

OCCUPATIONAL LICENSING NATIONAL LAW (WA) BILL 2010

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 5: Amendments to Schedule —

Debate was interrupted after the clause had been partly considered.

Ms J.M. FREEMAN: Before the debate was interrupted for question time, the Minister for Commerce had advised the house that it is the government's intention to amend this bill by deleting subclauses (4), (5) and (6) of clause 5. The minister outlined to the house that an order would come before the house. My question is: will that be by way of a substantial amendment, so that it will come in as a bill with an amendment to the schedule that can be debated in the house; or, if not, how will an order be able to be debated in the house so that the house will be able to apply the parliamentary scrutiny that the minister says is at the core of the reason that we are having a separate Occupational Licensing National Law for Western Australia?

Mr W.R. MARMION: I have been advised, because I have been in the Parliament for only the same length of time as the member for Nollamara, that this process was brought into the house by the previous government —

Ms J.M. Freeman: Sorry. You will have to speak up, minister. I cannot hear you.

Mr W.R. MARMION: The process for amending uniform legislation in Western Australia by order —

Ms J.M. Freeman: Sorry, minister. I still cannot hear you.

The SPEAKER: Members! I instruct members in this place who are having other conversations that they are restricting the business of this house. I would appreciate the member for Nollamara being able to have her question answered, if the minister is able to do that. So if members are having other conversations in this place, please take them outside.

Mr W.R. MARMION: Thank you, Mr Speaker. The process for amending uniform legislation in Western Australia by order of the Governor was implemented for the uniform Consumer Credit Code in 2002 by the Labor government. The process in subclauses (1), (2) and (3) of clause 5 is based on the process set out in the Consumer Credit (Western Australia) Amendment Bill 2002. The process would be that an order would come to the house, and it would be voted on. I understand that quite often bills to implement uniform legislation are referred to a committee. But it is actually in the control of this house, because the bill then comes back to this house.

I have some further information in relation to what has happened in South Australia. This is hot off the press. South Australia is going to bring in its national licensing legislation in the same way as we are doing today. So, South Australia will have the opportunity to amend regulations. South Australia basically likes our process, and it has chosen to have a process under which it can disallow national regulations too. South Australia has come on board with us and is basically implementing the legislation in the same way as we are doing. I am not sure whether South Australia has chosen to delete these subclauses. I am advised that South Australia does not have these subclauses in its bill. I move —

Page 3, line 18 to page 4, line 10 — To delete the lines.

Ms J.M. FREEMAN: The minister made the comment that South Australia is going to do the same thing as we are doing in this state. It seems to me that by outlining this, we are being the thin edge of the wedge. The minister said that South Australia wants what we have got. Can the minister put on record that that is exactly what he knows, and that that has come from their debate? It seems to me to be somewhat concerning that the minister makes these assertions in *Hansard*, on the record, when that may not be the case. Equally, the minister said that, as he understands it, South Australia has none of clause 5; South Australia does not have subclauses (1), (2) and (3). Therefore, if the minister is saying that his position is right, I cannot understand why we need subclauses (1), (2) and (3) and will amend clause 5 to remove only subclauses (4), (5) and (6). Why does the minister not simply remove clause 5 as an amendment so that changes to the legislation will come in to this place as a substantive amendment to the act, which is by law the schedule as attached to this particular bill?

Mr W.R. MARMION: I have only just received information that, apparently, this legislation is going through the South Australian Parliament right now. South Australia's upper house amended the template legislation this morning to provide the ability for the regulations to be tabled and disallowed. It is not exactly the same; we have an order but it will be able to disallow the regulations.

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

Mr W.R. MARMION: Sorry—that should be amend the schedule by regulation.

Ms J.M. Freeman: Is that amend the schedule by regulation?

Mr W.R. MARMION: That is correct; yes.

Ms J.M. FREEMAN: Amending the schedule by regulation means that the schedule effectively becomes a regulation and then there will be regulations on top of that. That is not what we are doing. When we debated clause 4, I asked the minister whether the schedule to this bill effectively becomes regulations. The minister did not say no—because no-one ever says “no” or “yes” in this place—but that it applies as a law of this jurisdiction. Therefore, the schedule applies as a law to this place and the minister is now removing the provision in subclauses (4), (5) and (6) as per how regulation used to get amended, so we will now simply amend it by order. Why do we need to amend the schedule in any other way? If this is law, why do we not amend the schedule as a bill that comes into this house with amendments so that it can be substantially argued, go to consideration in detail—which we are doing now—and we can have the proper discussions around it? Is the minister saying that he has been wrong at this last minute? We are already in this place with a bill that has come before us in a very short time that a lot of us have had to get on top of in a very short period and suddenly the minister is saying, “Oh, yes, you’re right; they probably won’t accept that in the other place so let’s get rid of subclauses (4), (5) and (6)”! Why does the minister not simply get rid of clause 5 altogether?

Mr W.R. MARMION: No, because we will not have the ability to amend the schedule by order if we want to. That is the reason; otherwise, if we get rid of all of clause 5, we will not have the ability to amend the schedule.

Ms J.M. FREEMAN: Minister, that cannot be right! The minister told me that the schedule applies as a law of this jurisdiction and so applies as part of the act. I asked the minister about that in the debate on clause 4. I asked the minister whether the schedule was a regulation and he said that it applies as part of this act. If we wanted to amend the schedule, let us say that the minister agrees with me and gets rid of clause 5, do we not simply then bring in a bill —

Mr W.R. Marmion interjected.

Ms J.M. FREEMAN: It is all right—the minister can stand later.

Do we simply then bring in a bill that will amend the act and in amending the act we amend the schedule?

Mr W.R. Marmion: Yes.

Ms J.M. FREEMAN: I am completely confused now as to why the minister wants to have amendments made by order and not by the proper process of this place whereby legislation is amended by a substantive bill in this house. The minister read to me that we can amend —

Mr W.R. Marmion: I have already given the answer to this in a great big discourse to the member for Armadale’s question on this.

Ms J.M. FREEMAN: No—the minister has come into this place and changed something at the last minute. Frankly, that has made me completely suspicious about what he is doing, given that I just very quickly raised an issue and suddenly the minister said, “Yes, you’re right; let’s amend it.” What is going on in this place? The minister’s amendment will remove subclauses (4), (5) and (6), which would have been used to basically lay an order on the table for us to disallow it, and now we will just go to an order. Can the minister tell me where it will appear on the notice paper, how it will be debated, what will be the opportunity to vote against it and will it be examined in detail?

Mr W.R. MARMION: Yes, the order will go on the notice paper, so members will see it listed on the notice paper, it will become an order of the day and it will come on for a vote and discussion.

Ms J.M. FREEMAN: Therefore, it will come on for a vote, but will it come on for debate? Will we be able to debate the substantive change to an act as we would if it came in as a bill?

Mr W.R. MARMION: I have never been involved in this situation, but I would imagine —

Ms J.M. Freeman: Clearly, minister!

Mr W.R. MARMION: Nor has the member!

Ms J.M. Freeman: No, clearly!

Mr C.J. Barnett interjected.

Mr W.R. MARMION: Thanks for that interjection, Premier!

The situation would be that if the order came on, there could be discussion on it so, obviously, we could talk about it and the opposition could disagree with it or members on this side could agree with it. Then it would be put to the vote, so it is the same as —

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Ms J.M. Freeman interjected.

Mr W.R. MARMION: Can I finish? Can I do this, too!

It would be on the notice paper for discussion and following the discussion it would be voted on. What could be simpler than that?

Ms J.M. FREEMAN: Can the minister show me where the standing orders talk about discussion? I know that the standing orders talk about debate, movers, seconders and how we go into the first and second reading stages, but I do not see anywhere in the standing orders that goes into discussion and how we can sort of get on and discuss something. Can the minister show me where discussion is in the standing orders?

Mr W.R. MARMION: No, I do not have a copy of the standing orders with me. However, it would go on the notice paper for debate like everything else goes on the notice paper—anything can go on the notice paper—and then Parliament has the opportunity to debate it.

Mr A.J. WADDELL: Items that go on the notice paper merely appear on the notice paper. There are items on our notice paper today that have sat there since the beginning of sitting this year.

Mr W.R. Marmion: Orders of the day.

Mr A.J. WADDELL: Yes, but what is the opportunity to actually raise something from the notice paper? It is all fine from where the minister is sitting, essentially he gets the opportunity to go to Council of Australian Governments meetings to discuss what regulations or changes to the act will occur and he gets his two cents' worth in at that time. One presumes that should the minister wish something to change that he would obviously have the government's ear to bring a debate on in this place. However, for those of us who sit on this side of the chamber, there is no ability to bring on an item; to lift any item off the notice paper. There has to actually be a process whereby that debate will actually occur; if it is just going to sit there, it is just going to sit there. I suppose what the member for Nollamara is trying to get at is: what is the formal process by which we will have the debate about these amendments that will invariably occur to this act in the future? Would it not simply make more sense rather than to create a convoluted new approach to this one particular piece of legislation to say, "Here is an act that has a schedule. The schedule needs to be altered. We're just going to bring on an amendment to alter it like we do every other piece of legislation." Why does there need to be a different approach for this legislation from every other piece of legislation?

Mr W.R. MARMION: I think I answered that in response to debate on the previous clause. I will repeat the answer that I gave before. There is likely to be down the track a number of trades and a whole pile of licensing requirements around those trades involved. If the ministerial council chose to change the licensing requirements for one of those trades—I am theorising at the moment—which could happen two or three times a year, we would have two or three amendments to make to the schedule every year. Therefore, we have a choice: we can bring amendments in, as the member for Nollamara suggests, in the normal way or we can come up with a system that might be a little more streamlined in that. This is a system that I have been told—I was not around this place in 2002—the previous Labor government brought in and it sounds like a pretty sensible system to me. An order by the Governor is brought into the house and made an order of the day. If it is an order of the day, it will be dealt with during the day's sitting. Indeed, the relevant minister would want to make it an order of the day; if he or she does not make it an order of the day, it will never happen, the same as if it were an amendment. If a member does not bring forward an amendment, it will never happen. The minister will seek an order from the Governor, the order will be brought to the house, and the minister will hopefully do it very promptly, because the longer he or she leaves it to put the order on the table, the longer it will take to become part of a national regulation. That is the difference between clauses 4 and 5. Clause 5 provides the opportunity to put an order on the table. I have just moved an amendment to delete subclauses (4), (5) and (6), which would have provided for further streamlining. If the order went on the notice paper and, after 21 days, it had not been dealt with, it would be automatically approved. The amendment will get rid of that provision, and there is a reason for doing so. In similar legislation that was recently passed in this house and transmitted to the Legislative Council, amendments were moved in the other place to delete those provisions. We could leave those provisions in this legislation, but my advisers are happy for them to be deleted in this place, so we do not have to worry about them being changed in the other place. I hope that provides an answer for the member.

Dr A.D. BUTI: I do not want to labour this point; the minister is being very courteous and trying to be as straightforward as possible, but I am a little confused now. Can we just go back a bit? As I said last night, the whole idea of this legislation is to have a national scheme and streamline the process as much as possible. In many respects, it fits into the mutual recognition system, although there are, of course, differences. That is fine. The minister has agreed to this at the ministerial level, but Western Australia wants to be slightly different and to have the ability to scrutinise its own laws.

Mr W.R. Marmion: It won't be different in the way it's implemented.

Dr A.D. BUTI: Yes, it is more about the process. We do not necessarily want different standards, although that is a possibility with the process. Today, after questioning by the member for Nollamara, the minister, just like that, struck out subclauses (4), (5) and (6), without any real explanation. I now wonder about what thought has been put into the drafting process if the minister can, with the stroke of a pen during consideration in detail, say that these provisions are no longer needed. The member for Forrestfield asked how we can then have the ability to scrutinise the laws. The whole purpose of being different from the other jurisdictions was for this house to have the ability to scrutinise the laws. As it sits at the moment—please correct me if I am wrong—it will be completely controlled by the government of the day, or the party or side that has the most numbers, which, of course, is the government of the day, generally. I do not really see how the house can scrutinise laws through this process. It really comes down to a situation in which the government of the day can completely control the agenda and there is no liberty for the house, as a whole, to scrutinise. If I have that wrong, I would love the minister to explain why, and to provide greater justification for making this quite significant stroke of the pen.

Mr W.R. MARMION: I think there are two questions there; I can usually deal with only one question at a time, but I think I can remember those two! The main question was about subclauses (4), (5) and (6) and why, at the last minute, it is proposed to strike them out. I can see why it would be of concern to the member if the government did that unilaterally. The advice the Legislative Council received on a similar bill was that provisions such as those in subclauses (4), (5) and (6) are contrary to the Constitution Acts Amendment Act. We have advice that it is not, but this is not a die-in-the-ditch issue. It would be nice to make quite clear what happens and to know that orders can be approved within 21 days. As a minister, one wants legislation to go through, but it is not a die-in-the-ditch issue. My advisers have said that they are happy to see to it, so I am happy to do that in the same situation. The member for Nollamara wanted some clarity, and as we are debating it, it is probably a prudent thing. It is not essential to have those provisions, given that it is very likely that, if this bill is passed as it is and goes to the Legislative Council, given the precedent set last night, the Legislative Council will again come to the conclusion that it came to last night—that subclauses (4), (5) and (6) may be inconsistent with the Constitution Acts Amendment Act. What was the member's other question?

Dr A.D. BUTI: By removing those subclauses, are we actually decreasing the ability of the house to scrutinise the legislation? Subclause (2) provides that an order cannot be made under subclause (1) unless a draft of the order has first been approved by resolution passed by both houses of Parliament. How does that actually allow us to scrutinise legislation?

Mr W.R. MARMION: We are actually increasing the ability to scrutinise because it will not be possible to pass legislation by default—for example, by members forgetting to disallow legislation or ministers forgetting to bring on legislation. The fact that it is an order means that it has to be passed; it cannot just sit in the house and, after 21 days, be deemed to have passed. It has to be voted on; Parliament actually has to vote, a division can be called, and the numbers can be counted.

Dr A.D. BUTI: So it is not different from any other piece of legislation. Is the minister now saying that the process is no different than for any other piece of legislation?

Mr W.R. MARMION: Not quite. It will not go through first reading, second reading, consideration in detail and third reading; it is just a simple order.

Ms J.M. FREEMAN: I have a green bit of paper and the minister has a pink bit of paper with all the daily business on them. Will the order appear on those or on the white orders of the day?

Mr W.R. MARMION: My advice from the highest level is that that is up to the Parliament; we have no control over that.

Ms J.M. FREEMAN: Will it be laid on the table? Will it be just one change, amendment or order that changes a particular aspect? For example, it might be an amendment to division 4 of part 2 of the schedule. Clause 24, "Failure to decide an application", reads —

If the Licensing Authority fails to decide an application for a licence within 120 days after its receipt, or the longer period agreed between the Authority and the applicant, the failure by the Authority to make a decision —

Mr W.R. Marmion: What is the member referring to?

Ms J.M. FREEMAN: I am just trying to give an example of what I am trying to understand. It is division 4 of part 2 of the schedule, clause 24, "Failure to decide an application". In this case, that failure —

Mr W.R. Marmion: I am sorry, clause 22?

Ms J.M. FREEMAN: No, clause 24, which states —

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If the Licensing Authority fails to decide an application for a licence within 120 days after its receipt ... the failure by the Authority to make a decision is taken to be a decision to refuse to grant a licence to the applicant.

If the minister wants it to default the other way because of Western Australian red tape, laws and things like that—in which case a failure to make that decision means that the applicant has his licence, not that he does not have his licence—and because he thinks that that is onerous and difficult and allows departments to become lax in those matters, he would bring in a change to that schedule. Hopefully, he would take it nationally and discuss it with the other states and territories. He would then bring that to this place in an order. Would that come as a single order, or could the minister decide at the same time that he wants to look at the schedule, part 4, clause 76, “Securing evidence”, and change that as well? My question is: will the order be one thing at a time or can it be multiple orders?

Mr W.R. MARMION: My advice is that it could be one order or it could be multiple orders. If the ministerial council was dealing with three or four matters, I think it would be prudent to bring on all four matters as one order. I guess the next question would be: if it was all brought on as one order, could we pass three of them and not the other one? I guess that would be right. It would come on as one order, but the proposed amendments would have to be listed.

Ms J.M. FREEMAN: But they are not amendments, because we have already ascertained that they do not come on, in the normal course of procedures, as amendments. Therefore, we could have four things that amend those particular sections. What I want to know is: do we have to vote against the complete order of the Governor or can we accept part of the order and not other parts of the order? Then, how does that mean it is an order? It changes the nature of the order from the Governor, so to speak.

Mr W.R. MARMION: My advice is that we could get approval from the Parliament to pass part of it, so the Parliament would decide. Let us say there were three proposed changes to the schedule as an order. My advice is that Parliament could agree on two and maybe not the third.

Ms J.M. FREEMAN: One of those areas that I outlined just now changes a fundamental aspect of a particular process. I am referring to the schedule, part 2, clause 24, “Failure to decide application”. What mechanism is there for that to be laid on the table for the usual period? That is a substantial change to an act. I am not suggesting that the government is going to do that. However, if we had an amendment, the government would go through the normal process. There would be the first reading and the second reading, and then the government would have the legislation laid on the table. My first question is: what calls us to know that that order is there? Will the minister stand and make the Parliament aware of it, or do we simply have to be cognisant of what will come before us under the notices and orders of the day? My second question is: do we know what period of time we will have to consider these orders? We may be in a situation in which something like that could be a substantive change—it may be a good change or a bad change—and we need to talk to industry about it.

Mr W.R. MARMION: That is a good question. The minister could bring it on as an order of the day without notification, I guess, and that is the member’s point. She would like to consider the matter and get feedback. The member’s question is: could the minister or Parliament bring it on as an order of the day and would the house have to vote on it? The answer is that the minister or Parliament probably could.

Ms J.M. FREEMAN: If the objective of dealing with this Occupational Licensing National Law in the manner in which the government is doing it is to give the Parliament a capacity to accept or not accept national things based on some peculiarities with Western Australia taking on national laws, does not making a change to this legislation through an order in effect undermine what the government’s objective is by doing this in the first instance? Is the government not trying to say that we have the right, as a parliamentary democracy in Western Australia, with issues that affect the Occupational Licensing National Law, to be able to assess whether that is absolutely what we need in this state; or, if we have a peculiar situation, we have a right to have something that particularises occupations or imposes certain conditions, and the minister has used examples? Does that not mean that by doing it in this manner, which is an order of the day that could come on straightaway without the capacity for the house to be able to understand and debate it, it makes people suspicious and undermines the purpose of having uniform laws and having a situation in which people can make informed decisions that, at the end of the day, are for the good of the people and the consumers who will have these laws? It also undermines the government’s objective in the first instance by doing that. It seems to me to be inconsistent with what the government is trying to achieve.

Mr W.R. MARMION: This is amazing. It reminds me of when I was young and I had an argument with my sister.

Ms J.M. Freeman: So far I have been your wife, and now I’m your sister!

Extract from Hansard

[ASSEMBLY — Wednesday, 24 November 2010]

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Mr W.R. MARMION: After 10 minutes, I would get her on the other side. Suddenly, it would swing around and she would be arguing against what she was arguing for in the first place.

Point of Order

Ms J.M. FREEMAN: I asked a serious question. I do not need to be belittled. Once I was belittled by being his wife. Now I am being belittled by being his sister. She is probably a really nice lady, but in the context in which the minister put it, it was as though I was a nagger. Now he is putting it as though I am just causing dispute for the purposes of dispute. Frankly, even if it is not a point of order, I want to say to the minister that I take offence.

The ACTING SPEAKER (Mr J.M. Francis): It is not a point of order.

Debate Resumed

Mr W.R. MARMION: I apologise if the member took offence. The situation is that a minute ago, or an hour ago, the member was saying that we should have template legislation whereby the Parliament does not have one opportunity at all to —

Ms J.M. Freeman: No, minister, you're misrepresenting what I'm saying.

Mr W.R. MARMION: Mr Acting Speaker, can I finish what I am saying?

Ms J.M. Freeman: I'm saying that if that is what you are intending, you are undermining —

Mr W.R. MARMION: An hour ago the member for Nollamara was saying that we should have template legislation whereby a ministerial council can vote on an amendment, and it automatically applies as law in Western Australia. Now the member is saying, "Well, hang on. We want to have more scrutiny of the order."

Ms J.M. Freeman: No, I'm saying that that is what you intend, and that's what you're undermining by what you are doing in terms of the order. Doesn't that seem inconsistent to you? If your intention is that we have greater scrutiny of what's coming through, doesn't the fact that you are undermining that by placing it into an order undermine your intent in the first instance?

Mr W.R. MARMION: No.

Ms J.M. Freeman: I believe in a national law. I have no quibbles about that, sir—none whatsoever. What I'm saying is if that's what you intend, you are misleading the house, because that is not what this does.

Mr W.R. MARMION: No. I think this is a prudent way to go. I think it gives the Parliament an opportunity to scrutinise any amendment by order. I have made a concession, because I think I would have to, anyway, to the upper house, that it does not automatically become an order in 21 days. Parliament has to vote on it. It would have voted on it anyway, but if it had not voted on it in 21 days, it would have been approved. So I think this is a very good way to go, and a good outcome.

Ms J.M. FREEMAN: Will the minister please tell me where the scrutiny is? I need to know, and the minister needs to put firmly on the record, where the scrutiny of the order is. The minister has told me that a minister can bring it in on the day, without consideration of what it is and without laying it on the table for any other purpose. Suddenly, very complex laws about licensing, which, frankly, are areas that many of us are not familiar with—I am not professing to understand licensing laws—are put before the house. The minister can just bring it in and say, "Adopt it." The minister is saying that the objective of this legislation is to make sure that we do not have situations in which it is a question of just "adopt this". Therefore, I am saying that the minister should show me where the scrutiny is to achieve the objectives of doing this.

Mr W.R. MARMION: It is a hypothetical question, but it is likely that if there were a contentious order the relevant minister would talk to the Leader of the Opposition and negotiate. If the opposition wanted to consult, then I am sure a reasonable minister would allow that. That is the way it would work. At the end of the day, the Parliament would vote. I imagine if a minister continually did not allow that, he would be reasonably unpopular. There may be an emergency situation and from a safety point of view we wanted to fast-track an amendment. There could be a problem with insulation and people killing themselves—who knows, we might want to fast-track that.

Ms J.M. Freeman: They are not licensed in Western Australia

Mr W.R. MARMION: The way the process would normally work is that the minister would talk to the Leader of the Opposition, get agreement and run it through.

Ms J.M. FREEMAN: Let me put on record that I believe the Minister for Commerce is a reasonable minister. I believe that the minister would do that. I believe that, in the circumstance in which I discussed some planning laws with the Minister for Planning, he was a reasonable minister. However, I sit in question time, as does the

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minister, and I hear the accusations flying across the chamber about ministerial conduct of members from both parties. As a new member of Parliament I do not have great faith in “reasonableness”. If the minister included a definition of “reasonableness”, and the bill stated that a resolution is made in a “reasonable” manner and we were able to debate what constitutes a reasonable manner until we were all satisfied and we could all go home, I would be happy with that. However, it is not enough for the minister to put on record now that he thinks everyone is going to be reasonable, because he and I both know that we have sat here and listened to what at times is very distressing debate in this place from both sides of Parliament. I put on record that I do not think the minister should do it this way; it should be a national law and then the minister can negotiate at a national level where we can be assured 100 per cent that consensus is reached and the minister has to act and play on the same playing field as other people. I have already put that on record. But if it is the minister’s intention that Western Australia can unilaterally scrutinise and change national law or have a capacity to change that law, then doing that by order without laying it on the table and going through that process means that the minister is not allowing the people who are elected in this place to properly scrutinise that legislation.

Amendment put and passed.

Ms J.M. FREEMAN: Subclause (2) states that an order cannot be made unless a draft has been approved and a resolution passed by both houses of Parliament. Can the minister clarify that the order will come to both houses of Parliament; the Minister for Commerce will deal with this matter in this place and a parliamentary secretary will deal with this matter in the other place, and it will be listed on both of those notice papers and come up for debate in both chambers?

Mr W.R. MARMION: The minister representing me in the other place is Hon Norman Moore; he would deal with it in the other place.

Mr A.J. WADDELL: The other place tends to refer legislation off to various committees, such as the Standing Committee on Uniform Legislation and Statutes Review or whatever other committee might be appropriate. I would expect that a national law would come under the auspices of the uniform legislation committee. Does the minister see that the mechanism that was developed, whereby we simply pass a motion, will enable the other place to refer matters to the uniform legislation committee?

Mr W.R. MARMION: That is correct. It is my understanding that just about all bills are referred to committees. The history has been—certainly in the case of the consumer credit legislation—that bills have all been referred to a committee, so there is a high probability that in this case the same would apply.

Dr A.D. BUTI: Further to that question and the minister’s answer, last night we talked about delay, and the minister’s answer now raises the chances of major delay. If the other place refers the bill off to a committee as a matter of customary practice, there will be a major delay, and there is a very good chance that our laws will not be in sync with the national laws for an extended period of time.

Mr W.R. MARMION: The member is correct. The upper house committee has 30 days in which to consider legislation. The other way we could get around that is if the minister from Western Australia, and possibly also South Australia, said they had a process to go through. We could suggest to the ministerial council that maybe the implementation date be, say, 45 or of 60 days’ time to allow for the order to go through our respective Parliaments. There would be a mechanism for that, and most ministerial council ministers get on quite well, so that could be a compromise when a resolution is made at ministerial council.

Ms J.M. FREEMAN: The minister said this is what happened with the consumer credit legislation. In the two years of this government has an order come before this chamber on the consumer credit legislation and then gone off to the Standing Committee on Uniform Legislation and Statutes Review in the other place, or has such an order gone only to the other place and off to the uniform legislation committee? Does that mean the other place does not have the same amendments to the schedule?

Mr W.R. MARMION: The consumer credit legislation has been transferred and is a national law, but when it was a law of the state my adviser is not sure whether that occurred in the past two years. However, the order would be the same in the Assembly and the Council, and obviously it has happened with a number of other bills. I refer the member to subclause (2) which reads —

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.

Ms J.M. FREEMAN: Can I clarify that the minister has said that the consumer credit legislation he is relying on is now obsolete and is now a national law? Therefore, this will be the only piece of legislation. It is certainly not the case with the national health practitioners’ regulation national law that was put through. The piece of legislation the minister is relying on to show member how this will operate is now obsolete and is a national law.

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Mr W.R. MARMION: I am not sure of the member's question. The Australian Consumer Law, which we debated last night, has the same provision, so there is a current law in Western Australia—or a bill is going through. I did not hear a specific question, only the member's commentary.

Ms J.M. FREEMAN: When I asked the minister whether an order had come into this place in the past two years, the minister said it is no longer operable because we have a national law.

Mr W.R. Marmion: What is the member's question?

Ms J.M. FREEMAN: When I first asked the minister how and why this operates, he used the consumer credit law as a precedent to show that it does operate. I am still trying to understand how we will deal with such an order in this place. I asked whether there had been anything in the past two years, and the minister has effectively told me that. I suppose my question is: are the three provisions amending the schedule currently in operation in any act in Western Australia?

Mr W.R. MARMION: I am not an expert on that. I am unaware. My advisor, who is constrained to Commerce, is —

Ms J.M. Freeman: Does this apply to any commerce act at this time?

Mr W.R. MARMION: No.

Mr W.J. JOHNSTON: Clause 5(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.

I rise to question the use of the word “draft”. Does that mean the order first passed by the house is in the same terms as the order signed by the Governor or can there be a variation? The word “draft” can imply that there will be a change; for example, the draft of a bill is not necessarily the same as the bill introduced. Does the minister understand what I mean? Do the terms of the order presented to the house have to be the same as those in the order signed by the Governor? If the terms have to be the same, should that not be said here in the bill, rather than use “draft”? Is there a better word to use other than one that could imply a variation between the order presented to the house and the order signed by the Governor?

Mr W.R. MARMION: Good question. This is the advice of parliamentary counsel on how to draft legislation. Yes; it is a draft and cannot be an order of the Governor until the Parliament has approved the legislation; that is, it is a draft until Parliament has approved it and then, when the Governor signs, it becomes an order.

Mr W.J. Johnston: Is the minister saying that the terms of the order considered by the house have to be the same, that is in identical terms, as the order? Is that what the minister is saying?

Mr W.R. MARMION: Yes; however, one would assume that if the draft were amended, the order would become whatever Parliament put to the Governor.

Mr W.J. Johnston: Is the minister saying that a draft is presented to the house —

Mr W.R. MARMION: Yes.

Mr W.J. Johnston: Is the minister saying that there is provision for the house to amend that draft?

Mr W.R. MARMION: I think Parliament has the power to do what it likes. That is democracy, is it not?

Mr W.J. Johnston: No; we are only empowered to do the things we are have the power to do. Is the minister saying that that provision empowers us to do that?

Mr W.R. MARMION: I am not saying that provision allows that; I am saying that separate to the provision. If a draft is put up, hopefully we will not have to amend it because it will conform with what the national system wants us to approve. The ideal situation is that the draft will contain the changes made to the Victorian template legislation—ours will be a draft of the formal national draft—and hopefully we would not amend it. However, the member for Cannington might not be happy with the draft and may move an amendment. There is nothing, I guess, stopping him from doing that. That amendment may or may not be passed by his fellow members of Parliament.

Mr W.J. JOHNSTON: Is the minister saying that the words in subclause (2) allow an amendment of the draft order by both houses of Parliament? It is not clear to me that that is what is being provided for. If that is the case, it is fine by me, but it seems to extend the words in a way that I did not expect. That is not the answer that I was expecting.

Mr W.R. Marmion: My adviser is trying to explain the member's real question, but I am trying to listen to him. Perhaps if my adviser can advise me about the member's real question, I will be able to answer it.

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Mr W.J. JOHNSTON: Why do I not wait for a second? Mr Acting Speaker, I always try to be very generous to the minister at the table.

The ACTING SPEAKER (Mr J.M. Francis): While the member for Cannington is on his feet, and before I give the minister the call, I will make a point for all members. I ask members to seek the call because this is a sand timing glass in front of me, not a crystal ball. The member for Cannington saw before that I was not quite sure whether he was having a private conversation or seeking the call.

Mr W.R. MARMION: I am advised that the member has asked two questions and that they may not be about what I had thought the member was asking. The answer to his first question is that the Governor can make the order only in the exact same words approved by Parliament, which is obvious. I would not have thought that the member would have asked that question because it is —

Mr W.J. Johnston: No; I am not sure. That is what I am trying to clarify.

Mr W.R. MARMION: Okay. The Governor can only make the order approved by Parliament. If that was the member's question, I apologise. Is it the member's feeling that the Governor can maybe change the words?

Mr W.J. Johnston: Yes. Why is "draft" used? I am not a lawyer. If there is a particular reason, tell me.

Mr W.R. MARMION: I am not a lawyer, either. It has to be called a draft because it is not an order yet. It is a draft of the order that will become an order by way of the Governor. It appears that we have a lawyer in our presence seeking the call.

Dr A.D. BUTI: We do! Minister, I would seriously take advice on having "draft" removed. I do not think it necessary. An order does not become an operational order until signed off by the Governor. I am not necessarily sure—I am of course prepared to be corrected by the minister's superior advisers—about "draft". I think it should be removed. The member for Cannington makes an excellent point. "Draft" in its normal context means something that often will be amended. Therefore, I ask the minister to seriously consider seeking advice about the removal of "draft" and, if necessary, inserting other words—unless the minister is advised that "draft" needs to remain.

Mr W.J. JOHNSTON: I seek the call to follow up on the same issue before the minister answers. Would there not need to be words to make it clear that whatever is approved—be it a draft or whatever; I do not care—has to be the same as the order issued by the Governor? That is the issue I am getting to. I am not a lawyer and if I am wrong, I am happy to be corrected. I am indebted to the member for Armadale because he seems to be saying the same thing as I am; that is, it appears that nothing in subclause (2) requires the terms of the Governor's order to be identical to the terms of the resolution passed by both houses. That is, fundamentally, the point that I am raising. I am indebted to the member for Armadale because he seems to agree and given his great learning in questions of law that comforts me greatly.

Mr W.R. MARMION: All I can say is that parliamentary counsel—I know some of them—have been doing only this since they graduated from uni way back when I did.

Dr A.D. Buti: You have to feel sorry for them.

Mr W.R. MARMION: I know; I do. It is a horrible job. However, we have to defer to their better judgement. This has form; it has worked in the past. I am happy, if this legislation goes to the other house, to seek parliamentary counsel advice on that subclause. If not needed, we can recommend deleting those words when the bill goes through the other place. I am happy to do that.

Mr A.J. WADDELL: I have another question about whether this is a black-and-white situation. Presumably, the national body gets together and agrees to some changes, which are put through the Victorian Parliament. That is what will form the draft for our schedule. When those words come to us as an order that we can debate, what is the potential for us to modify? Is it "Yes, we accept that" or "No, we do not accept that"? For instance, if one of the modifications is that such and such must happen within two weeks and we think that, for our circumstances, it should be three weeks, will we as a Parliament have the opportunity to change a particular element of the order to reflect the local conditions, or does the minister see that in order to maintain that substantially national flavour we talked about earlier, it will be a yes or no question—yes, we accept that amendment or no, we do not accept that amendment, and there is no grey area?

Mr W.R. MARMION: Parliament can decide that there is a grey area. The way I see it is that the minister would be going into bat if he agreed with the national uniformity situation. The minister would probably put an order on the table and move that it be approved. It may be that someone might think it is not too bad except for one tiny bit. There would be nothing stopping that. If the order were moving away from this bill, it would be Parliament's right to make an amendment. The issue would then become, and the debate might swing around to, the impact on not only that amendment but also the national system of uniformity. There would be issues to consider, which we discussed at the very beginning. We would have to weigh up the merits of deviating from the

national licensing system for that particular trade or that particular aspect of the trade. It would probably involve a micro issue of conformity with a licence versus the national system. It would probably have to be a safety issue. We might be very concerned from a safety point of view in our state. It also opens up the debate about consultation. If the minister wanted it to go through and there was a perception by the opposition or anyone that there were some safety issues, we would want to make sure we had further consultation before we brought it on for debate. That is how democracy works. The way we are bringing this on and allowing the Western Australian Parliament to consider any amendment to both the schedule and regulations in the future is worthy.

Mr A.J. WADDELL: The minister can conceive of this grey area whereby some additional knowledge that may be held by members in here has not come up at the national consultation level or in any of the other Parliaments, and we might make that slight alteration and decide to make the call that it is of such a substantial nature that it is valid to deviate from the national standard in some way. That would bring into question the nature of the way we are altering this legislation. If we were to do something like that, we would normally have first and second reading stages and consideration in detail, and it would have to be passed by both houses for it to be enacted in law. Because we have an alternative mechanism in place whereby we simply have a draft order that needs to be passed by both houses, what will happen in the event the draft order passes quite happily through the upper house and comes back to this house and we make a grey amendment? Will there be a need for that new draft order to then go back to the upper house for its approval so that both houses approve precisely the same order?

Mr W.R. MARMION: The government cannot make the order unless both houses approve identical wording, so it would have to go to the other house for amendment.

Clause put and passed.

Clause 6: Exclusion of legislation of this jurisdiction —

Mr A.J. WADDELL: Clause 6 deals with the exclusion of the legislation in this jurisdiction and outlines seven different acts that will be excluded. I wonder whether the minister can enlighten us on paragraph (a), which excludes the Auditor General Act 2006. What effect will that have and will it remove the potential for the Auditor General to have any oversight of the operation of this act?

Mr W.R. MARMION: If these instruments of law were not excluded, the Auditors General in every single state would audit the National Occupational Licensing Authority. These are excluded so that only the Australian National Audit Office would audit the National Occupational Licensing Authority. That is the reason the state instruments are excluded from the national licensing law.

Mr A.J. WADDELL: Further to that, the Public Sector Management Act 1994 is excluded under paragraph (f). The Public Sector Management Act essentially authorises the employment of people in the public sector. Presumably, certain roles within the public sector require the very licences this bill deals with. If we are excluding the Public Sector Management Act, which would appoint someone, does that mean a person might be licensed to carry out a particular function through qualifying in, say, New South Wales, and if that person were to work within the private sector, he or she would be recognised under this act, but would not be recognised under the Public Sector Management Act so that the person could not be employed in the WA public sector because that act is excluded under this particular act?

Mr W.R. MARMION: The Public Sector Management Act will still apply in WA. The Department of Commerce people, who are delegated to manage the licensing, would be subject to these acts. The member picked out the Public Sector Management Act. The people in Canberra, or wherever the National Occupational Licensing Authority is, would not be subject to the Western Australian Public Sector Management Act. The same would apply in all other states so that people are not subject to every single state's Public Sector Management Act.

Mr A.J. WADDELL: I do not mean to labour the point, but is the minister saying that is a sort of one-way measure: these acts do not apply to the legislation we are discussing but the legislation we are discussing will apply, in fact, to these acts? The Public Sector Management Act will not be able to impose anything on the Occupational Licensing National Law (WA) Act, but the Occupational Licensing National Law (WA) Act could provide that, to use the minister's earlier example, a rigger can be licensed to perform functions within Western Australia, and that can therefore be inserted into the Public Sector Management Act, so that a person licensed under New South Wales law can become a Western Australian public sector employee and practise that particular occupation. Is that correct?

Mr W.R. MARMION: A tradesman will not come under the act unless he is a public servant. If someone from New South Wales had a licence and was operating in Western Australia, all the rules and laws of Western Australia would apply to that individual. I think the member's example is probably more general than the Public Sector Management Act provides because a public servant might have been working in the National

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Occupational Licensing Authority and been transferred to the Department of Commerce. He certainly would be covered by the Public Sector Management Act in WA.

Clause put and passed.

Clause 7 put and passed.

Clause 8: Parliamentary scrutiny of national regulations —

Mr F.M. LOGAN: I refer to the minister's description of the parliamentary scrutiny of national regulations —

Debate interrupted, pursuant to standing orders.

[Continued on page 9526.]