

Response to Standing Committee on Uniform Legislation and Statutes Review - Health Practitioner Regulation National Law (WA) Bill 2017 from the Minister for Health

Finding 1

Agree.

The 2010 Act went through the normal legislative processes. Regulations (the current WA Regulations) under the Act were gazetted and tabled in the normal manner. While they were disallowable, they were not disallowed.

The problem is that WA Regulations enable automatic updating of the WA Regulations without being subject to Parliamentary scrutiny. Further changes to those regulations did occur, automatically applying changes to WA from the National Regulations.

The resolution to this is two-fold: the existing National Regulations, and the current WA Regulations will be repealed and replaced by a completely new set of National Regulations. The new National Regulations, and future amendments to them as they apply in WA will be subject to sections 41 and 42 of the WA *Interpretation Act 1984*, due to section 245 of the WA National Law.

Until the existing WA Regulations are replaced, there is still the issue with the disallowance of any changes to the National Regulations. The Government proposes the Amendments in Committee to amend the WA Regulations so that a fixed version of the National Regulations, as at 6 December 2017, will apply in WA. The amendment does not prevent further changes, but ensures that further changes to the regulations cannot be made without them being gazetted, tabled and subject to the possibility of disallowance.

Findings 2 Accept Finding 2

The WA National Law is satisfactory in terms of *Gazetta* and scrutiny of amendments to the WA Regulations. Under section 245(3) of the WA National Law, sections 41 and 42 of the WA *Interpretation Act 1984* apply.

Recommendation 1

Support, however, the problem does not reside at the level of the Act, the problem in being able to apply Parliamentary scrutiny due to the form in which the original WA Regulations of 2010 were made. This is because:

- The WA Regulations applied the National Regulations as in force from time to time.
- Subsequent amendments to the National Regulations by the Ministerial Council automatically applied in WA, and so sections 41 and 42 of the WA *Interpretation Act 1984* did not apply.
- Amendments to the National Regulations did not need to be Gazetted in WA or tabled in the WA Parliament.

Since the problem resides at the level of the regulations, the solution is to be effected at that level. There are 2 solutions:

- (1) amending the WA Regulations as proposed in the Amendment in Committee on the Supplementary Notice Paper, making all future amendments disallowable in WA.
- (2) replace the WA Regulations with new National Regulations. To give some further detail:

- the new National Regulations will be made, in their WA application, under the WA regulation making power in the WA Health Practitioner Regulation National Law Act;
- therefore, those regulations, in their WA application, will be subject to sections 41 and 42 of the WA *Interpretation Act 1984*, under subsection 245(3) of the WA National Law;
- further, amendments to those regulations will likewise be subject to sections 41 and 42 of the WA *Interpretation Act 1984*, under subsection 245(3) of the WA National Law.

The WA National Law does not need to be amended to effect this result. It already has the necessary provisions to do all of this.

Findings 3 & 4, Recommendation 2

The Minister notes Finding 3, and agrees with Finding 4.

Finding 4 acknowledges that there are important reasons for leaving the proclamation of some provisions of the Bill to be determined by the executive because it is not possible to predict all the relevant dates for commencement.

A number of clauses in Part 2 and 3 of the bill can only come into effect across all jurisdictions after WA has passed the bill. Additionally, the COAG Health Council is required to make a new set of regulations. As per Recommendation 2, an estimated timeframe on the making of the new regulations has been tabled (tabled paper 1172). It is expected the new regulations will be finalised around July/August.

It is anticipated that all of the provisions in the bill would be proclaimed on or before participation day in approximately September 2018, being the day on which the requirement for paramedics to be registered commences. The Paramedicine Board of Australia has been constituted ahead of participation day so that it can undertake necessary administrative functions.

While appreciating that the Legislative Council would welcome firmer dates on commencement, when those dates are known the Government will advise the House.

The Government will also undertake to advise the house of progress towards the new National regulations.

Finding 5

Agree.

Finding 6

Agree.

Parliamentary sovereignty issues around the existing regulations will be addressed by:

the amendments in committee requiring all future amendments to the regulations to be tabled, and would be disallowable in WA; and by replacing the WA regulations with new National Regulations.

Recommendation 3

A brief response to the recommendations and key themes raised by the committee report was provided during consideration of the bill. This provides a more detailed response.