to downgrade current standards in Western Australia by accepting Australian Psychological Society College (APS) members as 'endorsed' psychologists, even though APS Colleges have members without an accredited (or equivalent) postgraduate psychology degree (and some College members do not even have an accredited (or equivalent) undergraduate psychology degree). This would amount to a significant dilution of standards required to practice as specialist psychologists in Western Australia, and thereby place the public at increased risk.*
>
> *Membership of APS Colleges has not been an acceptable criterion to be registered as a specialist by the Psychologist Board of Western Australia. We also lack confidence in the APS to properly advocate for and credential specialist psychologists.*[205]

5.41 The Department of Health questioned whether the two registration systems could coexist:

> *there are some fundamental issues before looking at any sort of mechanism that might be employed. The first major issue is whether one Parliament can effectively pass two sets of legislation that are inconsistent because in this situation, the law that sets up the national law is a Western Australian law. So it is not an inconsistency between, say, the commonwealth law and the state law, where there are very well settled legal principles for determining which law prevails, but it would in fact be two sets of Western Australian law that are, by their design, inconsistent. So, I am not clear whether it is in fact possible to even do so in that sense. There is also a question of practicality; for example, if the two laws ran in parallel and a person*

[205] Parliament of Western Australia, Legislative Council, 'Petition for the Establishment of a Specialist Psychologists Registration Board for Western Australia', 27 May 2010, Tabled Paper No. 2080.

was registered under both, leaving aside the three-year transition period for clinical psychologists, in the absence of that arrangement, you could have a situation whereby someone could call themselves a clinical psychologist in WA if they are endorsed to practice, but not in the sense that we understand a specialist clinical psych. That would be okay under the national law, but under the state law they would be committing an offence because they are not recognised as a clinical psychologist.

The Chairman: As it currently stands.

Mr Ashburn: As it currently stands, so there are some real practicalities. If that sort of anomaly were to be removed, it would essentially need amendment of the national law, which is the process that needs every jurisdiction to participate in. If it were possible, the provision in the local part of the bill that deals with state matters would have to be amended so that the repeal of the state law was removed. Alternatively, it could be repealed but it would need to be replaced by an equivalent state law that deals with psychologists or clinical psychologists …

there may well be some public confusion if we were seeking to use the term "clinical psychologist" in perhaps two slightly different ways...[206]

The Chairman: So is it your evidence to the committee that it is unlikely to be workable to have a state registration scheme running concurrently with the national registration scheme for clinical psychologists?

Mr Ashburn: It is. I believe that it may not in fact be legally possible; it will have practical problems as well. [207]

5.42 If the State is to retain a State system for specialist title registration after the commencement of the National Scheme, this would give rise to a situation in which Western Australian psychologists with specialist title registration will be recognised in Western Australia only. Their specialist title registration will not be recognised in any other jurisdiction in Australia. They would also need to be registered under the National Law and obtain registration in that endorsed area of practice in order to be able to practise in another jurisdiction and hold themselves out to be, or to advise the public of, their expertise.

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206 Mr Stephen Ashburn, Acting Director, Legal and Legislative Services, Department of Health, *Transcript of Evidence*, 10 May 2010, p6.

207 Ibid, pp7-8.

5.43 The proposal to retain a State specialists system in addition to joining the National Scheme raises a number of legal issues that the Committee has not had the time to examine during the limited time the Committee has to report on the Bill.

5.44 The Committee is of the view that establishing a State system for specialist title registration of psychologists is problematic.

Transitional arrangements for psychologists undertaking specialist training

5.45 The Psychologists Registration Board of Western Australia advised that it is concerned about the effect of the change in registration systems on 140 people currently undertaking supervision for the purposes of attaining specialist title registration.

5.46 It appears that these concerns have been addressed, to the extent that the specialist title training will be recognised for the purpose of obtaining an endorsed area of practice under the National Law. However, it will not be open for the 140 people to obtain specialist registration under the National Law unless and until the Ministerial Council approves specialist recognition for the psychology profession on the recommendation of the Psychology Board of Australia.

5.47 The Department of Health advised:

> *The Board will recognise current psychology specialist training programs in WA for the purpose of endorsement. The Psychology Board of Australia's (PBA) position is that:*
>
> > *a generally-registered psychologist who, on the day preceding participation day, has an approved supervision plan for the purposes of gaining specialist title in an approved area of practice in Western Australia and who then completes the supervision plan by 30 June 2013 will be eligible for endorsement in that area of practice.*
>
> *The existing specialist training programs in WA will transition as approved qualifications for the purposes of related area of practice endorsements under the National Law.*
>
> *The PBA is proposing to recognise all WA Psychology Board approved supervision plans, therefore if the person is currently on an approved course leading to specialist title this will be recognised by the PBA as an approved pathway to gain endorsement in the area of practice.*

> *In addition, from 1 July 2010 the PBA will instigate a process of approval of supervision plans that replicates those currently in force in WA. Therefore, WA psychologists will experience minimal disruption moving from the WA system of approval to the PBA system of approval. Equivalent qualifications and supervised standards will be in place matching the WA specialist standard with the PBA endorsement standard.* [208]

WESTERN AUSTRALIA NEEDS ITS OWN STATE BOARD

5.48 As previously noted, the Psychology Board of Australia has established a South Australian and Western Australian Board of the Psychology Board of Australia (often referred to as a regional board). The South Australian and Western Australian Board of the Psychology Board of Australia (**Regional Board**) consists of six members, three from each State.[209]

5.49 The Committee is sympathetic to submissions arguing that Western Australia should have its own State Board and should not share a board with another State.

5.50 The Psychologists Registration Board of Western Australia considers that a stand alone Western Australian State board is appropriate to reflect the unique nature of the Western Australian disciplinary system operated through SAT, which differs from the South Australian disciplinary system. The Board considers that the cost argument raised in support of the Regional Board is not supported by the fact that the current Board is self-funded by a relatively modest fee of $300, whereas the National Scheme will be far more expensive.[210] (Under the proposed fee schedule, the registration fee for the psychology profession would increase from $300 to $390).[211]

5.51 The Psychologists Registration Board of Western Australia is concerned about a number of aspects of the Regional Board.[212] One issue is the capacity of a small group to manage and process the volume of work required. A further issue is that by limiting the number of people on the Regional Board covering two States, the breadth of experience and knowledge of the profession available to the Regional Board will be

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208 Answer to Questions on Notice, Department of Health, 14 May 2010, p7.

209 Communiqué of the Second meeting of the Psychology Board of Australia, 15 and 23 October 2009, p2: http://www.psychologyboard.gov.au/documents/ and select 'Second meeting of the Psychology Board of Australia' (viewed on 7 June 2010). The National Law contemplates a State board comprised by more than one State. The Psychology Board of Australia established four 'State' Boards for the seven jurisdictions. Only New South Wales has a one State only State Board.

210 Submission No. 37 from Psychologists Registration Board of Western Australia, 3 March 2010, attachment, p3.

211 Answers to Questions on Notice, Department of Health, 9 June 2010, Appendix to Attachment 1 of response, p1.

212 See letter from Mr Trevor Hoddy, Registrar, Psychologists Registration Board of Western Australia, to Associate Professor Brin Grenyer, Chair, Psychology Board of Australia, 15 December 2009.

substantially constrained. The Board notes that the Psychologists Registration Board of Western Australia comprises eight members and meets monthly with meetings usually of three hours duration. They also advised that the Complaints Assessment Committee meets monthly for approximately three hours. The Board is very concerned about the operation of regulatory processes for the proposed smaller Regional Board making decisions across two jurisdictions. Current board members spend an average of more than ten hours per month on Board related matters and the Regional Board will have fewer members.[213]

5.52 The Australian Psychological Society advised that it did not see any difficulties in how the Regional Board would function '*as long as in each capital city there is a footprint which allows ready and easy community access to the complaints and reporting process*'.[214]

5.53 The Department of Health provided the following information on how the Regional Board would operate:

> *The Psychology Board of Australia's regional WA / SA board will be based jointly in WA and SA with equal representation of members from both states, rather than solely located in SA. Individual complaints or notifications will be managed in the registrant's state consistent with the provisions of the national law. Where appropriate, the regional board will form a panel to manage the complaint in the state in which the complaint was made. There will be no additional costs for WA practitioners / psychologists as a result of the regional board. Hearings relating to WA practitioners/psychologists will be conducted in WA.*[215]
>
> *Individual complaints or notifications will be managed in the registrant's state consistent with the provisions of the national law. Where appropriate, the regional board will form a panel to manage the complaint in the state in which the complaint was made.*[216]

5.54 Based on the evidence presented to the Committee concerning the operation of the Regional Board, the Committee is unable to determine what costs savings, if any, will result from the establishment of the Regional Board compared to two State Boards.

5.55 The Committee is of the view that Western Australia should have its own State Board of Psychology.

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213 Ibid, p3.

214 Mr David Stokes, Senior Manager, Professional Practice, Australian Psychological Society, *Transcript of Evidence*, 17 May 2010, p6.

215 Answers to Questions on Notice, Department of Health, 14 May 2010, p6.

216 Ibid.

Recommendation 11: The Committee recommends that the responsible Minister advise the Legislative Council of the reasons for the Psychology Board of Australia's decision to establish a South Australian and Western Australian Board of the Psychology Board of Australia (Regional Board) rather than two separate State Boards and detail the expected cost savings, if any, from the establishment and operation of the Regional Board.

ORGANISATIONAL PSYCHOLOGISTS

5.56 The Australian Psychological Society noted that of all the health professions covered by the National Law, psychology stands out as the only one that has many practitioners whose services are not necessarily '*individual health care*' in nature.[217] Organisational psychologists in particular have been described as an '*odd fit*' to the Scheme.[218] The Australian Psychological Society recommended that the scope of the Bill be expanded to cover '*health and cognate services*'.[219]

5.57 The long title of the Bill states that this is an Act to '*provide for a national registration and accreditations scheme for health practitioners*'. This description may not cover some branches of the psychology profession.

217 Submission No. 38 from The Australian Psychological Society Ltd, 3 March 2010, p6.

218 Dr Jennifer Thornton, Presiding Member, Psychologists Registration Board of Western Australia, *Transcript of Evidence*, 24 May 2010, p7.

219 Submission No. 38 from The Australian Psychological Society Ltd, 3 March 2010, p6.

CHAPTER 6

THE UNIFORMITY OF THE BILL

6.1 The front part of the Bill (before the National Law) contains provisions necessary to enact the National Scheme and provides for local conditions. The front part of the Bill therefore may differ from other jurisdiction's legislation.

6.2 The Department of Health advised that the National Law, the Schedule to the Bill, is exactly the same as the National Law contained in the Queensland Act, which has been adopted by other jurisdictions.[220]

6.3 The Department of Health advised, with the caveat that the front part of the Bill provides for local conditions, that the Bill is consistent with the Queensland Act, legislation tabled or enacted in other jurisdictions, the Intergovernmental Agreement and subsequent agreements entered into by the State.[221]

6.4 Committee inquiries support a finding that the Bill is consistent with the supporting documentation.

Finding 1: The Committee finds that the Bill is consistent with the national scheme as agreed in the Intergovernmental Agreement.

6.5 The Committee commends this report to the House.

Hon Adele Farina MLC
Chairman

22 June 2010

220 Answers to Questions on Notice, Department of Health, 5 May 2010, pp2-3.

221 Ibid.

APPENDIX 1
LIST OF STAKEHOLDERS

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LIST OF STAKEHOLDERS

Professor Gary Geelhoed, President, Australian Medical Association (WA Branch)

Ms Leonie Coxon, Chair, Australian Psychological Society Ltd (WA Branch)

Ms Hilary Brakewell, Manager, Australian Physiotherapy Association (WA Branch)

Mr Wade James, Committee Chair, Australian Acupuncture and Chinese Medicine Association (WA Committee)

Mr Ray Power, President, Australian Osteopathy Association (WA Branch)

Mr John Rompotis, President, Australian Dental Prosthetists Association of Western Australia

Dr Greg Marslen, President, Chiropractors' Association of Australia (WA Branch)

Mr Duncan Ridley, Executive Officer, Australian Podiatry Association

Dr Peter Shipman, Chairperson, Royal Australian and New Zealand College of Radiologists (WA Branch)

Ms Sandra Kevill, Australian Association of Occupational Therapists WA Inc.

Mr Craig Somerville, Chief Executive Officer, Aboriginal Health Council of Western Australia

Mr Tony Martella, Chief Executive Officer, Optometrists Association Australia (WA Branch)

Mrs Heidi Denison, Administration Officer, Royal Australian and New Zealand College of Psychiatrists (WA Branch)

Dr Rachel Hammond, President, Western Australian General Practice Network

Mr Glen Ruscoe, Presiding Member, Physiotherapists Registration Board of Western Australia

Mr Kim Bradbury, Registrar, Osteopaths Registration Board of Western Australia

Mr Wayne Clarke, Registrar, Podiatrists Registration Board of Western Australia

Mr Trevor Hoddy, Registrar, Psychologists Registration Board of Western Australia

Mr John Harvey, President, Pharmaceutical Council of Western Australia

Ms Joanna Riches, Presiding Member, Occupational Therapists Registration Board of Western Australia

Mr Wayne Clarke, Registrar, Optometrists Registration Board of Western Australia

Dr Bevan Goodreid, Presiding Member, Chiropractors Registration Board of Western Australia

Dr John R Owen, Chairman, Dental Board of Western Australia

Mr Claude Minuta, Secretary, Dental Prosthetics Advisory Committee

Professor Con Michael, President, Medical Board of Western Australia

Ms Robyn Collins, Chief Executive Officer, Nurses and Midwives Board of Western Australia

Professor Craig Speelman, Head of School, Edith Cowan University, School of Psychology and Social Science

Professor David Morrison, Head of School, University of Western Australia, School of Psychology

Professor Bonnie Barber, Chair of Psychology, Murdoch University

Ms Catherine Cassarchis, Director of State Records

APPENDIX 2

LIST OF SUBMISSIONS

APPENDIX 2

LIST OF SUBMISSIONS

No	Name	Profession/Organisation	Date
1	Kay McCashney	Clinical Psychologist	22/02/10
2	Faye Brooks	Clinical Psychologist	22/02/10
3	Laurie Haynes	Clinical Psychologist	22/02/10
4	Mandy Juniper	Clinical Psychologist	22/02/10
5	Dr Thelma Pitcher	Clinical Psychologist	rec 24/02/10
6	Peter Fox	Clinical Psychologist	20/02/10
7	Margot Willox	Clinical Psychologist	23/02/10
8	Raymond Rudd	Clinical Psychologist	20/02/10
9	Michele Arthur	Clinical Psychologist	24/02/10
10	Clare Pigliardo	Clinical Psychologist Registrar	24/02/10
11	Graham Emery	Clinical Psychologist	rec 25/02/10
12	Dr Emma Grinter	Clinical Psychologist Registrar	23/02/10
13	Senia Malmgren	Clinical Psychologist	rec 26/02/10
14	Dr Suzie Brans	Clinical Psychologist Registrar	rec 26/02/10
15	Gayle Maloney	Clinical Psychologist	24/02/10
16	Yvette Williams	Clinical Psychologist	rec 26/02/10
17	Dr Gabrielle Unsworth	Clinical Psychologist	24/02/10
18	Kate van Koesveld	Clinical Psychologist	25/02/10
19	Sandy Williams	Clinical Psychologist	23/02/10
20	Dr Sian Jeffery	Clinical Psychologist	rec 26/02/10
21	Deborah Foster-Gaitskell	Clinical Psychologist	24/02/10
22	Barry White	Clinical Psychologist and Clinical Neuropsychologist	23/02/10
23	Patricia Hart	Clinical Psychologist	22/02/10
24	Dr Darryl Menaglio	Clinical Psychologist	26/02/10
25	Nick Ramondo	Clinical Psychologist	28/02/10
26	Siagari Luckwell	Clinical and Analytical Psychologist and Cranio-Sacral Practitioner	01/03/10
27	Carol Poole	Clinical Psychologist	03/03/10
28	Chris Theunissen	Clinical Psychologist	23/02/10
29	Dr George Paulik	Clinical Psychologist Registrar	rec 03/03/10
30	Glenn Ruscoe	Physiotherapists' Registration Board of Western Australia	02/03/10
31	Professor Andrew Page	School of Psychology, University of Western Australia	26/02/10

No	Name	Profession/Organisation	Date
32	Margaret Jones	Clinical Psychologist	01/03/03
33	Michael Tunnecliffe	Clinical Psychologist	rec 03/03/10
34	Lee Goddard-Williams	Clinical Psychologist	01/03/10
35	Dr Marjorie Collins Dr Oley Kay	Clinical Psychologist Psychiatrist	01/03/10
36	Richard Taylor	Clinical Psychologist	26/02/10
37	Trevor Hoddy	Psychologists Registration Board of Western Australia	03/03/10
38	Professor L Littlefield, Mr David Stokes, Bo Li	Australian Psychological Society Ltd	03/03/10
39	Professor John O'Gorman, Mr Arthur Cook, Professor L Littlefield	Australian Psychological Society Ltd	03/03/10
40	Sandra Kevill	Australian Association of Occupational Therapists WA Inc	02/03/10
41	Dr S Gairns	Australian Dental Association (WA Branch) Inc	26/02/10
42	Bronwyn Williams Nichola Webb Taralisa DiCiano	Clinical Psychologist Clinical Psychologist Psychologist	03/03/10
43	Julia Reynolds	Clinical Psychologist	24/02/10
44	Suzanne Midford	Clinical Psychologist	27/02/10
45	Pamela Woods	Counselling Psychologist	28/02/10
46	Sarah Syminton	Clinical Psychologist	21/02/10
47	Dr David Cockram	Clinical Psychologist Registrar	rec 02/03/10
48	Andrea Urbinati	Member of the Public	25/02/10
49	Dr Mary Kaspar	Clinical Psychologist	02/03/10
50	Dianne Ferguson	Clinical Psychologist	26/02/10
51	Dr Melanie Newton	Clinical Psychologist Registrar	24/02/10
52	Darralynn Siddall	Clinical Psychologist Registrar	24/02/10
53	Aillen Kroll	Master of Psychology	24/02/10
54	Submission withdrawn		
55	Delphin Swalm	Clinical Psychologist	25/02/10
56	Juliana Fong	Clinical Psychologist	02/03/10
57	Sonia Smuts	Clinical Psychologist	28/02/10
58	Dr Thelma Pitcher	Clinical Psychologist	03/03/10
59	Dr Anne C Warcholak	Consultant Psychiatrist	02/03/10
60	Ross Gregory	Member of the Public	rec 03/03/10
61	Geoffrey P Jones	Clinical Psychologist	rec 03/03/10
62	Dr Lizabeth Tong	Clinical Psychologist	28/02/10
63	Dr Jillian Horton	President, Institute of Private	rec 02/03/10

No	Name	Profession/Organisation	Date
	Ben Mullings Dr Marjorie Collins Melanie Freeman Paul Jeffery	Practicing Clinical Psychologists Chairperson, Association of Counselling Psychologists Senior Lecturer in Psychology, Murdoch University Psychologist Coordinator, North Metropolitan Area Child Adolescent and Youth Mental Health Service	
64	Patrick O'Connor	Clinical Psychologist	01/03/10
65	Melanie L Freeman	Psychologist	02/03/10
66	Professor Gary Geelhold	Australian Medical Association, Western Australia	03/03/10
67	Shannon Clarke	Member of the Public	23/02/10
68	Submission withdrawn		
69	Name withheld	Clinical Psychologist Trainee	03/03/10
70	Mr Tony Martella	Optometrists Association Australia, Western Australia	rec 10/03/10
71	Christine McClean	Clinical Psychologist	rec 02/03/10
72	Cathrin Cassarchis	State Records Office	29/03/10
73	Professor Jill Downie	Professor of Nursing, Curtin University of Technology	26/03/10
74	Dr Sarah Egan Dr David Ryder Dr Chris Lee	School of Psychology, Curtain University of Technology School of Psychology and Social Science, Edith Cowan University School of Psychology, Murdoch University	26/02/10
75	Michael McKibbin	Chiropractor	17/05/10
76	Dr Jillian Horton	Clinical Psychologist	10/06/10

APPENDIX 3

FUNDAMENTAL LEGISLATIVE SCRUTINY PRINCIPLES

APPENDIX 3

FUNDAMENTAL LEGISLATIVE SCRUTINY PRINCIPLES

Does the legislation have sufficient regard to the rights and liberties of individuals?

1. Are rights, freedoms or obligations, dependent on administrative power only if sufficiently defined and subject to appropriate review?

2. Is the Bill consistent with principles of natural justice?

3. Does the Bill allow the delegation of administrative power only in appropriate cases and to appropriate persons? Sections 44(8)(c) and (d) of the *Interpretation Act 1984*. The matters to be dealt with by regulation should not contain matters that should be in the Act not subsidiary legislation.

4. Does the Bill reverse the onus of proof in criminal proceedings without adequate justification?

5. Does the Bill confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer?

6. Does the Bill provide appropriate protection against self-incrimination?

7. Does the Bill adversely affect rights and liberties, or impose obligations, retrospectively?

8. Does the Bill confer immunity from proceeding or prosecution without adequate justification?

9. Does the Bill provide for the compulsory acquisition of property only with fair compensation?

10. Does the Bill have sufficient regard to Aboriginal tradition and Island custom?

11. Is the Bill unambiguous and drafted in a sufficiently clear and precise way?

Does the Bill have sufficient regard to the institution of Parliament?

12. Does the Bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?

13. Does the Bill sufficiently subject the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the Legislative Council?

14. Does the Bill allow or authorise the amendment of an Act only by another Act?

15. Does the Bill affect parliamentary privilege in any manner?

16. In relation to uniform legislation where the interaction between state and federal powers is concerned: Does the scheme provide for the conduct of Commonwealth and State reviews and, if so, are they tabled in State Parliament.

APPENDIX 4

EXTRACTS FROM THE

CONSUMER CREDIT (WESTERN AUSTRALIA) ACT 1996

APPENDIX 4

EXTRACTS FROM THE

CONSUMER CREDIT (WESTERN AUSTRALIA) ACT 1996

6. Application of uniform regulations under the Consumer Credit Code

(1) The regulations in force under Part 4 of the *Consumer Credit (Queensland) Act 1994* on the commencement of section 6 of the *Consumer Credit (Western Australia) Amendment Act 2003* apply, as if amended as set out in regulations made for the purposes of this section, as regulations in force for the purposes of the *Consumer Credit (Western Australia) Code.*

(2) If the regulations in force under Part 4 of the *Consumer Credit (Queensland) Act 1994* are amended, the Governor may amend the *Consumer Credit (Western Australia) Code Regulations* by order published in the *Gazette.*

(3) An order may not be made under subsection (2) unless a draft of the order has first been approved by each House of Parliament.

(4) The provisions applying because of subsection (1), as amended under subsection (2) (if there are such amendments), may be cited as the *Consumer Credit (Western Australia) Code Regulations.*

(5) Schedule 2 to the *Consumer Credit (Western Australia) Code* applies in relation to the *Consumer Credit (Western Australia) Code Regulations.*

[Section 6 inserted by No. 43 of 2003 s. 6.]

6B. Minister to give Queensland Bills and regulations to the Clerk of each House of Parliament

(1) Within 7 days of the Minister becoming aware of —

(a) the introduction into the Legislative Assembly of Queensland of a Bill to amend the Consumer Credit Code set out in the Appendix to the *Consumer Credit (Queensland) Act 1994*; or

(b) the notification in the Queensland Government Gazette of regulations to amend the regulations in force under Part 4 of the *Consumer Credit (Queensland) Act 1994*,

the Minister is to give a copy of the Bill or regulations to the Clerk of each House of Parliament.

(2) The Minister is to use his or her best endeavours to comply with subsection (1) but a failure to do so does not affect the validity of any other action under this Part.

(3) The Clerk of each House of Parliament is to give a copy of the Bill or regulations to the committee or committees of the Parliament whose terms of reference cover uniform legislation (that is, legislation that gives effect to an intergovernmental agreement or that is part of a uniform system of laws throughout the Commonwealth).

(4) A copy of the Bill or regulations given to the Clerk of a House is to be regarded as having been laid before that House.

(5) The laying of a copy of the Bill or regulations that is to be regarded as having occurred under subsection (4) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

[Section 6B inserted by No. 43 of 2003 s. 6.]