HEALTH PRACTITIONER REGULATION NATIONAL LAW APPLICATION BILL 2023

Consideration in Detail

Clause 1 put and passed

Clause 2: Commencement —

Ms L. METTAM: I note that clause 29 will commence on the day after assent day if section 94 of the Queensland Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022 comes into operation on or before assent day. Can the minister provide the house with an update on the progress of the Queensland legislation and her expected timing of when clause 29 will commence?

Ms A. SANDERSON: The other jurisdictions are waiting for Western Australia to pass this bill so that we are all moving at the same time and we are not delaying. We have a commitment that Queensland will delay until towards the end of next year, but we have given the commitment that we will pass this by March next year so that we can have these new regulations in place as soon as possible.

Clause put and passed.

Clauses 3 and 4 put and passed.

Clause 5: Applicational of National Law as law of the State —

Ms L. METTAM: There is no major issue with this clause, but it states "Applicational of National Law as law of the State". Should it be "application"? Is "applicational" right?

Ms A. SANDERSON: That is the drafting style of parliamentary counsel and the advice from them. That is a mechanism that has been used in other applied laws and is a mechanism that works.

The ACTING SPEAKER (Mr D.A.E. Scaife): Leader of the Liberal Party, I have just been advised by the clerks that the error where it says "applicational" instead of "application" is a clerical error that will be corrected administratively by the clerks. It is not something that needs to be corrected through an amendment to the bill. Does that deal with clause 5?

Ms L. Mettam: Yes, thank you.

Clause put and passed.

Clauses 6 and 7 put and passed.

Clause 8: Disallowance of amending Acts —

Ms L. METTAM: The definition of "disallowance period" in clause 8(1) states —

> … in relation to a disallowance resolution of which notice is given in a House of Parliament, means the period of 30 sitting days of the House after the day on which the notice is given;

Can the minister outline how a period of 30 days was determined? On the sitting schedule for next year, that is half a year, so how was that determined?

Ms A. SANDERSON: The disallowance time frame was determined on recommendation by the Standing Committee on Uniform Legislation and Statutes Review for similar laws and processes. It is consistent with the disallowance periods and processes of other applied laws.

Clause put and passed.

Clauses 9 to 15 put and passed.

Clause 16: Tabling and disallowance of national regulations —

Ms L. METTAM: I refer to a circumstance in which national regulations may cease to have an effect, even if inadvertently. What is the process that must be undertaken for regulations to subsequently take effect?

Ms A. SANDERSON: National regulations cease to have effect if they are not published within 18 days after they are made or they are not tabled within six sitting days after publication or they are tabled within six sitting days and notice of a resolution to disallow is given and agreed by a house. If national regulations cease to have effect, provisions that were amended or repealed by those national regulations are revived.

Ms L. METTAM: If the regulations are not published under clause 15, what action will need to be taken to enable them to take effect?

Ms A. SANDERSON: I am just trying to understand the question from the member. Is this about if there is a mistake in the process or there is a deliberate decision not to go through that process so that they apply in WA?

Ms L. Mettam: Either/or—if it is inadvertent or if it is deliberate. If the regulations are not published under that clause, what will need to happen?

Ms A. SANDERSON: There may be a policy decision not to publish them and therefore they would not be relevant in Western Australia and therefore there would not be a requirement to go through the process to publish them. I would have to seek advice from parliamentary counsel on the process if there were an inadvertent mistake in the process somewhere.

Ms L. METTAM: Will the minister provide the advice?

Ms A. SANDERSON: Yes, I will provide advice.

Clause put and passed.

Clauses 17 to 23 put and passed.

Clause 24: Section 3A modified —

Ms L. METTAM: Can the minister explain the purpose of replacing the words "and are of an appropriate quality" with the words "consistent with best practice principles"?

Ms A. SANDERSON: "Best practice principles" is a phrase that is commonly used by and well understood amongst WA health practitioners. When Western Australia developed and passed the corresponding national law, the inclusion of this phrase was discussed with and agreed to by stakeholders and the government. There is no reason to depart from this phrase that has existed in WA's corresponding national law since 2010. The departure from uniformity with other jurisdictions can be justified on the basis of the unique requirements of WA health practitioners.

Clause put and passed.

Clause 25: Section 113 modified —

Ms L. METTAM: I note that this clause will amend the provision restricting the use of protected titles to include "physician" as a protected title. Can the minister advise on how many occasions a person in WA has been convicted for using the title "physician" contrary to section 113 of the Health Practitioner Regulation National Law Act?

Ms A. SANDERSON: None. This was a request by the Australian Medical Association (WA) that we agreed to.

Ms L. METTAM: What advice was provided to include this term?

Ms A. SANDERSON: The AMA (WA) was clear in its advocacy that it wanted to protect the term "physician" and its strong link with the medical profession, so that it not be potentially misused. It is a position that is unique to the AMA (WA). I am not sure that when we decide national laws in the future, we will have a unique Western Australian process. It was a suggestion from the AMA (WA) and the department was happy to accept it; therefore, it has made its way into the legislation.

Clause put and passed.

Clause 26: Section 123A inserted —

Ms L. METTAM: I note that this clause will insert a provision to protect birthing practices. The provision will limit the care of a person in labour to a medical practitioner, a midwife, a student in the course of their medical or midwifery studies, or a person who is under the supervision of a medical practitioner or midwife. Does the minister have any advice on why such a provision was not included in the national law that has been adopted?

Ms A. SANDERSON: I am advised that not all other states and territories were willing or wanted to include that in their laws. I could not give the member an explanation of why; it would be unique to those states and territories. It may be that they have local laws and regulations that already cover that. It is really about protecting patients and practitioners from people who purport to be practitioners, as opposed to being support people in labour. Although they both have legitimate roles in labour and birth, this will make very clear what their roles are and which regulations they will or will not fall under.

Ms L. METTAM: Did WA make any attempts to include such a provision in the national law; and, if so, why were those attempts rejected?

Ms A. SANDERSON: This amendment relates back to 2018, so I cannot give the member information about Western Australia's advocacy around the national law. It will make its way into the Western Australian law following a recommendation of the coroner in 2015 that it be put in place. That is why it will make it into the Western Australian law.

Ms L. METTAM: Has anyone in WA been convicted for carrying out restricted birthing practices who did not fall within the protected classes?

Ms A. SANDERSON: The regulation is a response to the coronial inquest into three babies who died in Western Australia and who were all under the care of the same person. I would have to provide supplementary information, if that is possible, as to whether she was convicted under local law or the national law.

Ms L. METTAM: Can I just get confirmation that the information can be provided by way of supplementary information?

The ACTING SPEAKER (Mr D.A.E. Scaife): Just to clarify, there is no process through which supplementary information can be tabled. However, the minister could obviously provide that information to the Leader of the Liberal Party if she committed to do so, separate from the proceedings here.

Ms A. SANDERSON: I commit to providing that information to the member's office.

Clause put and passed.

Clause 27 put and passed.

Clause 28: Sections 141A, 141B and 141C deleted —

Ms L. METTAM: I note that this amendment will remove the requirement for a registered health practitioner who, in the course of providing a health service, forms a reasonable belief that a second health practitioner has engaged, is engaging or is at risk of engaging in sexual misconduct in connection with the practice of the practitioner's profession. As I understand it, this is a unique position with respect to WA, as will be removing the notification requirement if a health practitioner has a reasonable belief that a second health practitioner is placing the public at risk of harm. Can the minister explain the significance or importance of the unique position of Western Australia, in contrast to the national law?

Ms A. SANDERSON: WA's position is to support voluntary notifications for health practitioners because there is a strong view and some evidence that mandatory reporting will deter medical professionals from seeking the treatment that they need, whether it is mental health treatment or to resolve an impairment. Evidence shows that practitioners continue to make voluntary reporting, and that is working. Essentially, the view is that mandatory reporting would frighten registered health practitioners from reporting those concerns should it then impact their ability to continue to work and maintain their registration.

Ms L. METTAM: I understand the history of this clause and the opposition certainly supports it. Does the minister have any data at a national level on the number of Western Australian practitioners who have made voluntary notifications on issues raised by sections 141A, 141B or 141C, which are proposed to be deleted?

Ms A. SANDERSON: The Australian Health Practitioner Regulation Agency keeps that data, but obviously it would like to keep the specific data confidential. I can tell the member that Western Australia averaged around six voluntary reports per annum over the last five reporting periods, which is comparable with other states.

Ms L. METTAM: Have any other jurisdictions deleted sections 141A, 141B and 141C?

Ms A. SANDERSON: No.

Ms L. METTAM: Can the minister confirm whether she is aware of the number of practicing medical practitioners who would have otherwise been reported under those sections?

Ms A. SANDERSON: That data is not available.

Clause put and passed.

Clauses 29 to 32 put and passed.

Clause 33 put and negatived —

New clause 33 —

Ms A. SANDERSON: I move —

Page 17, after line 13 — To insert —

33. **Section 242** replaced

Delete section 242 and insert:

242. **Proceedings for offences**

(1) A proceeding for an offence against this Law is to be by way of summary proceeding before a court of summary jurisdiction.

(2) A proceeding for an offence against a provision of Division 10 of Part 7 or section 196A(1) may be commenced at any time.

Ms L. METTAM: I have not had the opportunity to check out this amendment. Can the minister explain the purpose of the amendment on the notice paper and the reason it has been placed there at this time?

Ms A. SANDERSON: I apologise to the opposition and other members for taking them by surprise. My understanding was that they had been provided information on this amendment, so I apologise for that. This replaces the previous clause 33. This position had not been considered previously, but on examination of the bill, it was determined that Western Australia would remove the 12-month limitation period to be consistent with the national law. It replicates existing section 242 in WA's corresponding national law. It is a consequential modification resulting from the deletion of section 241A and retains the current policy position in Western Australia to treat all of the offences under the national law as summary offences. Summary offences in WA are subject to a 12-month limitation period. An alleged offender can be charged within 12 months after the offence was allegedly committed. By not making certain offences indictable, WA prosecutions of those offences will be subject to the statutory limitation period. This will be inconsistent with the statutory limitation in every other jurisdiction and disadvantage the Western Australian community.

Proposed section 242(2) will allow proceedings for certain offences under the national law to be commenced at any time. These offences are: holding out to be registered when not actually registered; using a protected title; undertaking restricted practices and contravening a prohibition order. These types of offences may take some time to come to light due to their deceptive nature. A clear example of this was the case of Shyam Acharya, who assumed the identity and claimed the credentials of a doctor, enabling him to work at six New South Wales hospitals over 11 years. He was convicted in 2017, but at that time, the relevant offences under the national law were subject to a 12-month limitation period, so the true nature of his prolonged offending could not be addressed and appropriately punished. Removing the limitation period for these serious offences under the national law will enable better protection for the WA public, as serious offenders can be appropriately punished for all of their offending, not only their offending within the last 12 months. People who commit serious offences which place the public at risk of significant harm should not be able to get away with their offending just because the 12 months has passed.

Ms L. METTAM: The minister mentioned those individuals who unlawfully claim their credentials. Are there any figures on the numbers of so-called practitioners in Western Australia who have done that in recent times?

Ms A. SANDERSON: Since 2010, there have been 12 successful prosecutions in Western Australia. The first successful prosecution occurred in Western Australia in 2014. There have been 12 since 2010 nationally and in Western Australia. Some of the types of offending include unqualified practitioner and lapsed practitioner or suspended practitioner.

Ms L. METTAM: Is it possible to get a breakdown for Western Australia?

Ms A. SANDERSON: That is publicly available information. We can provide that to the member's office.

Clause put and passed.

Clauses 34 to 54 put and passed.

Title put and passed.