

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

**INQUIRY INTO HEALTH PRACTITIONER REGULATION NATIONAL  
LAW BILL 2010**

**TRANSCRIPT OF EVIDENCE TAKEN  
AT PERTH  
WEDNESDAY, 5 MAY 2010**

**Members**

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

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**Hearing commenced at 10.07 am.**

**COOPER, MRS ANNE**

**Acting Principal Policy Officer, Legal and Legislative Services, Department of Health,  
sworn and examined:**

**ASHBURN, MR STEPHEN JOSEPH**

**Acting Director, Legal and Legislative Services, Department of Health,  
sworn and examined:**

**The CHAIRMAN:** On behalf of the committee I welcome you to the meeting. Before we begin I ask you to take either the oath or the affirmation.

[Witnesses took the oath.]

**The CHAIRMAN:** Thank you. These proceedings are being recorded by Hansard and a transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full name of any document you refer to during the hearing. Also please be aware of the microphones. This is a makeshift room that we have had to meet in today, so please try to talk into the microphones and do not cover them with any pieces of paper. I must remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. The committee will then consider that request. For your information, we do have a member of the public present at the moment, by the door, so if there is something that you want to say in private session it is important that you make that request before giving that evidence. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

Have you signed a document entitled "Information for Witnesses" and have you read and understood the document?

**Mr Ashburn:** I have read the document and signed it.

**Mrs Cooper:** Yes, I have read it and signed it.

**The CHAIRMAN:** Thank you very much. That is the formal part over with, and we will try to be as casual as we can just to get the discussion going for the rest of the hearing. You indicated at the beginning that you had some documents you wanted tabled?

**Mrs Cooper:** Yes, Suzanne sent through the list of questions, so we have put some brief answers to them all. Because there are so many, we thought that might be the better way to go.

**The CHAIRMAN:** That is fine. We will need to go through the questions for the purposes of the hearing and getting it on the public record. I ask that by all means you use these notes as a guide but that you do not actually read from them so that we can have a discussion of the issues.

**Mrs Cooper:** This is also a copy of the intergovernmental agreement that was signed. Also, here is an article on hazardous substances, from the *Medical Journal of Australia*.

**The CHAIRMAN:** Is the Health Practitioner Regulation National Law (WA) Bill 2010, provided to the committee on 28 April 2010, the same bill that has been, or will be, tabled in Parliament?

**Mrs Cooper:** Yes, that is correct.

**The CHAIRMAN:** So it is exactly the same?

**Mrs Cooper:** Yes.

**The CHAIRMAN:** There will not be any changes to it?

**Mrs Cooper:** No, not at this stage.

**The CHAIRMAN:** When will the bill be tabled in Parliament?

**Mrs Cooper:** Possibly tomorrow.

**The CHAIRMAN:** Does the Pharmacy Bill need to be enacted before the bill?

**Mrs Cooper:** No, the Pharmacy Bill and the Health Practitioner Regulation National Law (WA) Bill will be debated cognately. The national law bill will repeal the Western Australian Pharmacy Act 1964 because that act registers pharmacists and also licenses premises and other things. Those things will not go into the national law, therefore they require a state bill to continue that, which is what the Pharmacy Bill is. They need to be operative at the same time so that the premises and pharmacists can meld together properly and continue with what is currently in place.

**The CHAIRMAN:** By what date must the Health Practitioner Regulation National Law (WA) Bill 2010 be enacted?

**Mrs Cooper:** Ideally it would be 1 July 2010. That is when it will become operational in most other states, with the exception of Tasmania, which recently had an election. South Australia has reintroduced its bill. They still have their Labor Government so they should be able to get it through fairly easily; that is my understanding.

**The CHAIRMAN:** What are the consequences of not enacting the bill by the stated date of 1 July 2010?

**Mrs Cooper:** That would have some implications for people who wanted to come to WA to work because they would require a dual registration. They would need to be registered under the national law and also in WA. I understand that it will have some implications for the international medical graduates because they are waiting for the national law to come in before they apply. If they apply through the national registration system, they can go to all of the states that have it in place. So if WA is not a party to that, the likelihood is that they will not apply to come to Western Australia, because it will not carry across the border. We are setting up the system here in WA and if people need to be taken off the national registers because we are not party to the scheme, there will be some costs incurred, as I understand.

**Hon LIZ BEHJAT:** When will Tasmania be in a position to sign it? Are you aware of that?

**Mrs Cooper:** They were drafting the bill—I am pretty sure they did have it drafted—but I cannot speak for Tasmania at this time.

**Hon LIZ BEHJAT:** Will they experience these problems you have just pointed out?

**Mrs Cooper:** Yes.

**Hon LIZ BEHJAT:** They will be experiencing those things. My understanding is that with medical registration at the moment, you can be registered across jurisdictions anyway. Are there no provisions in the bill that if a state does not enact the legislation by 1 July those provisions could not continue to allow cross-jurisdictional practice to occur?

**Mrs Cooper:** There is the mutual recognition, but you still have to apply; it is not a given thing.

**Mr Ashburn:** It also requires that you be registered in both jurisdictions and you pay whatever registration fees are applicable in both jurisdictions.

**The CHAIRMAN:** Just to clarify, all states have enacted the national law, with the exception of WA, South Australia and Tasmania?

**Mrs Cooper:** That's correct.

**The CHAIRMAN:** Would you please briefly outline the purpose and effect of the bill and the purpose of the national registration and accreditation scheme and how the scheme is being implemented Australia-wide?

**Mrs Cooper:** The purpose is to establish the national registration and accreditation scheme for the regulation of health practitioners, so it is for 10 groups initially. The main objective is the protection of the public by ensuring that the health practitioners who are registered are suitably qualified; that they also are competent and ethical; and that they meet all the requirements and history checks and identity checks, which is quite important. It is to facilitate movement across the borders without having the dual registration process. There will be a standardised national accreditation process. All the registration standards will be the same, so it will not be different in WA and different in New South Wales; it will be uniform. It will be quite transparent and open. All these documents are available on the website. There has been extensive consultation with them by the national boards, which is ongoing. It is really just about having the same process across all the jurisdictions. WA is introducing corresponding legislation, so it will be taken from the two houses of Parliament. Any amendments can be moved in the committee stage of the bill and it will be up to members to decide how they want to go forth with that. The other states are having adopting legislation, which means that Queensland puts it through their own house of Parliament and the other states have actually just adopted the Queensland model into their jurisdictions, whereas we are not doing that, we are going down a totally independent, separate path.

[10.20 am]

**The CHAIRMAN:** Just briefly, what bodies and entities are established by the national law?

**Mrs Cooper:** There is the Australian Health Workforce Advisory Council, which is an independent body. The clauses have actually been put in the schedule so that the committee can go back and have more of a look at the functions and those sorts of things. That body will provide advice to the ministerial council; it will be independent advice. The bill is actually set up with participating jurisdictions, which are both large and small. Western Australia is a large participating jurisdiction, so we are able to have a nominee on that body. Smaller jurisdictions have to fight a little to get their nominee, so it is very important for WA to have an adviser on that council, and I understand that that is happening. There is also the agency management committee, which is the board that manages the national agency. We also have the ministerial council, which the minister sits on, representing Western Australia and putting forward his views for WA. Every state has a minister sitting on that council. One is a committee, there is the board and then there is the national agency that sits underneath the board.

**Mr Ashburn:** It is the main operative body, if one likes.

**Mrs Cooper:** Then there are the national boards, such as the Optometry Board of Australia.

**The CHAIRMAN:** Will there be a separate board for every profession?

**Mrs Cooper:** Yes, nationally. In each state there will be state boards. In WA we will have four state boards—the dental board, the physio board, the medical board and the nursing and midwifery board. There will also be a regional board with South Australia, which will be the psychologists' board, which the committee has referred to.

**Hon LINDA SAVAGE:** Am I correct in understanding that the advisory council and management committee are based in Victoria?

**Mrs Cooper:** I think that is probably correct.

**Hon LINDA SAVAGE:** So administratively, this will be managed from Victoria?

**Mrs Cooper:** Yes.

**Hon LIZ BEHJAT:** Can I return to the previous question in relation to the template legislation versus the mirror legislation? The comment you made was that WA can amend it on the floor of the house and is entitled to do so. My understanding from the briefings we have been given is that that could happen, but it would have no effect on the legislation because it would then have to be adopted by all the other states. Could you expand on that for me?

**Mrs Cooper:** That actually means that, yes, we can amend it on the floor of the house, but it will not operate in any of the other jurisdictions because every state is putting this through their own Parliament.

**Hon LIZ BEHJAT:** But it can operate in this jurisdiction?

**The CHAIRMAN:** That is right.

**Mrs Cooper:** Not really; I will let Steve expand on that.

**Mr Ashburn:** The essential difference is that by adopting the Queensland legislation in other jurisdictions, any changes that are made to that legislation flow through to the other jurisdictions. The way we are doing it in Western Australia, that does not automatically happen. In order for a change to be made in the Western Australian law, it has to be passed in our Parliament. The issue of whether passing an amendment in our Parliament can affect the national law is another issue, although related. In most cases, if there is an issue that requires a national approach to something, it would be ineffective for a single jurisdiction to make a change in that jurisdiction, because it would not bind the other jurisdictions and the approach would not be changed nationally. There are some matters in the law that we could change locally that would apply locally but not nationally, and would not have effect in that way. But in general, because it is a national approach and it requires everyone to take the same approach, making a change in a single jurisdiction would not be effective.

**Hon LINDA SAVAGE:** But would it be effective in this jurisdiction? I will give the example of clinical psychologists. If we found a way to amend it so that that differentiation was recognised in Western Australia, would that stand in Western Australia?

**Mrs Cooper:** No, because it is a national board doing the registration and accreditation.

**Hon LINDA SAVAGE:** So when you say amendments could be made —

**Mr Ashburn:** I will give one example. The professions are joining the scheme, with 10 professions joining initially and then a further four in 2012. If, for whatever reason, Western Australia decided that it did not wish those four to join the scheme, it could make amendments, and that could keep Western Australia out for those professions. There is still an argument that that may or may not be ineffective, but it is more likely to be effective than making changes to definitions and so forth to operate only locally and not nationally.

**Mrs Cooper:** With all of these things, in the IGR—I think it is 1.3—there is a process through the ministerial council to make amendments through that. It will be taken through the Queensland Parliament, adopted in the other jurisdictions and then put through Western Australia. In the case of the psychologists, Western Australia is the only state with specialist registration for that profession. The national board has agreed to go down the path of practice endorsement, which is very similar to the specialist title. There are some provisions there, if one holds out, to have an area of practice endorsement similar to specialist registration. The reason the psychologists issue did not go forward as specialist registration is that, because the other states do not have any specialist registration, they do not have anything in place to actually gauge the correct qualifications and all those sorts of things. It was decided that the national board, at ministerial level—which I do not participate in, so I do not have any idea of the workings of it—would do this area of practice endorsement, and then

the matter of working out how people could get specialist registration for psychologists was referred back to a committee that I actually sit on, and we are now working out the criteria that people need to address to actually get that. It is not a foregone conclusion that what has currently been approved by the ministerial council for specialist titles is set in concrete; this is just something that is being developed as this has been implemented across all jurisdictions. To ensure that everybody has the right qualifications, they have actually dealt with it that way.

**The CHAIRMAN:** We have some questions relating to this issue a bit further down the track. We might just leave that discussion here at this point and come back to it later; I am being aware of the time constraints we have. What health professions fall within the scope of the bill, and does the bill provide a second group of professionals to join the scheme from 1 July 2012, and is this consistent with legislation in other jurisdictions?

**Mrs Cooper:** Yes, there will be 10 professions initially, including chiropractors; dental—which comprises dentists, dental hygienists, dental prosthetists and dental therapists; medical practitioners; nurses and midwives; optometrists; osteopaths; pharmacists; physiotherapists; podiatrists and psychologists. In Western Australia we also have school dental therapists employed by the school dental service under the Department of Health. Those people will continue to be registered and they will move across and be registered as dental therapists. The four groups that are coming in on 1 July 2012 are Chinese medicine practitioners, including herbalists and acupuncturists; occupational therapists; medical radiation practitioners—we currently have medical radiation technologists here in Western Australia; and Aboriginal and Torres Strait Islander health practitioners.

[10.30 am]

**Hon LIZ BEHJAT:** Did you say we cannot have medical radiation practitioners?

**Mrs Cooper:** No, I said we currently have technologists and the OTs; we do not have the other two groups.

**The CHAIRMAN:** Is the bill, including the scheme, consistent with the national Health Practitioner Regulation National Law Act 2009 in Queensland—the Queensland act—and in particular the national law in that act's schedule?

**Mrs Cooper:** Yes, it is all the same. Our schedule in our bill is actually the identical—this sits in it.

**The CHAIRMAN:** So there are no differences for it?

**Mrs Cooper:** No differences to that.

**The CHAIRMAN:** Is the bill consistent with the legislation tabled or enacted in other jurisdictions?

**Mrs Cooper:** If you are talking about this national law part, yes.

**The CHAIRMAN:** Is the bill consistent with the intergovernmental agreement and subsequent agreements?

**Mrs Cooper:** Yes. These answers are all to the best of my knowledge.

**The CHAIRMAN:** I appreciate that; okay.

Part 5 of the bill contains a large number of consequential amendments. Are there any contentious issues arising out of these consequential amendments?

**Mrs Cooper:** There are two that I am aware of; one is the Poisons Act. There were some amendments to that to the table that is in there that deals with the uniform standard—anyway, drugs and poisons. It is the SUSDP, which is the commonwealth standard that they put out. It was modified initially so that it was easier to read because we are also going to be putting through a therapeutic goods and poisons act in WA. The Pharmacy Guild was not happy with the way that that was drafted and we will actually be making the amendment to exactly mirror what is in the standard in Parliament. I understand that the nursing and midwifery profession here in WA, in

particular the midwives, are not happy with some of the way the definitions have been drafted in the consequential. It is in question 22, so we will deal with it there.

**The CHAIRMAN:** It has been submitted to the committee that it is unacceptable that the bill provides that laws in different jurisdictions will change automatically if the Queensland-based act is changed in that jurisdiction, and regulations can only effectively be disallowed by a majority of states. Would you like to comment on that concern?

**Mrs Cooper:** The national law bill, the WA one, which will be the act, cannot be changed. Because we are doing the corresponding legislation rather than adopting whatever goes through in Queensland, we still have to actually amend our act. In the case of the regulations, I believe that the regulations are being drafted. They will be gazetted and printed in Victoria. They will apply to us, unless we disallow them and then, yes, it is correct that it has to be the majority of the jurisdictions for them to have no effect.

**The CHAIRMAN:** Can you just clarify how that is going to work, because as I understand it the regulations will be adopted in Queensland?

**Mrs Cooper:** No; they will actually —

**The CHAIRMAN:** Need to be adopted by every state?

**Mrs Cooper:** The way it is drafted is that they will apply to all states and because we are applying the schedule to Western Australia, they will apply to us once this is enacted. They are actually being put through Victoria, but the ministerial council makes the regulations. Our Minister for Health here in WA sits on the ministerial council and as long as we are a participating jurisdiction, he will have a say in whether those regulations —

**The CHAIRMAN:** I am just trying to clarify the process and the issue of the concern that has been raised with us. If the regulations are being implemented through Victoria with respect to the other states, excepting WA from this, are the other states still in a position where they can disallow the regulations that have been passed through the Victorian Parliament?

**Mr Ashburn:** Yes. The process is that they are passed through and all the states have an opportunity to disallow them in their jurisdiction, but the effect of that will only be disallowance if a majority of the jurisdictions disallow them.

**The CHAIRMAN:** So, for example, if, say, New South Wales were to disallow a regulation and the rest of the states did not, they accepted the change in the regulation, that would mean that the disallowance in New South Wales would not be effective?

\*witn: Correct.

**Hon LIZ BEHJAT:** I understand the minister's position on minco—that is fine—but is Western Australia in any other way participating in the drafting of those Victorian regulations?

**Mrs Cooper:** Yes. I sit on the national registration and accreditation scheme subcommittee of AHMAC, which is the Australian Health Ministers' Advisory Council, and as part of that we are developing them. There is a member from each jurisdiction who sits on that committee, so WA has a say in what actually goes into them. It is not where the representatives from each jurisdiction go where they actually disadvantage their own jurisdiction, so it is up to the representative to try to put forward the view or policy position of your jurisdiction and ensure that you actually get it through. So you need the strong argument in there to actually make that happen.

**The CHAIRMAN:** Just following through that example that I provided, if Victoria passes regulations, which then apply to all the states that are under that scheme, and WA then has to enact similar regulations, if it 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.

**The CHAIRMAN:** In relation to the senate report into the national law, it noted that there was a common view expressed by stakeholders that the national law accreditation process was still potentially threatened by a power granted to the ministerial council to issue directions relating to accreditation standards, and also raised the issue of the composition of national boards. The committee has also received a number of submissions raising concerns about the accreditation process, potential political interference in the accreditation standards and/or committee membership. WA professions are not being sufficiently involved in the NRA schemes, bodies and processes; eastern states’ central control; and increased bureaucracy and red tape are the issues that have been raised with the committee. Would you briefly explain the accreditation process?

**Mrs Cooper:** The accreditation process that has actually occurred in this initial phase is that most of the accreditation bodies that have been used in the past are the ones that will continue. There were some concerns with the nursing and midwifery one, and they have actually, under the ministerial council’s advice back to them, modified some of the way they are structured and those sorts of things. I believe that they have now been appointed for a short period of time and then they are going to review some of their processes. But my understanding is that most of the accreditation bodies that are currently doing it are the ones that will continue. In the first instance, the ministerial council has approved those bodies, but in the future the national boards themselves will approve who is actually the accrediting body.

All of the accreditation standards go out for consultations; they are all put on the national boards’ websites. There has been extensive consultation over those. I mean, I am not sure what —

[10.40 am]

**The CHAIRMAN:** So you are confident that WA has been adequately represented in relation to the accreditation process up to date and after the implementation of this national law?

**Mrs Cooper:** Well, we have a minister on the ministerial council. We also have a representative on the national board. For all boards, we have a WA person. In the case of the physiotherapist, I think he is the actual chair of that board. You know, we have a voice on all of those. I should imagine that we would be reasonably looked after. I mean, I cannot guarantee what is happening up at that level, but I cannot see that there would be any change from what we currently have.

**Mr Ashburn:** The national law guarantees that large jurisdictions such as Western Australia do have a seat on every national board, so it is guaranteed. And that seat is a practitioner member.

**Hon LIZ BEHJAT:** Could you just outline the large jurisdictions as opposed to the small—just define which ones are the large?

**Mr Ashburn:** I will just refer to make sure I get the list right.

**Mrs Cooper:** The smaller ones are Tasmania and the ACT.

**Hon LIZ BEHJAT:** The Northern Territory and the ACT.

**Mrs Cooper:** Yes. The big ones are WA, NSW, Queensland, Victoria, South Australia.



**The CHAIRMAN:** So you are confident that those concerns that have been raised with the committee in terms of the accreditation process are not really legitimate concerns—that the issues are being and have been addressed?

**Mrs Cooper:** Well if it is the medical, the AMA, it is the same body that is currently doing the accreditation for them. It is the Australian Medical Council or something.

**The CHAIRMAN:** And the concern about there being political interference?

**Mrs Cooper:** Well, the ministerial council can only give a direction in relation to those sorts of things if it is going to impact on the workforce; otherwise, they cannot. Under current state health practitioner regulation, the minister can give directions on anything he chooses, except for, you know, a specific practitioner or if there is a disciplinary matter before a board. So WA currently has those rights anyway under state law. Under the national law it is actually a little more restricted, because they will not be able to direct on across-the-board issues, it will just really be where there is a workforce.

**The CHAIRMAN:** Okay. The Psychologists Registration Board of WA has expressed their disapproval of the psychologists board of Australia's decision to establish a joint Western Australian and South Australian regional board. Does a regional board best serve WA's interests?

**Mrs Cooper:** I think with the psychologists, because it was a smaller professional group, and probably based on some financial implications, it was decided to have the regional board. All of the current WA members will move across to the state board, so members that we currently have on our WA board will move to the regional board initially.

**The CHAIRMAN:** Yes, I keep hearing this word "initially". What happens after year one?

**Mrs Cooper:** You cannot have a board that has 30 members. It is far too unwieldy, probably. So there will be natural attrition with that, like there will be some people that decide they do not wish to continue. There will also probably be some decisions made by the national board as to how many members they will have on there.

**Hon LIZ BEHJAT:** But the decision of the psychologists board of Australia to combine Western Australia and South Australia was driven by the psychologists board itself; it was not driven by political interference from any of the states saying, you know, "This is what you're going to do."

**Mrs Cooper:** No.

**Mr Ashburn:** There is no indication that that was the case.

**Hon LIZ BEHJAT:** So the psychologists really have an argument with their own board, not with the governments of the states.

**Mrs Cooper:** No, it is the national board that makes —

**The CHAIRMAN:** But was it driven by the WA psychologists to have a regional board?

**Mrs Cooper:** To have a regional board? Not that I am aware of.

**Hon LIZ BEHJAT:** No, but their argument still lies with their national board.

**Mrs Cooper:** Yes. If they have a complaint, then they need to go to them and get them to put in the state board. And the minister appoints the state members to each state board so our minister would be able to do that, but —

**The CHAIRMAN:** But it will not be a state board, it will be a regional board, so what role will the WA Minister for Health have in the appointment of members of the regional board of psychologists?

**Mrs Cooper:** He would have to be able to appoint some members to that.

**The CHAIRMAN:** But where in the legislation does it provide that power to the minister?

**Mrs Cooper:** Yes, it is in here; he appoints the state board.

**Hon LIZ BEHJAT:** And will it be equivalent to South Australia's representation?

**The CHAIRMAN:** We have no information about the maximum membership of the regional board, whether there are any requirements in terms of ensuring that there are equal numbers of representatives from WA and SA on the board and how those appointments are going to be made past year one, and that is information that the committee would find most useful.

**Mrs Cooper:** Normally with an act, as you probably are aware, there is not always all of that detail in there, so a lot of it will go into the regulations, which —

**The CHAIRMAN:** Well, frequently it is in the act, but what you are telling me is that that detail is not in this act and we are being asked to pass the national scheme on a promise that it will be taken care of in the regulations.

**Mrs Cooper:** Well, section 36 deals with the state and territory boards.

**The CHAIRMAN:** But this is neither a state nor territory board; it is a regional board.

**Mrs Cooper:** I think it will have the same.

**Mr Ashburn:** We would expect that either by regulation or agreement between ministers, essentially the terms of clause 36, which specifies that the minister appoints members to a state board, would essentially be complied with. So each of the ministers would come to an agreement, if it is not in regulation, as to appointing board members.

**Hon NIGEL HALLETT:** Is there a question we could put on notice?

**The CHAIRMAN:** We have asked the question, we have got the answer. It is a matter then for the committee to deliberate on that.

**Mr Ashburn:** It is correct; there is no specific mechanism in the law as it currently stands to deal with a regional board that is across two ministers' jurisdictions.

**Hon LINDA SAVAGE:** Is it referred to at all in the —

**Mrs Cooper:** No. It just talks about state and territory boards.

**The CHAIRMAN:** Was it contemplated by the ministerial council that there would be a regional board established as opposed to state boards? Because it seems to me that the national board has made this decision to have a regional board in relation to WA and SA; however, the decision by the ministerial council was that there would be state boards.

**Mrs Cooper:** I am not aware of what occurred at a ministerial level.

**Mr Ashburn:** The legislation gives national boards the power to appoint committees or boards as it sees fit, so it is contemplated within the broader powers of a national board, but it is not dealt with specifically in the law.

**Hon LINDA SAVAGE:** It does not seem consistent with what you were talking about with the larger jurisdictions. This one particular group, interestingly, are the group that, as you would know, has made a lot of response to this bill.

**Mrs Cooper:** Well they are specialists. Most of the others, I understand, they do not have any issues.

**The CHAIRMAN:** Can I suggest that we have had the question asked and answered? We might just move on, because I do not think anything more can be gained by pursuing that. Proposed section 5 of the national law, the schedule to the bill, defines "criminal history" to include charges. What is the practical effect of this proposed section, and are you aware if the ACT or other jurisdictions have amended this clause to omit the reference to "charges"?

**Mr Ashburn:** The practical effect is that criminal charges have to be disclosed whenever criminal history checks are made. And essentially, applicants or practitioners have to make full disclosure of their history in this regard. 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.

**The CHAIRMAN:** But are you aware whether the ACT and other jurisdictions have actually made changes?

**Mr Ashburn:** I have looked briefly at the ACT legislation. They have made one amendment in respect of criminal history checks and it is an amendment which sets out what must be considered by the board when it looks at criminal history checks. As far as I can tell, they do not change the definition.

[10.50 am]

**The CHAIRMAN:** So they have sought to qualify it in some way?

**Mr Ashburn:** I would probably describe it as they sought to codify what would be required anyway. They simply say that the board has to look at and weigh up matters.

**The CHAIRMAN:** What sorts of things are they asking that the board would get? Are they things like circumstances?

**Mr Ashburn:** From memory, it simply asks them to look at it and weigh up the issues under the circumstances, which would be an obligation of the board anyway without that being there.

**Hon LIZ BEHJAT:** Does that also means there is an obligation to disclose a spent conviction?

**Mr Ashburn:** Yes, there is.

**The CHAIRMAN:** What issues, if any, would arise if the reference to charges in paragraph (c) in section 5 were deleted?

**Mr Ashburn:** If it were deleted through the ministerial council process as set out in the IGA, it would effective.

**The CHAIRMAN:** We appreciate that; we are talking about if WA were to just remove it from the Western Australian bill.

**Mr Ashburn:** It would have no effect on the national law and it would most likely mean that Western Australian applicants for registration would be refused under the national scheme, because they would be providing lesser information than is required for all other practitioners in the rest of the country.

**The CHAIRMAN:** Would you please explain how and why the bill operates to include consideration of spent convictions?

**Mrs Cooper:** We currently do criminal history checks in WA under the state health practitioner. It has been expanded a little more under this national legislation to take in spent convictions. I believe this is already in place in some other jurisdictions. Spent convictions would be looked at initially when they are first registered. However, for renewals and those sorts of things, they would not be expected to have to go through that same process again. It is really just looking at spent convictions to see if there are any conditions a board needs to place on somebody; if there has been some sort of conduct where they should not be with a minor—those sorts of things. It is not a guaranteed given that a person would not be registered. There is an appeal process in the national law that allows people to appeal against decisions of a national board, if they wish, in relation to registration matters. It just gives the board the ability to look at all the information in relation to that person and decide whether that person is of a good character and should actually be registered. We have had a few things across all jurisdictions where certain practitioners have been registered who should never

have been registered because of things that have come out later. So this is just raising that bar a little more and including spent convictions.

**The CHAIRMAN:** Is Western Australia the only jurisdiction in Australia with specialist registration psychologists?

**Mrs Cooper:** Yes.

**The CHAIRMAN:** The committee has received a large number of submissions from psychologists concerned about the potential loss of their specialist title registration under the NRA scheme. The Australian Psychological Society submitted to the committee that it was highly unlikely that the specialist title arrangements currently in place would continue indefinitely given the position of the AHMAC governance committee. Would you please outline the process for obtaining specialist title registration under the national law, what areas of endorsement for psychologists will exist under the law, and what transitional arrangements will apply to specialist title psychologists?

**Mrs Cooper:** Under section 281 of the schedule of the bill, once it is implemented in Western Australia, specialist psychologists in Western Australia in transition across will have specialist title for three years. They can continue to use the specialist title they currently have. To get specialist titles, the national board sends a recommendation to the ministerial council, and the ministerial council approves or declines that specialist title. As in this case, because there were not any criteria in other jurisdictions for that to happen, they decided on the area of practice endorsement and the seven specialist titles in WA will become areas of practice endorsement. So they will still be able to use some sort of title there, depending on the national board.

**Hon LIZ BEHJAT:** At the moment if you are a specialist clinical psychologist, you can be that for the next three years, and after that you will become an endorsed clinical psychologist?

**Mrs Cooper:** Yes, in your area of practice. But that may change once the criteria has been established. The national board will decide the qualifications people have and the appropriate expertise and that sort of thing.

**The CHAIRMAN:** So will the endorsed clinical psychologist advertise as an “endorsed clinical psychologist”?

**Mr Ashburn:** There will be nothing to stop them.

**Hon LINDA SAVAGE:** And that is assuming that at the national level they call them clinical psychologists, or endorse their qualifications as fitting in that category.

**Mrs Cooper:** They will, because as part of their registration standard they have endorsed areas of practice. They have put out a registration standard that has been approved by ministerial council.

**The CHAIRMAN:** And that is equivalent to our specialist registration?

**Mrs Cooper:** Yes.

**Hon LIZ BEHJAT:** How does the board differentiate between the meaning of “endorsed” and the meaning of “specialist”? Why do they see it as so important to not allow ours to continue as specialist clinical psychologists as opposed to being endorsed clinical psychologists, which presumably they will not be in other jurisdictions because they have not done the extra study to become an endorsed clinical psychologist?

**Mrs Cooper:** That would be a matter that was dealt with at ministerial council level. The national board would put its recommendations forward to the ministerial council and the ministerial council would make the decision on whether to approve the specialist title for that particular profession.

**The CHAIRMAN:** Are you simply saying that this is just a matter of terminology?

**Mrs Cooper:** Yes.

**Hon LIZ BEHJAT:** Semantics.

**The CHAIRMAN:** Okay, that being the case, is it the case that if the national board has endorsed the endorsed specialist areas, a psychologist from, say, Victoria, who wants to be registered as an endorsed clinical psychologist would be able to do so as well?

**Mrs Cooper:** They would have to be endorsed by the board, so the board would have some criteria it has already decided —

**Hon LIZ BEHJAT:** Which presumably means they have to match the standard of an endorsed psychologist in Western Australia?

**The CHAIRMAN:** No, sorry, they would not—they would need to meet the criteria that the national board imposes to obtain an endorsed title. It can be less than what is currently required to be a specialist clinical psychologist, for example, in WA, because the board does not necessarily have to endorse WA's criteria for their endorsed clinical psychologist category. Am I correct?

**Mr Ashburn:** Correct.

**Hon LINDA SAVAGE:** But are you saying that they have already done some work in this. That is what I asked you earlier, and you said there are already these categories, such as an endorsed clinical psychologist. Do we have a document showing what that means in terms of qualifications yet, or is that yet to be finalised?

**Mrs Cooper:** I think they are all being finalised. There is a registration standard that has been drafted and agreed.

**Hon LINDA SAVAGE:** But we have not got something yet that says whether in the endorsed system a clinical psychologist means a four-year honours degree and then a two-year post-masters in clinical. So that is being worked on?

**Mr Ashburn:** And in the transitional period, there are three years that WA clinical psychs and other specialist psychs will be able to continue their specialty.

[11.00 am]

**Hon LINDA SAVAGE:** So what we know as a clinical psych in Western Australia, where there is some understanding of what that means compared, say, to a psychologist, could that terminology itself change if the national board wants to create an area taking in what we understand as clinical psychs and others in the rest of the country with, perhaps, slightly different qualifications? Is that what you are saying? So we would be able to go to a central website, see the word "clinical psychologist", and actually understand what nationally that meant—what qualifications you had to have to be called that?

**Mrs Cooper:** I presume that they would have something on their website in relation —

**The CHAIRMAN:** Look my understanding, from reading the IGA, is that, yes, all of that information will be transparent and available, and I assume that means that it will be available on a website, although the IGA does not actually specify a website. And, yes, they will agree to whatever accreditation is required for each of the professions, and if there are specialist titles, for the specialist titles, and then that accreditation will be consistent across the nation and it will be specified. But it is not the case that they will necessarily have specialist titles that are identical to the specialist registration that we currently have in Western Australia or that the qualifications required to get a specialist title under the national scheme will be identical to the qualifications required to get a specialist registration currently under the WA scheme.

**Hon LINDA SAVAGE:** And I follow that, and that is why I suppose it must be whether we have already got —

**The CHAIRMAN:** Can I just get confirmation? Is what I have said accurate?

**Mr Ashburn:** Yes.

**The CHAIRMAN:** Okay, thank you.

**Hon LINDA SAVAGE:** And that has not been developed yet, then, what that endorsed clinical psychologist will actually mean.

**Mrs Cooper:** Section 98 deals with the endorsement for approved area practice. So WA currently has those seven specialist titles. That is what has been agreed to be —

**Hon LINDA SAVAGE:** For three years.

**Mrs Cooper:** No, that is ongoing. The area of practice endorsement has been approved by the ministerial council. That is an indefinite, now, for those seven areas of practice.

**The CHAIRMAN:** Can you just specify what they are?

**Mrs Cooper:** Yes, certainly. It is clinical psychology, clinical neuropsychology, counselling psychology, educational and development psychology, forensic psychology, organisational psychology and sport psychology. These are the seven branches under our current regulations.

**The CHAIRMAN:** And when was that endorsed by the ministerial council?

**Mrs Cooper:** Just recently.

**The CHAIRMAN:** Can you give us the date of the meeting? You can come back to us on that; we can take that on notice and we will identify that as question on notice 1. You can provide that information to the committee, if that is possible, by the close of business on Friday.

**Mrs Cooper:** Yes. It was in the last two months. It is either March or April. I know some stuff went through on 22 April, but I think it might have been —

**The CHAIRMAN:** The committee has received a submission, and I am just going to read from this submission and ask you to comment on the concerns that are raised. The submission says —

While the ... possibility for specialist registration exists —

Under the national law —

... it is highly unlikely that, for sake of national consistency, the existing arrangement for psychologists in WA with specialist registration entitlements will continue indefinitely. ... the AHMAC Governance Committee for NRAS, which comprises the CEOs of the State, Territory and Commonwealth health departments, does not support the proposal by the Psychology Board of Australia for specialist registration under NRAS.

Would you comment on that concern?

**Mrs Cooper:** I am not sure that that is correct. I mean, I think the reason that it was not initially agreed to by the health CEOs was because WA was the only state with it, and I do not really know, but they possibly did not know how to spread that across all of the jurisdictions. Some of the other jurisdictions do have endorsements under their current legislation, so I think it was, you know, possibly something to do with that.

**The CHAIRMAN:** So there is something in the legislation. Can you point me to the appropriate clause which actually establishes the endorsed title?

**Mrs Cooper:** The areas of practice endorsement are number 98.

**The CHAIRMAN:** Are they specified?

**Mrs Cooper:** No, it just talks about the way you get an endorsement—how you can get it. The areas of practice —

**The CHAIRMAN:** Are not identified at all.

**Mrs Cooper:** They are in the registration standards made by the national board, once they have been approved by the ministerial council.

**Hon LIZ BEHJAT:** Am I also right in saying that in these ongoing meetings and discussions that the ministerial council are having, that the WA state minister has now convinced the other ministers on minco that they will need to go back to the state psychologist registration boards to get them to have the national board reconsider this specialist title for psychologists, and that he is driving this thing to have them adopt the higher standard that Western Australia has?

**Mrs Cooper:** Yes, that is correct.

**Hon LIZ BEHJAT:** That is correct?

**Mrs Cooper:** At the last meeting—22 April—I understand that the minister raised the issue, but it is actually going back to the national boards to reconsider their position.

**Hon LIZ BEHJAT:** Could we ask, as supplementary question 2, that we have provided the actual wording, if it is available and it is not private, of exactly what was passed at minco?

**The CHAIRMAN:** I think it would be appropriate to ask for the minutes of that 22 April meeting of minco, and that will be question on notice 2. And also, that you provide us with any correspondence that the Minister for Health has had with other state and federal and territory ministers of health concerning this matter of identifying special registration for psychologists.

**Mrs Cooper:** The minutes that I had for the meeting were only draft, so I would not be able to provide those and I would have to seek a final version that has been agreed to by all ministers before I could release that.

**The CHAIRMAN:** And what is the process for agreeing to the minutes by ministers? Is there a time line by which that is done or is it done at the next meeting, in which case there is no capacity for the committee to get access to it?

**Mrs Cooper:** I am not sure. I would need to check.

**The CHAIRMAN:** Okay. We will take that on notice and we will await your advice at close of business on Friday. Now I have lost my place! How far did I get? Is it likely that the psychology profession in WA will be worse off as a result of the NRA scheme?

**Mrs Cooper:** I do not believe so. When you say they will be worse off, I am not sure how they would be worse off.

**The CHAIRMAN:** Well, they are not having specialist title registration and they are going to an endorsed title recognition, of which we have absolutely no details yet in terms of what the criteria are for getting that endorsement, which could be lower than what is currently required to get a specialist registration in WA.

**Mrs Cooper:** Yes, that is correct; they will move from specialists to area of practice, unless the national board convinces the ministerial council to approve the specialist registration within the next three years.

**The CHAIRMAN:** It is possible or likely that the psychology profession in WA would be worse off as a result of this scheme?

**Mr Ashburn:** In determining standards, boards and also other bodies have to give consideration to public safety and similar sorts of concerns. They would really only be able to lower standards if they did not impact on public safety and public health, so there are some protections built into the law that do not allow lower standards to be put into place where they would have an impact on patient safety or health.

**The CHAIRMAN:** Yes, although there is a pretty broad range of where there could be a fair bit of dispute as to what would be the absolute minimum that is required and where that standard might actually apply.

I just note the time. I understand that you have a meeting with the Minister for Health to brief opposition members on the bill. My apologies; I did not realise until this morning's meeting, when I was told, that you were the same staff that were required at that other meeting. If I had been advised of that earlier, I would have made sure that that was cancelled, because the committee hearing takes precedence over a briefing session, and we are not even midway through the questions that we need to ask. However, not having known that and not being able to do that, I appreciate that you are now in a dilemma because your minister is expecting you up at Parliament House. A couple of options here; we could adjourn our meeting, which would enable you to attend that briefing with the minister, and reconvene at 12 o'clock today. That would give us another hour for a hearing, because Parliament starts at 2.00 pm today, and then if we are not completed, we will need to convene another day. Alternatively, we could exert our right to continue our hearing and keep you here and your minister would have to do without you, but I do not want to put either the minister or you in that position so I am not suggesting that last course of action! I assume from the reaction on your faces that you would prefer the first option—an adjournment until 12 o'clock.

**Mr Ashburn:** Yes, please.

**The CHAIRMAN:** Okay. Now, if you would not mind leaving the room, because the committee will need to consider that proposition and make a decision on it in private, and then we will communicate that decision to you. Thank you.

**Proceedings suspended from 11.10 am to 12.12 pm**

[12.12 pm]

**The CHAIRMAN:** Welcome back. It has just occurred to me that you have not had a chance to have a break or have lunch, so we will definitely finish at one o'clock. There is every likelihood that we will need to reconvene the hearing on another date. As a committee we will need to identify a suitable date, but at this stage it will probably be Monday. If that is a huge problem for you, speak now.

**Mrs Cooper:** Not that I am aware of.

**The CHAIRMAN:** When we adjourned the hearing, we were dealing with the concerns of the clinical psychologists and the issue of specialist registration versus endorsement.

**Mrs Cooper:** Or area of practice.

**The CHAIRMAN:** One of the issues we want to get clear is that in the transitional period, for three years the clinical psychologists will be able to continue to call themselves clinical psychologists; is that right?

**Mrs Cooper:** Yes, the title.

**The CHAIRMAN:** That is just a carry-on of what is currently in place in the state.

**Mrs Cooper:** Yes.

**The CHAIRMAN:** After the three years, the endorsement system kicks in; is that the case?

**Mrs Cooper:** Yes, unless it has changed and they do get specialist title within that three years, under the ministerial council.

**The CHAIRMAN:** The legislation allows for endorsement of areas of practice.

**Mrs Cooper:** Yes, there are two endorsements under the legislation. One is for scheduled medicines, and one is for area of practice.

**The CHAIRMAN:** Is the endorsement for areas of practice intended under the legislation to indicate a specialist area of practice requiring a higher level of qualification?

**Mrs Cooper:** Yes.



**The CHAIRMAN:** Is it specified in the legislation that that is what an endorsement is?

**Mrs Cooper:** I think it is proposed section 98, endorsement for approved area of practice. Proposed section 15 relates to the approval of areas of practice for purposes of endorsement on the recommendation of the national board. Proposed section 98 sets out what you need to have as a practitioner to be approved in an area of practice.

**Hon LIZ BEHJAT:** But it says there only that they need to hold an approved qualification. It can be the minimum qualification, and they could get endorsement for that if the board so determines; is that right?

**Mrs Cooper:** Yes, but there is general registration so there would be a qualification that would give you general registration. Under the “approved area of practice” you would have another qualification, and that would set you aside.

**Hon LIZ BEHJAT:** Yes, but it does not say in this definition that an approved qualification is anything more than a general qualification.

**Mrs Cooper:** That is not normally something you would put in the legislation because qualifications change, and usually subsidiary legislation is written.

**Hon LIZ BEHJAT:** I accept that point, but it could state “an approved qualification being a qualification higher than the qualification required for registration”.

**Mr Ashburn:** I think the difficulty the original drafter has attempted to get around is that qualifications may change over time. The aim is to give the power and obligation to the national board to determine what is approved and what is an appropriate qualification. So rather than setting it in legislation and then needing to make changes —

**Hon LIZ BEHJAT:** But neither of those terms the Chairman just used then is subjective, as in “general registration” and “approved qualification”.

**The CHAIRMAN:** I suppose the concern is that there does not appear on the face of the law—the bill that is currently before us—any distinction between the qualification that is required to get a general registration and the qualification that is required for an endorsement.

**Mrs Cooper:** It is my —

**The CHAIRMAN:** It is your understanding—I understand that—but the issue is there is nothing in the law that sets out that distinction. If it is not in the law, then it is always open to the body that is implementing the law to say that there is no requirement for there to be a distinction in the law, so anyone who has psychologist training can get an endorsement to be a clinical psychologist, for example.

**Mrs Cooper:** It does not seem feasible to me that you would have eligibility for general registration under proposed section 52, and that you would have the same qualification allowing you to have area of practice endorsement. That just does not seem correct.

**The CHAIRMAN:** I appreciate that, but unfortunately the bill before us does not actually specify that. It simply says that this is the process for registration and qualifications will be set; this is the process for endorsement and qualifications will be set. It does not say that the qualification for endorsement needs to be something higher than the qualification for general registration. While that is absent from the legislation, there is always a capacity at some future time for some board to say that we do not need a distinction here.

**Mrs Cooper:** Under our current Psychologists Act 2005 for WA we have general registration. I cannot remember the exact section of the act, but I know section 30 deals with specialist registration. Under that act it is the qualifications that are prescribed for those specialities. So the qualifications are prescribed in the regulations. The regulations under that act prescribe the qualifications you need, or that are approved by the Psychologists Registration Board of WA.

[12.20 pm]

**The CHAIRMAN:** And that is fine, but this clause does not even say, to me, the qualifications that are prescribed, which concerns me, because what we are dealing with now is administrative procedure, which can be changed at the will of the board without any reference to the ministerial council or the Parliament. At least if it is prescribed in regulations, the Parliament has the capacity to disallow the regulation if they have a concern with it. 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. I suppose the other thing that I need to get clear is: once you have got an endorsement, what can you do with it? So if you are an endorsed clinical psychologist, you would then be able to use the term “clinical psychologist” as your position title. Is that what we are saying? It is effectively the same as if you had specialist registration.

**Mrs Cooper:** I think it would depend on the national board, because under clause 119 of the schedule of the bill it actually talks about holding yourself out as having a type of registration or endorsement, so if you had an endorsement by the national board as a clinical psychologist or to practise in the area of clinical psychology and you were doing that, then it would actually contravene a section.

**The CHAIRMAN:** Sorry, could you just repeat that?

**Mrs Cooper:** If you were somebody who did not have an area of practice endorsement as a clinical psychologist or to practise in the area of clinical psychology and you said that you had expertise in that area and were able, you know, to do this, then —

**The CHAIRMAN:** Then you would be in breach.

**Mrs Cooper:** Yes.

**The CHAIRMAN:** Okay, that is fine. But if you were endorsed, you would be able to refer to yourself and market yourself as a clinical psychologist.

**Mr Ashburn:** And employers would advertise for and employ people as a clinical psychologist or similar.

**Hon LINDA SAVAGE:** Can I just go back? I am not sure that I heard you correctly. Have any areas that we are talking about been endorsed yet?

**Mrs Cooper:** Yes, the seven specialist titles that we have in WA have been endorsed under the national scheme.

**The CHAIRMAN:** By whom?

**Mrs Cooper:** By the national board, and they have been agreed to by the ministerial council.

**Hon LINDA SAVAGE:** So do we know the qualifications that go with them?

**Mrs Cooper:** No, I could not say that.

**Hon LINDA SAVAGE:** And they only last for three years?

**Mrs Cooper:** No, that is only for the specialist titles—a transitional. When WA goes into the scheme, those clinical psychologists that hold that specialist title in WA will be able to continue to use the words “clinical psychologist” under what we currently have for three years under the national scheme. Then under the national scheme it has been agreed that clinical psychology would be an area of practice endorsement under this legislation, and those other states that do not have any specialist title who would have the qualification that enabled them to access that endorsement would be able to use similar words.

**Hon LINDA SAVAGE:** So does that mean they are adopting what qualifications Western Australia says is a clinical psychologist?

**Mrs Cooper:** No, because we only have those here in WA, unless there is anything that they do in the east, which I do not know.

**Hon LINDA SAVAGE:** So are they yet to specify what range of qualifications will be required for a clinical psychologist Australia-wide?

**Mrs Cooper:** Yes, I think that is correct.

**Hon LINDA SAVAGE:** So they are endorsed as a title, but we do not have information about what would be required across the whole country to fall into that category.

**Mr Ashburn:** They would not be able to endorse someone until that person had met whatever the qualifications were, and in order to meet the qualifications, they would have to define them.

**Hon LINDA SAVAGE:** And they have not defined them?

**Mr Ashburn:** As far as I know, they are currently in the process of determining those qualifications. Until that is done, a person cannot be endorsed, but in the transitional phase, specialist psychologists in Western Australia transition that in.

**Hon LINDA SAVAGE:** I understand that for the first three years, so they are currently working on —

**The CHAIRMAN:** I assume they have allowed themselves a window of three years to get the criteria sorted for the endorsements, which is why they have allowed a transitional period for three years. It might not take three years, but I think they have looked at it as, “The maximum period of time it would take us would be three years”, and that detail is still to be sorted.

**Hon LINDA SAVAGE:** But they have accepted those areas—clinical psychology, those seven. They have accepted those titles.

**The Witnesses:** Yes.

**Hon LINDA SAVAGE:** Taking out of the equation the next three years in WA, they are working towards, and at some stage there will be, qualifications that you would have to meet to be able to, Australia-wide, call yourself that.

**Mr Ashburn:** Yes.

**Hon LINDA SAVAGE:** But you have not yet got those qualifications.

**Mrs Cooper:** No. The minister for WA has asked, as I understand it, the national board to reconsider for psychologists and physiotherapists the specialist title issue, so that may well be resolved.

**The CHAIRMAN:** This is where I start having problems. If the minister has asked for the board to reconsider the issue of specialist titles, but in effect specialist title or endorsed title is intended to be exactly the same thing in the long run, what is the argument all about and what is the grief of the clinical psychologists all about, other than the fact that it is not actually detailed in the bill and, therefore, the board, although it has agreed to recognise those special areas of practice, may at some point in time say that they are not going to recognise them anymore and do away with them?

**Mr Ashburn:** The legislation recognises specialist titles for medical practitioners and for dentists. It does not recognise them for any other health profession.

**The CHAIRMAN:** Can you explain to me why they recognise it for those two categories only?

**Mr Ashburn:** Yes. It is an outcome essentially of pulling together the supervisory frameworks for 10 professions across seven or however many jurisdictions there are, and maintaining some of the history of how people are recognised in those jurisdictions. Medical practitioners and dentists have been recognised across all the jurisdictions as specialists. Psychologists, for example, have not. What the legislation recognises or reflects is that historical situation coming into the new legislative framework.

**Hon LIZ BEHJAT:** Can I put this hypothetical to you, to make it clear in my mind? A person in Western Australia does a psychology degree of four years and then they do a further three years of study and they then become a clinical psychologist and that is what they now hold themselves out to be—a clinical psychologist. So they are considered a specialist in this state because that is what they have done—they have done seven years of qualification. If in this three-year transition period, where we have the national board looking at this term “endorsed clinical psychologist”, it then comes out that the definition of “endorsed clinical psychologist” according to the national board is someone who has undertaken seven years of study, which is a four-year first degree and a three-year second degree, they can then be endorsed, and the argument that the Psychologists Board people are putting to us now will disappear because they will be happy.

[12.30 pm]

**The CHAIRMAN:** I think we need to ask one question before that one. What is the distinction in the legislation between endorsement and specialist? “Is there a distinction?” should maybe be the first question.

**Mrs Cooper:** Yes; there is. There is the process that you go through for an endorsement and there is the process that is in there for specialist title, or specialist registration.

**The CHAIRMAN:** How do they differ?

**Mr Ashburn:** Specialist title is essentially in the legislation; endorsement is within the power of the national boards.

**The CHAIRMAN:** That is the answer to your question; Liz—are you happy with that? The issue is that the legislation recognises specialists in the area of medical practitioners and dentistry. Currently in this state, our legislation recognises specialists or psychologists. Under the national scheme, psychologists do not get specialist recognition, which is embedded in the legislation. No-one can take it away from them unless the legislation is changed. All that they will be able to get is endorsement, which is provided at the whim of the board because it is an administrative process. Arguably, there is structure there, so you would hope there would be some level of certainty, but the problem is that there is no guarantee of the level of certainty with an administrative process as there is with a legislative process. Arguably, the same level of recognition does not attach where that recognition is embedded in the law.

**Hon LIZ BEHJAT:** In order to satisfy the psychologists, if we were to try to do that, we would need to, under clause 13(2) of the bill have them defined. Clause 13(2) states —

- (a) approve a list of specialties for the profession; and

Is it right that they would have to be defined somewhere in that section to be held out as specialists—is that right?

**Mrs Cooper:** Clause 57 deals with specialist registration.

**Hon LIZ BEHJAT:** Clause 13(2) deals with approvals in relation to specialist registration.

**Mrs Cooper:** Yes; but it does not list the specialties there, or any of them; not for medical or not for dental.

**Hon LIZ BEHJAT:** Clause 13(1)(c) states—

any other health profession approved by the Ministerial Council, on the recommendation of the National Board established for the profession.

**Mr Ashburn:** Clause 13(1)(c), I think, is where the minister is at, at the moment.

**Hon LIZ BEHJAT:** So that is the crux of where we are trying to get to; to get the national board to recommend that, under clause 13(1)(c), we would be able to define psychologists under 13(1)(c) of the act?

**Mrs Cooper:** No, it would not be in the act; it would just be that they would approve it under that.

**Hon LIZ BEHJAT:** Under clause 13(1)(c).

**The CHAIRMAN:** What is the process for enacting 13(1)(c)? I assume it is that the ministerial council approves it.

**Mrs Cooper:** On the recommendation of the national board, yes.

**The CHAIRMAN:** How does anyone know that the ministerial council has approved it; and, if someone were to pick up this act in 10 years' time and they can see that the medical profession and dentists are specialists, where do they go to find out if anybody else has been approved by the ministerial council?

**Hon LIZ BEHJAT:** Under clause 13(1)(c).

**Mrs Cooper:** No, under the registration standards that are made by the national board that are on the website.

**The CHAIRMAN:** But it does not say “and prescribed in the regulations”.

**Mrs Cooper:** No, no, the registration standards that are made by the national boards and approved by the ministerial council.

**The CHAIRMAN:** But can you see that clause 13(1)(c) provides a lower level of certainty and guarantee than clause 13(1)(a) and (b)? Would you agree that that is the case?

**Mr Ashburn:** In terms of a person being able to rely on being a legally defined specialist, it will be exactly the same. The point you make about how you would find that: I would expect that the ministerial council would sign a suitable instrument that would be available publicly.

**The CHAIRMAN:** However, the process for making a change is different in that under clause 13(1)(a) and (b) it would require it to go back to Parliament for the Parliament to amend the legislation. Under clause 13(1)(c), a future ministerial council could change a decision that was made by a previous ministerial council without any reference to Parliament at all.

**Mr Ashburn:** They have the power to approve it and, generally, that means they also have the power to not approve it or withdraw it. The process for making the change to the legislation itself would involve the national board and the change of the legislation in all the jurisdictions.

**Hon LINDA SAVAGE:** I was just going to ask about the historical nature of it just so I get a better sense of it. Am I correct in understanding that the reason dentists and medical practitioners are dealt with differently is that they have national exams? When you become a specialist, it is by way of an Australian and New Zealand college exam to get a specialist exam that is recognised all throughout Australia and New Zealand. With psychologists—if I am correct—there is not a national exam that we are talking about currently that they do to create that level of uniformity. We are talking about different qualifications in different states. Is that essentially what you are saying? Can you talk about the historical aspect?

**Mr Ashburn:** No, you may in fact know more about that part of the history than I do. I was simply looking at it from what is in other jurisdictions' legislation, and so looking at that and not looking behind that particularly. I was looking at the recognition and what is recognised in previous legislation in the jurisdictions, and that is why it has come through to this legislation. You may well be correct that there is something behind it in terms of national examinations.

**Hon LINDA SAVAGE:** Specialty degrees are national; you are qualified for Australia and New Zealand. I just wondered if that is why the groups that do not have the national registration or national standards are being dealt with differently.

\*anti: You may be right, but that may be what is behind the legislation in the other states.

**The CHAIRMAN:** Is the possibility of no longer having specialist registration in psychology inconsistent with any of the objectives of the NRA scheme as set out in clause 2 of the national law? This is the last dot point to question 14 that was provided.

**Mrs Cooper:** I think that was in clause 3(2)—is that correct?

**The CHAIRMAN:** No; I am asking you about the last dot point in question 14.

**Mr Ashburn:** Yes.

**The CHAIRMAN:** The question is: is not having a specialist registration in psychology inconsistent with any of the objectives of the NRA scheme as set out in clause 2 of the national law?

**Mr Ashburn:** We do not think that it is inconsistent.

**The CHAIRMAN:** The Psychologists Board of Western Australia advised that a majority of the 140 psychologists currently undertaking specialist training will not complete their training prior to 1 July 2010 and may suffer disadvantage because there is no apparent scheme for transitioning their current training into the national regime. Does the bill contain relevant transitional arrangements for these current students?

[12.40 pm]

**Mrs Cooper:** Clause 283 of this schedule, "Programmes of study", is in the national law and that deals with that. If it was an approved program of study for a qualification for registration in Western Australia, it would continue to be.

**The CHAIRMAN:** Would continue to be what?

**Mrs Cooper:** Would continue to be an approved program of study.

**The CHAIRMAN:** The question is about a student who is going to complete that specialist qualification of clinical psychologist in, say, November of 2010. Would that student be able to then access the transitional provisions to be able to use that title for three years, given that they are not actually technically qualified until after the national law bill comes into effect?

**Mrs Cooper:** I suppose it would be a matter for the national board once they actually decided.

**The CHAIRMAN:** No; I need to know what the legislation says. What does the bill say? Does the bill deal with that situation at all?

**Mrs Cooper:** It does not really deal with people who are undergoing specialist title in the transitionals, as far as I am aware, for the programs of study they are currently doing, except for this clause 283.

**The CHAIRMAN:** Is it the case, then, that as a result of WA becoming part of this national scheme, all those people who are currently, for example, in their final year of study will be disadvantaged because, although they have completed their studies to be a specialist clinical psychologist in this state and would have got registration on that basis if we stayed with the state scheme, they will not be able to get access to that title at a state scheme level because it no longer

exists, but they will not be able to avail themselves of the transitional provisions in the bill for those practising clinical psychologists, who are able to hold onto that title for three years? Will there be a group of people who have actually completed their study at clinical psychologist specialist status who will not get any recognition for that?

**Mrs Cooper:** Could we actually come back to you and provide you with that answer on Friday?

**The CHAIRMAN:** That will be question on notice 3.

**Mr Ashburn:** It will depend on the interpretation of the breadth of the clause 283.

**The CHAIRMAN:** I am not so sure about that, but we will see what you come back with.

**Mr Ashburn:** And we will look at the rest.

**The CHAIRMAN:** Can we take the whole of question 15 as well, because there is a second dot point? The whole of that is question on notice 3, because there is no point in separating those. If WA were to amend the national law bill currently before us to recognise specialist registration for psychologists in this state only—that would mean a whole separate registration arrangement—would that put the national scheme in jeopardy or undermine it in any way? They could still register as part of the national scheme at psychologists level, and we could continue to have a separate registration scheme in this state that recognised the specialist clinical psychologist.

**Mrs Cooper:** Would you run two parallel systems—namely, a registration system in Western Australia just for specialists, and a separate one? They would have to have two registration fees.

**The CHAIRMAN:** Is that technically feasible?

**Mr Ashburn:** Technically it can be done. It would have a cost.

**The CHAIRMAN:** Yes, I appreciate that. It would not undermine the national scheme, because they would still only be recognised under the national scheme at whatever the national board decides and at whatever level they are registered, whether it is just general registration or general registration plus endorsement. That comes into being at some later time.

**Mr Ashburn:** There could be clashes between the two in that someone's qualifications under one scheme may be different to qualifications under the other scheme. If the national scheme is using the terminology "clinical psychologist", to use that same terminology under a different scheme may be confusing. The practicalities of someone using both those titles and differentiating which title they are using at a particular time could become somewhat confusing.

**Mrs Cooper:** You would have to set up a state board as well.

**The CHAIRMAN:** Yes, I appreciate that. I am just trying to look at avenues that may be available to address the concerns that clinical psychologists have. I believe they have a legitimate concern in terms of the fact that they have developed this specialist area of practice, they have studied hard to achieve that specialist area of practice, but they are not getting any recognition under the legislation for those qualifications that they have earned. The only recognition under the current legislation is an endorsement process, which may or may not continue to exist. It is not a matter that the legislature will get to make a decision on; it is a matter that a board will get to make a decision on. Quite frankly, I think they have a genuine beef with the national law and so I am just trying to explore in my mind options that may be available in this state to try to address the concern that they have.

**Hon LIZ BEHJAT:** I think those concerns are exactly what our state minister's concerns are in relation to that issue, which is why he has gone back to them and asked them to rethink it.

**The CHAIRMAN:** I think that is a positive and certainly, if they do rethink it, to a certain extent it may address the problem; however, there is still that problem that clause 13(1)(c) can be altered by a ministerial council at a future date, whereas clause 13(1)(a) and (b) require the matter to go back to Parliament to remove that specialty.

**Hon LIZ BEHJAT:** That is where you are going to have to hope that you can convince them to amend the legislation, at 13(1)(c), yes.

**The CHAIRMAN:** Assuming that is even possible, if that takes a number of years, as these things usually do, and if it extends beyond—well, it has an immediate effect because no-one is going to go in and do the additional years of study to be a clinical psychologist in this state until they have got certainty that that effort will actually be recognised.

**Hon LIZ BEHJAT:** Beyond the three-year transition period.

**The CHAIRMAN:** If they are going to do the study or they are currently in the process of doing that study, I believe they will miss out on the application of that transition provision. We will wait to see the advice we receive on Friday. I believe they will miss out on being able to access that transitional provision, and they have no guarantee that the endorsement will be at the same qualification standard as the one they are currently undertaking, so they might decide not to invest that amount of time and effort in that study at this point in time, particularly given how costly it is these days to actually go to university and get a degree. We will have a whole dumbing down of the profession in WA for, at a minimum, this three-year transitional period, which may, perhaps, be even longer if the endorsement is at a standard lower than what is currently required to get a specialist clinical psychologist standard in WA. I think the argument that clinical psychologists make about dumbing down is a very valid concern. If I was a student at university now, there is no way I would be taking on board the additional cost and the additional years of no salary for whatever period that is—two or three years of study—to get to clinical psychologist status without knowing that it was actually going to be worth something at the end of all of that effort. They have no guarantee at this point of time, which is my concern about the process that is currently being undertaken to simply consider and explore the possibility of amending the legislation to recognise it at some future time. The problem is, once you break that system down, it becomes very hard to re-establish it, and it then affects the intent of removing it in the first place, which was the intent of the bill as it currently stands, and to remove it altogether. It becomes a self-perpetuating reality. My concern is that those measures, as well intended as they are, will not actually deliver the result of protecting that specialist area of practice. If that is a decision made by the WA Parliament, it needs to actually find some alternative ways of protecting that.

[12.50 pm]

**Mrs Cooper:** I think if we open it up for psychologists, you would have to do it for the remainder of the professions, because others will also have the same concerns.

**The CHAIRMAN:** Who? Nobody else has raised them.

**Mrs Cooper:** The physiotherapists are another group who would like specialist title.

**The CHAIRMAN:** But they currently do not have it?

**Mrs Cooper:** No. It is in their legislation, but they do not have any qualifications prescribed for it. That is answering you exactly.

**The CHAIRMAN:** I think that is a fair point but it is a slightly different situation than the situation of the clinical psychologists who have got it and have got the qualification and the process and the system is already in place. I think it is slightly different.

Following on from that, the next question is, what changes would be needed to the national law bill to effect a separate registration in this state for clinical psychologists if this state were to want to protect that while we sort out whatever might happen at the national level? Would you be able to advise the committee on what sort of amendments to the national law could be or would need to be effected in order to put that in place? I do not expect you to be able to do it right now. I am happy for you to take it on notice, but I just need to understand whether you would be able to come back to the committee with some information?



**Mr Ashburn:** We can do that; we will take it on notice.

**The CHAIRMAN:** That will be question on notice 4.

**Mrs Cooper:** We would probably not be able to do that by Friday; we would have to go back to parliamentary counsel and ask them, because you would have to have an interact in some way with them if they were going to retain some—were you proposing that they retain some registration under the national law, or not at all?

**The CHAIRMAN:** I think they would have to. I am interested in your comment on that, but if you want to deal with that whole issue of mobility so that they could practise at least as a psychologist level in another state, I think you would need to have the double registration. It would be a cost to them, but it would protect their current state system while something was sorted out at a national level, and I think it is worth exploring that. Of course, they might think that my proposition is completely ridiculous and unreasonable and might not want to go down that path at all, but I would just like to explore it as an option.

**Mr Ashburn:** As a preliminary comment, running a parallel system would probably require no change to the national law because the WA system would be totally outside it and would run in parallel.

**The CHAIRMAN:** You can take that as question on notice 4. If you are not able to provide that answer by close of business on Friday, could you at least give us an indication by close of business Friday of how much more time you need so that the committee can consider whether that will fit within our reporting time frame or whether we need to come back and pressure you for a shorter time frame?

**Hon LINDA SAVAGE:** I just want to follow on from what Adele was raising about the period of uncertainty. I wonder if there is any sense of when the endorsement of specialist areas of practice would occur. It appears to me that you were saying that there will be a group who is waiting and wondering whether it is worth doing the further two years to become a clinical psychologist, when potentially an endorsement of the area of practice would mean there would be little or no benefit in that over and above doing four years. You said those endorsement areas of practice had not happened.

**Mrs Cooper:** No; they have been endorsed by the —

**Hon LINDA SAVAGE:** But not the qualifications.

**Mrs Cooper:** Not that I am aware of.

**The CHAIRMAN:** I will take that as question on notice 5. You can come back to the committee and inform the committee whether the qualifications in those endorsed areas of practice are actually in place and have been finalised, because that really goes to your question. Linda, was there anything more?

**Hon Linda Savage:** That was it.

**The CHAIRMAN:** Was there anything more on this issue? I note that it is five to one, and I wonder whether there is any value in actually starting a round of questions on a different section of the bill at this point in time given the time. If members are agreeable, we might adjourn the hearing to be held at a date and time to be advised. Mark will get back to you with that detail once the committee has considered that. I will adjourn the hearing at this point. Thank you very much for attending and for your forbearance in coming back and having to come back again—sorry. Our meeting will continue once the witnesses have left the room.

**Mrs Cooper:** Could I just clarify a couple of things, just to make sure that I got have this down right? Would you like a copy of the minutes of the meeting that dealt with the endorsement approval?

**The CHAIRMAN:** Susan will contact you later today and clarify exactly what those five questions on notice are.

**Mrs Cooper:** I did write them down.

**Mr Ashburn:** We just want to be very clear.

**The CHAIRMAN:** Yes, so did Susan, in shorthand, and I think she wants to run them past the committee before she actually tells you what they are. Susan will be in contact with you later today and we will have that clarified.

**Hearing concluded at 12.56 pm**