

41ST PARLIAMENT



Report 145

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

*Health Practitioner Regulation National Law Application Bill
2023*

Presented by
Hon Donna Faragher MLC (Chair)
February 2024

Standing Committee on Uniform Legislation and Statutes Review

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EXECUTIVE SUMMARY

- 1 The Health Practitioner Regulation National Law Application Bill 2023 (Bill):
 - repeals the *Health Practitioner Regulation National Law (WA) Act 2010*
 - moves Western Australia’s implementation of the *Health Practitioner Regulation National Law Act 2009* (Queensland) (National Law) from corresponding legislation to applied legislation.
- 2 The Bill proposes to apply the National Law as in force on 10 October 2023, incorporating amendments between 2019 and 2023. This will bring Western Australia up to date with other jurisdictions.
- 3 Like the Rail Safety National Law Application Bill 2023, future amendments will be subject to an applied legislation disallowance mechanism.
- 4 The Bill impacts upon the Western Australian Parliament’s sovereignty and law-making powers. It:
 - uses an applied legislation disallowance mechanism
 - does not contain a review clause
 - excludes the application of various Western Australian interpretation and accountability legislation
 - contains a Henry VIII clause authorising transitional regulations to modify or disapply provisions of the Bill or National Law.

Findings

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

FINDING 1

Page 4

The complementary applied scheme approach to uniform legislation adopted by the Health Practitioner Regulation National Law Application Bill 2023 erodes the Western Australian Parliament’s sovereignty and law-making powers.

FINDING 2

Page 4

The disallowance mechanism in Part 2 of the Health Practitioner Regulation National Law Application Bill 2023 provides a level of parliamentary oversight and scrutiny that reduces its impact on parliamentary sovereignty and law-making powers.

FINDING 3

Page 6

The lack of a review clause in the Health Practitioner Regulation National Law Application Bill 2023 is justified.

FINDING 4

Page 8

The application of Commonwealth interpretation and accountability laws in Western Australia by clause 22(1) and (2) of the Health Practitioner Regulation National Law Application Bill 2023 erodes the Western Australian Parliament's sovereignty and law-making powers.

FINDING 5

Page 8

Applying laws of another jurisdiction in Western Australia enables a nationally consistent application of these laws as part of a national uniform scheme.

FINDING 6

Page 8

Clause 49(3) of the Health Practitioner Regulation National Law Application Bill 2023 erodes the Western Australian Parliament's sovereignty and law-making powers.

FINDING 7

Page 9

Clause 49(3) of the Health Practitioner Regulation National Law Application Bill 2023 is justifiable to regulate any transitional matters arising from amendments to the *Health Practitioner Regulation National Law Act 2009* (Queensland) since the passing of the *Health Practitioner Regulation National Law (WA) Amendment Act 2017*.

FINDING 8

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The second reading speech and/or Explanatory Memorandum for a bill should identify any Henry VIII clause in that bill, provide a rationale for it and explain its practical effect.

1 Introduction

- 1.1 On 28 November 2023 the Health Practitioner Regulation National Law Application Bill 2023 (Bill) was introduced into the Legislative Council. It was referred to the Standing Committee on Uniform Legislation and Statutes Review (Committee) under Standing Order 126.
- 1.2 The Committee must report by 27 February 2024.¹
- 1.3 The Bill's purpose is to:
 - repeal the *Health Practitioner Regulation National Law (WA) Act 2010* (2010 Act)
 - move Western Australia's implementation of the *Health Practitioner Regulation National Law Act 2009* (Qld) (National Law) from corresponding legislation to applied legislation.
- 1.4 The Bill's purpose is part of the Government's approach to move uniform laws previously implemented through corresponding legislation to applied legislation. This was undertaken for the Rail Safety National Law Application Bill 2023 (Rail Safety Bill).² It also reflects the Government's policy to use an applied legislation disallowance mechanism (disallowance mechanism) for amendments to the National Law to safeguard parliamentary sovereignty.
- 1.5 The Bill proposes to apply the National Law as in force on 10 October 2023,³ incorporating amendments between 2019 and 2023. Amendments after 10 October 2023 will only apply once scrutinised using the disallowance mechanism in Part 2 (see section 6). According to the second reading speech this will:

ensure interjurisdictional consistency, which is fundamental to the original intent of this national scheme.⁴

2 Inquiry procedure

- 2.1 The Committee posted the inquiry on its webpage.⁵
- 2.2 The Committee's terms of reference confine it to investigating whether a bill may impact upon the Western Australian Parliament's sovereignty and law-making powers. The Committee is not able to consider any other matter, including the policy of the Bill.
- 2.3 Accordingly, no submissions were sought.

3 Supporting documents

- 3.1 The Committee received copies of the Bill, the second reading speech and Explanatory Memorandum (EM) when the Bill was introduced into the Legislative Council.
- 3.2 Standing Order 126(5) states:

¹ On 1 February 2024 the Legislative Council suspended Standing Order 126(7) to enable the Committee to report by 27 February 2024. Otherwise, the Committee would have been required to report on 1 February 2024 due to the Joint Sitting of both Houses.

² Standing Committee on Uniform Legislation and Statutes Review, report 144, [Rail Safety National Law Application Bill 2023](#), Western Australia, Legislative Council, 17 October 2023.

³ See the discussion of the comparison between the corresponding and complementary applied approaches to uniform legislation in Standing Committee on Uniform Legislation and Statutes Review, report 89, [Gene Technology \(Western Australia\) Bill 2014](#), Western Australia, Legislative Council, 10 March 2015, pp 13-16.

⁴ Legislative Council, *Debates*, 28 November 2023, p 6617.

⁵ Legislative Council, [Standing Committee on Uniform Legislation and Statutes Review](#), Parliament of Western Australia, 2023, accessed 16 February 2024.

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

- 3.3 The Committee thanks the Minister for Health (Minister) for providing the information required by Ministerial Office Memorandum 2022/01 within this timeframe.

4 Background

- 4.1 The Committee has tabled the following reports on previous bills implementing the National Law in Western Australia:

- Report 52: Health Practitioner Regulation National Law (WA) Bill 2010 (2010 bill)⁶
- Report 109: Health Practitioner Regulation National Law (WA) Amendment Bill 2017 (2017 bill).⁷

- 4.2 Report 52 contains commentary on the background to the national scheme governed by the National Law and the Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions (IGA).⁸ Report 109 summarises the Committee's scrutiny of the 2010 bill as well as scrutiny of the 2017 bill.⁹

- 4.3 Amendments between 2019 and 2023 that are incorporated into the National Law as applied by the Bill are:

- *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2019* (Qld)¹⁰
- *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022* (Qld)¹¹
- *Health Practitioner Regulation National Law (Surgeons) Amendment Act 2023* (Qld).¹²

- 4.4 As stated in the Minister's submission to the Committee:

Of the four Acts amending the National Law which have been enacted and adopted in every other jurisdiction, WA has only passed corresponding legislation for one of those amending Acts. This means that the National Law in WA is inconsistent with the National Law in every other jurisdiction.

⁶ Standing Committee on Uniform Legislation and Statutes Review, report 52, [*Health Practitioner Regulation National Law \(WA\) Bill 2010*](#), Western Australia, Legislative Council, 22 June 2010.

⁷ Standing Committee on Uniform Legislation and Statutes Review, report 109, [*Health Practitioner Regulation National Law \(WA\) Amendment Bill 2017*](#), Western Australia, Legislative Council, 31 October 2017.

⁸ Standing Committee on Uniform Legislation and Statutes Review, report 52, [*Health Practitioner Regulation National Law \(WA\) Bill 2010*](#), pp 7-11.

⁹ Standing Committee on Uniform Legislation and Statutes Review, report 109, [*Health Practitioner Regulation National Law \(WA\) Amendment Bill 2017*](#), pp 3-6.

¹⁰ Queensland Parliament, [*Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2018 Explanatory Notes*](#).

¹¹ Queensland Parliament, [*Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022 Explanatory Notes*](#). See also Ahpra & National Boards, [*How Ahpra will implement changes to the Health Practitioner Regulation National Law: An information guide*](#), October 2022, accessed 29 November 2023 and <https://kennedyslaw.com/en/thought-leadership/article/the-health-practitioner-regulation-national-law-and-other-legislation-amendment-act-changes-to-the-national-law/>.

¹² Queensland Parliament, Health and Environment Committee, Report No. 35, 57th Parliament, [*Health Practitioner Regulation National Law \(Surgeons\) Amendment Bill 2023*](#).

The Bill seeks to remedy this by repealing WA's corresponding National Law and implementing an applied laws mechanism to adopt the National Law. This will bring WA's National Law up-to-date with the National Law current in the other jurisdictions, and make it easier for WA to stay up-to-date with future reforms to the National Scheme.¹³

5 Structure of uniform legislation

- 5.1 The Bill uses the same disallowance mechanism as the Marine Safety (Domestic Commercial Vessel National Law Application) Bill 2023 (Marine Safety Bill) and the Rail Safety Bill.¹⁴ It is therefore, also, a complementary applied scheme.¹⁵

6 Provisions that impact upon parliamentary sovereignty and law-making powers

Part 2 of the Bill - Applied legislation disallowance mechanism

- 6.1 The disallowance mechanism in Part 2 of the Bill is used to apply amendments to the National Law and the Health Practitioner Regulation National Law Regulation 2018 (Qld) (National Regulations) in Western Australia. This contrasts with the corresponding or 'mirror' legislation approach adopted in the 2010 bill and the 2017 bill.
- 6.2 The differences between the complementary applied legislation approach and the corresponding or 'mirror' legislation approach to uniform legislation were explained in the Committee's 89th report:

The main difference between these two approaches is that when an amendment is sought to be made to mirror legislation, an amendment Bill will be introduced into Parliament. This would allow the Parliament to consider and debate any changes and decide whether they are in the best interests of Western Australia. Applied legislation automatically applies any such amendments without any requirement for an amendment Bill.¹⁶

Committee comment

- 6.3 The Committee observes the Government's approach is to:
- move uniform laws previously implemented through corresponding legislation to applied legislation
 - use the disallowance mechanism to strike a balance between:
 - ensuring Western Australia remains in step with the National Law as applied in other jurisdictions; and

¹³ Information from Hon Amber-Jade Sanderson MLA, Minister for Health, provided pursuant to MM2022/01.

¹⁴ The Bill also uses a similar disallowance mechanism to the Legal Profession Uniform Law Application Bill 2021 and the Fair Trading Amendment Bill 2021.

¹⁵ This approach involves one jurisdiction enacting legislation, which is then applied in all other jurisdictions, achieving high consistency. It has the greatest impact on parliamentary sovereignty of all uniform schemes by future amendments coming into effect automatically without the requirement for an amendment Bill. See Standing Committee on Uniform Legislation and Statutes Review, report 89, [Gene Technology \(Western Australia\) Bill 2014](#), Western Australia, Legislative Council, 10 March 2015, pp 13-16.

¹⁶ Standing Committee on Uniform Legislation and Statutes Review, report 89, [Gene Technology \(Western Australia\) Bill 2014](#), 10 March 2015, p 13.

- upholding parliamentary sovereignty.
- 6.4 The Committee also observes that while the complementary applied scheme approach erodes parliamentary sovereignty by future amendments coming into effect without an amendment bill, the disallowance mechanism provides a level of parliamentary oversight and scrutiny that reduces this erosion. The disallowance mechanism ensures amending Acts and regulations will not come into effect until parliamentary scrutiny has occurred. This approach also enables Western Australia to keep pace with future changes to health practitioner regulation. The Joint Standing Committee on Delegated Legislation is able to scrutinise all relevant legislation, thus providing a level of parliamentary oversight.
- 6.5 It should be noted this is similar to the Committee’s commentary in its 143rd and 144th reports.¹⁷ The Committee also makes the same findings as in its 143rd and 144th reports.

FINDING 1

The complementary applied scheme approach to uniform legislation adopted by the Health Practitioner Regulation National Law Application Bill 2023 erodes the Western Australian Parliament’s sovereignty and law-making powers.

FINDING 2

The disallowance mechanism in Part 2 of the Health Practitioner Regulation National Law Application Bill 2023 provides a level of parliamentary oversight and scrutiny that reduces its impact on parliamentary sovereignty and law-making powers.

No review clause

- 6.6 The Bill does not contain a review clause. This contrasts with the Marine Safety Bill (clause 34) and the Legal Profession Uniform Law Application Bill 2021 (clause 256).
- 6.7 Clause 14.1 of the IGA states:
- For the purposes of the scheme, an independent review will be initiated by the Ministerial Council following three years of the scheme’s operation.¹⁸
- 6.8 The 2010 bill contained a review clause which stated:

13. Review of Act

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after 5 years have elapsed since the Act comes into operation.
- (2) The Minister is to prepare a report based on the review carried out under subsection (1) and is to cause the report to be laid before each House of Parliament as soon as is practicable after the report is prepared, and in any

¹⁷ Standing Committee on Uniform Legislation and Statutes Review, report 143, [Marine Safety \(Domestic Commercial Vessel National Law Application\) Bill 2023](#), Western Australia, Legislative Council, 8 August 2023, p 12; Standing Committee on Uniform Legislation and Statutes Review, report 144, [Rail Safety National Law Application Bill 2023](#), p 6.

¹⁸ Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions, <file:///C:/Users/ahickman/Downloads/Intergovernmental-Agreement-for-National-Registration-and-Accreditation-Scheme-for-the-Health-Professions.PDF>.

event in relation to a review under subsection (1), not later than 12 months after the requirement for the review arose.¹⁹

6.9 The 2010 bill received Royal Assent on 30 August 2010.

6.10 In the Committee's 52nd report on the 2010 bill, the Committee made observations about the review clause, including that it:

...provides that the Minister is to carry out a review of the operation and effectiveness of the Act as soon as is practicable after 5 years have elapsed since the Act comes into operation. Clause 13(2) provides that this review is to be laid before each House of Parliament as soon as is practicable [after] the report is prepared and, in any event, not later than 12 months after the requirement for the review arose. It is not clear whether the review of the Western Australian Act can and will incorporate a review of the National Scheme and the National Law and if it does, the extent to which it can effectively review these.²⁰

6.11 In its 109th report the Committee stated:

In 2014, the Ministerial Council appointed Mr Kim Snowball, a former Director General of the Western Australian Department of Health, to undertake the review.

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

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

The implementation of the COAG Health Council's/Ministerial Council response to the review is occurring in two stages. The first stage consists of the amendments to the National Law proposed by this Bill.²¹

6.12 Mr Snowball's review was undertaken pursuant to clause 14.1 of the IGA (clause 14.1 review).

6.13 The Committee asked the Minister why there is no review clause in the Bill. In response, the Minister advised that including a review clause would result in a duplication of the review role of the Ministerial Council.²² The Minister also advised that there was no statutory review undertaken pursuant to section 13 of the 2010 Act (section 13 review).

Committee comment

6.14 Noting the advice referred to in paragraph 6.13 regarding the duplication of the Ministerial Council's review role, the Committee agrees with the Minister's view that a review clause in the Bill is unnecessary.

6.15 It is unclear why section 13 was inserted in the *Health Practitioner Regulation National Law (WA) Act 2010* given the existence of clause 14.1. However, it is clear from the Minister's

¹⁹ Health Practitioner Regulation National Law (WA) Bill 2010 cl 13.

²⁰ Standing Committee on Uniform Legislation and Statutes Review, report 52, [Health Practitioner Regulation National Law \(WA\) Bill 2010](#), p 62.

²¹ Standing Committee on Uniform Legislation and Statutes Review, report 109, [Health Practitioner Regulation National Law \(WA\) Amendment Bill 2017](#), p 8.

²² See Appendix 1.

response that the clause 14.1 review supplanted, in practice, the section 13 review. This is reinforced by the fact that the 2017 bill contained amendments arising out of the clause 14.1 review more than 5 years after the commencement of the Act, as required by section 13.

FINDING 3

The lack of a review clause in the Health Practitioner Regulation National Law Application Bill 2023 is justified.

Clause 12(2)

6.16 Clause 12(2) appears to facilitate the automatic application of national regulations made before the commencement day since 2019, including any made under the following amending Acts:

- *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2019* (Qld)
- *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022* (Qld)
- *Health Practitioner Regulation National Law (Surgeons) Amendment Act 2023* (Qld).

6.17 This is because it states (bold italics added):

12. Application of national regulations as subsidiary legislation

(2) The national regulations, ***as in force from time to time*** —

- (a) apply as subsidiary legislation for the purposes of the *Health Practitioner Regulation National Law (Western Australia)*, subject to sections 13, 14 and 16 of this Act; and
- (b) as so applying may be referred to as the *Health Practitioner Regulation National Law Regulation (Western Australia)*.

6.18 The following regulations have been gazetted and tabled in the Legislative Council since 2019 and subjected to parliamentary scrutiny:

- *Health Practitioner Regulation National Law Amendment (Professional Indemnity Insurance) Regulation 2021*
- *Health Practitioner Regulation National Law Amendment Regulation 2022*
- *Health Practitioner Regulation National Law Amendment (Paramedicine Qualification) Regulations 2022*.

6.19 However, any national regulations made under the amending Acts listed in paragraph 6.16 and not listed in paragraph 6.18 may not be subject to scrutiny because clause 12(2) applies.

6.20 The Committee sought clarification from the Minister by asking:

- whether any national regulations have been made under the amending Acts and if so, whether these regulations will be subject to parliamentary scrutiny
- if yes, what mechanism will be utilised to enable parliamentary scrutiny to occur.

6.21 The Minister advised no national regulations had been made 'and as such question 2.2 is not applicable'.

6.22 The Committee brings this matter to the attention of the Legislative Council.

Clause 22

6.23 Clause 22 excludes the application of Western Australian interpretation and accountability legislation to the National Law. It states:

22. Exclusion of legislation of this jurisdiction

(1) The *Interpretation Act 1984* does not apply to the *Health Practitioner Regulation National Law (Western Australia)*.

Note for this subsection:

See the *Health Practitioner Regulation National Law (Western Australia)* section 6.

(2) The following Acts of this jurisdiction do not apply to the *Health Practitioner Regulation National Law (Western Australia)* or to the instruments made under the Law (except as applied under the Law) —

- (a) the *Auditor General Act 2006*;
- (b) the *Financial Management Act 2006*;
- (c) the *Freedom of Information Act 1992*;
- (d) the *Parliamentary Commissioner Act 1971*;
- (e) the *Public Sector Management Act 1994*;
- (f) the *State Records Act 2000*.

(3) An Act mentioned in subsection (2) applies to a public sector body as defined in the *Public Sector Management Act 1994* section 3(1), and an employee of the body, performing a function under the *Health Practitioner Regulation National Law (Western Australia)*.

6.24 Section 6 of the National Law applies the interpretation provisions in Schedule 7 of that Law.

6.25 Sections 212A, 213, 215 and 235 of the National Law apply the following Commonwealth legislation as laws of a participating jurisdiction:

- *Australian Information Commissioner Act 2010*
- *Privacy Act 1988*
- *Freedom of Information Act 1982*
- *Ombudsman Act 1976*.

Committee comment

6.26 Due to the similarity of these provisions to those in the Marine Safety Bill and the Rail Safety Bill, the Committee repeats its commentary in paragraph 7.52 of its 143rd report and paragraph 6.30 of its 144th report:

The Committee's position remains that applying laws of another jurisdiction in Western Australia, which the Parliament cannot amend, erodes parliamentary sovereignty. Nevertheless, the Committee recognises the need for a consistent application of all laws as part of national uniform schemes.²³

²³ Standing Committee on Uniform Legislation and Statutes Review, report 143, [Marine Safety \(Domestic Commercial Vessel National Law Application\) Bill 2023](#), p 17; Standing Committee on Uniform Legislation and Statutes Review, report 144, [Rail Safety National Law Application Bill 2023](#), p 8.

6.27 The Committee also makes the same findings as in its 143rd and 144th reports adapted to the Bill.

FINDING 4

The application of Commonwealth interpretation and accountability laws in Western Australia by clause 22(1) and (2) of the Health Practitioner Regulation National Law Application Bill 2023 erodes the Western Australian Parliament's sovereignty and law-making powers.

FINDING 5

Applying laws of another jurisdiction in Western Australia enables a nationally consistent application of these laws as part of a national uniform scheme.

Clause 49(3)

6.28 Clause 49(3) is a Henry VIII clause authorising transitional regulations to modify a provision of the Act the Bill is proposing or the National Law. It states:

(3) Without limiting subsection (2), transitional regulations may provide that —

(a) specified provisions of this Act or the new Law —

(i) do not apply in relation to a matter; or

(ii) apply with specified modifications to or in relation to a matter; and

(b) specified provisions of the repealed Act continue to apply (with or without specified modifications) to, or in relation to a specified matter as if the repealed Act were not repealed.

6.29 This is the same as clause 56(3) of the Rail Safety Bill.²⁴ However, unlike the Rail Safety Bill, neither the second reading speech nor the EM identify clause 49(3) as a Henry VIII clause. The identification of matters relevant to the Committee's terms of reference in second reading speeches and/or EMs should be a consistent practice across all of Government.

6.30 The Committee has previously recognised that a transitional regulation making power, despite having a Henry VIII effect, can be justified, in order to effect a smooth transition to the new regulatory scheme and acceptable by reason of its focused operation.²⁵

6.31 The Committee also notes the possibility that transitional matters may arise following the application in Western Australia of the amending Acts listed in paragraph 6.16. Accordingly, the Committee makes the following findings, which reflect those made in its 143rd and 144th reports on the Marine Safety Bill and Rail Safety Bill on similar clauses.

FINDING 6

Clause 49(3) of the Health Practitioner Regulation National Law Application Bill 2023 erodes the Western Australian Parliament's sovereignty and law-making powers.

²⁴ Standing Committee on Uniform Legislation and Statutes Review, report 144, [Rail Safety National Law Application Bill 2023](#), pp 8-10.

²⁵ Standing Committee on Uniform Legislation and Statutes Review, report 136, [Legal Profession Uniform Law Application Bill 2021 and Legal Profession Uniform Law Application \(Levy\) Bill 2021](#), Western Australia, Legislative Council, 12 October 2021, p 23.

FINDING 7

Clause 49(3) of the Health Practitioner Regulation National Law Application Bill 2023 is justified for regulating any transitional matters arising from amendments to the *Health Practitioner Regulation National Law Act 2009* (Queensland) since the passing of the *Health Practitioner Regulation National Law (WA) Amendment Act 2017*.

6.32 The Committee also makes the following finding arising from the EM failing to identify clause 49(3) as a Henry VIII clause.²⁶

FINDING 8

The second reading speech and/or Explanatory Memorandum for a bill should identify any Henry VIII clause in that bill, provide a rationale for it and explain its practical effect.



Hon Donna Faragher MLC
Chair

²⁶ Standing Committee on Uniform Legislation and Statutes Review, report 136, [Legal Profession Uniform Law Application Bill 2021 and Legal Profession Uniform Law Application \(Levy\) Bill 2021](#), p 23.

APPENDIX 1

MINISTER'S RESPONSE TO COMMITTEE QUESTIONS ON THE BILL

RESPONSE to the Standing Committee on Uniform Legislation and Statutes Review – Health Practitioner Regulation National Law Application Bill 2023

The following advice was requested by the Committee on 8 December 2023, as part of its inquiry into the Bill:

No review clause

1.1 Why does the Bill lack a review clause?

A review clause was not included in the Bill because, as part of a National Scheme, the most appropriate avenue for review of the National Law is at a national level. When the National Scheme came into effect, the Health Ministers of all participating jurisdictions and the Commonwealth, sitting as the Ministerial Council, committed to continually review and update it to ensure it continues to protect the public and meet future workforce needs. To date, 25 reviews relating to various aspects of the operation and effectiveness of the National Scheme have been undertaken.

Including in the Bill a review clause similar to the *Marine Safety (Domestic Commercial Vessel National Law Application) Act 2023* section 34 or the *Legal Profession Uniform Law Application Act 2022* section 257 (the Marine Safety and Legal Profession review clauses) would result in duplication of the review role of the Ministerial Council.

Further, the Marine Safety and Legal Profession review clauses appear necessary as those Acts apply the relevant uniform laws for the first time in Western Australia. Those review clauses would be more analogous to section 13 of the *Health Practitioner Regulation National Law (WA) Act 2010* (the 2010 Act). It is noted that section 13 of the 2010 Act and the Marine Safety and Legal Profession review clauses do not require ongoing review. The National Law has now been operational in WA for 13 years, with the Ministerial Council providing adequate ongoing review of the National Law.

The Parliamentary Counsel's Office advises that the Bill is comparable to the *Rail Safety National Law Application Bill 2023* which also does not contain a review clause.

1.2 Was a statutory review pursuant to section 13 of the 2010 Act undertaken?

There was no statutory review undertaken pursuant to section 13 of the 2010 Act.

Clause 14.1 of the Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions requires the Ministerial Council to initiate an independent review of the National Scheme following three years of the scheme's operation. Pursuant to this clause, a review of the effectiveness and operation of the National Law was undertaken at a national level by Mr Kim Snowball,

former Director General of the Western Australian Department of Health, culminating in a Final Report released in December 2014 (the Independent Review – refer Attachment 2).

The Independent Review involved an extensive consultation process spanning across all participating jurisdictions, including Western Australia. The Independent Review canvassed unique jurisdictional modifications to the National Law, including WA's mandatory reporting exemption for treating practitioners. A separate review of the corresponding legislation in WA would have been a duplication of the Independent Review.

The Independent Review was not tabled in the WA Parliament. Parliament and the Standing Committee on Uniform Legislation and Statutes Review have been alerted to the existence of the Independent Review however, through the passage of the *Health Practitioner Regulation National Law (WA) Amendment Bill 2017*. The Independent Review informed the amendments in that Bill, as outlined in the explanatory memorandum for that Bill and the Committee's 109th report.

1.3 What mechanisms are in place to review the operation and effectiveness of the amendments introduced by the 2019, 2022 and 2023 amending Acts?

The operation and effectiveness of the amendments introduced by those amending Acts will be reviewed by the Ministerial Council as part of its ongoing review role. As outlined in the response to question 1.1, review at a national level is the most appropriate avenue for review of those amendments and unique jurisdictional modifications are taken into account in national level reviews.

Parliamentary oversight of the operation and effectiveness of the National Law is also provided through section 8 of the National Law, which requires the Australian Health Practitioner Regulation Agency (Ahpra) to deliver an annual report on its activities. The annual report is to be tabled in each participating jurisdiction and the Commonwealth. Ahpra is responsible for managing the implementation of the National Law and their annual report provides a detailed account of the operation of the National Law, including extensive data and statistics. The operation and effectiveness of the amendments introduced by those amending Acts have been, and will continue to be, captured in Ahpra's annual report.

Any participating jurisdiction can identify deficiencies in the operation and effectiveness of the National Law, including as a result of those amendments, and raise proposed amendments to the National Law for consideration by the Ministerial Council. Agreement by consensus of the Ministerial Council triggers the process of review. Reviews may be conducted by Ahpra or an independent body.

Parliamentary scrutiny of National Regulations made since 2019

2.1 Have any national regulations been made under amending Acts since 2019?

No, and as such question 2.2 is not applicable.

GLOSSARY

Term	Definition
2010 bill	Health Practitioner Regulation National Law (WA) Bill 2010
2017 bill	Health Practitioner Regulation National Law (WA) Amendment Bill 2017
2010 Act	<i>Health Practitioner Regulation National Law (WA) Act 2010</i>
Bill	Health Practitioner Regulation National Law Application Bill 2023
Clause 14.1 review	Review of the national scheme undertaken by Mr Kim Snowball pursuant to clause 14.1 of the IGA
Committee	Standing Committee on Uniform Legislation and Statutes Review
Disallowance mechanism	Applied legislation disallowance mechanism in Part 2 of the Bill
EM	Explanatory Memorandum
IGA	Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions
Marine Safety Bill	Marine Safety (Domestic Commercial Vessel National Law Application) Bill 2023
Minister	Hon Amber-Jade Sanderson MLA, Minister for Health
National Law	<i>Health Practitioner Regulation National Law Act 2009</i> (Queensland)
National Regulations	Health Practitioner Regulation National Law Regulation 2018 (Queensland)
Rail Safety Bill	Rail Safety National Law Application Bill 2023
Section 13 review	Statutory review pursuant to section 13 of the <i>Health Practitioner Regulation National Law (WA) Act 2010</i>







Standing Committee on Uniform Legislation and Statutes Review

Date first appointed:

17 August 2005

Terms of Reference:

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

'6. Uniform Legislation and Statutes Review Committee

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



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