OCCUPATIONAL LICENSING NATIONAL LAW (WA) BILL 2010

Consideration in Detail

Clause 1: Short title —

Ms J.M. FREEMAN: I apologise because I was not here for the debate yesterday, but I took the opportunity to go to the briefing, which I found very informative. I am interested in the way this bill is drafted. It is called the Occupational Licensing National Law (WA) Bill; yet it is not a national law as such because it is a Western Australian law that simply adopts a national law. I note that the short title of the schedule is "Occupational Licensing National Law". What is the title in the other states? Is it just an occupational licensing national law, or are other states specified in their bills? If so, how does it pertain to the fact that the government is trying to get nationally consistent laws if we are passing just a separate WA bill?

Mr W.R. MARMION: I am advised that the title in every other state is exactly the same as our title, except the brackets do not have "WA"; they have NSW, Victoria, Queensland, South Australia.

Ms J.M. Freeman: Each of the other jurisdictions has, for example, Occupational Licensing National Law (Victoria) Bill?

Mr W.R. MARMION: Occupational Licensing National Law (Victoria); Occupational Licensing National Law (Queensland); Occupational Licensing National Law (NSW); et cetera. We are all adopting the same in a different way.

Ms J.M. Freeman: As a schedule?

Mr W.R. MARMION: No; they are adopting the legislation in Victoria.

Ms J.M. Freeman: Is Victoria adopting just the schedule or is the minister saying that this law adopts the Occupational Licensing National Law (Victoria)?

Mr W.R. MARMION: Yes.

Mr F.M. Logan: They will have a very short bill that says, "For the purposes of the national licensing law, the Victorian law applies in this state." That should have been done here.

Mr W.R. MARMION: Yes. We are not doing that here because we —

Ms J.M. Freeman: Do not want a national law?

Mr W.R. MARMION: It is a national law; the national law is right there. We will have the ability to —

Ms J.M. Freeman: Not make it national.

Mr W.R. MARMION: No; the member is putting words in my mouth.

Ms J.M. Freeman: No; I'm interjecting.

Mr W.R. MARMION: The member is; I have said one word and the member is finishing the sentence for me. No; this is national law. It is exactly the same in every other state, but if down the track there is a change, the people of Western Australia, through the member for Nollamara as a member of Parliament, can have a say. I will use the example of a rigger, because I think the member for Cockburn is knowledgeable about riggers. Let us assume, hypothetically, down the track for a safety reason, the ministerial council decides that rigging is an important industry to license so it decides to bring in a licensing system for riggers. Everyone will therefore look at what legislation each state has and will agree that riggers working with a sling weight of up to, say, 60 tonnes should be licensed. However, riggers in WA can do 200 tonnes for which they have special training. If the national compliance and regulations require that riggers will be licensed for 60 tonnes, a national licensed rigger might comply with the regulations in every other state except WA, which might want a special condition. It may be able to be done under the national system, but this will give us that little bit extra protection in terms of putting a positive into it.

Ms J.M. FREEMAN: That seems to me to completely undermine the whole concept of an occupational licensing national law. I understand the Intergovernmental Agreement for a National Licensing System for Specified Occupations agreed at provision 3.5, under the heading "Operation and Scope of the Agreement", as follows —

> The national licensing system will include relevant business and occupational licences in the following initial occupation areas:

It lists first air conditioning and refrigeration mechanics, for which no licence is required in WA. It then lists building and building-related occupations, electrical, land transport, maritime, plumbing and gas fitting and property agents. I gather riggers would come under building and building-related occupations.

Mr F.M. Logan: They would do but they are not governed by this legislation.

Ms J.M. FREEMAN: That is at this point in time; they could be in the future. I understand the whole intent of the proposed Occupational Licensing National Law is to provide a national law. The whole purpose of this bill is to include additional conditions. Is it in fact a proper title for this bill if the minister is saying that at some stage in the future, by virtue of clause 5 of the schedule—we will go to that in a minute because it seems to be something the government can do without taking it to the Parliament—it can be a law that is not national. I put it to the minister that it is, therefore, in effect a misnomer to call it an occupational licensing national law.

Mr W.R. MARMION: In no way is it a misnomer; it is a national law. I will tell the member what the Council of Australian Governments agreed for a national licensing system. It did not tell us how to do it; the following are the principles —

> cooperative national legislation;
>
> national governance arrangements to handle standard setting and policy issues and to ensure consistent administration and compliance practices;
>
> all current holders of state and territory licences being deemed across to the new licence system at its commencement;
>
> the establishment of a publicly available national register of licensees; and
>
> the Commonwealth having no legislative role in the establishment of the new system.

I can tick all those principles. The methodology of what we are adopting—the process we are going through in terms of model legislation rather than template legislation—was approved by the other states to such an extent that the Victorian legislation was amended to allow the adoption of our methodology. The legislation is identical to legislation in every other state, hence it is national.

Ms J.M. FREEMAN: I am putting to the minister, given that under clause 5 of the schedule, the provisions allow amendments to a schedule that in effect —

Mr W.R. Marmion: Are we dealing with clause 5?

Ms J.M. FREEMAN: We are dealing with clause 1, "Short Title", which I say does not properly reflect the objectives in terms of what the minister has said because of the provisions in clause 5 of the schedule, which is that Western Australia can change occupational licensing laws unilaterally outside the objects and principles agreed to in the Intergovernmental Agreement for a National Licensing System for Specified Occupations. Therefore, I say that the short title, Occupational Licensing National Law, is incorrect because the government is giving itself the capacity to not act in a national manner and not act in consensus as per agreement, which requires 100 per cent agreement; not act in agreement with the objectives and principles if this government so chooses; and not act in accordance with the voting arrangements under the governance of the agreement. Therefore it is a misnomer to call it an occupational licensing national law.

Mr F.M. Logan: Correct.

Mr W.R. MARMION: No. Our title is exactly the same as the title on every other state's bill. Indeed, this is the Victorian legislation that all other states, except Western Australia, are adopting by template legislation, and it contains the definition of a participating jurisdiction.

Clause 4 of part 1 of the schedule to the Occupational Licensing National Law (WA) Bill 2010, in part, reads —

> ***participating jurisdiction*** means a State or Territory in which —
>
> (a) this Law applies as a Law of the State or Territory …

So those states or territories that have adopted it as template legislation, or —

> (b) a law that substantially corresponds to the provisions of this Law has been enacted.

That provision was put in specifically for Western Australia, and the words are "substantially corresponds to the provisions of this Law".

Ms J.M. FREEMAN: Is the minister saying to me that if he went out there to the good people of Western Australia, he could say that a national law is something that is substantially national? He could say that it is not really national; it is just substantially national. It is like saying a national company can be substantially national, not totally so. It seems to me that that, again, undermines the purpose and objectives of this legislation, which are to make sure that there are no differences across states and territories and so that people can have confidence. As I understand it, this bill is additional to the Mutual Recognition (Western Australia) Bill 2010, to provide efficiencies and effectiveness in our economy and so that people can go across states and territories. That is why a national licensing bill was brought on, not because we substantively want to do that. I ask the minister again

whether the bill fully reflects that; and, if it does, can the minister give an undertaking to this Parliament, on the basis of that title, that the intention is not to divert from this national law in any substantive manner?

Mr W.R. MARMION: This is a national law, and the purpose and intention for any state—Western Australia, obviously, is the only one that has that opportunity—should be to be uniform for every single profession. We are talking about a few professions to start with, and it is yet to be worked out what regulations will apply to those professions, but it is pointless to have a national licensing scheme if there are inefficiencies because each state starts to have a different system. The intention is that that will not happen, and, if it did, I would imagine that that will be only in exceptional circumstances. Indeed, if the member thinks about it, to actually change from the national system by way of an amendment, Parliament would have to vote on it, so members of Parliament would have to decide that this issue was so important that Western Australia would deviate from this really important principle of national uniformity. It would have to be a really important situation. To answer the member's question, the aim is for everything to be national—that is the intention.

Dr A.D. BUTI: I have a question about the short title, and my query is a bit more basic and relates to the word "occupation". I know that the Occupational Licensing National Law (WA) Bill 2010 defines the various occupations, and there is room for that list to increase, but would the minister not say that, from the occupations listed, the general intention is that they do not relate to the so-called traditional professions, such as law or medicine et cetera? I am just wondering whether the title "occupation" is a bit too generic and could be seen to be a bit misleading.

Mr W.R. MARMION: This is just a start, member for Armadale, so it is just getting the ball rolling with the professions or trades that were agreed to by all the states—all the states agreed on this to get something going. That does not preclude, obviously, as the member has read it, the adoption of other trades and professions as ministers across Australia see fit.

Dr A.D. BUTI: I think I am right in my assumption, because, for instance, the Attorney General was saying that national regulations are being developed at the Council of Australian Governments level for the legal profession.

Ms J.M. Freeman: A couple of months ago, we did one for the health sector.

Dr A.D. BUTI: So if we are going to have these separate national uniform standards for various other professions, surely they will not then be merged into this legislation; they will stay separate, will they not? If that is the case, is the name too generic?

Mr W.R. MARMION: Possibly; "occupation" is a very broad term. The member is right; professionals such as lawyers and doctors will have their own regulations. This is mainly about trades and associated occupations, say building and conveyancing—property-type trades—but, for uniformity, that is the title that everyone has adopted. If we changed the word, then we would not be uniform; we would have a different title. We are adopting a national approach, which I think is a worthy thing to do. I think the member's point is valid, but ministers have agreed on this—I was not at the meeting because I was not around then as a minister—and I think they probably made a very good decision.

Mr A.J. WADDELL: Just on that point, minister, surely we could insert the word "trades" to limit it, and still be a substantially national law.

Mr W.R. MARMION: Good try, member! But real estate agents do not consider themselves to be tradespeople, although the member might consider them to be; they consider themselves to be professionals. It was a good try, but I think that my learned ministerial colleagues from other states thought of that one.

Clause put and a division taken with the following result —

Ayes (28)

Mr F.A. Alban	Mr V.A. Catania	Mrs L.M. Harvey	Dr M.D. Nahan
Mr C.J. Barnett	Dr E. Constable	Mr A.P. Jacob	Mr C.C. Porter
Mr I.C. Blayney	Mr M.J. Cowper	Dr G.G. Jacobs	Mr D.T. Redman
Mr J.J.M. Bowler	Mr J.H.D. Day	Mr R.F. Johnson	Mr M.W. Sutherland
Mr I.M. Britza	Mr J.M. Francis	Mr A. Krsticevic	Mr T.K. Waldron
Mr T.R. Buswell	Mr B.J. Grylls	Mr W.R. Marmion	Dr J.M. Woollard
Mr G.M. Castrilli	Dr K.D. Hames	Ms A.R. Mitchell	Mr J.E. McGrath *(Teller)*

Noes (23)

Ms L.L. Baker	Mr W.J. Johnston	Mr P. Papalia	Mr P.C. Tinley
Dr A.D. Buti	Mr J.C. Kobelke	Ms M.M. Quirk	Mr A.J. Waddell
Ms A.S. Carles	Mr F.M. Logan	Mr E.S. Ripper	Mr M.P. Whitely
Mr R.H. Cook	Mr M. McGowan	Ms R. Saffioti	Mr B.S. Wyatt
Ms J.M. Freeman	Mr M.P. Murray	Mr T.G. Stephens	Mr D.A. Templeman *(Teller)*
Mr J.N. Hyde	Mr A.P. O'Gorman	Mr C.J. Tallentire	

Pairs

Mr P. Abetz	Mrs C.A. Martin
Mr P.T. Miles	Mr P.B. Watson
Mr A.J. Simpson	Mrs M.H. Roberts

Clause thus passed.

Clause 2: Commencement —

Mr W.J. JOHNSTON: I note that there is no expiry date fixed for this bill. I draw the minister's attention to the report of the Red Tape Reduction Group and its recommendation to government that all legislation that comes into the house be limited to a period of five years, or at least be subject to a review. So I am wondering whether the government has abandoned that idea and is happy to have legislation that does not have a limited life, or whether the government is going to implement a review period in some way.

Mr W.R. MARMION: The act will be subject to review after five years, and every 10 years after that. That is what has been agreed nationally, and we are happy with that.

Clause put and passed.

Clause 3: Terms used —

Ms J.M. FREEMAN: Subclause (1) states —

> For the purposes of this Act, the ***local application provisions of this Act*** are the provisions of this Act other than the Occupational National Licensing Law set out in the Schedule.

Because this is a national law, and because certain parts of this law are not in any way to be amended—in particular clause 3 of the schedule, "Objectives"—I ask for the record: is it the government's commitment that the objectives of this act will be agreed to without any amendment and that those objectives will be the ongoing objectives of this act? This bill, to which the schedule is attached, contains no objectives. So I want to be clear that these are the objectives that the government will be committed to without any substantive amendment over the course of this act.

Mr W.R. MARMION: As a stand-alone, yes, those objectives are the ones that we are adopting.

Ms J.M. FREEMAN: Given the minister's comment that this is substantially the adoption of a national law, my question is: is there any intention to substantially alter the objectives of the Occupational Licensing National Law as outlined in part 1, clause 3 of the schedule? I want it to be clear that there is no intention to substantially change the objectives, so that we ensure that this continues to be a national act.

Mr W.R. MARMION: That is a good question. The objectives are important. There is no intention to change the objectives. If we did move to change the objectives, it would be a substantial breach of this intergovernmental agreement, and I guess we would probably be pulling out of the scheme if we did that. So there is no intention to do that.

Dr A.D. BUTI: One of the main objectives that the minister mentioned last night is consumer protection, and public health and safety. If the minister is telling us that the intention is that he will comply with the national objectives, does that mean that if we were to diverge from any law that was made at the national level, that would not be a divergence that will be of a lesser standard; in other words, safety standards will not be

compromised? Under the old award system, employees were not able to contract to conditions that were less than the award conditions. In other words, is the minister putting on the record that any divergence from the objectives will not be of a standard that is less than the national standard?

Mr W.R. MARMION: I cannot categorically put that on the record, because, again, that would be up to the Parliament. I cannot pre-empt what a Parliament might do in the future. But I do not think it would ever get to that, because if there was an issue, ministers would be able to debate that at ministerial council. So I do not envisage that ever being an issue.

Dr A.D. Buti: But could the minister not insert a clause in the bill that states that any variation by this Parliament could not result in a standard that is less than the national standard?

Mr W.R. MARMION: We cannot put a clause in an act that would bind future Parliaments; and future Parliaments could change that anyway.

Dr A.D. Buti: They could. But that does not prevent you from putting that in there.

Mr W.R. MARMION: I do not know what the precedent for that is; and that would be pre-empting a parliamentary decision.

Dr A.D. Buti: But it is not unconstitutional for this Parliament to put in a clause that seeks to guide future Parliaments. It is just that it is not binding. But it can show that the intention of this current Parliament is that future Parliaments should not vary the national model to the extent that it will result in a standard that is less than the national standard.

Mr W.R. MARMION: I do not think that would be a wise provision, and I am sure the Legislative Council would not think it was a wise provision either. The Legislative Council does not like legislation that takes away the power of the Legislative Council. If the member did choose to do that, I would not recommend it; in fact, I would vote against it. The member would find that if he was successful in moving an amendment along those lines, the Legislative Council would move to strike it out.

Dr A.D. Buti: I am sure that the Council would like it to be referred to the Privy Council!

Mr W.R. MARMION: I am sure!

Clause put and passed.

Clause 4: Application of Occupational Licensing National Law —

Mr F.M. LOGAN: Can the minister explain clearly, for the purpose of this house and for the purpose of the record, how this law will apply in Western Australia? How will the application of the national law, which will be effective by way of a Western Australian law, work for the purpose of the implementation of that law in Western Australia? Can the minister be clear as to exactly how he sees it working, for the purpose of *Hansard* and future decisions that may rest on the minister's words?

Mr W.R. MARMION: The law will apply as it does now. Basically, we are just adopting the national law. If the member's question is —

Mr F.M. Logan: I just want to know how it will work. That is all.

Mr W.R. MARMION: This is setting up the framework to adopt the national law. It is a whole lot of things. How long is a piece of string? It will create the National Occupational Licensing Authority, and it will create a board over the top of that. The board will provide some direction to the national body. A CEO will be appointed. In advising the national authority, there will be a series of advisory boards for each trade. Those boards will have on them people from the unions in that area, people from that particular trade or profession, and various other learned people. They will initially advise what licensing requirements have to be met to be registered nationally. That will have to be ticked by the ministerial council. Once these trades are operational, those advisory boards will continue advising the national authority on what changes may be required in terms of licensing or an extra provision. That is the nuts and bolts of how it will run. We have adopted that. The delegation of that will happen in Western Australia. The Department of Commerce will be on the ground in Western Australia running the national scheme. The outcome then is if someone, for instance an electrician in New South Wales, comes to work in Western Australia with a New South Wales licence, it will comply with the Western Australian licensing scheme; therefore he or she will not have to come to the Department of Commerce to get another licence. That is the nuts and bolts of how it will work.

Mr F.M. LOGAN: The minister has just described how part of the national structure works. I accept he did not do that very well, but at least the minister had a go at describing how part of the national structure works. I was simply trying to identify, for the purposes of *Hansard* and for the rest of the community out there, particularly decision makers such as judges who may well look at the second reading speech and the minister's words in

Hansard, how this law is supposed to apply. How will the law apply in Western Australia? The minister started to touch on it with respect to the role of the Department of Commerce, but what is the role of the Department of Commerce? For the purposes of *Hansard*, can the minister explain how this bill works? What input do Western Australian industry occupations have to influence national standards? How do they go about it? Do they go to the Department of Commerce? Do they appeal directly to the national board? If there is a problem with the application of national standards in Western Australia, how does somebody go about addressing that issue? I gave an example to the minister earlier. I do not want to go into examples; I want to stick to the actual law. I gave an example of the application of a particular electrical regulation in Western Australia and its implications on building construction sites. We now know how that issue is addressed. That issue is addressed by way of disallowance in the upper house at the current moment. It may or may not work, but nevertheless it has been brought to the minister's attention and it may be addressed in the future. How does that work under this proposed Western Australian act? Why was it necessary for a Western Australian act to be in place supposedly to make that work? Certainly people outside this house want to know what this law means.

Mr W.R. MARMION: I drew a model.

Ms J.M. Freeman: That's good for *Hansard*!

Mr W.R. MARMION: I will try to put it in words.

Mr F.M. Logan: I think the minister better put it in words!

Mr W.R. MARMION: I think I said this, but maybe I did not make it clear: the actual licensing function will be delegated to the Department of Commerce in Western Australia. For instance, a builder will be licensed in WA through the Department of Commerce. Did the member's question relate to how it operates in terms of builders at a national level?

Mr F.M. Logan: It could be anything.

Mr W.R. MARMION: There are two ways. There is straight up through the Department of Commerce. That will inform the minister at ministerial council level. The builder may be a member of a local association or a local union which will be represented on the national advisory body. It actually says in the bill —

Mr F.M. Logan: There is an advisory committee and a licensing authority.

Mr W.R. MARMION: There will be union officials and industry bodies on that committee. The national licensing authority can be directly influenced that way. It will be appointed by the ministerial council. I pre-empt that all this legislation is set up without the commonwealth because it is not a commonwealth power. It is a cooperative arrangement between all states to make this work for the benefit of having a uniform licensing system. A builder who has a problem with the licensing system can influence change by reporting problems directly to the local department. The CEO or the building commissioner can say to the minister, "There is a real problem here. I want you to go in to bat for Western Australia at the ministerial council level." If I was the minister, I would say to that person, "We have a problem here. Make sure you tell your national association so that the advisory committee to the national licensing authority is aware of it as well." Then it goes to ministerial council and hopefully gets ticked off if there is any valid change.

Mr F.M. LOGAN: The reason I raise it is because it goes back to clause 1. The minister's second reading speech stated the reason for having this bill in the first place is that Western Australia needs to have control over its own destiny. The minister has just given a relatively clear explanation of how this bill will influence the national scheme. Clearly, we do not have any control over our own destiny. It begs the question: what are we doing here in the first place to deal with —

Mr W.R. Marmion: What does the member mean by us not having control over our own destiny?

Mr F.M. LOGAN: To have a stand-alone piece of legislation is absolutely irrelevant in terms of changing any regulation. It would have to be done at a national level anyway.

Mr W.R. Marmion: No. I gave an example of how we hope it will work. If it did not work that way and we wanted to change it, we could.

Mr F.M. LOGAN: In that case, please go on, minister, and explain to us the benefits of regulatory change for any of these occupations, that a stand-alone piece of legislation will deliver for Western Australia.

Mr W.R. MARMION: I will provide part 2 of the answer. I wanted to provide part 1 of the answer because that is how things would work hopefully in 100 per cent of situations. It will then be uniform across Australia. Let us assume the example that I have already mentioned of a rigger. A person may not be happy with a minute part of a licensing system for a particular trade. In fact a person might be halfway there. I will use my part 1 answer. Say there was a concern by a builder and we went into bat, and it was recognised by other states that yes, there is a problem. They make an amendment but it does not go quite far enough. Is that good enough for us to keep it a

national system? That proposed amendment to the regulation would go to both houses of Parliament and it would be up to the Parliament. A vote would be taken whether to disallow it or not. I cannot pre-empt what would happen. There are two scenarios. The amendment is either passed and we stay uniform with the rest of Australia, or it is not passed and we move out of step and that particular trade then has an element of its licensing that is out of step with the rest of Australia.

Mr F.M. Logan: We are back to where we started.

Mr W.R. MARMION: No. We are moving back towards where we might have started, but we are not back to where we started. Where we are now is all over the place. This would be one trade of a number of trades, with one perhaps ministerial aspect that we want, such as a higher safety standard.

Ms J.M. FREEMAN: My question goes to an aspect of the drafting of clause 4. I understand that the intention of clause 4 is to make the schedule, as attached, law in Western Australia. My question is: why did we not simply do what Victoria did—namely, adopt a whole act, which we would call the "Occupational Licensing National Law WA Act"? If the law was adopted in that way, any debate about amendments could come through Parliament. Because of the way this bill is drafted, the actual law—the substantive nature of the law—becomes a schedule. That is confusing because people believe laws are legislation, not schedules to legislation. Another issue that I see from drafting the bill in this way is that instead of actually having a piece of mirror legislation, if that is what the government intended to do, we are able to effectively amend sections in the act through clause 8. Therefore, my issue is with drafting and the intent of why it needed to be drafted in that particular manner, which to me appears to not enable the Parliament to actually do what the government wants us to; that is, be able to scrutinise—because of its need to have peculiarities for Western Australia that are not substantially different from the national law—each and every one of the schedules as outlined.

Mr W.R. MARMION: The main reason the bill was set up like this is so that the actual numbering remains the same right across Australia; therefore, if someone in another state refers to, say, section 76, it is section 76 right across Australia. That was the purpose for doing it this way, rather than simply attaching it. For instance, if we turn to the schedule, part 3, clause 53, it is exactly as it appears in other states. That is the way it was decided to adopt it here. Did that make sense?

Ms J.M. FREEMAN: No; it made no sense whatsoever.

Mr W.R. Marmion: Could you repeat the question then?

Ms J.M. FREEMAN: If we have a mirror piece of legislation that starts out as —

> **1. Short title**
>
> This Law may be cited as the Occupational Licensing National Law.
>
> **2. Commencement**
>
> This Law commences in a participating jurisdiction as provided by the Act …
>
> **3. Objectives**

We get the same numbers. The minister has actually given us different numbers because if someone needs an application for a warrant, which is clause 66 of the Victorian legislation—the Occupational Licensing National Law—we have to actually say that it is the schedule to the act; it is not clause 66, rather it is clause 66 of the schedule of the act. But let us get really confusing! Let us just say that someone is talking about clause 6 because there are two clause 6s in this bill—or let us talk about clause 8. If someone has something that says he has to comply with clause 6, he suddenly will ask, "Is that clause 6 of the act or is that clause 6 of the schedule?" That took me a bit to get used to when I was looking at a particular section in this act. For example, clause 4 states —

> The Occupational Licensing National Law set out in the Schedule, as modified to give effect to section 8(3) …

I had to ask myself whether that was section 8(3) of the act or the schedule. I looked at both parts of the bill and realised that it section 8(3) of the act. But, frankly, that does not give me the reason why the minister is doing it.

Mr W.R. MARMION: This is how it has been set up. Every state has set up the national law as a schedule so it exactly mirrors what other states have. Victoria has a preliminary short title of how it is adopted in that state and we have just, I guess, mirrored what it has done. However, I take the member's point; in fact, when I read the bill, the same thing happened to me. Therefore, I agree in that we read about, say, clause 7 but then realise that there is a clause 7 in our bit of the legislation and also a clause 7 in the national law. I understand that.

Mr A.J. WADDELL: I feel that the way we have structured the Western Australian legislation will in fact create greater confusion at a national level. If I am in New South Wales and I refer to the schedule, clause 52, one presumes that that is the same as the Victorian schedule, clause 52 and the Queensland schedule, clause 52.

However, in Western Australia it is not going to be the schedule, clause 52; it will be the schedule, clause 52 in whatever version the Western Australian Parliament has agreed or not agreed to because, as we will see later in our examination of clause 5, there is an ability for us to, for want of a better word, disallow a modification to the act in the future. If we disallow clause 52 in the future, say, when a particular term is modified, one presumes that means we will be left with the substantive, the original, version of that and, therefore, clause 52 in WA will in fact be a different clause 52 from that that would exist in New South Wales, Queensland and Victoria. Therefore, we would start to move away from the substantial element of it being a national law and we would start to become quite fragmented. People who are employers with businesses that cross state boundaries will need to ensure that they line up the current schedule from Western Australia with the current schedule for the other states to ensure that we are still word for word for word for word with what they are. How will anyone know that we have or have not adopted one of those changes that may come at a future time?

Mr W.R. MARMION: As it stands now, the schedules are all exactly the same. Hypothetically, if there was a change to a schedule, it would depend on the type of change as to whether it would make a change to all the numbering et cetera because it would depend on the amendment. However, any change would be well advertised. If someone is a tradie in a certain area and is coming to WA, I think that the various trades will know—they already do know—of the variations from state to state. If WA has a minor variation, I think the member would find that the trades concerned would know. However, yes, the member is right: it is conceivable that if the Western Australian Parliament chose down the track to make some sort of change that the schedule would change.

Ms J.M. FREEMAN: My question is again on drafting. Does clause 4 effectively make schedule 1 like a regulation or does it become substantive legislation in terms of how that operates? I am confused as to its status in this place. Clause 4 states that it "applies as a law of this jurisdiction" but then the bill goes on to deal with how we amend the schedule; therefore, it seems to me confusing that we require such a clause as clause 5 if it is applying as a law of this jurisdiction. Is it regulation or is it in fact a substantive act?

Mr W.R. MARMION: Clause 5 provides us with the ability to amend this law. I think we have talked about clause 8—that is, how we —

Ms J.M. Freeman: In regulations.

Mr W.R. MARMION: Regulations, yes.

Clause put and passed.

Clause 5: Amendments to Schedule —

Ms J.M. FREEMAN: This is the clause of which I just asked the question: does clause 4 make this law? The minister said, "Yes, this makes it law but clause 5 provides capacity to how we will amend that particular piece of legislation." Clause 4 of the Health Practitioner Regulation National Law (WA) Bill 2010, which was passed in this house some months ago, is identical to clause 4 of the Occupational Licensing National Law (WA) Bill 2010, apart from a couple of subsections. However, the health practitioner regulation bill does not make amendments to the schedule. Why are such amendments to the schedule needed? If it is law, should not any amendments to that law come before this house, and not simply be made by way of regulation, which is what this clause does? Given that the minister previously said this will be the law, amendments to the schedule are somewhat akin to changing the legislation. That has not occurred in a similar piece of legislation for the national occupational law for health practitioners.

Mr W.R. MARMION: Under clause 5 we are trying to maintain uniformity rather than amend everything. Usually, every time a change is made to mirror legislation, we would bring in an amending bill. I hope that when this bill goes to the Council, it will not disagree with this approach. This is an almost halfway house approach.

Ms J.M. Freeman: By way of interjection —

Mr W.R. MARMION: I have not finished my answer. I have not explained why we have done this yet. The member is guessing what I will say, and she is probably right, but she should let me say it anyway. My wife is like that.

Ms J.M. Freeman: You were going well before you made that comment.

Mr W.R. MARMION: She will kill me, now.

Ms J.M. Freeman: Me or your wife?

Mr W.R. MARMION: My wife.

Ms J.M. Freeman: A nagging wife. Is that what you are alluding to?

Mr W.R. MARMION: Yes, I am, but I am sure that the member will not nag me.

Under this approach, if a change is made at the national level, we can use this process to gazette the change. If the change is not disallowed, it will be adopted and so we will not have to bring in an amendment each time. We believe that this process is a more efficient way of trying to keep uniformity. Down the track, changes might be made nationally to 10 or 12 trades each year. It would be very difficult for the Minister for Commerce to keep bringing in an amending bill each time. It was felt that this was a very practical and pragmatic way of giving Parliament the ability to have some control over any changes to licensing in our state and also make it quicker to get national uniformity.

Ms J.M. FREEMAN: Is the minister saying that he will use the provisions under clause 5 when changes are made nationally? Is it the minister's intention for this provision to be used only when amendments to the schedule are generated from the national body? Is there is no intention, and does this clause not give Parliament the ability, to amend the schedule in Western Australia's own right? Is that what the member minister is saying?

Mr W.R. Marmion: I am not saying that at all.

Ms J.M. FREEMAN: Does the minister want to stand and explain it?

Mr W.R. MARMION: This provision gives the Western Australian Parliament the ability to amend the bill if it so chooses. In other words, if it were a substantial amendment, as I said before, it could break the agreement. That is what Parliaments have the right to do.

Ms J.M. Freeman: Parliaments have the right to repeal acts.

Mr W.R. MARMION: This provision gives Parliament the ability to amend the bill if it so chooses.

Ms J.M. FREEMAN: When the minister says that this provision gives Parliament the right to amend the bill, that is not correct, is it? This clause gives Parliament the right to disallow an amendment to the schedule that is put on the table, but if the amendment is not disallowed within 21 days, the amendment is deemed to be allowed. The minister could make a decision outside the national agreement that he wanted to amend the national law and he could put a motion to do that before the house. Unless the motion was disallowed, it would come into operation 21 days later. Is that the case?

Mr W.R. MARMION: If I put up an amendment —

Ms J.M. Freeman: Unilaterally, not nationally.

Mr W.R. MARMION: Not nationally. I can do that. If it is not disallowed after 21 days, it is deemed to have passed.

Mr F.M. LOGAN: Quite a number of provisions in clause 5(5) determine how the draft order will be passed, regardless of what Parliament does. Clause 5(5)(e) provides that if the Legislative Assembly expires or is dissolved, or the Parliament is prorogued, the draft order is passed anyway. That is effectively what it says. Clause 5(5) lists the things for which the draft order applies if they occur within 21 days. One of those things is if the Legislative Assembly expires or is dissolved, or Parliament is prorogued. All the draft orders could be lined up prior to calling an election and when the election was called or Parliament was prorogued, the draft orders would automatically become law. That is effectively how it operates, without any parliamentary scrutiny.

Mr W.R. MARMION: I have been advised that previous similar legislation passed through this house and is sitting in the upper house and that the Council is unhappy about it. Therefore, I foreshadow an amendment to delete subclauses (4), (5) and (6) of clause 5.

Mr F.M. LOGAN: From a parliamentary scrutiny point of view, we certainly would feel more comfortable if those subclauses were deleted.

Ms J.M. FREEMAN: I am a bit confused. Perhaps that is because I am a new member. Is it the minister's intention to amend the bill by deleting subclauses (4), (5) and (6) but not subclauses (1), (2) and (3)?

Mr W.R. Marmion: Correct.

Ms J.M. FREEMAN: Clause 5(3) states —

> A resolution under subsection (2) can originate in either House of Parliament.

Is that resolution an amendment of the act that will be debated in Parliament, just like any other amendment? Will that amendment include an amendment to the schedule and will it be debated in this place just like any other amendment to an act?

Mr W.R. MARMION: It means that the approval of an order could start in either the Assembly or the Council but would not be automatically approved after 21 days.

Ms J.M. FREEMAN: The minister is saying that he will move an amendment to delete subclauses (4), (5) and (6). The Governor can issue an order to amend the Occupational Licensing National Law set out in the schedule—the schedule is the substantive legislation—and that order will be published in the *Gazette*. Subclause (2) states —

> An order cannot be made under subsection (1) unless a draft of the order has first been approved by a resolution passed by both Houses of Parliament.

Can the minister explain to me, because I have been in Parliament for only two years, what is meant by "resolution"? Does that mean an amending bill will come before Parliament and therefore will be first and second read and that we can go into consideration in detail?

Mr W.R. MARMION: It comes through from government as an order to be approved, like a motion, so it will be voted on by the house. There will be a vote on that particular order of the government.

Ms J.M. FREEMAN: Can the minister give me an example of where we have done that before? I still do not understand. If it does not lay on the table for 21 days, how do we get notice of that order? Do we have to listen to the Clerk very carefully to make sure that we pick it up when he gives his very concise outline?

Debate interrupted, pursuant to standing orders.

[Continued on page 9498.]