

40TH PARLIAMENT



Report 109

**STANDING COMMITTEE ON UNIFORM
LEGISLATION AND STATUTES REVIEW**

*Health Practitioner Regulation National Law (WA) Amendment
Bill 2017*

Presented by
Hon Michael Mischin MLC (Chairman)

October 2017

Standing Committee on Uniform Legislation and Statutes Review

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REPORT 109

**STANDING COMMITTEE ON UNIFORM
LEGISLATION AND STATUTES REVIEW**

**HEALTH PRACTITIONER REGULATION NATIONAL
LAW (WA) AMENDMENT BILL 2017**

GLOSSARY

Bill	Health Practitioner Regulation National Law (WA) Amendment Bill 2017
COAG	Council of Australian Governments
COAG Health Council	Council of Australian Governments Health Council, sitting as the Australian Workforce Ministerial Council (see paragraphs 6.1, 11.1 and footnote 8)
Committee	Standing Committee on Uniform Legislation and Statutes Review
IGA	Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions signed on 26 March 2008 (see paragraph 4.1)
Minister	Hon Roger Cook MLA, Minister for Health
Ministerial Council	COAG Health Council sitting as the Australian Health Workforce Ministerial Council (see paragraphs 6.1, 11.1 and footnote 8)
National Law	<i>Health Practitioner Regulation National Law</i>
National Regulation	<i>Health Practitioner Regulation National Law Regulation</i>
National Scheme	National Registration and Accreditation Scheme for the Health Professions
Queensland Amendment Act	<i>Health Practitioner Regulation National Law and Other Legislation Amendment Act 2017 (Qld)</i>
Report 52	Standing Committee on Uniform Legislation and Statutes Review, Report 52: <i>Health Practitioner Regulation National Law (WA) Bill 2010</i> , tabled in the Legislative Council on 22 June 2010
WA National Law	<i>Health Practitioner Regulation National Law (WA) Act 2010</i>
WA National Regulations	<i>Health Practitioner Regulation National Law (WA) Regulations 2010</i>
2010 Bill	Health Practitioner Regulation National Law (WA) Bill 2010

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**EXECUTIVE SUMMARY, FINDINGS AND RECOMMENDATIONS FOR THE
REPORT OF THE STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES
REVIEW**

HEALTH PRACTITIONER REGULATION NATIONAL LAW (WA) AMENDMENT BILL 2017

EXECUTIVE SUMMARY

- 1 On 14 September 2017, the Legislative Council referred the Health Practitioner Regulation National Law (WA) Amendment Bill 2017 (Bill) to the Standing Committee on Uniform Legislation and Statutes Review (Committee) for consideration and report. The reporting date is 31 October 2017, being the next sitting day after the 45 day period mandated by Standing Order 126.
- 2 The Bill amends the *Health Practitioner Regulation National Law (WA) Act 2010* (WA National Law), which joined Western Australia to a single national registration and accreditation scheme for 14 health professions. The intergovernmental agreement that established the scheme required that the scheme be reviewed after three years of operation. The amendments proposed to be effected by the Bill purport to result from that review.
- 3 Under its terms of reference, the Committee is confined to investigating whether the Bill has an impact on the parliamentary sovereignty and law-making powers of the Parliament of Western Australia.
- 4 The Committee has identified three aspects of the Bill that may affect Parliamentary sovereignty and law-making powers. These are:
 - Parliament's inability to scrutinise and disallow national regulations (see Findings 1 and 2, Recommendations 1 and 2).
 - Commencement provisions (see Findings 3 and 4).
 - National Health Practitioner Boards to be provided for by regulations (see Findings 5 and 6).
- 5 The WA National Law as it presently stands, and the manner in which regulations made under it take effect in Western Australia, derogate from Western Australian Parliamentary sovereignty and should be addressed. The Bill does not provide for the scrutiny or disallowance by the Western Australian Parliament of amendments to the *Health Practitioner Regulation National Law Regulation* (National Law Regulation) so far as they apply in Western Australia.
- 6 The Committee has been informed that a new set of National Regulations will be made, but as presently advised the proposed process does not necessarily address the issue.

FINDINGS AND RECOMMENDATIONS

7 Findings and recommendations are grouped as they appear in the text at the page numbers indicated:

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Finding 1: The Committee finds that the incorporation into Western Australian law of amendments to the *Health Practitioner Regulation National Law Regulation* without a legislative requirement for them to be published in the *Western Australian Government Gazette*, and without them being subject to Parliament's scrutiny and possible disallowance, is contrary to what the Parliament expected to achieve when passing amendments to the *Health Practitioner Regulation National Law (WA) Bill 2010*.

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Finding 2: The Committee finds that the *Health Practitioner Regulation National Law (WA) Amendment Bill 2017* does not ensure the scrutiny of amendments to the *Health Practitioner Regulation National Law Regulation* so far as they apply in Western Australia.

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Recommendation 1: The Committee recommends that the Government address the deficiencies in the *Health Practitioner Regulation National Law (WA) Act 2010* that derogate from Western Australian Parliamentary sovereignty.

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Recommendation 2: The Committee recommends that the Minister for Health advise the Legislative Council about the progress of the proposed new *Health Practitioner Regulation National Law Regulation*, including any proposed date for tabling in the Legislative Council.

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Finding 3: The Committee finds that clause 2(d) of the *Health Practitioner Regulation National Law (WA) Amendment Bill 2017*, in providing that the Executive determines commencement dates, erodes the Western Australian Parliament's sovereignty and law-making powers.

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Finding 4: The Committee finds that there are sound reasons for leaving the proclamation of some provisions of the *Health Practitioner Regulation National Law (WA) Amendment Bill 2017* to be determined by the Executive.

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Finding 5: The Committee finds that the establishment of National Health Practitioner Boards by regulation as proposed in the Health Practitioner Regulation National Law (WA) Amendment Bill 2017 is pragmatic and acceptable.

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Finding 6: The Committee finds that the Western Australian Parliament will not be able to scrutinise and disallow the regulations regarding National Health Practitioner Boards provided for in clause 14 of the Health Practitioner Regulation National Law (WA) Amendment Bill 2017 unless the Parliamentary sovereignty issues identified in Findings 1 and 2 are addressed.

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Recommendation 3: The Committee recommends that the Legislative Council note the Committee's findings, comments and recommendations during consideration of the Health Practitioner Regulation National Law (WA) Amendment Bill 2017.

**REPORT OF THE STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES
REVIEW**

HEALTH PRACTITIONER REGULATION NATIONAL LAW (WA) AMENDMENT BILL 2017

1 INTRODUCTION

- 1.1 On 14 September 2017, the Legislative Council referred the Health Practitioner Regulation National Law (WA) Amendment Bill 2017 (Bill) to the Standing Committee on Uniform Legislation and Statutes Review (Committee) for consideration and report. The reporting date is 31 October 2017, being the next sitting day after the 45 day period mandated by Standing Order 126.
- 1.2 The Bill amends the *Health Practitioner Regulation National Law (WA) Act 2010*, which joined Western Australia to a single national registration and accreditation scheme for 14 health professions. The intergovernmental agreement that established the scheme required that the scheme be reviewed after three years of operation. The amendments proposed to be effected by the Bill purport to result from that review.
- 1.3 This report includes discussion and analysis of:
- the intergovernmental agreement that established the scheme
 - the Committee's report on the Health Practitioner Regulation National Law (WA) Bill 2010
 - the *Health Practitioner Regulation National Law (WA) Act 2010*
 - the Bill.

2 INQUIRY PROCEDURE

- 2.1 The Committee posted the inquiry on its website at [Uniform Legislation Committee homepage](#). The general public was immediately notified of the referral via social media.¹ Given the Committee's terms of reference, the Committee considered that any broader advertising or invitation for submissions from the public was neither necessary nor warranted in relation to the Bill.

3 SUPPORTING DOCUMENTS

- 3.1 The Committee received copies of the Bill, the Second Reading Speech and the Explanatory Memorandum when the Bill was introduced into the Legislative Council.

¹ Legislative Council, 14 September 2017, retrieved from <https://twitter.com/WALegCouncil/status/908249649172987905>

3.2 Hon Roger Cook MLA, Minister for Health (Minister), provided the Committee with the information required pursuant to Ministerial Office Memorandum MM2007/01.²

3.3 Standing Order 126(5) states:

The Member in charge of a Bill referred to the Committee shall ensure that all documentation required by the Committee is provided to the Committee within 3 working days after referral ...

3.4 The Minister forwarded the information required under Ministerial Memorandum MM2007/01 to the Committee on 20 September 2017, four working days after referral. The Committee extends its appreciation to the Minister for the timely provision of the supporting documentation and information.

4 THE INTERGOVERNMENTAL AGREEMENT

4.1 There is no new intergovernmental agreement for the Bill. It was made pursuant to an Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions (IGA) signed on 26 March 2008 by the Premier of Western Australia, the Prime Minister and the Premiers and Chief Ministers of all the other Australian States and Territories.³

4.2 The IGA sets out the agreed basis for the National Registration and Accreditation Scheme for the Health Professions (National Scheme) which was implemented through the *Health Practitioner Regulation National Law* (National Law).

5 HEALTH PRACTITIONER REGULATION NATIONAL LAW

5.1 The purpose of the National Law was to create a single national registration and accreditation scheme for 14 health professions, creating a major overhaul of the way those professions were regulated under the previous State-based systems.

5.2 The National Law established 14 National Boards to regulate the 14 nationally registered health professions. It also established the Australian Health Practitioner Regulation Agency to provide regulatory services for the National Boards.

² Ministerial Office Memorandum MM 2007/01 requires the provision of information to the Committee such as a copy of the relevant intergovernmental agreement/memorandum of understanding or a copy of the communique from the Ministerial Council meeting at which it was agreed to introduce the legislation, a statement as to any timetable for the implementation of the legislation, the advantages and disadvantages to the State of Western Australia as a participant in the relevant scheme or agreement, any relevant constitutional issues, an explanation as to whether and by what mechanism the State can opt out of the scheme, the mechanisms by which the bill, once enacted, can be amended and, if the legislation has been developed by reference to a model bill, a copy of that model bill.

³ *The Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions* lists the parties as the Commonwealth of Australia, the State of New South Wales, the State of Victoria, the State of Queensland, the State of Western Australia, the State of South Australia, the State of Tasmania, the Australian Capital Territory and the Northern Territory of Australia, 26 March 2008.

5.3 The National Law provided 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.⁴

5.4 The Explanatory Memorandum for the Bill states:

*The National Scheme and National Law ensure that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered. It allows health practitioners to have a single registration recognised anywhere in Australia and provides mechanisms for detecting and addressing practitioner health, conduct or performance issues.*⁵

5.5 According to the Explanatory Memorandum:

*The scheme is a ‘protection of title’ model, with powers to prosecute persons who falsely hold out to be registered or use a restricted professional title.*⁶

6 LEGISLATIVE FRAMEWORK

6.1 Queensland is the host jurisdiction for the National Law under the *Health Practitioner Regulation National Law Act 2009* (Qld).⁷ Under clause 13.2 of the IGA, proposed amendments to the National Law must be approved by the Council of Australian Governments Health Council sitting as the Australian Health Workforce Ministerial Council (Ministerial Council).⁸

6.2 Most jurisdictions adopt the National Law, the exceptions being Western Australia and South Australia. Western Australia must pass its own legislation and South Australia adopts the National Law by way of regulations.

6.3 Clauses 6.3 and 6.4 of the IGA reflect Western Australia’s intention to maintain its parliamentary sovereignty, as far as practicable, within the national scheme:

⁴ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 52, *Health Practitioner Regulation National Law (WA) Bill 2010*, 22 June 2010, p 2.

⁵ Health Practitioner Regulation National Law (WA) Amendment Bill 2017, *Explanatory Memorandum*, Legislative Council, p 2.

⁶ *ibid.*

⁷ *Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions*, para 6.3, p 4.

⁸ ‘Ministerial Council’ is currently defined in section 5 of the National Law as ‘the Australian Health Workforce Ministerial Council comprising Ministers of the governments of participating jurisdictions and the Commonwealth with portfolio responsibility for health.’ The Explanatory Memorandum for the Bill advises ‘The structure and names of Ministerial Councils are revised by COAG from time to time. The ‘Australian Health Workforce Ministerial Council’ no longer exists as a separate Ministerial Council and its work has been included in the ambit of the COAG Health Council ... the COAG Health Council and the Ministerial Council are the same entity.’ Clause 9 of the Bill addresses this by inserting in section 5 of the National Law a new definition of ‘Ministerial Council’ to mean ‘the COAG Health Council, or a successor of the Council by whatever name called, constituted by Ministers of the governments of the participating jurisdictions and the Commonwealth with portfolio responsibility for health.’

6.3 *The State of Queensland will host the substantive legislation to give effect to the national scheme, which will be subject to the approval of the AHMC.⁹ Once approved by the AHMC, the State of Queensland will take the lead in enacting the primary legislation to establish the scheme.*

6.4 *The State of Western Australia will, as soon as reasonably practicable, enact corresponding legislation, substantially similar to the agreed model, so as to permit the scheme to be established on 1 July 2010. The States of New South Wales, Victoria, South Australia and Tasmania and the Australian Capital Territory and the Northern Territory will, as soon as reasonably practicable following passage of the Queensland legislation, use their best endeavours to enact legislation in their jurisdiction applying the Queensland legislation as a law of those jurisdictions, so as to permit the scheme to be established on 1 July 2010. [Underlining added].*

6.4 The National Law did not operate in Western Australia until the *Health Practitioner Regulation National Law (WA) Act 2010* came into effect. Amendments proposed to the National Law must also be introduced and passed by the Parliament of Western Australia in order to become law in Western Australia.

6.5 The National Scheme commenced on 1 July 2010. Western Australia joined the National Scheme on 18 October 2010.¹⁰

7 HEALTH PRACTITIONER REGULATION NATIONAL LAW (WA) BILL 2010

7.1 The Health Practitioner Regulation National Law (WA) Bill 2010 (2010 Bill) was introduced into the Legislative Council on 20 May 2010 and referred to the Committee pursuant to former Standing Order 230A.¹¹

7.2 The 2010 Bill comprised:

- the Health Practitioner Regulation National Law (WA) Bill 2010 made up of four Parts which contained Western Australian specific provisions and amendments to State legislation
- the National Law which was set out in the Schedule.

⁹ The Australian Health Ministers' Conference, which had responsibility for implementing the proposed framework until the establishment of the Australian Health Workforce Ministerial Council, see IGA paragraph 6.12.

¹⁰ Health Practitioner Regulation National Law (WA) Amendment Bill 2017, *Explanatory Memorandum*, Legislative Council, p 2.

¹¹ Previous Legislative Council Standing Order 230A was replaced with the current Standing Order 126 in 2012.

7.3 By reason of clauses 3 and 4 of the 2010 Bill, the National Law in the Schedule, so far as it applied to Western Australia, was referred to as the *Health Practitioner Regulation National Law (Western Australia)*.

7.4 Ten health professions initially joined the National Scheme, and another four health professions joined from 1 July 2012.¹²

8 UNIFORM LEGISLATION AND STATUTES REVIEW COMMITTEE REPORT ON THE HEALTH PRACTITIONER REGULATION NATIONAL LAW (WA) BILL 2010 – REPORT 52

8.1 The Committee provided a comprehensive and detailed analysis of the National Law, the National Scheme and the 2010 Bill in Report 52, which is available at [Uniform Legislation Committee Report 52](#).¹³

8.2 The Committee identified a number of serious concerns with the regulation-making process as provided for in sections 245 to 247 of the National Law. These concerns are set out in Chapter 3 of Report 52 at paragraphs 3.25 to 3.78.

8.3 In summary, the Committee was of the view that the provisions in the National Law:

- 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*’ (clauses 245(1) and (2))
- for the regulations to have effect in Western Australia on being published by the Victorian Government Printer, with no requirement to inform the Parliament of Western Australia of regulations published (clause 245(3))

were an erosion of Western Australia’s Parliamentary sovereignty.¹⁴

8.4 The Committee recommended that, to preserve the sovereignty of the Parliament of Western Australia to make, disallow and repeal regulations:

- clause 7 of the Health Practitioner Regulation National Law (WA) Bill 2010 be amended to apply sections 41 and 42 of the *Interpretation Act 1984* to regulations made under the *Health Practitioner Regulation National Law (Western Australia)* [namely the National Law set out in the Schedule to the 2010 Bill].
- Clause 245 of the National Law contained in the Schedule to the Health Practitioner Regulation National Law (WA) Bill 2010 be amended to:
 - delete the requirement for regulations to be published by the Victorian Government Printer

¹² Hon Roger Cook MLA, Minister for Health, Letter, 20 September 2017, p 1.

¹³ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 52, *Health Practitioner Regulation National Law (WA) Bill 2010*, 22 June 2010.

¹⁴ *ibid*, paragraphs 3.25 to 3.78, pp 24-37 and in particular paragraph 3.57 at page 29.

- insert a provision to apply sections 41 and 42 of the *Interpretation Act 1984* to regulations made under section 245(1).
- Clause 246 of the National Law contained in the Schedule to the Health Practitioner Regulation National Law (WA) Bill 2010 be deleted. Clause 246 provided that a National Law regulation can only cease to have effect if the regulation is disallowed in a majority of the participating jurisdictions.
- Clause 247 of the National Law contained in the Schedule to the Health Practitioner Regulation National Law (WA) Bill 2010 be deleted. Clause 247 prescribed the effect of disallowance of regulations made under the National Law.¹⁵

Health Practitioner Regulation National Law (WA) Bill 2010 amended

8.5 The Legislative Council accepted the Committee's recommendations during its consideration of the 2010 Bill, and the suggested amendments were duly made. The amendments were agreed to by the Legislative Assembly and the 2010 Bill subsequently received Royal Assent on 30 August 2010. The Act, to which the National Law is a Schedule, is the *Health Practitioner Regulation National Law (WA) Act 2010* (WA National Law).

9 HEALTH PRACTITIONER REGULATION NATIONAL LAW (WA) REGULATIONS 2010

9.1 The *Health Practitioner Regulation National Law Regulation* (National Regulation) was made by the Australian Health Workforce Ministerial Council on 17 June 2010 and published by the Victorian Government Printer on 22 June 2010.

9.2 The *Health Practitioner Regulation National Law (WA) Regulations 2010* (WA National Regulations) were made under section 245 of the WA National Law and gazetted on 26 November 2010, tabled and subject to the usual disallowance procedures.¹⁶

9.3 Under regulations 3 and 4(1) of the WA National Regulations, the National Regulation is applied as a regulation in Western Australia 'as in force from time to time.'¹⁷ As a result, amendments to the National Regulation as published by the Victorian Government Printer are incorporated by reference in Western Australia. Because amendments to the National Regulation are not made under section 245 of the WA National Law, there is no requirement for them to be published in the Western Australian *Government Gazette* pursuant to section 41 of the *Interpretation Act 1984*. Accordingly, they are not subject to disallowance by the Western Australian Parliament pursuant to section 42 of that Act.

9.4 Amendments to the National Regulation were made on:

¹⁵ *ibid*, Recommendations 1 to 4.

¹⁶ Western Australia, *Government Gazette*, 26 November 2010, No. 222, p 5952.

¹⁷ *Health Practitioner Regulation National Law (WA) Regulations 2010* reg 4(1).

- 26 September 2011 and published by the Victorian Government Printer on 7 October 2011
 - 14 June 2013 and published by the Victorian Government Printer on 20 June 2013
 - 1 June 2015 and published by the Victorian Government Printer on 3 June 2015
 - 10 October 2016 and published by the Victorian Government Printer on 12 October 2016.¹⁸
- 9.5 The first three amendments were tabled in the Legislative Council on 20 September 2016 as part of a response to a Parliamentary Question.¹⁹ The fourth amendment was tabled in the Legislative Council on 16 May 2017 on behalf of the current Minister for Health.²⁰
- 9.6 None of the amendments have been published in the Western Australian *Government Gazette*.²¹ That being the case, they did not stand referred to the Joint Standing Committee on Delegated Legislation for consideration under its terms of reference.²²
- 9.7 The Committee considers that this falls short of the Western Australian Parliament's intentions when it amended the 2010 Bill. The Committee observes that the amendments made to the 2010 Bill were intended to preserve Parliament's sovereignty and empower it to scrutinise regulations made under the National Law so far as they apply in Western Australia.

Finding 1: The Committee finds that the incorporation into Western Australian law of amendments to the *Health Practitioner Regulation National Law Regulation* without a legislative requirement for them to be published in the Western Australian *Government Gazette*, and without them being subject to Parliament's scrutiny and possible disallowance, is contrary to what the Parliament expected to achieve when passing amendments to the Health Practitioner Regulation National Law (WA) Bill 2010.

¹⁸ *Health Practitioner Regulation National Law (WA) Regulations 2010*, Note, p 4. The Note asserts that Notice was published by the Victorian Government Printer on 11 October 2016, but the extract of the *Victoria Government Gazette* Number S314 of 12 October 2016 (Legislative Council Tabled Paper Number 60 of 16 May 2017) states it was published on 12 October 2016.

¹⁹ Hon Adele Farina MLC and Hon Donna Faragher MLC, Response to Parliamentary Question 4321, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 20 September 2016, pp 6239- 40.

²⁰ The former Minister for Health, Hon John Day MLA, advised the Committee on 23 December 2016 of his intention to table the fourth amendment to the National Regulation, to keep the Parliament and relevant Committees informed. However, following Parliament being prorogued for the March 2017 election, Parliament did not commence sitting until May 2017. The current Minister has affirmed that he intends to continue the practice proposed by his predecessor.

²¹ Hon Adele Farina MLC and Hon Donna Faragher MLC, Response to Parliamentary Question 4321, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 20 September 2016, pp 6239- 40.

²² Paragraph 10.5 of Schedule 1 to the Standing Orders of the Legislative Council: '*Upon publication, whether under section 41(1)(a) of the Interpretation Act 1984 or another written law, an instrument stands referred to the [Joint Standing Committee on Delegated Legislation] for consideration.*'

9.8 The Committee obtained an assurance from the Minister in July 2017 that he would table any further amendments made under the National Regulation in the Western Australian Parliament.²³ The Committee also asked the Minister what progress had been made to amend the process for making regulations for the purposes of the *Health Practitioner Regulation National Law (WA) Act 2010* to reflect Parliament's intention: that it have the power to scrutinise and disallow regulations made pursuant to the National Law so far as they are applicable to Western Australia.

9.9 The Minister informed the Committee:

*I am advised that the Department of Health, State Solicitor's Office and Parliamentary Counsel's Office are continuing to resolve the issues. I understand that the solution has taken a little longer to resolve given the complexity of the matter which involves a number of parties including Health Ministers and departments in all Australian jurisdictions. I am confident that the matter will be resolved as soon as possible.*²⁴

9.10 This issue is discussed further in paragraphs 11.6 to 11.20.

10 REVIEW OF THE NATIONAL SCHEME – DECEMBER 2014

10.1 Clause 14.1 of the IGA requires that the National Scheme be reviewed after three years of operation. In 2014, the Ministerial Council appointed Mr Kim Snowball, a former Director General of the Western Australian Department of Health, to undertake the review.²⁵

10.2 His final report made 33 recommendations.²⁶ The COAG Health Council/Ministerial Council responded to the report on 7 August 2015 by:

- accepting nine recommendations
- accepting 11 recommendations in principle
- not accepting six recommendations
- deferring consideration of seven recommendations pending further advice.²⁷

10.3 The implementation of the COAG Health Council's/Ministerial Council response to the review is occurring in two stages. The first stage consists of the amendments to the National Law proposed by this Bill.²⁸

²³ Hon Roger Cook MLA, Minister for Health, Letter, 11 July 2017, p 1.

²⁴ *ibid.*

²⁵ Health Practitioner Regulation National Law (WA) Amendment Bill 2017, *Explanatory Memorandum*, Legislative Council, p 2.

²⁶ Kim Snowball, Independent Reviewer, *Independent Review of the National Registration and Accreditation Scheme for health professions*, Final Report, December 2014.

²⁷ Health Practitioner Regulation National Law (WA) Amendment Bill 2017, *Explanatory Memorandum*, Legislative Council, p 3.

²⁸ *ibid.*

10.4 The Minister advised the Committee that:

The Queensland-led amendments to the National Scheme have already commenced for some provisions and it would be beneficial that the WA amendments commence as soon as possible, so that there is uniformity across the jurisdictions.²⁹

11 HEALTH PRACTITIONER REGULATION NATIONAL LAW (WA) AMENDMENT BILL 2017

11.1 The Health Practitioner Regulation National Law (WA) Amendment Bill 2017 (Bill) amends the National Law as agreed by the Council of Australian Governments Health Council, sitting as the Australian Workforce Ministerial Council (COAG Health Council) on 29 May 2017.³⁰

11.2 The amendments are to the WA National Law.

Structure of the Bill

11.3 The Bill contains 117 clauses in three Parts as follows:

- Part 1 contains the preliminary provisions
- Part 2 amends the WA National Law (both the *Health Practitioner Regulation National Law (WA) Act 2010* and Schedule)
- Part 3 makes consequential amendments to other Western Australian Acts.

Purpose of the Bill

11.4 According to the Explanatory Memorandum, the Bill includes the following key reforms to the WA National Law:

- *national regulation of paramedics, including the establishment of a Paramedicine Board of Australia*
- *enabling the COAG Health Council to make changes to the structure of National Boards by regulation following consultation*
- *recognition of nursing and midwifery as two separate professions, rather than a single profession, with the professions continuing to be regulated by the Nursing and Midwifery Board of Australia*
- *improvements to the complaints (notifications) management, disciplinary and enforcement powers of National Boards to*

²⁹ Hon Roger Cook MLA, Minister for Health, Letter, 20 September 2017, p 2.

³⁰ Health Practitioner Regulation National Law (WA) Amendment Bill 2017, *Explanatory Memorandum*, Legislative Council, p 1.

strengthen public protection and ensure fairness for complainants (notifiers) and practitioners, and

- *technical amendments to improve the efficiency and effectiveness of the National Law.*³¹

Clauses that may affect Parliamentary sovereignty and law-making powers

11.5 The Committee has identified three aspects of the Bill that may affect Parliamentary sovereignty and law-making powers. These are:

- Parliament's inability to scrutinise and disallow national regulations
- commencement provisions
- National Boards to be provided for by regulations.

Parliament's inability to scrutinise and disallow national regulations

11.6 As detailed above, the Committee identified a number of serious concerns with the regulation-making process as provided for in the National Law.

11.7 The Bill does not address the concerns identified by the Committee in 2010. The amendments made to the 2010 Bill were intended to preserve Parliament's sovereignty and empower it to scrutinise regulations made under the National Law so far as they apply in Western Australia. However, those amendments have not prevented amendments to the National Regulation being incorporated into Western Australian law without such scrutiny.³²

11.8 The Committee inquired of the Minister regarding this issue. The Acting Minister for Health advised:

Due to the concerns raised by the Committee and the JSCDL [Joint Standing Committee on Delegated Legislation], the Department of Health (DOH) has worked with jurisdictions in order to resolve the application of the National Regulations to WA.

*The DOH has received agreement from the other jurisdictions that following the passage of the Amendment Bill [Health Practitioner Regulation National Law (WA) Amendment Bill 2017] in WA, a complete new set of National Regulations will be made by the COAG Health Council. The new set of National Regulations will be disallowable in Western Australia. Copies of the National Regulations will be tabled in the Parliament of Western Australia and the JSCDL will receive all associated documentation in accordance with Premier's Circular Number 2014/01.*³³ [Underlining added].

³¹ Health Practitioner Regulation National Law (WA) Amendment Bill 2017, *Explanatory Memorandum*, Legislative Council, p 1.

³² *Health Practitioner Regulation National Law (WA) Regulations* 2010 r 4(1).

³³ Hon Simone McGurk MLA, Acting Minister for Health, Letter, 26 September 2017, p 2.

- 11.9 The letter from the Acting Minister for Health dated 26 September 2017 is attached as Appendix 1.
- 11.10 The Committee sought further information from the Minister to explain how the making and gazettal of a ‘*complete new set of National Regulations*’ will address the current problem of incorporation by reference into Western Australian law of amendments to the National Regulation without Western Australian Parliamentary scrutiny.
- 11.11 The Minister advised that:
- As part of the process of drafting and the making of a new set of National Regulations the WA National Regulations will be repealed. Only one set of National Regulations will be operational across jurisdictions. Therefore, the current application of the National Regulations by the WA National Regulations will not occur.*
- The new set of National Regulations will be tabled in the WA Parliament and any amendments to the National Regulations will also be tabled. Copies of the new National Regulations and amendments will be forwarded to the Joint Standing Committee on Delegated Legislation for consideration and disallowance.³⁴*
- 11.12 However, the Minister did not explain how this proposed process would ensure that new national regulations, and any amendments thereto, would be subject to Parliamentary scrutiny and possible disallowance. The Committee therefore sought further advice from the Minister.
- 11.13 The Minister responded by letter dated 19 October 2017 which is attached as Appendix 2.
- 11.14 In substance, the Minister explained that:
- the proposal is that the COAG Health Council will repeal the current set of National Regulations and then WA Regulations and replace them with new National Regulations. The new National Regulations will be operational in all participating jurisdictions including WA.*
- WA will then be able to follow the process required under sections 41 and 42 of the Interpretation Act 1984 and the Premier’s Circular 2014/01. That is, the new National Regulations and any future amendments to them will be gazetted in WA, tabled in the WA Parliament and subject to its disallowance.³⁵*
- 11.15 He went on to explain the proposed process for making new National Regulations and future amendments.

³⁴ Hon Roger Cook MLA, Minister for Health, Letter, received 12 October 2017, p 2.

³⁵ Hon Roger Cook MLA, Minister for Health, Letter, 19 October 2017, pp 1-2.

11.16 In short, the Ministerial Council would make the regulations pursuant to section 245(1) of the National Law, which would then be published by the Victorian Government Printer, as is currently the case. The new regulations would be sent to the Western Australian Department of Health, which would:

*arrange the gazettal in the Government Gazette in WA in accordance with the Interpretation Act 1984 sections 41 and 42 ... The new set of National Regulations would be tabled in both Houses of the WA Parliament.*³⁶

11.17 Upon gazettal, the Department of Health would ‘*in accordance with Premier’s Circular 2014/01 forward to the Joint Standing Committee on Delegated Legislation the required documents within 10 working days.*’³⁷

11.18 The Committee considers that this does not necessarily address the problem, as it does not provide a legislative requirement that any regulations published by the Victorian Government Printer will be submitted to the Parliament of Western Australia for scrutiny and possible disallowance.

11.19 Firstly, whereas section 245(3) of the WA National Law applies sections 41 and 42 of the *Interpretation Act 1984* to regulations made under section 245(1) of that law, section 245 of the National Law contains no such requirement. Accordingly, there is no requirement for regulations made pursuant to section 245(1) of the National Law to come before the Western Australian Parliament for potential disallowance. Merely submitting documentation to the Parliament or the Joint Standing Committee on Delegated Legislation does not activate a mechanism to ensure Parliamentary scrutiny and possible disallowance.

11.20 Secondly, even if the WA National Regulations were repealed and new national regulations made under section 245(1) of the WA National Law, nothing appears to prevent new regulations being made similar to current regulations 3 and 4 of the WA National Regulations that permit amendments to national regulations being incorporated by reference into Western Australian law.

Finding 2: The Committee finds that the Health Practitioner Regulation National Law (WA) Amendment Bill 2017 does not ensure the scrutiny of amendments to the *Health Practitioner Regulation National Law Regulation* so far as they apply in Western Australia.

Recommendation 1: The Committee recommends that the Government address the deficiencies in the *Health Practitioner Regulation National Law (WA) Act 2010* that derogate from Western Australian Parliamentary sovereignty.

³⁶ ibid, p 2.

³⁷ ibid.

Recommendation 2: The Committee recommends that the Minister for Health advise the Legislative Council about the progress of the proposed new *Health Practitioner Regulation National Law Regulation*, including any proposed date for tabling in the Legislative Council.

Clause 2 – Commencement

- 11.21 Clause 2(a) of the Bill provides that Part 1 of the Act will come into operation on the date of Royal Assent.
- 11.22 Clause 2(b) of the Bill provides that multiple provisions in Part 2³⁸ will come into operation reliant on the commencement of section 3 of the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2017 (Qld)*.³⁹
- 11.23 The *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2017 (Qld)* (Queensland Amendment Act) received Royal Assent on 13 September 2017.⁴⁰ Relevantly, section 3 of the Queensland Amendment Act came into operation on that date.⁴¹ Therefore, relevant provisions in Part 2 of this Bill will come into operation on the day after it receives Royal Assent.⁴²
- 11.24 Clause 2(c) of the Bill provides that clause 38 will come into operation on the twenty-eighth day after the day on which clause 3 comes into operation. Clause 3 is contained in Part 2 and so will come into operation as explained in paragraph 11.23; that is, on the day after Royal Assent.
- 11.25 The rest of the Bill, which includes multiple sections in Part 2⁴³ and all of Part 3, will come into operation on a day or days fixed by proclamation.⁴⁴ This means these remaining sections may commence at different times.⁴⁵
- 11.26 Proclamation is an executive action and affects the Parliament's sovereignty as the commencement dates will be controlled by the Executive. There is nothing in the Bill that requires proclamation of the sections in Part 2 and Part 3 of the Bill within a

³⁸ Health Practitioner Regulation National Law (WA) Amendment Bill 2017, ss 3, 4, 5, 6, 7, 8, 9(1) and (2), 23, 24, 26, 36(a), 37, 40(2), 41(2), 42(2), 48, 50, 55(b), 71(2), 88 and 97.

³⁹ If section 3 of the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2017 (Qld)* comes into operation before assent day, then the sections listed in footnote 38 come into operation on the day after assent of the Bill.

⁴⁰ Queensland, *Government Gazette*, 15 September 2017, Volume 376 No. 12, p 67.

⁴¹ Hon Roger Cook MLA, Minister for Health, Letter, received 12 October 2017, p 3.

⁴² Refer to footnote 38, Hon Roger Cook MLA, Minister for Health, Letter, received 12 October 2017, p 3 and Hon Roger Cook MLA, Minister for Health, Letter, 19 October 2017, p 3.

⁴³ Health Practitioner Regulation National Law (WA) Amendment Bill 2017, ss 9(3)-(6), 10-22, 25, 27-35, 36(b)-(d), 39, 40(1) and (3), 41(1) and (3), 42(1), 43-47, 49, 51-54, 55(a), 56-70, 71(1), 72-87 and 89-96.

⁴⁴ Health Practitioner Regulation National Law (WA) Amendment Bill 2017 cll 2(b) and (d).

⁴⁵ Health Practitioner Regulation National Law (WA) Amendment Bill 2017, *Explanatory Memorandum*, Legislative Council, p 10.

specified time.⁴⁶ It is conceivable that a proclamation may never be made and the will of the Parliament, in passing the Bill, would be frustrated.

11.27 The Explanatory Memorandum explains that:

*Different Parts of the Act, and different sections will come into effect on different days to provide for when the Queensland Health Practitioner Regulation National Law and Other Legislation Amendment Act 2017 comes into operation and is applied nationally across Australian jurisdictions.*⁴⁷

11.28 The Explanatory Memorandum does not specifically explain further why some provisions will commence on a day fixed by proclamation.

11.29 The Committee wrote to Hon Roger Cook MLA, Minister for Health, seeking his advice as to:

- Why the commencement dates were not stipulated for all of Parts 2 and 3 of the Bill.
- How soon after the passage of the Bill through both Houses of Parliament he expects all provisions in the Bill will be proclaimed.

11.30 The Minister responded as follows:

A number of the clauses in Parts 2 and 3 of the Bill can only come into effect across all jurisdictions after WA has passed the Bill currently in Parliament. Additionally, the COAG Health Council sitting as the Australian Health Workforce Ministerial Council (Ministerial Council) is required to make a new set of National Regulations. Several of the clauses in the Bill relate to the national boards and the paramedicine health profession and paramedics joining the National Registration and Accreditation Scheme (National Scheme)...

*It is anticipated that all of the provisions in the Bill will be proclaimed in or around September 2018. This is to ensure that the Paramedicine Board of Australia has undertaken the necessary administrative functions to enable paramedics to be registered. The administrative functions include the development of registration standards, codes and guidelines.*⁴⁸

11.31 The Committee accepts the Minister's explanation and concludes that there are sound reasons for leaving the proclamation of the Bill to be determined by the Executive.

⁴⁶ Refer to footnote 43.

⁴⁷ Health Practitioner Regulation National Law (WA) Amendment Bill 2017, *Explanatory Memorandum*, Legislative Council, p 9.

⁴⁸ Hon Roger Cook MLA, Minister for Health, Letter, received 12 October 2017, pp 1-2.

Finding 3: The Committee finds that clause 2(d) of the Health Practitioner Regulation National Law (WA) Amendment Bill 2017, in providing that the Executive determines commencement dates, erodes the Western Australian Parliament’s sovereignty and law-making powers.

Finding 4: The Committee finds that there are sound reasons for leaving the proclamation of some provisions of the Health Practitioner Regulation National Law (WA) Amendment Bill 2017 to be determined by the Executive.

Clause 14 – Section 31 replaced: Regulations must provide for National Boards

- 11.32 Section 31 of the National Law specifies the structure of the National Board for each of the health professions it regulates.
- 11.33 The review by Kim Snowball of the National Law found that five health professions accounted for 87.5 per cent of registrants and 95.5 per cent of complaints and notifications in 2012-13. The remaining nine professions accounted for 12.5 per cent of registrants and less than five per cent of complaints and notifications (referred to in the report as the ‘*low regulatory workload professions*’).⁴⁹
- 11.34 The review recommended consolidating the nine low regulatory workload National Boards into a single National Board.⁵⁰ The COAG Health Council decided not to accept this recommendation.⁵¹ The Explanatory Memorandum advised that ‘*It decided that efficiencies can and should be achieved by streamlining existing committee and operational arrangements under all the National Boards.*’⁵²
- 11.35 COAG did not rule out the possibility that changes may be required in the future to ensure the governance arrangements for the National Scheme continue to be fit for purpose.⁵³ The COAG Health Council agreed to amend the National Law so that changes to the governance and membership of National Boards could be made by regulation.⁵⁴
- 11.36 According to the Explanatory Memorandum:

⁴⁹ Health Practitioner Regulation National Law (WA) Amendment Bill 2017, *Explanatory Memorandum*, Legislative Council, p 13.

⁵⁰ *ibid.*

⁵¹ *ibid.*

⁵² *ibid.*

⁵³ *ibid.*, pp 13-14.

⁵⁴ *ibid.*, p 14.

To achieve this flexibility, the Bill requires that National Boards for each health profession be provided for in regulations, rather than specified in the National Law.⁵⁵

11.37 As noted at paragraph 9.3, the National Regulation is applied as a regulation in Western Australia ‘as in force from time to time.’⁵⁶ As a result, amendments to the National Regulation as published by the Victorian Government Printer are incorporated through reference in Western Australia. Amendments to the National Regulation are not made under section 245 of the WA National Law, and as such are not subject to the publication, tabling and disallowance procedures set out in sections 41 and 42 of the *Interpretation Act 1984*.

11.38 Part 5 of the National Law sets out provisions relating to National Boards including:

- Establishment of National Boards (section 31).
- Powers of National Boards (section 32).
- Membership of National Boards (section 33).
- Eligibility for appointment to a National Board (section 34).
- Functions of National Boards (section 35).

11.39 The professions that can be overseen by a National Health Practitioner Board are set out in section 5 of the National Law.

11.40 Clause 14 of the Bill replaces section 31 with a proposed new section 31 which provides that regulations:

- must provide for a National Health Practitioner Board for each health profession (proposed new section 31(1))
- may continue an existing Board⁵⁷, establish a Board for a health profession or for two or more health professions or dissolve a Board for a health profession (proposed new section 31(2))
- may make transitional arrangements for a new National Board structure (proposed new section 31(3)).

11.41 Two issues arise from clause 14, namely:

⁵⁵ *ibid.*, p 14.

⁵⁶ *Health Practitioner Regulation National Law (WA) Regulations 2010* r 4(1).

⁵⁷ The definition of ‘existing Board’ in proposed new section 31(6) is a ‘National Health Practitioner Board in existence immediately before the commencement.’ ‘Commencement’ is defined in section 12 of Schedule 7 of the National Law as ‘the time at which this ... provision comes into operation.’ As well as referring to the National Boards referred to in current section 31 of the National Law, the definition of ‘existing Board’ is intended to capture the Paramedicine Board of Australia established in clause 88 of the Bill. Clause 88 will commence on Royal Assent of the Bill, while clause 9(4) commences on proclamation. As such, by the time clause 9(4) of the Bill commences, the Paramedicine Board of Australia will be in existence and therefore captured by the definition of ‘existing Board’: Health Practitioner Regulation National Law (WA) Amendment Bill 2017, *Explanatory Memorandum*, Legislative Council, p 15.

- the propriety of prescribing the structure of National Health Practitioner Boards by regulations rather than statute
- the ability of the Western Australian Parliament to scrutinise and disallow such regulations.

11.42 Regarding the first issue, the Committee came to the view that the establishment of National Health Practitioner Boards by regulation is, in the circumstances, pragmatic and acceptable. The National Law will continue to prescribe the professions to be overseen by National Health Practitioner Boards, as well as the powers, membership and functions of any such Board. The Committee accepts that establishing National Health Practitioner Boards by regulation will allow flexibility to change governance arrangements as necessary.

Finding 5: The Committee finds that the establishment of National Health Practitioner Boards by regulation as proposed in the Health Practitioner Regulation National Law (WA) Amendment Bill 2017 is pragmatic and acceptable.

11.43 Regarding the second issue, the Committee observes that unless the Parliamentary sovereignty issues identified previously are addressed, the Western Australian Parliament will not be able to scrutinise and disallow such regulations.

Finding 6: The Committee finds that the Western Australian Parliament will not be able to scrutinise and disallow the regulations regarding National Health Practitioner Boards provided for in clause 14 of the Health Practitioner Regulation National Law (WA) Amendment Bill 2017 unless the Parliamentary sovereignty issues identified in Findings 1 and 2 are addressed.

12 CONCLUSIONS

- 12.1 The Committee concludes that the Bill is materially consistent with the IGA.
- 12.2 Under its terms of reference, the Committee is confined to investigating whether the Bill has an impact on the parliamentary sovereignty and law-making powers of the Parliament of Western Australia.
- 12.3 There are sound reasons for leaving the proclamation of some provisions of the Bill to be determined by the Executive.
- 12.4 The establishment of National Health Practitioner Boards by regulation is pragmatic and acceptable.
- 12.5 The National Law as it presently stands, and the manner in which regulations made under it take effect in Western Australia, derogate from Western Australian Parliamentary sovereignty and should be addressed. The Bill does not address issues

regarding scrutiny or disallowance by the Western Australian Parliament of amendments to the National Regulation so far as they apply in Western Australia.

Recommendation 3: The Committee recommends that the Legislative Council note the Committee's findings, comments and recommendations during consideration of the Health Practitioner Regulation National Law (WA) Amendment Bill 2017.



Hon Michael Mischin MLC
Chairman

31 October 2017

APPENDIX 1
LETTER DATED 26 SEPTEMBER 2017 FROM THE ACTING
MINISTER FOR HEALTH



The Hon Roger Cook MLA
Deputy Premier
Minister for Health; Mental Health

Our Ref: 60-04403

Hon Michael Mischin MLC
Chairman
Standing Committee on Uniform Legislation and Statutes Review
Legislative Council Committee Office
Parliament House
4 Harvest Terrace
WEST PERTH WA 6005

Dear Mr Mischin

Thank you for your letter of 19 September 2017 regarding the *Health Practitioner Regulation National Law (WA) Amendment Bill 2017* (Amendment Bill).

The Amendment Bill does not amend sections 245, 246 or 247 in the Schedule to the *Health Practitioner Regulation National Law (WA) Act 2010* (WA Act).

The Legislative Council in the Parliament of Western Australia made amendments in the committee stage following the release of Report 52 by the Uniform Legislation and Statutes Review Committee (Committee) in 2010 to the Bill before the House. Amendments were made to sections 245, 246 and 247 in the Schedule of the Bill to provide that regulations made by the Australian Health Workforce Ministerial Council (COAG Health Council) would be subject to sections 41 and 42 of the *Interpretation Act 1984* (WA) and disallowable by the Parliament of Western Australia. Section 7 of Part 2 of the Bill was also amended.

The *Health Practitioner Regulation National Law (WA) Regulations 2010* (WA Regulations) were made under section 245 of the WA Act in full compliance with the process provided by sections 41 and 42 of the Interpretation Act. Copies of the required documents were forwarded to the Joint Standing Committee on Delegated Legislation (JSCDL) for consideration.

Under regulations 3 and 4(1) of the WA Regulations, the *Health Practitioner Regulation National Law Regulation* (National Regulation) made by the COAG Health Council on 17 June 2010 and published by the Victorian Government Printer on 22 June 2010, was applied as a regulation in Western Australia as in force from time to time. Section 245(1) and clause 24(1) and (2) of Schedule 7 to the WA Law were relied upon to make regulations in those terms.

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As you are aware, sections 41 and 42 of the Interpretation Act only apply to regulations made under section 245 of the WA Act.

The Tranche 1 amendments contained in the Amendment Bill will move several provisions into the National Regulations. The provisions relate to the consolidation of National Boards which was recommended in the Independent Review of the National Registration and Accreditation Scheme for Health Professions (recommendations 2 to 6).

Due to the concerns raised by the Committee and the JSCDL, the Department of Health (DOH) has worked with jurisdictions in order to resolve the application of the National Regulations to WA.

The DOH has received agreement from the other jurisdictions that following the passage of the Amendment Bill in WA, a complete new set of National Regulations will be made by the COAG Health Council. The new set of National Regulations will be disallowable in Western Australia. Copies of the National Regulations will be tabled in the Parliament of Western Australia and the JSCDL will receive all associated documentation in accordance with Premier's Circular Number 2014/01.

I would like to thank the Committee for its early consideration of the Amendment Bill. I have instructed the DOH to continue to respond to requests for information to meet the Committee's timeframes.

Yours sincerely



HON SIMONE MCGURK MLA
ACTING MINISTER FOR HEALTH

26 SEP 2017

APPENDIX 2
LETTER DATED 19 OCTOBER 2017 FROM THE MINISTER FOR
HEALTH



The Hon Roger Cook MLA
Deputy Premier
Minister for Health; Mental Health

Our Ref: 60-04403

Hon Michael Mischin MLC
Chair
Standing Committee Uniform Legislation and Statutes Review
Legislative Council Committee Office
18-32 Parliament Place
WEST PERTH WA 6005

Dear Mr Mischin

Thank you for your letter of 16 October 2017 regarding further information on the process that will be undertaken as part of the making of a new set of National Regulations and whether or not the new set of National Regulations would be subject to the requirements of sections 41 and 42 of the *Interpretation Act 1984 (WA)*.

I requested advice from the Department of Health and I have been advised as follows:

Difference between the current process and the new process

The *Health Practitioner Regulation National Law (WA) Regulations 2010 (WA Regulations)* were made by the COAG Health Council under section 245 of the Schedule to the *Health Practitioner Regulation National Law (WA) Act 2010 (WA Act)*.

Under regulations 3 and 4(1) of the WA Regulations, the National Regulations (the *Health Practitioner Regulation National Law Regulation*) made by the COAG Health Council on 17 June 2010 are applied as a regulation in Western Australia (WA) as in force from time to time. Section 245(1) and clause 24(1) and (2) of Schedule 7 to the WA Law were relied upon to make regulations in those terms.

The outcome of the approach in the WA Regulations is that amendments that were made to the National Regulation were not made under section 245 of the Schedule to the WA Act. Therefore, the amendments were not covered by sections 41 and 42 of the *Interpretation Act 1984 (WA)*.

In comparison, the proposal is that the COAG Health Council will repeal the current set of National Regulations and the WA Regulations and replace them with new National Regulations. The new National Regulations will be operational in all participating jurisdictions including WA.

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WA will then be able to follow the process required under sections 41 and 42 of the *Interpretation Act 1984* and the Premier's Circular 2014/01. That is, the new National Regulations and any future amendments to them will be gazetted in WA, tabled in the WA Parliament and subject to its disallowance.

Please note, the COAG Health Council and the Ministerial Council referred to in step 1 are the same body.

Steps in the process of making the new National Regulations and future amendments

1. The Ministerial Council may make regulations for the purposes of this Law under section 245(1) of the *Health Practitioner Regulation National Law* (National Law) as enacted in participating jurisdictions. The Ministerial Council is defined in section 5 of the National Law by "*the Australian Health Workforce Ministerial Council comprising Ministers of the governments of the participating jurisdictions and the Commonwealth with portfolio responsibility for health*". The Minister for Health in WA sits on the Ministerial Council representing WA.
2. Following the making of the new set of National Regulations, the new set of National Regulations would be published by the Victorian Government Printer in accordance with the arrangements for the publication in Victoria.
3. The new set of National Regulations would be sent to a nominated officer at the Department of Health in WA by email with electronic copies in PDF attached.
4. The Department of Health in WA and Parliamentary Counsel's Office in WA will arrange the gazettal in the *Government Gazette* in WA in accordance with the *Interpretation Act 1984* sections 41 and 42.
5. The State Law Publisher publishes the new set of National Regulations in the *WA Government Gazette* in accordance with publication timeframes. Following gazettal, electronic copies of the new set of National Regulations would also be sent to the officer who organised gazettal at the Department of Health.
6. The new set of National Regulations would be tabled in both Houses of the WA Parliament.
7. Once the new set of National Regulations are published in the *WA Government Gazette*. The Department of Health in WA would in accordance with Premier's Circular 2014/01 forward to the Joint Standing Committee on Delegated Legislation the required documents within 10 working days.

The above process for the new set of National Regulations will also be followed for any subsequent amendments to the National Regulations.

At the behest of the Department of Health in WA, Queensland and WA are working together to ensure that the WA Parliament's specific requirements are met.

Procedures currently in place in WA would be followed as well as sections 41 and 42 of the *Interpretation Act 1984* (WA) for the new set of National Regulations and any subsequent amendments.

Point of clarification

In relation to the email request of 11 October 2017 and response provided on page 3 to the second query and received by the Committee on 12 October 2017

Please note there was an administrative error in the list of sections in the response to this query regarding the sections that would be operational on the day after the WA Act receives the Royal Assent should have finished at section 97. As you would be aware, Part 3 covers sections 98 – 117 which are not operational on assent.

The response should read:

Query

As a result of section 3 of the Queensland Act having come into operation, sections 3, 4, 5, 6, 7, 8, 9(1) and (2), 23, 24, 26, 36(a), 37, 40(2), 41(2), 42(2), 48, 50, 55(6), 71(2) and 88 of the *Health Practitioners Regulation National Law (WA) Amendment Bill 2017* will come into operation on the day after assent of the Bill. Could you please confirm if my understanding is correct or advise otherwise.

Response

I am advised that your understanding is correct. Once the *Health Practitioner Regulation National Law (WA) Amendment Bill 2017* has been enacted by the WA Parliament, sections 3 -8, 9(1) and (2), 23, 24, 26, 36(a), 37, 40(2), 41(2), 42(2), 48, 50, 55(b), 71(2), 88, 97 will, under s. 2(b)(i), come into operation on the day after the WA Act receives the Royal Assent.

Thank you for seeking clarification on the above process and your understanding in dealing with the complex 2010 legislative arrangements which were put in place.

Yours sincerely



HON ROGER COOK MLA
DEPUTY PREMIER
MINISTER FOR HEALTH; MENTAL HEALTH

19/10/17.

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:

'6. Uniform Legislation and Statutes Review Committee

- 6.1 *A Uniform Legislation and Statutes Review Committee is established.*
- 6.2 The Committee consists of 4 Members.
- 6.3 The functions of the Committee are –
 - (a) to consider and report on Bills referred under Standing Order 126;
 - (b) on reference from the Council, to consider or review the development and formulation of any proposal or agreement whose implementation would require the enactment of legislation made subject to Standing Order 126;
 - (c) to examine the provisions of any treaty that the Commonwealth has entered into or presented to the Commonwealth Parliament, and determine whether the treaty may impact upon the sovereignty and law-making powers of the Parliament of Western Australia;
 - (d) to review the form and content of the statute book; and
 - (e) to consider and report on any matter referred by the Council.
- 6.4 In relation to function 6.3(a) and (b), the Committee is to confine any inquiry and report to an investigation as to whether a Bill or proposal may impact upon the sovereignty and law-making powers of the Parliament of Western Australia.'



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