

**OCCUPATIONAL LICENSING NATIONAL LAW (WA) BILL 2010**

*Consideration in Detail*

Resumed from earlier stage of the sitting.

**Clause 8: Parliamentary scrutiny of national regulations —**

Debate was adjourned after the clause had been partly considered.

**Mr F.M. LOGAN:** I got a few words out of my mouth before we adjourned consideration in detail. What I was trying to say, before I was interrupted by the moving on of parliamentary business, was that clause 8 refers to the parliamentary scrutiny of national regulations. How does this fit with clause 165 in the schedule of the bill, which is the effect of the disallowance of national regulation? If the minister remembers what we debated in this place, taking this bill through the house in the way the minister has described it and in the way in which he is currently doing will allow the Western Australian Parliament decision making over the bill and scrutiny of the bill, including the national regulations, to make them an instrument that is disallowable by both houses of Parliament, which is effectively clause 8. If we then go to clause 165, it states —

- (1) The disallowance of a regulation in a majority of jurisdictions has the same effect as a repeal of the regulation.

That is fairly straightforward —

- (2) If a regulation ceases to have effect under section 164 any law or provision of a law repealed or amended by the regulation is revived as if the disallowed regulation has not been made.
- (3) The restoration or revival of a law under subsection (2) takes effect at the beginning of the day on which the disallowed regulation by which it was amended or repealed ceases to have effect.

Perhaps the minister will just clarify what that means in respect of clause 164, which is the parliamentary scrutiny of national regulations, and the Western Australian part of the bill, clause 8, which states —

- (3) Section 164(4) of the Schedule does not apply in respect of a regulation disallowed by a House of the Parliament of this jurisdiction.

Does that mean that if a regulation is disallowed by this Parliament, it is able to be revived anyway under clause 165, which is the effect of disallowance of national regulation?

**Mr W.R. MARMION:** Clause 8 allows us to opt out of clause 164 and clause 165 provisions. The clause 164 and clause 165 provisions provide for the normal ministerial council voting position, where regulations are tabled in Parliament, and then there is a process whereby if a majority of states disallowed it, the Parliament is able to disallow it. The opt out provision is clause 8. Subclause (3) states —

Section 164(4) of the Schedule does not apply in respect of a regulation disallowed by a House of the Parliament of this jurisdiction.

**Mr F.M. Logan:** From that, if I might ask by way of interjection, it follows then that clause 165 has no effect as well?

**Mr W.R. Marmion:** That is our understanding. We do not believe so.

**The SPEAKER:** Minister, if you are going to respond to an interjection, you need to be on your feet.

**Mr W.R. MARMION:** Yes, we believe that clause 165 is covered by clause 8 in the same way as clause 164, because clause 165 relates to clause 164.

**Mr A.J. WADDELL:** Essentially, we can opt out of changes to the act nationally. We discussed that at clause 5. This is giving us the ability to opt out of regulations. Much in the way that the opting out of the act in clause 5 put in an alternative method of new legislation to be passed by this Parliament, there seems to not be a process here by which we can go through that disallowance process, in the sense that clauses 164 and 165 refer to the normal processes of Parliament. I presume, therefore, that the Joint Standing Committee on Delegated Legislation would get normal oversight of those regulations if they were to apply, but if these do not apply, then the question I would have is: what time frames are put around these disallowance regulations? There are normally time frames from the date of gazettal to the time that a Parliament can disallow a regulation. If we are opting out of that system, there does not seem to be a methodology here by which we put a deadline on the regulation. Can we disallow a regulation from two years ago under this regime?

**Mr W.R. MARMION:** Clause 8 refers to the Interpretation Act WA, so the normal disallowance procedures would apply. I do not have a copy of that act with me. My adviser is having a quick flick through it. The

regulations would be applied in the normal way. Section 42 of the Interpretation Act 1984 is headed “Laying regulations, rules, local laws and by-laws before Parliament, and disallowance”, and states —

- (1) All regulations shall be laid before each House of Parliament within 6 sitting days of such House next following publication of the regulations in the *Gazette*.
- (2) Notwithstanding any provision in any Act to the contrary, if either House of Parliament passes a resolution disallowing any regulations of which resolution notice has been given within 14 sitting days of such House after such regulations have been laid before it or if any regulations are not laid before both Houses of Parliament in accordance with subsection (1), such regulations shall thereupon cease to have effect, but without affecting the validity or curing the invalidity of anything done or of the omission of anything in the meantime.

**Mr A.J. Waddell:** I thank the minister; that clears up that question.

**Ms J.M. FREEMAN:** I apologise to the member for Forrestfield, but I did not quite hear what the minister said. The member for Forrestfield felt that the minister had clarified the point for him. I am interested in knowing why, when the bill refers to section 42 of the Interpretation Act 1984, it outlines subsections (1) to (3), misses out subsection (4) and then goes to subsections (5) to (8). I was trying to get the usher’s attention while the minister was reading out the first two subsections so that I could get a copy of the Interpretation Act, but I have not yet had an opportunity to get a copy of that act. Could the minister explain why section 42(4) of the Interpretation Act does not apply to this bill?

**Mr W.R. MARMION:** This is quite a long section of the Interpretation Act. It is not the act that we are debating.

**Ms J.M. Freeman:** But it is an act that is being referred to in the bill.

**Mr W.R. MARMION:** Correct. I had to read that section to find out what it says before I could answer the question.

**Ms J.M. FREEMAN:** Here we go; I am being given a copy of the Interpretation Act. For the record, section 42(4), which is not referred to in the bill, states —

Notwithstanding any provision in any Act to the contrary, if both Houses of Parliament at any time pass a resolution originating in either House amending any such regulations or substituting other regulations for that which has been disallowed by either House under subsection (2), then on the passing of any such resolution —

- (a) amending regulations, the regulations so amended shall, after the expiration of 7 days —

And it goes on. Why will that subsection not apply to this bill? Perhaps I do not have the understanding of the Interpretation Act that I should have, which is a bit of a worry considering that I sit on the Joint Standing Committee on Delegated Legislation. Why was reference to section 42(4) left out of the bill when section 42 is clearly a provision for laying all regulations before Parliament?

**Mr W.R. MARMION:** My adviser and I do not have an answer to that question. We would have to take it on notice and get back to the member.

**Ms J.M. FREEMAN:** Okay. We are passing a bit of law that is all about not totally adopting a federal piece of legislation. The national legislation talks about regulations being allowed to sit in the house and going through the usual processes, and where a majority of those states in the national scheme decide that the regulations will not apply, the regulations will not apply. Instead of doing that, we are using a convoluted method of parliamentary scrutiny of these national regulations because we want the right to do that. The minister is saying that only subsections (1) to (3) and (5) to (8) of section 42 of the Interpretation Act will apply to this bill, but he cannot explain why subsection (4) is being left out. Again, it seems to me that if the intent of this bill is to give power to the Parliament, I do not understand why it does not just refer to section 42 of the Interpretation Act. I ask for clarification of that matter.

**Mr W.R. MARMION:** I can only assume that the learned advisers who drafted the bill considered that in order to disallow the regulations, they wanted it to be quite explicit that section 42 applied, and that perhaps subsection (4) is not essential to the disallowance of the regulations. That is about all I can surmise. People more learned than me have drafted the bill. My adviser said that he could find out the answer to the question within two minutes, but we are obviously tied to the bench.

**Mr A.J. WADDELL:** My good friend from Nollamara has piqued my inquisitiveness on this point, and perhaps I am not as satisfied now as I was before. It seems to me that section 42(4) of the Interpretation Act refers to Parliament’s ability to amend a regulation or to replace a regulation with an alternative regulation. This goes

back to the point I was raising earlier: are we adopting the act—yes, no, or that grey area in between? I recall the minister indicating that Parliament was entitled to adopt that grey area in between by adopting something slightly different from what has been agreed to at the national level. It seems to me that if we do adopt that grey area—if we somewhat alter the parent act in some way in terms of the way in which it is brought into schedule 2 of our legislation—then from time to time there will be a need for our regulations to reflect those changes. Otherwise, if we simply adopted the national regulations, our regulations would be out of sync with our own act and would potentially refer to items that will simply not be in our act or will miss things that are in it. We need to be able to alter the regulations if we are going to allow grey areas to come into the legislation. By not including section 42(4), it would seem that the architects of this bill really were looking at this from a black or white perspective; that is, we either adopt what has been set down at the national level or we do not adopt it. This clause removes from Parliament the ability to substitute what has been agreed to at the national level with its own regulations. That is a slight difference, but we can imagine that over time we could find ourselves in an absolute world of pain. There will probably be some poor person sitting at the State Administrative Tribunal in 2016 and going, “What were they thinking to allow the regulations to get out of sync with the parent act in some way?” I suggest to the minister that we either include a reference to subsection (4) in this clause or we revisit clause 5 in terms of clarifying the question of whether we adopt or do not adopt the national law, so that we do not have any grey area in between.

**Mr W.R. MARMION:** I am endeavouring to get to the bottom of this issue. Clause 5 relates to the bill rather than to the regulations. I get the member’s point. I have read subsection (4) for the first time. What it seems to say to me as a layman and not as a drafter of legislation is that —

**Ms J.M. Freeman:** As a minister.

**Mr W.R. MARMION:** Just as a minister. I have not read subsection (4) in the context of the other subsections. In isolation from the other subsections, it appears to allow the substitution of a different type of regulation. What the member is saying, in isolation of me reading the other subsections, is that that is what could be construed. One would hope that is not the intent, but it does appear that that could be the intent. I will have to seek drafting advice on that.

**Mr A.J. WADDELL:** Given that the minister needs to seek some advice and given that there are some grey areas here, rather than us working through tonight and passing what could potentially be defective legislation, can I suggest that we adjourn this debate? We could take it up again tomorrow after the minister has sought that advice so that we do not find that we have to amend this bill in the other place and then need to bring it back here, which would delay the implementation of this legislation.

**Mr W.R. MARMION:** I am happy to continue and for it to be amended in the other place. I think that will be the quickest way to go, because we are not going to get it through in this session of Parliament anyway.

**Ms J.M. FREEMAN:** In the application of section 42(1) to (3) and (5) to (8) of the Interpretation Act 1984, could the minister clarify whether the regulations will come before the Joint Standing Committee on Delegated Legislation to consider whether it is within the intention and meaning of the act for scrutiny?

**Mr W.R. MARMION:** That is a joint house committee and obviously that committee can look at any regulations, so the answer is yes.

**Ms J.M. FREEMAN:** Does subclause (2) give the Joint Standing Committee on Delegated Legislation the capacity to disallow regulations under section 42(1) to (3) and (5) to (8) of the Interpretation Act for any national regulations? If that is the case, what impact will it have on the national licensing law?

**Mr W.R. MARMION:** Obviously if the regulations were disallowed, which they could be, then Western Australia would have different regulations to the national licensing law, and the impact will depend on how important that regulation was.

**Ms J.M. FREEMAN:** What impact will that have on the Council of Australian Governments agreement over the national licensing law, given that the original agreement was to adopt the Victorian legislation outright and have a national law?

**Mr W.R. MARMION:** It will have no impact because the ministerial council has agreed to Western Australia adopting this methodology. However, if we went right out there in left field with a regulation, obviously the ministerial council and the commonwealth might take exception and we might have to look at it again.

**Ms J.M. FREEMAN:** I refer to subclause (3), which refers to section 164(4) of the National Licensing Law not applying. I am interested to know why section 164(4) states that a regulation disallowed under subsection (3)—effectively getting rid of (3)—does not cease to have effect on the participating jurisdiction or any other jurisdiction?

**Mr W.R. Marmion:** Is the member talking about section 164(3)?

**Ms J.M. FREEMAN:** No, I am talking about section 164(4), which discounts subsection (3), and why we retain subsections (1) and (2) and why we did not specify that the whole of section 164 does not apply. What was the intent of that?

**Mr W.R. MARMION:** We have taken a minimalist approach; basically, we wanted to keep the National Licensing Law as is. The one exception to that is section 164(4), and the majority of the ministerial council agrees that that regulation be applied.

**Ms J.M. FREEMAN:** For the record, the minister is saying that the process will then be that regulations will be made through the ministerial council, according to section 164(1), and I gather that “representing a participating jurisdiction” relates to the Western Australian minister, who, along with the rest of the ministerial council, will table regulations made under this particular schedule which makes up a law in each house of the WA Parliament, and that the minister will comply with section 164(2) as well, but not subsections (3) and (4).

If Western Australia agrees with the regulation but New South Wales, Victoria, Queensland and the Northern Territory—that is, a majority of the other states—do not agree with the regulations, will Western Australia comply with section 164(5)—as we are not getting rid of (5)? We have undertaken to comply with section 164(1). Does that also mean we are complying with section 164(5), if a majority of participating jurisdictions disallow, other than us?

**Mr W.R. MARMION:** If we approve the regulations and they are not disallowed, then we will have a different regulation from the other jurisdictions. Is the member asking about the other way around—if we have made the amendment and they have not?

**Ms J.M. FREEMAN:** No, I am sorry if I was not clear. Section 164(5) reads —

If a regulation is disallowed in a majority of the participating jurisdictions, it ceases to have effect in all participating jurisdictions on the day of its disallowance ...

We are not excluding that from our bill; we will only exclude subsection (4), which then excludes subsection (3). My question is, if we agree with the regulation, but the majority of the other states disallow, are we then going to honour that particular part of the agreement and not let that regulation through as well, even though we may agree—that is, given we are not removing section 164(5) from the legislation? My interpretation of that is that if the majority of states, other than Western Australia, disallow a regulation, we will also not put that regulation through.

**Mr W.R. MARMION:** That is a very good question.

**Ms J.M. Freeman:** I keep doing this to the minister.

**Mr W.R. MARMION:** The member does, yes! The way that I read the clause suggests that if adopted—clause 8 does not provide for when it is not adopted—and a regulation was disallowed and we wanted to allow it here, there is a conflict. However, the intent is for that not to happen. My suggestion, which I will need to seek advice on, is that perhaps clause 8(3) also needs to refer to section 164(5).

**Ms J.M. Freeman:** I do not necessarily agree with that, minister, but certainly there is a conflict.

**Mr A.J. WADDELL:** This clause deals with the regulations. Throughout part 2 of the bill references are made to the national regulations. The national regulations that are defined under section 160 of the schedule, being those that the ministerial council may make for the purposes of this law, also define the limitations around those regulations. It would seem that the effect of clause 8, in which it is suggested that WA has the ability to opt out of that process or go it alone, would mean that the regulations that are adopted in Western Australia are not national regulations; they are Western Australian regulations. I would think that would be very confusing for people who are trying to determine which set of regulations they are actually applying: are they the uniquely Western Australian regulations, which may vary slightly over time, or are they national regulations? There does not appear to be any consideration for the fact that the Western Australian regulations may drift over time and not properly reflect what is at the national level. Is there a methodology in the Occupational Licensing National Law (WA) Bill 2010 that will rectify that problem?

**Mr W.R. MARMION:** I think the member made a number of comments and asked a number of questions, and I will try to answer them together. The Western Australian law is what will apply in WA, so if we make any changes in WA, that is what the law will be in this state. It may vary from the national law that other states—except for, possibly, South Australia—are tied to under the template legislation. There could be some differences between the regulations, but the WA regulations will be the ones approved by this Parliament, so they will be the ones that will take precedence. There is no overriding national legislation.

**Mr A.J. WADDELL:** I certainly would agree with that interpretation, but the difficulty, particularly in the context of consideration in detail, is that because of the nature of this legislation, we do not get a chance to scrutinise the schedule; that has been written, it is done, and it is set in stone. But that schedule as written now does not refer in any way to the Western Australian regulations; it refers to the national regulations. Given that we are identifying that there will be two different sets of regulations—those that are uniquely Western Australian and those that are of the national scheme, albeit at day one they will be identical—we need to deal with the fact that we are approaching this bill in a way that other jurisdictions are not. We need to provide ourselves the scope to be somewhat out of sync with the rest of the nation, and we need to ensure that the schedule reflects that fact and that we do not create the ridiculous situation of having these great Western Australian regulations with a schedule that instructs people to apply the national regulations.

**Mr W.R. MARMION:** The principle is harmonisation of the act and the regulations, but we are dealing with the regulations now. The intent would be that all the regulations be the same; in effect, they would be national regulations. Hypothetically, a situation may occur down the track with a regulation for one particular trade or one particular aspect of a trade whereby we might agree to disagree with the national regulation—“we” being the Parliament of Western Australia. So, yes, we could get out of sync.

As I said before, the best way to minimise the possible damage of getting out of sync, even in terms of timing, is, if there was a change to the regulation, that there would be a delay before it was brought in in New South Wales, where the regulations will be brought in. That would give South Australia and WA a bit of time to, hopefully, approve that regulation; however, if we disallow it and the other states do not, then we will be out of sync. This bill is just a shell to set up the methodology of how the regulations will be adopted, because there are not yet any regulations.

**Dr A.D. BUTI:** Further to what my friend the member for Forrestfield has said, many times this evening—it is a mark of the minister’s character—the minister has talked about “the intention” and so forth. Yes, one may have the intention, but that intention must be reflected in the law. The minister may have all good intentions, but the law has to reflect those intentions. I think a way around the member for Forrestfield’s point is that the actual act should contain a definition of what is meant by “national law”. That definition should take into account that “national law” may mean Western Australian law, because we will have the ability to vary the national law. But, as the member for Forrestfield said, “national law” in the schedule does not reflect that at all. Surely we should provide a definition in the actual act to state that “national law” will include any law passed by this Parliament.

**Mr W.R. MARMION:** I think we are talking about national regulations in this clause. In reality, there will be eight different sets of national regulations—one for each state or territory—all harmonised. I think what the member is suggesting would complicate matters further.

**Dr A.D. BUTI:** It may complicate it, but the government has decided to go down this path. It would have been very simple if we had just said, “Okay, we’ll go through the process of adoption that every other state has done or is doing”, but the government has decided that we will not be going down that path, which automatically complicates the situation. Our laws will not necessarily be harmonised because both houses of this Parliament will have the capacity to vary the national laws and regulations.

**Mr W.R. MARMION:** That is correct, and, as the member says, that is the path we have chosen to go down. Hopefully, there will be minor instances of divergence, or there may be none, because it may be that all the ministers from all the states agree that any amendments to the regulations are reasonable, so that may not happen.

**Mr A.J. WADDELL:** As my friend the member for Armadale said, the road to hell is paved with good intentions. Assuming this bill is passed, we will have decided that we are going to be uniquely Western Australian and that we are going to do it our way.

**Mr W.R. Marmion:** As will South Australia and, possibly, the Northern Territory.

**Mr A.J. WADDELL:** Maybe others will emulate our maverick nature!

**Mr T.G. Stephens** interjected.

**Mr A.J. WADDELL:** But we are going our own way on this, and so we are saying that we want to reserve the sovereignty of this Parliament and our ability to alter in some small way or some major way what is contained in national law. Obviously, we have agreed to a national framework and obviously we are trying to stay within those parameters, but we are saying that we reserve the right. If we reserve the right, we have to therefore build into our mechanism the fact that we may exercise that right; we cannot say that we reserve the right and never build in a mechanism to exercise that right. I will give the minister one example of the problem that I pulled out at random. If the minister looks at clause 21 —

**Mr W.R. Marmion:** You will have to slow down; I haven't gotten to clause 21 yet. It's a bit like estimates committee hearings.

**Ms J.M. Freeman:** No; estimates had a time period on it, minister!

**Mr A.J. WADDELL:** That is right; the minister would have been done by now if this had been estimates!

The minister should look at clause 21(1)(g), which states —

the person is an excluded person under the national regulations;

Those words will appear in the Occupational Licensing National Law (WA) Bill. There will be regulations—the Occupational Licensing National Law (WA) Regulations. They are not the national regulations; they are the Occupational Licensing National Law (WA) Regulations. It is fair to say that if we are going to alter the path in some way, one of the areas in which we may alter the path would be to specify who an excluded person is. I do not even know what an excluded person is for the purposes of what we are discussing, but it seems to me the type of thing on which we might choose to take a different path. The act that we will have passed will state that people must comply with what is in the national regulations, not in the WA regulations. We need to alter the schedule to reflect it being the WA regulations, or the national regulations as adopted by the WA Parliament—perhaps that is the methodology that my friend the member for Armadale was suggesting as a definition. But at present the bill refers to what is going through the New South Wales Parliament; it does not refer to what is going through the Western Australian Parliament.

**Mr W.R. MARMION:** I think the member is talking about the definition. Is he talking about how we classify it so there is no confusion —

**Mr A.J. Waddell:** Yes.

**Mr W.R. MARMION:** — between what would be the national regulations and the state regulations?

**Mr A.J. Waddell:** The minister is hoping they will be the same.

**Mr W.R. MARMION:** Yes, that is right.

**Ms J.M. Freeman:** The minister is giving himself a mechanism so they will not be.

**Mr W.R. MARMION:** Possibly a mechanism. Parliament has a say. I think the member for Forrestfield summed it up perfectly. I take his point. We think this is the way to go.

**Dr A.D. BUTI:** This is an incredibly important point that the member for Forrestfield commenced. For this Parliament to be able to change the national law, it has to be built into legislation. The minister said that he hoped that does not happen but he has created a mechanism whereby it may happen. There is all likelihood it will happen at least once. The minister has to build that into legislation. It is no good saying the intention is that it will not happen et cetera. The minister has to build into the definitional structure what we mean by “national law”. I suggest that “national law” means national law as passed by both houses of Parliament. The minister has to recognise that in law. The possible consequence of the minister's legislative framework is that there will be a variation. The whole point of this legislative framework is to allow a variation. If we are going to allow a variation to take place, the minister has to build in the possible consequence that there will be a variation. It has to be reflected in the legislation.

**Mr W.R. MARMION:** It is. The bill is called the Occupational Licensing National Law (WA); “WA” is in brackets. We are adopting the national law in a cooperative approach. The national law as adopted in WA will be different from the national law as adopted in all other states. The national law in New South Wales will be the “Occupational Licensing National Law (NSW) Bill” et cetera. Ours is the Occupational Licensing National Law (WA). All the states will conceivably—certainly those with the ability, like us, to make amendments—have “national law” followed by the relevant state in brackets. Initially, and hopefully forever, it will be exactly the same. As the member for Forrestfield said, we will have the ability to change both our regulations and our proposed national law WA act so there could be a variation, but it will be under one Western Australian act.

**Dr A.D. BUTI:** With all due respect, the fact that we may have “WA” in the long title to the act does not overcome the problem that we have highlighted to the minister. The fact is it will not necessarily be the national law. In the legislative framework the minister has to allow for that. I do not see why the minister may be reticent. It will not change the purpose of the act.

**Mr W.R. Marmion:** Can the member tell me what he would like changed? I do not understand.

**Dr A.D. BUTI:** The minister needs to insert into the act and into the regulations a definition of what is meant by “national law”. I suggest it means “as passed by this Parliament”. The minister needs to expressly confirm his intention. At the moment someone picking this up may think that the national law and the regulations are national and not necessarily Western Australian laws. But they are Western Australian laws because they are

Mr Fran Logan; Mr Bill Marmion; Mr Andrew Waddell; Ms Janine Freeman; Dr Tony Buti

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laws passed by this Parliament. It does not matter if their genesis is in another Parliament; the fact they can be passed by our Parliament means it then becomes WA law.

**Mr W.R. MARMION:** It is very clear to me that it is fine as it is. If we have “WA” in brackets, it is WA law. I do not think —

**Ms J.M. Freeman:** You’re a layperson and he’s a lawyer; you said that yourself!

**Mr W.R. MARMION:** I have my other adviser up the back nodding with me.

**Ms J.M. FREEMAN:** Is the adviser up the back a lawyer? He shook his head to indicate no. For the record, the adviser up the back, when I asked whether he was a lawyer, shook his head to indicate no.

I ask the minister to clarify clause 8(2). After a reference to the Interpretation Act, it reads —

... and apply as if a regulation made under the Occupational Licensing National Law (WA) had been published in the *Gazette* on the day that it was published on the NSW legislation website under section 163(1) of the Occupational Licensing National Law (WA).

Does that mean it then kicks in and we publish it in the *Government Gazette* at that point in time? Is the publishing date in the *Government Gazette* based on the New South Wales website publishing date, or is it the publishing date that it goes into the Western Australian *Government Gazette*? The first question is: is it published in the WA *Government Gazette*? The second question is: what then becomes the date of publication, because that has impacts on disallowance?

**Mr W.R. MARMION:** The reason gazetted in New South Wales is referred to in clause 8(2) is to explain that it will actually apply from when it is gazetted in WA. It is done as though it were done through the same process as it is gazetted in New South Wales on its website. In terms of WA, the date is the date it is gazetted in WA, not the date that it is gazetted in New South Wales.

**Ms J.M. Freeman:** And will it be published in the WA *Government Gazette*?

**Mr W.R. MARMION:** Yes.

Clause put and a division taken with the following result —

Ayes (24)

Mr P. Abetz  
Mr F.A. Alban  
Mr C.J. Barnett  
Mr I.C. Blayney  
Mr J.J.M. Bowler  
Mr G.M. Castrilli

Dr E. Constable  
Mr J.M. Francis  
Dr K.D. Hames  
Mrs L.M. Harvey  
Mr A.P. Jacob  
Dr G.G. Jacobs

Mr R.F. Johnson  
Mr A. Krsticevic  
Mr W.R. Marmion  
Mr P.T. Miles  
Ms A.R. Mitchell  
Dr M.D. Nahan

Mr C.C. Porter  
Mr D.T. Redman  
Mr A.J. Simpson  
Mr M.W. Sutherland  
Mr T.K. Waldron  
Mr J.E. McGrath (*Teller*)

Noes (18)

Ms L.L. Baker  
Dr A.D. Buti  
Mr R.H. Cook  
Ms J.M. Freeman  
Mr J.C. Kobelke

Mr F.M. Logan  
Mr M. McGowan  
Mr M.P. Murray  
Mr A.P. O’Gorman  
Mr J.R. Quigley

Ms M.M. Quirk  
Mr E.S. Ripper  
Mrs M.H. Roberts  
Mr T.G. Stephens  
Mr C.J. Tallentire

Mr A.J. Waddell  
Mr M.P. Whitely  
Mr D.A. Templeman (*Teller*)

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Pairs

Mr I.M. Britza  
Mr B.J. Grylls  
Mr J.H.D. Day  
Mr M.J. Cowper

Mrs C.A. Martin  
Mr P.B. Watson  
Mr J.N. Hyde  
Mr P.C. Tinley

**Clause thus passed.**

**Clause 9 put and passed.**

**Schedule put and passed.**

**Title put and passed.**

*Third Reading*

**MR W.R. MARMION (Nedlands — Minister for Commerce)** [7.50 pm]: I move —

That the bill be now read a third time.

**MS J.M. FREEMAN (Nollamara)** [7.51 pm]: I asked my colleagues today whether we would be debating the third reading of the Occupational Licensing National Law (WA) Bill 2010 and was assured that we would not, and so I did not intend to speak to the third reading. I am not trying to filibuster or prolong what is a very important debate, but I did not get the opportunity to speak in the second reading debate because the opposition Whip was very nice and paired me so that I could go to an event in my electorate.

**Mr D.A. Templeman:** You told me you were going home!

**Ms J.M. FREEMAN:** Shush! I went to the briefing that the Minister for Commerce's very good officers gave on the bill. This bill came about because the mutual recognition process was not as effective as we thought it would be regarding the ability of people from the other states to work in Western Australia. It is worth putting on the record—I am not sure whether the minister mentioned this during the second reading debate—that one of the minister's advisers informed us that the ineffectiveness of the mutual recognition process became most apparent when builders from New South Wales and Victoria could not assist in the clean-up operation after cyclone Larry hit Townsville in Queensland and the clean-up operation was hamstrung as a result. This is an important bill that has been introduced into Parliament. I can see that the member for Mount Lawley is particularly enamoured by my speech tonight, and I thank him for his attention.

When we differ from the national legislation, we do not do it lightly. We do it only after long and protracted negotiations with the other state governments. The very important Intergovernmental Agreement for a National Licensing System for Specified Occupations was the genesis of this legislation. It is rather disappointing that we want to stand out as mavericks. We are saying that we want to play ball only if we get to choose the size of the ball and determine some of the road rules. If we are in, we in and if we are out, we are out. We are trying to have our cake and eat it too. Many times during the examination in detail stage—I can never quite remember what it is called—that is what I thought. At one stage I wrote, "Is clause 5 trying to have the cake and eat it too?" Clause 5 seems to me to be a complete misnomer in terms of what we want to do. When we raised an issue with clause 5, out of the blue—I am not sure that it was because of my brilliance because I have not been here long enough to be all that brilliant—the government said it would amend it. This mechanism is such a poor way of adopting the national law. It will cause delays and result in red tape. It will cause all the things that the national law was trying to avoid.

I told the minister earlier that I took pity on him. Clearly, I do not take pity on him now because I did not realise that we would be debating the third reading stage. I wanted to ask the minister about clause 9(1), which states —

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

Previously, we were looking at sections 42(1), (3), (5) and (8) of the Interpretation Act applying. That means that we cannot amend the regulations. Clause 8 is an adopt or do not adopt clause. However, clause 9 states that the Governor may make whatever regulations are necessary. There is complete confusion. The bill then goes on about giving effect to the purposes of the act. If the purpose of the act is a national system, we have not accorded with the purposes of either the act or the intergovernmental agreement.

I want to put some other things on the record. I read the minister's second reading speech but did not see the points I will raise mentioned in it. I will quickly go through them because they have to be put on the record. I understand that under these amendments there will be an internal review of licensing before a matter can go to the State Administrative Tribunal. I understand also that inspectors currently have a right of entry to go into any place, including people's homes. Last night when I read members' speeches, I noted that one of the biggest issues that the member for Armadale raised was that the American studies have shown that licensing may cause people to do unlicensed work in their own home. It is somewhat concerning that whereas we previously had a capacity for right of entry for inspectors, the new bill restricts the right of entry into a person's home. I understand the reason for that for privacy purposes, although I am not sure whether that is the best outcome. An agreement on that was probably reached between the states.

The bill introduces the possibility of imprisonment for breaching a licence after committing a third or subsequent offence. That is currently not the case in Western Australia. The idea of a being a fit and proper person is a time-honoured notion of many lawyers and has been replaced by personal and financial probity provisions. I am interested in the impact that will have on licensing, particularly as this legislation concerns licensing for the real estate industry. If a person qualifies and applies for a licence, the licence must be given without condition. That is interesting because during the consideration in detail stage we talked about the licences and our right to change the conditions because we have constructed the legislation so that we do not have to play ball or participate. There may be aspects and conditions to that. I understood that the whole objective of the national legislation was to not have separate conditions in each so that we would not find ourselves in a similar situation

Mr Fran Logan; Mr Bill Marmion; Mr Andrew Waddell; Ms Janine Freeman; Dr Tony Buti

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to that which Queensland faced during cyclone Larry when people from other states were unable to assist at a time of crisis because of the licensing laws.

I understand that the National Occupational Licensing Authority will be established and that Western Australia will become a delegate. The delegate will operate in accordance with the authority. The Department of Commerce, EnergySafety, and eventually the Commissioner for Consumer Affairs, will deal with real estate. I think it is to be commended that this bill has come to the house. I suppose it was telling on members of this place that we had to deal with such a bill because mutual recognition laws were not as successful as we had proposed. It brings into question the need to deal with another bill that came before us the other day. It would have been worthwhile if we had had debate on both those bills at the same time, especially for someone like me, who is still grappling with this sort of legislation. However, I stand with the rest of my colleagues in my opposition to the bill; not opposition to the intent and objects of this bill but opposition to the way in which it was introduced to the house.

It concerns me that this bill is trying to, I suppose, set things apart when really the agreement was very clear on the aspect of 100 per cent consensus, so that if at any stage we did not want a regulation or law changed, we could be part of the process of ensuring that there was 100 per cent consensus on the operation of the system under the legislation that was put before us. On that note, I thank the house for its indulgence.

**MR W.R. MARMION (Nedlands — Minister for Commerce)** [8.01 pm] — in reply: I thank the member for Nollamara for her contribution and I commend the bill to the house.

Question put and a division taken with the following result —

Ayes (24)

Mr P. Abetz  
Mr F.A. Alban  
Mr C.J. Barnett  
Mr I.C. Blayney  
Mr J.J.M. Bowler  
Mr G.M. Castrilli

Dr E. Constable  
Mr J.M. Francis  
Dr K.D. Hames  
Mrs L.M. Harvey  
Mr A.P. Jacob  
Dr G.G. Jacobs

Mr R.F. Johnson  
Mr A. Krsticevic  
Mr W.R. Marmion  
Mr P.T. Miles  
Ms A.R. Mitchell  
Dr M.D. Nahan

Mr C.C. Porter  
Mr D.T. Redman  
Mr A.J. Simpson  
Mr M.W. Sutherland  
Mr T.K. Waldron  
Mr J.E. McGrath (*Teller*)

Noes (18)

Ms L.L. Baker  
Dr A.D. Buti  
Mr R.H. Cook  
Ms J.M. Freeman  
Mr J.C. Kobelke

Mr F.M. Logan  
Mr M. McGowan  
Mr M.P. Murray  
Mr A.P. O’Gorman  
Mr J.R. Quigley

Ms M.M. Quirk  
Mr E.S. Ripper  
Mrs M.H. Roberts  
Mr T.G. Stephens  
Mr C.J. Tallentire

Mr A.J. Waddell  
Mr M.P. Whitely  
Mr D.A. Templeman (*Teller*)

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Pairs

Mr I.M. Britza  
Mr B.J. Grylls  
Mr J.H.D. Day  
Mr M.J. Cowper

Mrs C.A. Martin  
Mr P.B. Watson  
Mr J.N. Hyde  
Mr P.C. Tinley

Question thus passed.

Bill read a third time and transmitted to the Council.