STANDING COMMITTEE ON
UNIFORM LEGISLATION AND STATUTES REVIEW

HEALTH PRACTITIONER REGULATION NATIONAL LAW BILL 2010

TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
MONDAY, 10 MAY 2010

Members

Hon Adele Farina (Chairman)
Hon Nigel Hallett (Deputy Chairman)
Hon Linda Savage
Hon Liz Behjat

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Hearing commenced at 11.12 am

COOPER, MRS ANNE
Acting Principal Policy Officer, Legal and Legislative Services, Department of Health,
sworn and examined:

ASHBURN, MR STEPHEN JOSEPH
Acting Director, Legal and Legislative Services, Department of Health,
sworn and examined:

The CHAIRMAN: I am sorry, but we are going to have to go through the formal part again. On behalf of the committee, I welcome you this morning to continue the hearing. I ask that before we start you either take the oath or the affirmation.

[Witnesses took the oath.]

The CHAIRMAN: You will have signed a document titled "Information for Witnesses". Have you read and understood the document?

The Witnesses: Yes.

The CHAIRMAN: As you are aware, these proceedings are being recorded by Hansard and a transcript of the evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of the hearing for the record, and also please be aware of the microphones, speak into the microphones and try not to cover them with paper. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Also, please note that until such time as the transcript of your public evidence is finalised it should not be made public. I advise you that the publication or disclosure of uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

Anne, I understand a question has been raised with the committee officers in relation to documents tabled with the committee and whether they are public or private documents. Would you like to raise that concern with the committee and if you are seeking to request that some documents be kept private, could you identify which documents?

Mrs Cooper: In relation to the questions that you gave us on Thursday, question 1 deals with the minutes of the ministerial council. It is my understanding—I have checked a couple of the websites—that they are not public documents as such. We have also had quite a lot of discussions with intergovernmental relations, which is a section within the Department of Health. They have also checked back to the eastern states, and they have also indicated that they would prefer that a caveat was put on two of these documents that I have here. One of them, which I am going to provide to the committee, is final decisions and actions arising from the Australian Health Workforce Ministerial Council from 31 March in relation to the areas of practice endorsement for psychologists. Another meeting was held on 22 April 2010, and I have just taken out an excerpt from those minutes. Those minutes are still in draft form so they have not been signed off by the

ministerial council, and I do not know whether they will be amended in any shape or form. Therefore, I would like those two lots of documents to remain confidential, if that is all right.

The CHAIRMAN: I understand that the second document is an extract from a draft minute and that has not yet been endorsed by the ministerial council, so I can understand why you would make that request for it to remain private. Could you explain again the reason for seeking that the first document be kept private?

Mrs Cooper: As I understand it, they are not available publicly on any website, and the intergovernmental relations section at the Department of Health has asked that those also be kept confidential, as far as I am aware.

The CHAIRMAN: Have they been endorsed by the ministerial council?

Mrs Cooper: Yes, they would have been signed off if they are final decisions and action arising.

The CHAIRMAN: Have you tabled those documents yet?

Mrs Cooper: I was going to hand them up today. I have taken the liberty to make five copies. Susan said if I brought them today, I would need to have five copies. I have also included the correspondence. There is one letter that the Department of Health's acting director general, Kim Snowball, has released. For question 3, there is a section out of the national law that deals with the scope and operation of that section; and then question 4, which deals with the amendments to the national law and what would be required to retain the state registration system. I have also already provided in relation to question 5 the qualifications for the endorsed area of practice for psychologists. As part of that, I have given the committee quite a lot of stuff that is on the public record, just as background.

The CHAIRMAN: I would like clarify that. We have a letter that is addressed to Associate Professor Brin Grenyer that is signed off by John Hill. You are not seeking that document to be made private?

Mrs Cooper: No.

The CHAIRMAN: We have also got a copy of a communiqué dated 22 April 2010. You are not seeking that document and attachment to be made private?

Mrs Cooper: No.

The CHAIRMAN: Just to explain, the process is that while witnesses can seek from the committee that certain documents be made private, it is a matter for the committee whether the documents are private or public. I ask that you table the documents and then the committee will adjourn the hearing for a few minutes to consider the status of the documents. It should not take long and then we will resume the hearing. Thank you.

Proceedings suspended from 11.19 to 11.30 am

The CHAIRMAN: Thanks, Anne and Stephen. For the purposes of Hansard, the hearing has resumed. In relation to your request to make certain documents private, the committee has agreed that the documents that relate to the minutes of the ministerial council meeting, pages 1–3, will be kept private by the committee. We appreciated that they have not yet been endorsed, and it would be inappropriate to do otherwise. However, in relation to the document titled "Attachment 1" and runs on pages 4 and 5, this is essentially the same as the document that is attached to the communiqué dated 22 April 2010. For that reason, we do not believe that there is any reason to keep that document private. The committee will not be doing that. For your information, all documents tabled before the committee are kept private until we table the report in Parliament. It will be private until that time. If at that time the committee chooses to make the document public, it may well be released and made public.

In relation to the letter to Associate Professor Grenyer from John Hill that outlines the position in relation to psychologists, could you advise the committee whether WA psychologists have been made aware of this?

Mrs Cooper: I do not know that for certain. It is available on the website that deals with the national registration system, and I think that this is one of the ones under the Psychology Board of Australia's website.

The CHAIRMAN: Has the department received any recent communications from WA psychologists indicating that the concerns that they initially expressed with the bill have been satisfied by the identification of endorsed areas of practice?

Mrs Cooper: No. My understanding is that the clinical psychologists in Western Australia are unhappy with the area of practice endorsement, and continue to be so.

The CHAIRMAN: Can you explain why they are unhappy with the area of practice endorsement?

Mrs Cooper: They seem to believe that the area of practice endorsement does not give the public the same safeguards as specialist title.

The CHAIRMAN: Why is that?

Mrs Cooper: It is not clear to me, because the area of practice endorsement means that the board will have a look at the qualification that the person holds, ensure that they meet the standards for that endorsement, and then it will endorse them to practice in one of those seven areas. Under the WA legislation, the board in WA would do the same thing; however, it would allow them to use the title "clinical psychologist".

The CHAIRMAN: Which an endorsement allows them to do?

Mrs Cooper: The clinical psychologists in WA will be able to use the "clinical psychologist" title for three years as part of the transition process. I understand that the national board does not have any issues with that continuing. There is a public document on its website that deals with transition for clinical psychologists. I am not absolutely certain exactly what people will be able to put. They will be able to put, "I am a psychologist. I am endorsed to practice in the area of clinical psychology".

The CHAIRMAN: So the national board has not yet made a decision, once a person receives an endorsement, exactly what title they will be able to use with that endorsement?

Mrs Cooper. I provided to the committee that bit on advertising, but I do not think I brought that with me. It goes through all of them and what they can actually call themselves.

The CHAIRMAN: Can you recall which document that was?

Mrs Cooper: It is on the advertising registration standard.

The CHAIRMAN: It tends to actually outline what you cannot do, rather than what you can do. I am not sure that it actually addresses my question.

Mrs Cooper: Is there anything in there that is the endorsement one. This document really tells them what they have to meet. Is that correct?

The CHAIRMAN: Yes, that is right. These are the issues for the committee: the act has a distinction between recognising some areas of practice as a specialist and then agreeing to endorse some specialist areas of practice. I think we asked this question at the last hearing. The indication that we got was that the distinction between the two is that the act recognises "specialist" where they are currently recognised as specialists in Western Australian legislation. Is that correct?

Mrs Cooper: Yes.

The CHAIRMAN: Stephen?

Mr Ashburn: Yes.

The CHAIRMAN: The endorsements process takes care of those areas in which we might want to recognises a higher level of qualification in an area of practice, which is not recognised as a specialist area in legislation in each of the jurisdictions in Australia. Is that correct?

Mrs Cooper: Yes.

The CHAIRMAN: I am clear on that and I want to make sure that the committee members are clear on that as well. That appears to be where the distinction lies. What is the practical effect of that distinction at the end of the day, because it seems to me that the specialist classification recognises specialist qualification and the endorsement process also recognises a specialist qualification in reality? What is the practical effect of having the two classes?

Mrs Cooper: Do you mean why they have gone down the area of practice endorsement rather than specialist title? It is because when the national scheme was put together, WA is the only state that has a specialist title for psychologists. The other states do not have a specialist title. There is not any criteria presently available that they can be measured against to ensure that it is of a high standard and that the other states, I presume, would believe are at an appropriate standard. It was decided to go down the area of practice endorsement and that the criteria would be developed as a sideline to that. Once that criteria was developed, then for psychologists who meet that specialist title, the national board could ask the ministerial council to approve them for specialist title. It would be up to the ministerial council to actually approve that registration standard. They may go from the area of practice endorsement over to specialist title once that criteria has been developed, formalised and agreed to by the ministerial council.

The CHAIRMAN: It has come to the committee's attention that there is a specialist area of study in Victoria to be a clinical psychologist as a masters degree, which appears on paper at least to be the equivalent of, or similar to, that undertaken in Western Australia. I have also seen some information that suggests there are psychologists in Victoria who are using the title "clinical psychologist". I am struggling to understand the distinction in those circumstances. Is it your evidence to the committee that the Victorian legislation in dealing with psychologists does not recognise specialist areas of psychology and does not recognise clinical psychology as a specialist area in the legislation?

Mrs Cooper: My understanding is that there is not a section in that act that deals with specialist title. Whether there is a section there that deals with area of practice, I am not certain. I believe that some of the other states have the area practice–type endorsements, which is why that is in the national scheme.

The CHAIRMAN: Are you able to tell us which states have the area practice endorsement? If you cannot tell us now, you can take that question on notice.

Mrs Cooper: This is a transition to a new registration type under the national law and it deals with psychologists. It goes through each state and it deals with how they will actually transfer across to the national scheme. I found this information only this morning and I am happy to hand it to the committee, but I have only the one copy.

The CHAIRMAN: Okay; that is fine. We will take that as a tabled document and Mark will make copies of that when he is able to. We may need to get you back to talk to you about that document once we have had time to consider it.

I want to clarify something in the document that has been provided to committee titled, "Communiqué — 22 April 2010", which has attached to it the areas of practice endorsements. The document to which I am referring is headed "Psychology Board of Australia", and it lists the requirements. Is that the level of detail that is ever going to be stated for area of practice endorsement or will further specifications be provided in terms of the actual units that need to be studied?

Mrs Cooper: Under the registration standards there is an area of practice endorsement registration standard, which you have.

The CHAIRMAN: About two-thirds down the page there are the requirements. It talks in very general terms and states —

(a) an accredited doctorate in one of the approved areas of practice, and a minimum one year of approved supervised full-time equivalent practice with a Board approved supervisor; or

(b) an accredited Masters in one of the approved areas of practice, and a minimum of two years of approved supervised full-time equivalent practice with a Board approved supervisor; or

(c) another qualification that, in the Board's opinion, is substantially equivalent to (a) or (b).

Is that the level of detail that is ever going to be specified or is there another level of detail that will be specified, in terms of the units that need to be undertaken in order to be accredited?

Mrs Cooper: Because qualifications change, they may not actually detail which courses a person would need to complete to meet these requirements. It would normally be something that it would actually put on its website, if it were going to do that. As far as I am aware, currently, this is all that has been released by the national board. I do not have anything else. My understanding is that this is very close to what WA has under its legislation; therefore, it is not hugely different. I spoke to the registrar of the Psychologists Board of Western Australia on Friday. He said that they are the same and it also has a Bachelor of Psychology qualification that it has approved for WA and it would come under (c), which states —

> another qualification that, in the Board's opinion, is substantially equivalent to (a) or (b).

What it does is with the work that people have to do —supervised experience, because I believe it is the doctorate that has quite a lot of practical-type units in it. What it does is reduce some of the time that people have to do as the required minimum, because they do it as part of their qualification, but this is essentially what Western Australia has.

[11.45 am]

The CHAIRMAN: Can I just get clarification about the process? For example, the University of Western Australia has a psychology course and is offering a masters in psychology. Would it then have to go to the board to get its masters course accredited by the board—is that the process?

Mrs Cooper: No, they have an accreditation body. Any new course that any university or educational institution decides to run, they actually have that course accredited because otherwise it would not actually be an approved course, so they get it approved through that mechanism.

The CHAIRMAN: Okay, so how do we know that an accredited masters in psychology in WA will be of the same standard as an accredited masters in psychology in Tasmania?

Mrs Cooper: Because the accreditation body that they are using is the one that all of them are currently using.

The CHAIRMAN: So it is a national accreditation —

Mrs Cooper: There are national bodies that do the accreditation and that will be the body that will continue to do it.

Hon LIZ BEHJAT: It is interesting. I just quickly logged onto a website about career paths in other areas of specialist psychology. For instance, for career paths in sports psychology, postgraduate studies are available at the University of Queensland and Victoria University to

become specialist sports psychologists, so it would indicate that those areas of specialist practice in psychology are available in other states. Why would other states not want that to be endorsed on their qualifications?

The CHAIRMAN: Tell me if I am speaking out of turn, but I think that neither Anne nor Stephen have comprehensively reviewed legislation in other states—correct me if I am wrong—and they are here to answer questions in relation to the national bill and the WA bill. We may need to undertake our own research to clarify that question further because I think it is a reasonable question to ask, but Anne and Stephen feel free to disagree with me.

Mr Ashburn: I might just make one comment; that is, we are really talking about some of the intricacies of the mechanism for those sorts of things being recognised. Various websites and other places may use the terminology "endorsed", "specialist" or "specialised" not necessarily in the technical sense that we are using now.

The CHAIRMAN: That is a fair point; okay.

Can I just go now to the written answer that you provided to question on notice 4 in terms of the parallel registration of psychologists? Stephen, would you mind just speaking to that answer?

Mr Ashburn: When I looked at it, there are some fundamental issues before looking at any sort of mechanism that might be employed. The first major issue is whether one Parliament can effectively pass two sets of legislation that are inconsistent because in this situation, the law that sets up the national law is a Western Australian law. So it is not an inconsistency between, say, the commonwealth law and the state law, where there are very well settled legal principles for determining which law prevails, but it would in fact be two sets of Western Australian law that are, by their design, inconsistent. So, I am not clear whether it is in fact possible to even do so in that sense. There is also a question of practicality; for example, if the two laws ran in parallel and a person was registered under both, leaving aside the three-year transition period for clinical psychologists, in the absence of that arrangement, you could have a situation whereby someone could call themselves a clinical psychologist in WA if they are endorsed to practice, but not in the sense that we understand a specialist clinical psych. That would be okay under the national law, but under the state law they would be committing an offence because they are not recognised as a clinical psychologist.

The CHAIRMAN: As it currently stands.

Mr Ashburn: As it currently stands, so there are some real practicalities. If that sort of anomaly were to be removed, it would essentially need amendment of the national law, which is the process that needs every jurisdiction to participate in. If it were possible, the provision in the local part of the bill that deals with state matters would have to be amended so that the repeal of the state law was removed. Alternatively, it could be repealed but it would need to be replaced by an equivalent state law that deals with psychologists or clinical psychologists.

There could well be other inconsistencies, I have not looked to check that, which may or may not be able to be fixed by amending the state law—the psychologist registration law. Timing could be a significant issue because it would be very important not to have a period when essentially registrations fell through the cracks. There is also a cost issue and I think the committee commented on that the last time we appeared before the committee. Essentially, there would be two sets of fees that would need to be paid for a psychologist to be part of both schemes. Finally, there may well be some public confusion if we were seeking to use the term "clinical psychologist" in perhaps two slightly different ways.

The CHAIRMAN: Thanks for that, Stephen. Can I just clarify: is it the intention under the national bill that, should endorsements come into effect prior to the expiration of the three-year transition period, the effect of the transition period for clinical psychologists being able to continue call

themselves "specialist clinical psychologists" would fall away once the endorsement scheme was up and running?

Mr Ashburn: Anne might know.

Mrs Cooper: The endorsement scheme will start from 1 July, so those practitioners in the eastern states—and it looks like every state under the APS, which is the Australian Psychological Society, actually has a list of members as part of that association that have a certain qualification; that is for every state, it looks like, except WA. From this transition document, it looks like those will all be endorsed psychologists for area of practice in those seven specialties, so all of those other states, including Western Australia if we join the scheme, on 1 July will be able to use that area of practice endorsement. WA will also be able to use their clinical psychologist specialist title because we have that under our legislation and it is a transition clause.

The CHAIRMAN: So for a period of three years there will be confusion in the minds of the public when they see the term "clinical psychologist" as to whether that clinical psychologist is a specialist clinical psychologist under the WA act, which has been recognised under the national bill, or an endorsed clinical psychologist under the national bill.

Mrs Cooper: I assume that the psychologists here in WA will just continue to use the term "clinical psychologist" and as long as they hold an area of practice endorsement under their registration under the national law, they will be able to just continue to do that.

The CHAIRMAN: Stephen, in relation to the confusion that you outlined would happen if we were to have a state scheme of registration for clinical psychologists, is it not the case that with currently what is proposed under the national bill with the three-year transition for WA clinical psychologists being able to retain the specialist title, that same level of confusion may occur during the three years?

Mr Ashburn: There may be; yes.

The CHAIRMAN: All right. If the time line for the commencement of the endorsement process is 1 July 2010, why do we need a transition provision for WA clinical psychologists to retain the specialist title? What is the purpose of that? I assumed that the purpose of that was to cover that title for the period that there might have been some delay in getting the endorsed area of practice process underway, but if that is going to have effect as of 1 July 2010, why is there a need for the transitional provision?

Mrs Cooper: Transitional provisions are always included in the bill to ensure that something is in place in case other things are not put in place in time. So it is something that you put in to ensure that things can continue to operate and anybody who currently has a specialist title would not be disadvantaged in any way, just in case the national boards have not finalised their administrative processes and those sorts of things. It leaves no doubt in anyone's mind that these things will continue to be the case.

The CHAIRMAN: Are you able to say with certainty that the criteria or qualifications requirement to have an area of practice endorsement as a clinical psychologist under the national bill is identical to the criteria and qualifications to have the specialist clinical psychologist title under the WA bill?

Mrs Cooper: I am prepared to say that they are extremely similar. That is my understanding from speaking to the registrar of the Psychologists Board in WA.

The CHAIRMAN: So is it your evidence to the committee that it is unlikely to be workable to have a state registration scheme running concurrently with the national registration scheme for clinical psychologists?

Mr Ashburn: It is. I believe that it may not in fact be legally possible; it will have practical problems as well.

The CHAIRMAN: Accepting that, how do we then deal with the practical issues that arise out of the three-year transition period under the national bill, which can be running concurrently with an endorsement of clinical psychologists, which could be with a lower set of criteria than are required currently under the WA bill for a specialist title of clinical psychologist? It just seems to me that the concern that you are raising we are dealing with anyway under the national bill.

Mrs Cooper: The concern?

The CHAIRMAN: The concern about the public being confused about two titles of clinical psychologist running concurrently; that is, endorsed area of practice clinical psychologists and the WA specialist clinical psychologist titles running at the same time, so the public could actually be confused between the two, particularly if there are different criteria or qualifications required to attain those two different titles. That is just going to add to the confusion in the minds of the public.

Mrs Cooper: My understanding of that would be that they would just continue to call themselves a "clinical psychologist". They could also say underneath that, if it was agreed by the national board, that they had an endorsement to practise in the area of clinical psychology. It is really the same thing; it is not that different. We are only talking about the psychologists here in WA. They do not have to say that they are endorsed; they can just continue to use the clinical psychologist specialist title. They would not actually have to mention the endorsement if they did not choose to.

Mr Ashburn: What I believe to be the case is that it is more a case of degree that in running a parallel system where you have two separate organisations and essentially two separate schemes, there is probably a higher risk that the qualifications required could diverge. Although there will be a transition where specialist clinical psychologists will exist at the same time as endorsed clinical psychologists, it will be through the same scheme with the same registration body. There is a lower chance of inconsistency of qualifications whereas when two separate schemes are operating, there is a higher chance that they may go in slightly different directions.

[12 noon]

The CHAIRMAN: But there is no certainty that the criteria to be endorsed as a specialist clinical psychologist will be equivalent to what is currently in the WA act.

Mrs Cooper: It is very, very similar. It is not that different.

The CHAIRMAN: I appreciate that. Then we have the added issue that the criteria for area of practice endorsement can be changed by the national board and does not need an amendment to an act of Parliament in order to amend that at any future time.

Mrs Cooper: It has to be approved by the ministerial council.

The CHAIRMAN: That is fine, but that is not Parliament. Under the WA act, for psychologists, that detail is in the regulations.

Mrs Cooper: Yes, but not in an act of Parliament.

The CHAIRMAN: But it is in the regulations so it can be disallowed by Parliament, if the criteria were to be lowered.

Mr Ashburn: Yes.

The CHAIRMAN: Having gone through that, I now go back to my concern that I have for those students who are currently in the process of undertaking the additional qualification that they need to get the specialist clinical psychologist title under the WA act. The transition provisions under the national bill do not recognise them at all and they could be in a situation where they are completing their qualifications to be specialist clinical psychologists and they are not going to get recognised in that area at all. That might have an impact on them in terms of the additional educational qualification that they have undertaken. I do not understand why the transitional provision is not for a longer period so it picks up those people currently going through those studies to be specialist

clinical psychologists in this state. Is there some reason why it was not extended for a longer period?

Mrs Cooper: Clause 283 of schedule 1 of the bill deals with the details of study and applies provided a qualification for registration in a health profession in a participating jurisdiction immediately prior to the jurisdiction's participating day is taken to be an approved program of study for that health profession as if it had been approved under this law. The national agency must, as soon as practicable after the participation day, include an approved program of study in the list published under clause 49(5) of the national law. I would read that to mean that it would take into account the areas of specialist study as well. A clinical psychology degree at UWA would be considered to be a program of study under clause 283 and anyone undertaking that study would continue.

The CHAIRMAN: I suppose my concern is that this national bill has effect as of 1 July 2010, presuming it is passed by the Parliament of Western Australia by that date, which is midway through an academic year. Those students who are in their last year of that specialist course to be a clinical psychologist have four or five more months of study and will not be able to use the specialist clinical psychologist title under the WA act because the transitional provisions do not allow them to use it, because they do not currently hold it. All they can do is seek endorsement under the national bill. It just seems to me to be unfair when a transitional provision is in place that recognises those currently practising as specialist clinical psychologists can retain that title for three years. We are talking about perhaps four to five months' difference. Someone who completed their degree before 1 July 2010 and may have been practising for less than 12 months can retain the title but someone who is only four months off attaining that title does not get the same benefit.

Mrs Cooper: Would you not then have to apply that to anybody who was just starting to study as well? In that case, you would have a transition provision that would quite possibly have to carry forward for eight to 10 years.

The CHAIRMAN: It would be for only four years. I understand that the extra qualification to get the specialist clinical psychologist is two years of study at a masters level and two years of supervised practice. We are talking about a three-year transition period versus a four-year transition period.

Mrs Cooper: It depends if the person finishes it within that time. You would have to provide some leeway for that. The provision applies only to people who currently hold the qualification. I do not think it has been considered.

The CHAIRMAN: We might move on. I think we have explored that as far as we can.

I move to question 16 from the list of questions that the committee provided to you. A number of health professional organisations have expressed concern about the mandatory reporting provisions in the national law, including concerns about the requirement to act on hearsay, a professional being unlikely to seek help for fear of being reported and the scheme jeopardising dental indemnity organisations. Do you have any concerns about the effect and impact of the mandatory reporting provisions?

Mrs Cooper: It is "reasonable belief" in the bill, not hearsay. There are two clauses in the bill—clauses 140 and 141. A person has to work with the other health practitioner. They have to be in the same practice. They cannot be somebody who knows the person socially or at home, say, the person's spouse, who is aware of something. The person must work in the same practice. They deal with fairly serious matters, such as sexual misconduct where the person could come to harm. I do not believe that they are items that are considered something of a very low standard. They are quite serious matters. If the second health practitioner sees it, they are asked to report it to the board. I do not see why that would be a problem.

The CHAIRMAN: Is that currently the case under the various state pieces of legislation that cover the various professions?

Mrs Cooper: There is not mandatory reporting as far as I can recall.

The CHAIRMAN: Stephen, are you able to add to that?

Mr Ashburn: I agree.

The CHAIRMAN: The AMA has questioned what happens to the current assets of the WA Medical Board. It claims that the WA Medical Board has assets in excess of $2 million. Under the bill, that money will be ceded to the national board and then become part of the general pool of moneys. It is doubtful that other states will be contributing such significant assets. It is also the understanding of the AMA that the national registration board is proposing to increase registration fees for medical practitioners by approximately 70 per cent, even though one of the objectives of the national legislation is to achieve economies of scale. Other submitters have also raised concerns about an increase in the fees under the scheme. Which sections of the bill prescribe that the board's assets will be ceded?

Mrs Cooper: Clause 295 of the schedule deals with the assets and liabilities that are going across. Some financial principles were agreed to by the ministerial council for the amount of money that would go across to the national boards. My understanding is that all existing boards contribute 12-month operating costs plus any fees they collect on the registration after 30 June. I am reasonably sure that the medical board also has a lease on its building for another period of some two years that will be a liability for the national board. Although the amount of $2 million may be the exact figure, there will also be a liability going across to the national board. All the money and assets that go across to the national board will be retained for the Medical Board of Australia. It does not go across. There is no cross-pollination of the money to other boards; it will actually be used for medical practitioners registered under that. Every state and every other jurisdiction has to do the same thing.

The CHAIRMAN: It is not quarantined to use that money only for registration of medical practitioners of WA? Once it goes across to the national board, will it be for all medical practitioners in Australia?

Mrs Cooper: Yes, that is correct. Do you have anything you wish to add to that, Stephen?

Mr Ashburn: I understand that all the boards across Australia have the same obligations to contribute to the national scheme.

The CHAIRMAN: From what you have told me, Anne, there is a ministerial council agreement that existing boards would contribute 12 months' operating costs plus any fees collected for registration after 30 June 2010, yet those words do not appear in the legislation.

Mrs Cooper: No, financial principles have been agreed, which is my understanding from the transition manager who is dealing with the transition.

The CHAIRMAN: My concern is that what is required under clause 295 could amount to a different figure than the amount that would result if you were to act on the basis of the ministerial council decision. For example, it talks about fees collected for registration after 30 June 2010. I understand that fees will not be collected by those state boards after 30 June 2010 because they will be part of the national scheme. They will therefore be collected by the national board. Is that not the case?

Mrs Cooper: No. If you pay your registration fee before 30 June, you will transition across on whatever fee you have paid into the national scheme. Anybody who is registered as of 30 June—WA becomes part of the national scheme on 1 July—will just transition across. The WA board will no longer exist and no further fees will be paid to any WA state board. If WA becomes part of the

national scheme, we then move to the national scheme. They will not be paying any more fees until they are due under the national scheme.

The CHAIRMAN: I think we are saying the same thing but you are disagreeing with me, which I find hard to follow. The reality is that the state board will not collect any registration fees after 30 June 2010 if WA has become a member of the national scheme.

Mrs Cooper: Yes, that is correct. I apologise.

The CHAIRMAN: I refer to that component of the ministerial council decision that says that the state boards will transfer any fees that are collected for registration after 30 June 2010. Assuming that the state has actually become a part of the national scheme, effective from 1 July 2010, no fees will fall within that definition. It only occurs if there is some delay in the state coming on board with the national scheme.

[12.15 pm]

Mrs Cooper: Yes.

The CHAIRMAN: Are you able to tell me the figure amount of the 12 months' operating costs for the Medical Board of Western Australia?

Mrs Cooper: No, I cannot. Are you aware of any?

Mr Ashburn: No, I am not aware of the figure.

The CHAIRMAN: If we were to ask you to take that on notice, would you be able to get that information or is it information that you are not privy to get access to?

Mr Ashburn: We do not have a right to it but we may be able to obtain it.

The CHAIRMAN: Or we might direct that question to the AMA directly. I think that just might be easier. My concern here is that the ministerial council direction is saying that the amount of money that needs to be transferred across to the national board is 12 months' operating costs of the WA Medical Board, plus whatever fees they collect after 30 June 2010. That figure may be less than the $2 million that is currently held by the WA Medical Board. My question is: that then becomes inconsistent with what clause 295 is asking in the national bill, because, as I understand it, what clause 295 is saying is that all the money that is held in the WA Medical Board fund will be transferred across to the national board. So I see an inconsistency between the ministerial council decision of principles to apply and the wording that is actually the legislation. If I am wrong, please correct me, but I do not see anywhere in clause 295 the words "contribute 12 months' operating costs plus any fees collected for registration after 30 June 2010".

Hon LIZ BEHJAT: Plus also, Madam Chair, did those to ministerial council minutes that you are referring to discuss the liabilities of boards as well, because what you are saying is that there is a current liability on the lease for another two years, and was that dealt with in that ministerial council as well?

Mrs Cooper: I am not sure if the ministerial council were aware of exactly what everybody has and what liabilities they have. I am not aware of those deliberations at that level.

The CHAIRMAN: Are you able to provide the committee with a copy of the ministerial council minutes of when this decision was made and which specify the contribution of 12 months' operating costs plus any fees collected for registration after 30 June 2010 or which endorse the words that are used in clause 295? To me we have got two completely different sets of words before us, which could have a quite different outcome in terms of the dollar amount that needs to be transferred across the national board.

Mrs Cooper: Yes, we can ask for that. I can try.

The CHAIRMAN: All right, so I will take that as question on notice 1, and Susan will liaise with Anne just to clarify that after the meeting. The other question I have is: in the event that the amount in dollars that is calculated as a result of the ministerial council decision, of 12 months' operating costs plus the registration fees after 30 to 2010, is greater than the amount required under clause 295 of the national bill to be transferred, what happens with the balance of the money?

Mrs Cooper: The state boards, and some of them have actually already earmarked some of their moneys for state purposes, and they will be using that money for whatever those purposes were.

The CHAIRMAN: Do you know whether the WA Medical Board has earmarked any of their $2 million for state purposes?

Mrs Cooper: No, I do not. This clause here "***Assets and liabilities***" states —

> (1) From the transfer day for a participating jurisdiction—
>
> (a) the assets and liabilities of a local registration authority for a health profession in a participating jurisdiction are taken to be assets and liabilities of the National Agency and are to be paid into or out of the account kept in the Agency Fund for the National Board established for the profession …

Most of them do not have a lot of assets, so it would really only be operating moneys that they have or liabilities. With assets, I think, it is only the Nurses Board of Western Australia that actually has a property asset, as in a building. Most of the other boards are actually managed through private subcontractors, and the Medical Board and the Pharmaceutical Council are the same. Those are the only three that are in a property separate. The other boards are all managed through two accounting firms privately.

The CHAIRMAN: I know that, Anne. I think that the concerns of the committee remain there in any event because the wording is different. It may be that the operating costs of the WA Medical Board are substantially less than $2 million for a 12-month period, and under the ministerial council decision, as it has been reported to the committee, it would mean that a lesser amount needs to be transferred across to the national board than would be required under clause 295. I think we just need to get clarification about the intent of the ministerial council and whether that has been accurately transcribed into the national law bill.

Hon LIZ BEHJAT: I also think we need to seek clarification as to contributing 12 months' operating costs; is that 12 months' operating cost that the state medical board used to incur as a 12-month operating cost or is it the projected 12 months' operating cost of the national board that they are being asked to contribute, because that is not actually clear there either, and that might be another thing that the ministerial council is saying, "This national board is going to start up. It has got no money. So in order for it to start up we need to say that it is going to cost this much to run it for 12 months and each state has to contribute towards that 12 months, not what the previous 12 months cost to run a state board."

The CHAIRMAN: I take your question, and we will take that as a two-part question for question on notice 1, although I suspect that is not what they say, but I appreciate it.

Hon LIZ BEHJAT: It just needs clarifying.

The CHAIRMAN: Absolutely. Let us get it clarified. In relation to the second point of question 17, which asks will the WA assets be in any way quarantined so that they can be utilised for the benefit of WA only, I think the answer to that is no, but they will be quarantined so that in the case of the medical practice board funds they are paid into the national medical practice board, and will be used in only that professional area and will not be used across other areas, but it will be used across all the state jurisdictions.

Mrs Cooper: Yes, that is correct.

The CHAIRMAN: Can we now just address the issue of the increase in registration fees. There has been a suggestion that there is a proposed 70 per cent increase in registration fees. Is that intended to be a one-off increase for the initial registration or is intended to be a registration fee that will be applied until such time as it is reviewed upwards rather than downwards?

Mrs Cooper: It is really a matter for the national board to set the fees. I cannot really guarantee what they will be doing in the future. As I understand it, those fees have not really been quite set yet; there is still some negotiation happening with those, so that amount there of the proposed 70 per cent that the AMA raises may not in fact be 70 per cent—it may be lower.

The CHAIRMAN: Moving on to question 18, OT Australia WA has sought an assurance that in WA the profession of occupational therapy will remain in the jurisdiction of the Occupational Therapists Act 2005 until transferred into the proposed bill. Can you give this assurance?

Mrs Cooper: They are currently registered under the WA act. There is no decision or anything for them to move anywhere else but into the national scheme from 1 July 2012 unless the government of the day makes a decision to repeal that act, which I think is not likely, so I believe that they will continue until they go into the national scheme.

The CHAIRMAN: Just on that issue about those four professions that have been identified in the bills to come under the auspices of the bill in 2012, that is a very unusual way to draft a bill—to actually identify upfront that another four professions are going to come under the auspices of the bill. Why was it done in that way rather than simply moving an amendment in 2012 to bring them under the auspices of the bill?

Mrs Cooper: It was decided at ministerial council to bring those four professions in. When the bill was drafted they were included. I am not sure why they were all included at that early stage, but I think because they are in the schedule to the bill, then parliamentary counsel here in Western Australia has also included them in the consequentials to the bill, which is the front end of the WA bill, so that they are already there. If there was any reason why that particular profession, or those professions, would not be included in WA, we currently have state acts for two of those professions, which are the medical radiation technologists and the occupational therapists, then we just would not proclaim those sections.

The CHAIRMAN: If the WA Parliament passes the national bill in the form that is currently before the WA Parliament, is there any capacity for the WA Parliament to decide at some point before 2012 not to have those four professions that have been identified come under the auspices of the bill in 2012? Can WA retract from that position before 2012 if we pass the bill in its current form?

Mrs Cooper: The government could just never proclaim those sections. Therefore, they would never come into operation. They would always remain part of schedule 1, because that is the national law and so, therefore, would apply in all the other jurisdictions, but would not apply here in Western Australia.

The CHAIRMAN: Would that create a problem?

Mrs Cooper: We would still have our two state pieces of legislation, so they would continue to operate in Western Australia. We just would not have registration for the Aboriginal and Torres Strait Islander health workers or the Chinese medicine practitioners.

The CHAIRMAN: What was the reason for delaying the inclusion of those four professions until 2012, rather than having them effective from 1 July 2010?

Mrs Cooper: The occupational therapists are not registered in every state in Australia. OT Australia is an association, and some of them hold membership with that association. Victoria is the only state that has registration for Chinese medicine practitioners. All other states do not have medical radiation practitioners or technologists registered as well. The only jurisdiction that holds registration for Aboriginal and Torres Strait Islanders is the Northern Territory. So in particular to

those professions—the Chinese medicine one and the Aboriginal and Torres Strait Islander—there are not any clear qualifications that are available and all of the framework is not in place to actually ensure that we could include those in national law and include all the administrative-type things, so they decided to go with the professions that were registered in most jurisdictions, I suppose, and that have registration across Australia. It was easier to go with those initially and then bring the other four in. There is a task force, or a committee, currently being established that is going to look at the Aboriginal and Torres Strait Islander group and work that out. They also only pay a very minimal amount of money for their registration fees, like $30. So there are quite a lot of things to do with that to bring them into the national scheme economically. Chinese medicine is a bit more well known. Victoria has a fairly good system that has been around for a while. But because of all of the unknowns in relation to, in particular, those two, it was decided to leave them out. I think in WA, too, we are also pushing, perhaps, for paramedics to be included, so that would be another thing. That is just something that is being looked at at the moment.

[12.30 pm]

The CHAIRMAN: The Optometrists Association Australia (WA) has expressed concerns about proposed section 122 of the national law in the schedule to the bill, which will enable orthopists to prescribe spectacles. Can you please explain the effect of this provision?

Mrs Cooper: It is because orthopists—they are currently mostly in Victoria, as I understand it; there are not very many in WA—work under opthalmologists, who are specialist medical practitioners. It was agreed, I believe, that people would not lose their livelihood under this scheme. So orthopists who are currently working can continue to do so. That was why the provision was included.

The CHAIRMAN: Have any concerns about the practical effect of this proposed section been raised with the department?

Mrs Cooper: I have not had any from the Optometrists Association or the Optometrists Board. I did actually speak to a member of that board to get some more information about them, because I am not very aware of them here in Western Australia. We do not include them under our current Optometrists Act. He explained to me that there were possibly eight in Western Australia. But they do not work on their own. They work under supervision with a specialist medical practitioner.

Hon LINDA SAVAGE: You have got in here that the "premise" is that no professional group would be disadvantaged. Is that a premise in a document? Where does that come from?

Mrs Cooper: Well, I did want to refer to a document, but I could not find it. That is why I referred to it in that way.

Hon LINDA SAVAGE: Okay. So that premise is just your understanding of the national law?

Mrs Cooper: Well, my understanding from the discussion with the transition manager.

Hon LINDA SAVAGE: So it is not in a document?

Mrs Cooper: Well, not that I could locate at this time. In the short time frame I have done any best to locate as many documents as I could, but I was not able to locate that.

Hon LINDA SAVAGE: If in the course of looking at documents you can find something, because I would be interested if there was something that explicitly had that as a principle —

The CHAIRMAN: We will take that as question on notice 2.

Clause 12(2) of the bill provides that —

> A person must not sell by retail contact lenses, whether or not designed to correct, remedy or relieve any reactive abnormality or defect of sight, unless the contact lenses have been prescribed for the purchaser by a medical practitioner or an optometrist.

Is the word "by" a typographical error?

Mrs Cooper: I do not want to comment on this clause because I do not know what the policy decision is with it now. I think I would decline to comment.

The CHAIRMAN: Are you able to comment, Stephen, on the words "A person must not sell by retail contact lenses"?

Mr Ashburn: I think you just read it in the way it was intended to be read, which is that a person must not sell, by retail, contact lenses. It may have been improved by the insertion of commas.

The CHAIRMAN: God forbid a lawyer would use commas!

Mr Ashburn: However, it can be read in a way that makes sense.

The CHAIRMAN: Why is this clause in the bill? It seems to stick out there. There is no similar clause that seeks to restrict retail activities in any way. So the committee is a little curious as to why it has been inserted in the bill.

Mrs Cooper: I am going to try to comment, because I have not been involved in the meetings that have been taking place, and I understand there have been some changes, but I really would rather not comment.

The CHAIRMAN: We are only asking you as to the reasoning for its inclusion in the bill in the first place. We are not asking you for anything that has happened since the bill has been drafted in terms of recent discussions. We are just trying to understand why it was put there in the first place.

Mrs Cooper: It was put there in the first place because the Optometrists Association and the Optometrists Board lobbied very strongly for this provision to be included in the previous Optometrists Act. Other jurisdictions in Australia have included a similar provision. I think there are four jurisdictions that are putting something forward. I know that three of them had it in there, including Western Australia, but I am not sure about one of them at the moment because I have not been able to check. The Optometrist Board and the association lobbied very strongly with the last Optometrist Act of 2005. It was not included in that act. It was then tried to be put in under the Health Act. We also tried to do something with the Department of Consumer and Employment Protection at that time, and we could not do anything about it. There have been a few cases where people who have used the novelty contact lenses have actually had some eye defects and things like that. So, although the schedule actually has a provision that deals with contact lenses, this is really specifically about the sale of them through retail premises to ensure that people who go to those places actually get some instructions on how to put them into their eyes and take them out and clean them and those sorts of things. That is why it was included. South Australia and Tasmania have a similar provision.

The CHAIRMAN: In view of the fact that it was intended that it would apply nationwide, why is it not in the actual national law bill rather than in this clause, which is really the Western Australian enactment component of the bill?

Mrs Cooper: This will specifically apply to Western Australia. The states have decided what they will have in these sections. Some of the states have some things that are exactly the same and some of them have some different things. This has been put in here for WA specifically. There is also a section in the schedule—I do not know exactly which one it is now—that also deals with contact lenses. You actually have to get them from a medical practitioner or an optometrist on a prescription.

The CHAIRMAN: Can you identify that section for us?

Mrs Cooper: It is proposed section 122 of the schedule, "Restriction on prescription of optical appliances". "Optical appliances" deals with spectacles, and that would cover contact lenses.

The CHAIRMAN: So why is that provision needed both at the front end of the bill, and in the schedule?

Mrs Cooper: Because this just provides that a person must not prescribe an optical appliance—which includes contact lenses—unless the person is an optometrist or a medical practitioner. The other provision is for the sale of the item. It provides that when you go to a shop and buy contact lenses over the counter, someone must explain to you how to use them correctly.

The CHAIRMAN: But would contact lenses that simply change the colour of your eyes come within the definition of "optical appliance" in proposed section 122?

Mrs Cooper: Yes, they would.

The CHAIRMAN: If they do, and they require a prescription, how can they be sold over the counter?

Mrs Cooper: Because there is no restriction on the sale of them.

The CHAIRMAN: I thought that if something is required to have a prescription, it is automatically not able to be purchased over the counter?

Mrs Cooper: Normally if you are getting contact lenses that are for the correction of your sight, you would buy them from an optometrist. If you want to get coloured contact lenses, I do not know where you would go to get them.

The CHAIRMAN: Currently you can pick them up at a chemist, over the counter. Is there a definition of "optical appliance" in the national law bill as it applies to proposed section 122?

Mrs Cooper: Yes. It is just over the page, in proposed section 122(2) —

> In this section
>
> ***optical appliance*** means —
>
> (a) any appliance designed to correct, remedy or relieve any refractive abnormality or defect of sight …
>
> (b) contact lenses …

The CHAIRMAN: Therefore, that would include contact lenses that people might use just to change the colour of their eyes. Would you agree, Stephen?

Mr Ashburn: Yes, it would.

The CHAIRMAN: If that is the case, and if people would need a prescription to purchase contact lenses that just changed the colour of their eyes, why do we need clause 12 of the bill?

Mrs Cooper: This one deals with the actual prescription of it. The prescription is restricted to a medical practitioner or an optometrist. Then you have orthopists, who can do spectacles. This restricts who can actually prescribe.

The CHAIRMAN: But my understanding is that if something can be purchased only on prescription, it cannot be sold over the counter. Therefore, it would do away with the need for section 12, would it not?

Mr Ashburn: In this situation, a prescription is simply a recipe for how the contact lenses are made. It does not in itself restrict sale. When you are thinking of drugs that are obtained on prescription, the Poisons Act is the act that restricts access to various drugs. I may be being somewhat pedantic, but it is not in fact the prescription that restricts it. It is another piece of legislation that says that you may not purchase it unless you have a prescription.

Hon LIZ BEHJAT: Because contact lenses are not provided under the Poisons Act, they are not restricted. I get what you are saying.

Mr Ashburn: So in this case it is the prescription that defines dimensions and such like. If it is a corrective lens, it defines the things that you need to correct your sight. But that in itself does not restrict the sale. It is clause 12 that I believe does the restricting.

The CHAIRMAN: Okay. I just wanted to clarify that, because the other jurisdictions in Australia have determined to have mirror legislation in relation to the national scheme; so the legislation is passed in Queensland and is adopted in all the other states through mirror legislation. But you have indicated that some states do and other states do not have a provision in relation to a restriction on the retail sale of contact lenses.

[12.45 pm]

Mrs Cooper: The other states put theirs forward into two bills. They have actually put the national law as the schedule, which has gone through already in the majority of jurisdictions as bill C, and then they have put through another bill C that will carry through their consequential and transitional arrangements to do with multiple issues. They all will have that going through their Parliaments at the moment. Some of them have passed them and others have not. Those provisions that deal with these specific things and their consequential amendments to their own state legislation are different from ours because they have gone through in two bills rather than one entire bill like we are doing in Western Australia.

Hon LIZ BEHJAT: I understand that WA is the one state with mirror legislation and that the others have template legislation.

Mrs Cooper: We are doing the adoptions. As it has gone through the Queensland Parliament, any change to the Queensland legislation will flow through to the other states' legislation, whereas in WA—the word I use is "corresponding"—we are putting through corresponding legislation and need to keep putting it through our Parliament every time there is a change.

The CHAIRMAN: Where is it going through?

Mrs Cooper: It goes through Queensland first and then it is adopted by the other states.

The CHAIRMAN: If Queensland adopts clause 12 -

Mrs Cooper: No; that is part of our own legislation. It is the front end of the bill, which is provision-specific to this jurisdiction only; it does not apply to any other jurisdiction. No other jurisdiction has it unless they include it in their bill C, which is currently going through their —

The CHAIRMAN: Has Victoria included it in its national law bill?

Mrs Cooper: I am not sure. I have printed off a few of them but I have not looked at that.

Hon LIZ BEHJAT: I am certain that you will need to take this question on notice. I understand that the Western Australian health minister has indicated that clause 12 is being taken out of the Western Australian legislation. It appears that that is not the case because what is tabled still contains it. Could you take on notice whether there is an intention by the state Minister for Health to remove that from the Western Australian legislation?

Mrs Cooper: Yes.

The CHAIRMAN: That will be question on notice number three.

Hon LIZ BEHJAT: If that is not the case and clause 12 remains, under clause 12(2) —Stephen will probably need to comment on this—"a person must not sell by retail" are the operative words. What happens in the case of wholesale and also giveaway?

The CHAIRMAN: That will be question on notice number four.

The CHAIRMAN: Going back to my question, I am trying to understand whether or not the issue about the sale of contact lenses is actually part of the national law.

Mrs Cooper: Do you mean clause 12?

The CHAIRMAN: Yes.

Mrs Cooper: It forms part of the Western Australian bill, but if you are talking about the specific national law, it does not form part of that.

The CHAIRMAN: Did the ministerial council agree that we should restrict the sale of contact lenses across Australia?

Mrs Cooper: I do not know.

The CHAIRMAN: Would you be able to take that as question on notice number five?

The CHAIRMAN: My concern is that if the ministerial council did decide that, and for whatever reason it cannot be included in the schedule, which is the national law bill, every state needs to incorporate in its section of the bill that enacts the national law bill in that state. If a decision is made to amend that in any state, will it have effect only in the one state? I am not sure that it will. If Queensland has agreed to that and the other states have passed legislation to adopt whatever has been agreed to in Queensland, will Queensland be required to amend its legislation in order for it to affect an amendment in one of the other jurisdictions? How does the majority of jurisdictions needing to agree to an amendment provision apply in respect of clause 12 in our bill, which may be clause whatever in the bills in other jurisdictions? I am very confused.

Mr Ashburn: The legislation that is adopted in other jurisdictions is that part of our bill that is in the schedule only—that is the national law. In order to make the national law operative, our bill in Western Australia incorporates other local amendments, some transitional arrangements and it also includes clause 12.

The CHAIRMAN: Do we know whether other states either have or are in the process of enacting clauses similar to clause 12 in our bill?

Mrs Cooper: Tasmania and South Australia are two that have and it is possible that New South Wales may, but I am not sure about that.

The CHAIRMAN: Can you take as question on notice number six which other jurisdictions in Australia have enacted a provision similar or equivalent to clause 12 of our bill? In which case, each jurisdiction would have the capacity to amend it themselves.

Mr Ashburn: That is correct.

The CHAIRMAN: So it is not actually part of the national bill at all?

Mr Ashburn: That is correct.

The CHAIRMAN: What would be the practical effect on proposed section 152 of the schedule as it relates to contact lenses if clause 12 of the bill was deleted?

Mrs Cooper: I think that you would be able to buy the novelty contact lenses from whichever source you chose.

The CHAIRMAN: Can you take that as question on notice number seven?

Is the phrase "in the nursing and midwifery profession" in the definition of "nurse" in the bill—for example, in clause 42—accurate and appropriate, given that the two professions are separate professions, as reflected in their separate registers under the NRA scheme and sections 95 and 96 of the national law, and the definitions of "midwife" and "nurse practitioner" in the bill are inconsistent as they do not include the above phrase? Should the phrase "in the nursing and midwifery profession" be deleted from the definition of "nurse"?

Mrs Cooper: Clause 40(2), which is in the Children and Community Services Act, in the front part of the bill has actually been amended to include that "nurse" means a person whose name is on the register of nurses kept under that law. It still has the nursing and midwifery professions because that is the way that the profession is described in the national law. I do not know whether you could say

that it is one or two professions, but the board is called the Nurses and Midwives Board of Western Australia. The two professions are put together under the one board. There are two registers—one for midwives and the other for nurses. Previously, there was no direct entry of midwives so a midwife had to be a registered nurse who also did the midwifery qualification. Now people can do just the midwifery qualification and practise as a midwife. That board and profession is described as the nursing and midwifery profession.

The CHAIRMAN: Stephen, would you like to comment on the question that was put?

Mr Ashburn: No, I do not need to make a comment.

The CHAIRMAN: The reason I invited you to do so is that I am not sure that because there is a board titled Nurses and Midwives Board, it is a sufficient explanation of the question that has been put.

Mrs Cooper: Under section 113 in schedule one, the profession is actually called the nursing and midwifery profession. That is how it is cited everywhere in the national law. I am not sure how we would take them out. These are the consequential amendments, and the consequential amendments relate to what was in those previous state acts and the way that they are described. Because these are consequential amendments, you cannot amend the act in great detail; this legislation only allows it to work with the national law. We do not have approval to amend other ministers' acts. The definition in the Children and Community Services Act is "doctor, midwife and nurse". The actual definitions that you correct then are adopted to a midwife and a nurse. A nurse has been described as person registered under this bill in the nursing and midwifery profession whose name is entered on the register of nurses kept under that law. It specifically takes that definition back to the register of nurses, which will be either a registered nurse or an enrolled nurse. It does not include a midwife because there is a separate definition of "midwife".

The CHAIRMAN: The definition of "midwife"—on the same page above the definition of "nurse"—means —

> ***midwife*** means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* whose name is entered on the Register of Midwives kept under that Law;

It does not include the words "in the nursing and midwifery profession", which are include in the definition of "nurse". Is there some reason why those words are omitted in the definition of "midwife"?

Mrs Cooper: The only possible explanation I can give is that perhaps the nurse who is registered under here as a registered nurse may also hold a qualification in midwifery.

The CHAIRMAN: Is it not possible that a midwife could also be a registered nurse?

Mrs Cooper: Yes, that is what I am saying. She may be, but you may have a direct-entry midwife who would not gain access to the register of nurses. This is the way that parliamentary counsel has drafted the bill. I give them instructions and they then draft it in accordance with the procedures and policies that they have in place.

The CHAIRMAN: I still do not understand why the words "in the nursing and midwifery profession" are in the definition of "nurse" and omitted from the definition of "midwife". Can we take that as question on notice number eight? Perhaps you can advise the committee about why that is the case.

The State Records Office has advised that the bill does not include any provision expressly or by implication stating whether the state boards established under the national law are subject to any record-keeping legislation such as the commonwealth Archives Act 1983. The State Records Office has advised that the bill does not include any provision, expressly or by implication, stating whether the state boards established under the national law are subject to any record keeping legislation,

such as the commonwealth Archives Act 1983. The State Records Office supports applying commonwealth legislation to all national law bodies and advises that this has been raised at a national level with the NRA scheme administrators. What, if any, record-keeping legislation applies to the bill and the national law bodies, and is this issue being addressed?

[1.00 pm]

Mrs Cooper: My understanding is that the State Records Act has not been excluded from applying. It is therefore my understanding that the state office here will actually follow retention and disposal procedures under the State Records Act. There is no commonwealth legislation that applies to this; it is not really a commonwealth piece of legislation, it is Western Australian legislation that has been enacted in this state. There is nothing in the bill that actually deals with records, apart from the transitional provisions, where I think there is something about records. But it is my understanding that, going forward, the state office will follow the State Records Act.

The CHAIRMAN: Okay. Can I ask why it is not expressly stated in the legislation, if that is the intention?

Mrs Cooper: For which?

The CHAIRMAN: For the state bodies to enact the State Records Act?

Mrs Cooper: Because it has not been excluded under the provisions that apply here in Western Australia. Because this is the national law as contained in the schedule, we only have the front section that deals with Western Australian provisions at the very front. Clause 7 deals with the exclusion zone; there are some acts that have been excluded from applying to it, but the State Records Act has not been excluded, so it can continue to apply.

The CHAIRMAN: Just out of curiosity, why has the Freedom of Information Act been excluded?

Mrs Cooper: There has been some discussion about including one of the commonwealth pieces of legislation to deal with privacy, freedom of information and the parliamentary commissioner provisions. That is still being worked on at the moment.

The CHAIRMAN: Okay. It being one o'clock, and having had a heavy session until this time, I suggest we adjourn for half an hour for lunch and resume at 1.30. We have lunch arranged, and you are invited to join us for lunch, which will make it a bit easier for you. I will adjourn the hearing at this point and ask you to leave the room so the committee can deliberate on the issue of adjourning for lunch! Thank you.

Proceedings suspended from 1.02 to 1.51 pm

The CHAIRMAN: The hearing is now reconvened, and I thank Anne and Stephen for still being with us, and Anne for pointing out that I skipped question 21. We will go back to question 21.

The Optometrists Association of Australia (Western Australia) also raised the issue of the scheduling of medicines that will interact with the national law, and the proposed amendments to the Poisons Act 1964 to avoid potential problems for patients, practitioner and the board. Have amendments to the Poisons Act 1964 been considered?

Mrs Cooper: Yes. In the consequentials—division 40, page 49—are several clauses that deal with amendments to the Poisons Act. One of those is clause 125(2), which deals with a dentist, an endorsed health practitioner, medical practitioner, medicine, nurse practitioner and pharmacist. The endorsed health practitioner will be those health practitioners under the national law who are endorsed to administer, obtain, possess, prescribe, sell, supply or use a scheduled medicine or a class of scheduled medicines. Those people—who will be nurse practitioners, optometrists and probably podiatrists—will actually be endorsed by their own national board to actually do one of those things with a scheduled medicine or a class of scheduled medicines. The medicines that they are going to do will be from the schedules 2, 3, 4 or 8. Once they have been endorsed under the national law, then they will be authorised, under the WA Poisons Act, to actually do one of those

things—administer, obtain, possess, prescribe, sell or supply. That will cover the optometrists. The optometrists have been approved by the ministerial council to use and access topical medicines for eyes. That has already been agreed to by the ministerial council.

The CHAIRMAN: Can I just clarify that schedules 2, 3, 4, 5, 6, 7 and 8 that you referred are schedules to the national law bill or to the Poisons Act?

Mrs Cooper: No, sorry; they are actually under the standard of uniform drugs and poisons. Under clause 127, section 20 of the Poisons Act will be amended. This will be amended slightly further than this in the amendment in the committee, but these are the medicines that it refers to. Schedule 1 is actually blank—that will be dealing with the Chinese medicine-type herbs; and then schedule 2, 3, 4, 5, 6, 7, 8 and 9 will explain what those are.

The CHAIRMAN: You just mentioned that there are going to be some amendments in committee to this section. Can you please tell us what they are?

Mrs Cooper: This will just be amended further, so it is exactly what is in that standard uniform drugs and poisons schedule. It is the one that is the commonwealth one.

The CHAIRMAN: Has that amendment been drafted?

Mrs Cooper: It is being drafted as we speak, yes.

The CHAIRMAN: Could you take that as question on notice 9, to provide us with a copy of that amendment?

Mrs Cooper: Parliamentary counsel has not actually finished it and it has not been checked, so it is not exactly finalised at this point.

The CHAIRMAN: What is the time line for finalising it?

Mrs Cooper: I presume they would have to have it ready for next week, so possibly Monday.

The CHAIRMAN: If we had it by Monday, that would be fine

Hon LIZ BEHJAT: Does that extend to other amendments that are being drafted; not just in relation to this one?

The CHAIRMAN: Anne, are you aware of any other amendments that are being drafted or considered by government for introduction during the committee consideration in the Legislative Assembly?

Mrs Cooper: I think there is this one here to do with the poisons, so that it is clearer. It is my understanding that there would be one other around the —

The CHAIRMAN: Contact lenses?

Mrs Cooper: No—well, that is a possibility; I do not really know with that one. The actual commencement clause, which I think is 2, might be just expanded a little bit so that it is a little bit clearer, as I understand it.

The CHAIRMAN: Can I amend that question on notice 9 to ask that you provide the committee with a copy of any amendments the government proposes to consider in committee in the Assembly?

Mrs Cooper: The one for the commencement clause is just one that is a tidy-up, really, just to make sure that it is a bit clearer.

The CHAIRMAN: We would still like to see it, if it is ready. In a submission to the committee the optometrists have actually put forward a proposed amendment that they would like to see to the Poisons Act 1964, and it is an amendment to section 23(2), so that it reads —

> *…authorise an optometrist whose registration is endorsed by the Optometry Board of Australia under section 94 of the Health Practitioner Regulation National Law Act to have*

> *in his possession and to use, supply or sell a schedule 4 poison for the treatment of conditions of the eye, in accordance with the terms of the endorsement approved by the Ministerial Council under section 14 of the Health Practitioner Regulation national law Act and in the lawful practice of his profession.*

Are you aware if they are the terms of the amendment that is being proposed by government?

Mrs Cooper: No; the amendments to the Poisons Act are those in division 40 only that deal with section 5, which deals with the definitions. Then you have an amendment to section 8, which deals with, I think, people who—I do not have the principal act here with me. I think that is for a person nominated to one of the boards, it must be; and then section 20, which deals with the actual commonwealth in—when you say section 23, is it section 23(2)?

The CHAIRMAN: Yes, section 23(2).
Mrs Cooper: That has been amended. Section 23(3B), which may be relevant to the one they are talking about, states —

> If the CEO gives an endorsed health practitioner a notice —

I am not sure if that is to do with something else.

The CHAIRMAN: Can we just take that as question on notice 10. If you could advise the committee whether the government intends to move an amendment consistent with the amendment that I have just read out and Suzanne will provide to you after the hearing today, to section 23(2) of the Poisons Act 1964.

Mrs Cooper: I think the amendment, though, to the definition actually covers that, because it states —

> ***endorsed health practitioner***, in relation to a scheduled 18 medicine or class of scheduled medicine, means a health practitioner who is registered under the *Health Practitioner Regulation National Law (Western Australia)* to practise a health profession and whose registration is endorsed to administer, obtain, possess, prescribe, sell, supply or use the scheduled medicine or class of scheduled medicine;

* chai: Where are you reading from, Anne?

Mrs Cooper: It is clause 125(2), where a new definition has been inserted for endorsed health practitioner. Previously, we did not have endorsed health practitioners under our state legislation.

The CHAIRMAN: I see.

Mrs Cooper: This has been inserted to cover those people who are endorsed under the national law.

The CHAIRMAN: It appears that that may actually be consistent with the end objective of what they are seeking but just by a different method. As part of question on notice 10, can you make a comparison and confirm to the committee that essentially delivers on what optometrists are seeking through their proposed amendment to section 23(2)?

Mrs Cooper: Those words will actually be provided in the schedule.

The CHAIRMAN: Yes, they will be provided to you. Linda has indicated that she has a question—we were going back to our clinical psychologist, sorry, so bear with us.

Hon LINDA SAVAGE: I know we have spoken a lot about this, and my apologies; I am still trying to clarify it in my mind. I have tried to just put it into one simple question and not go back through all the steps we have been through and the documents you have provided that appear to indicate that the qualifications for a clinical psychologist under the endorsement look very similar to what we currently have. This is the question as best as I can frame it: I want to know whether it will be possible under the national law, under the area of practice endorsement registration standards—that is, when they are finally settled—for there to be people holding themselves out to either be a

clinical psychologist with the additional word "endorsed", which they could put in their advertising or on their card, as well as people who could call themselves a clinical psychologist without making the claim to be endorsed?

[2.00 pm]

Mrs Cooper: There is a provision in the national law section. It is in the schedule for holding out. It is actually an offence.

Hon LINDA SAVAGE: They are not claiming to be endorsed; they are just using the words "clinical psychologist".

Mrs Cooper: There is a restriction on the use of protected titles. "Psychologist" is actually a protected title under the national law. You cannot use psychology as part of any other words around it without it being an offence and being liable. If you used a specialist title for a recognised specialist, then there are maximum penalties; in the case of an individual it is $30 000 and in the case of a body corporate it is up to $60 000.

Hon LINDA SAVAGE: Even if someone is not claiming to be endorsed or have the endorsement as a clinical psychologist, you are saying that they could not use those words "clinical psychologist"?

Mrs Cooper: No, they would not be able to. It is an offence as they would be holding themselves out to be something they are not.

The CHAIRMAN: To which section are you referring, Anne?

Mrs Cooper: "Title and practice protections" at section 113 in the schedule.

The CHAIRMAN: I think that covers it.

Hon LINDA SAVAGE: In order that I am absolutely clear on this, once we have the national law and the endorsed standards, the words "clinical psychologist" will not be able to be used by anyone except if they are endorsed?

The CHAIRMAN: Or a specialist clinical psychologist for the three-year transitional period.

Hon LINDA SAVAGE: Yes, that aside, but I am talking Australia-wide. I understand that we have the transition, but once this is all in place the words "clinical psychologist"—whether or not the word "endorsed" appears after—cannot be used by anyone else under any circumstances?

Mrs Cooper: That would be my understanding, yes.

Mr Ashburn: Yes, that is correct. In addition to that, there are the other various laws that deal with misleading and deceptive conduct and passing off, which are outside this law, which would also deal with it.

Hon LINDA SAVAGE: That is all I need to know. They are not claiming endorsed. Even if they are not claiming to be endorsed, those actual words "clinical psychologist" would be enough for them to have committed an offence?

Mrs Cooper: Section 115 of the schedule "Restriction on use of specialist titles". Subsection (2)(c) reads —

> A specialist title for recognised specialty … unless the person is registered under this Law and the specialty.

There will be the transition clause that takes them across, so I would expect that that would apply.

Hon LINDA SAVAGE: Even though the section that we are talking about just uses the word "psychologist" and does not use the words "clinical psychologist"?

The CHAIRMAN: Where are you looking at?

Hon LINDA SAVAGE: The table in section 113 of the schedule under "Psychology", the title "psychologist".

The CHAIRMAN: Then section 115 "Restriction on use of specialist titles", but a clinical psychologist is not a specialist title.

Mrs Cooper: No, but psychologist is and "clinical psychologist" would come across under the transition. It would still be a specialist title for those three years.

The CHAIRMAN: What about beyond the three years? There does not seem to be a clause in the legislation that deals with restriction on use of endorsed titles.

Mrs Cooper: Section 116(2) reads

> A person must not knowingly or recklessly —
>
> (a) take or use the title of "registered health practitioner", whether with or without any other words, in relation to another person who is not a registered health practitioner; or
>
> (b) take or use a title, name, initial, symbol, word or description that, having regard to the circumstances in which it is taken or used, indicates or could be reasonably understood to indicate —
>
> (i) another person is a health practitioner if the other person is not;

That is for other people. But section 116(1) ensures that people will not be able to use something that will imply that they are a clinical psychologist.

Hon LINDA SAVAGE: My example assumes that the person is a psychologist who had been operating as a clinical psychologist in the eastern states so they already had used that title, even though we know that is not a specialist title. Certainly, in the eastern states there are people who call themselves "clinical psychologists". That is the nub of my question again. "Psychologist", yes, but the "clinical" part, you are saying, they would not be able to use?

Mrs Cooper: Under the APA —

The CHAIRMAN: Sorry for interrupting. Linda, do you want to look at section 119, which deals with registration or endorsement?

Hon LINDA SAVAGE: They would not be claiming to be endorsed.

The CHAIRMAN: But if there is an area of practice that has an endorsement then —

Mrs Cooper: Endorsement and the specialist title are sort of together there. They sort of have similar —

Hon LINDA SAVAGE: This says that a registered health practitioner must not knowingly or recklessly claim to hold a type of registration or endorsement.

The CHAIRMAN: Yes, but it does not say it has to use the word "endorsement" in that claim. If we have a situation where a clinical psychology is an endorsed area of practice, we actually have to have an endorsement by the national board to use the term "clinical psychologist", be it with or without the word "endorsed"—or let us say even with the word "endorsed", my understanding of section 110, and we might need to get an opinion on that, is if someone was to call himself or herself a clinical psychologist with our without the word "endorsed" that would be an offence under section 119.

Hon LINDA SAVAGE: That is what I am trying to pin down when someone is not claiming to be endorsed but calls themselves a clinical psychologist. You are saying they would not be able to do that.

Mrs Cooper: I do not believe they would. There is a penalty here of $30 000. They would be holding themselves out to be registered under this law and they would not be registered if they are not a psychologist.

The CHAIRMAN: Can we take this as question on notice 11. Stephen, could you get Crown Law or parliamentary counsel advice on whether section 119 is sufficient to protect against the issue that Linda is raising; that is, a person can hold himself or herself out to be a clinical psychologist without the word "endorsed"? They are not indicating that they have been endorsed under the national scheme, but simply using the words, and whether that would be an offence.

Hon LINDA SAVAGE: They are not claiming to be endorsed.

Mr Ashburn: We will take that on notice.

The CHAIRMAN: That is question on notice 11. Just moving on, these are some questions that I have drafted myself so I apologise that you do not have them. What is the benefit to Western Australia in entering into the national scheme and adopting the national law? In particular, have any inducements, monetary or otherwise, been provided or offered to WA to enter into the national scheme?

Mrs Cooper: I am not aware of any inducements that that have been offered. It will allow for the portability of persons to move between jurisdictions without having to apply for dual registration in both states. It would also mean that there is a national set of registration standards and accreditation processes in place so that people in WA will have the same registration, accreditation and registration requirements as other people across Australia.

The CHAIRMAN: Can we take that as question on notice 12? That is, confirmation that there have been no inducements offered to Western Australia to enter into the national scheme. My next question is will any penalties, monetary or otherwise, be imposed on WA if WA elects not to implement the national scheme? I will take as part of question on notice number 12. Moving on. If WA adopts the national law, how will this impact on the right of the WA Parliament to make laws or regulations in relation to the registration of professionals covered by the national law or any other matters covered by the national law? Stephen, did you want to answer that question?

Mr Ashburn: That may be better taken on notice so that we can provide a fully considered answer.

The CHAIRMAN: That will be question on notice 13, and the wording of that will be provided to you after the meeting. If changes are made to a regulation in the Queensland regulations, will this automatically have effect in Western Australia?

Mrs Cooper: Yes. It is actually in Victoria where they are going to draft it, though.

Mr Ashburn: Not if it is in Queensland —

Mrs Cooper: No, but it will be WA. The regulations will be in WA.

The CHAIRMAN: So will WA enact its own regulations in relation to this bill?

Mrs Cooper: The national regulations are made under proposed section 245. They will be made by the ministerial council and they will be put through and printed in Victoria.

[2.15 pm]

The CHAIRMAN: What I am a bit confused about is: will the regulations that are printed in Victoria on instruction from the ministerial council be tabled in every Parliament in every jurisdiction?

Mrs Cooper: They can be disallowed by the Western Australian Parliament.

The CHAIRMAN: But how will the WA Parliament know that they have been tabled in the Victorian Parliament or that they have been made?

Mrs Cooper: I probably should take that one on notice.

The CHAIRMAN: Okay; that will be question on notice 14. So that question is: pursuant to section 249, as the regulations will be published by the Victorian Government Printer, how will the Parliaments of other jurisdictions know that the regulations are printed and be able to exercise their right to disallow the regulations if they are not notified? That applies to the initial enacting of those regulations and also to any amendments to the regulations that could occur further down the track.

My next question, which is related to the issue of the regulations, if Victoria proposes an amendment to the regulations at some point down the track, and WA does not agree to that amendment to the regulations, what action would WA need to take to prevent that change to the regulations as proposed by Victoria?

Mrs Cooper: Proposed section 246 deals with parliamentary scrutiny of the national regulations. They could be tabled and disallowed but the effect of the disallowance of those regulations is that if the majority of the participating jurisdictions do not also disallow them, they would continue to apply.

The CHAIRMAN: How would the Western Australian Parliament be notified whether other jurisdictions have also disallowed the regulation to effect the disallowance in WA? Effectively you are saying that under this legislation, if the WA Parliament disallows the regulation, it is not effective, so the power of the Parliament of Western Australia has been removed as a result of this legislation. Also, how are we informed as the WA Parliament if the majority of states have disallowed the regulations thereby giving effect to the disallowance in WA?

Mrs Cooper: It could be something that is raised at the ministerial council level.

* chai: Can we take that as question on notice 15 because we need to be clear on how this is going to operate? The fact that it is not in the bill, I think, is of great concern.

The other issue that I have is that I am not sure what the disallowance period is in the other states and all the other jurisdictions. So there is a question of timing here as well in terms of how do you coordinate that happening in all the states? Is there a point in time at which it is decided that there have not been enough disallowances by this state; therefore, there is not a majority and the regulation is allowed? I will take that as question on notice 16.

My next question is that if after 12 or 24 months of operation of the national law, WA decides that it no longer wants to be part of the national scheme, can WA withdraw from the scheme?

Mrs Cooper: I am reasonably sure there is something in the IGA that talks about the scheme being reviewed after I think it was three years and the state of Western Australia is able to withdraw from the scheme —

The CHAIRMAN: Yes, that is correct, but what about if it wants to withdraw prior to three years?

Mrs Cooper: Clause 16 of the IGA talks about withdrawal and cessation, so —

> … The Parties agree that withdrawal from the scheme will be a measure of last resort.
>
> … A Party that proposes to withdraw from this Agreement will notify each of the other Parties by giving at least 12 months written notice.
>
> … In the event of withdrawal from this Agreement by any one of the Parties, this Agreement will be rendered null and void except as otherwise agreed by the Ministerial Council …
>
> … In circumstances where a Party fails to comply with any of its obligations under this Agreement, the Agreement shall be rendered null and void except as otherwise agreed by the Ministerial Council …
>
> … In circumstances where this Agreement is rendered null and void, responsibility for the registration and accreditation of the health professions covered by the scheme will revert to individual States and Territories.

> … This Agreement may be terminated at any time by agreement in writing of all of the Parties.

So there appears to be a clause within the IGA that should deal with that.

The CHAIRMAN: My next question also refers to the IGA. Is it the intent of clauses 6.4 through to 6.7 inclusive to bind the WA Parliament to pass the national bill without amendment? Stephen, you might need to have a look at this as well. We can take that as a question on notice if you would prefer, so you can give some considered response.

Mr Ashburn: Yes, I would like to take that as a question on notice, please.

The CHAIRMAN: So that is question on notice 17.

Still referring to the intergovernmental agreement—do not put it away—clause 7.3 states —

> The relevant quorum requirements will be that all jurisdictions should be represented by the Minister responsible for health.

Does this mean that if one jurisdiction's health minister is unable to attend a ministerial council meeting that the ministerial council meeting lapses for want of a quorum?

Mrs Cooper: I am not aware of the background of that provision. I would need to look at it in further detail, I think.

The CHAIRMAN: We will take that as question on notice 18. Also as part of that, if my reading of that clause is correct, what is the practical effect of that clause? Because it seems to me that there is bound to be a state election on in some state at some point in time when there is a ministerial council meeting. If that is the effect, that the ministerial council meeting will lapse for want of quorum with the absence of just one minister, I think that is very concerning. If that it is not the intent of clause 7.3 of the IGA, can you please tell me what is the intent of clause 7.3 of the IGA? So that will all be encompassed in question on notice 18.

Still referring to the intergovernmental agreement, clause 7.4 states —

> In circumstances where the Ministerial Council is unable to come to an agreement and a decision must be made, there will be a transparent process of review in order to assist it to reach an agreement.

This process is described in attachment A, which states —

> … the Ministerial Council must take into account any advice provided by the Advisory Council.

Is the advisory council required to reach unanimous agreement on the advice it provides to the ministerial council; and, if yes, where is this provided?

Mrs Cooper: Hmm.

The CHAIRMAN: Would you like to take that as a question on notice as well?

Mrs Cooper: Yes, please.

The CHAIRMAN: That will be question on notice 19. We will make question on notice 19 three parts, so I will just read out the other two parts. If a member of the advisory council dissents from a majority decision of the advisory council and wants to submit a minority report to the ministerial council, does the IGA, the national law or regulations permit this to happen? Because we have the IGA saying that the ministerial council must take into account the advice provided by the advisory council, it assumes the advisory council will always speak with one voice, but there are no provisions in the IGA or the attachments that actually indicate how the advisory council will conduct its affairs. So I am concerned that if one or more members on the advisory council do not agree with the majority, does that view find its way to the ministerial council? Also, is there a requirement that WA be represented on the advisory council; and, if yes, where is that stipulated? If

not, how can WA be assured its specific regional circumstances will be taken into consideration by the advisory committee? That will all be part of question on notice 19.

My next question relates to clause 16.5 of the IGA, which states —

> In circumstances where this Agreement is rendered null and void, responsibility for the registration and accreditation of the health professions covered by the scheme will revert to individual States and Territories.

What would be the cost to the state if this were to occur? What problems or disruptions are likely to occur for registration in the interim? Because what we are seeing is that the WA Medical Board is required to transfer its money across to the national board as part of this scheme, but in the event that this falls apart and the state is required to take that back, is there any funding that is available for the state to be able to re-establish those institutions at a state level and what is the likely cost going to be? I will take that as question on notice 20.

My next question relates to clause 14.1 of the IGA that requires a review of the scheme following three years of operation. Does the national law provide or require the report of the review to be tabled in each jurisdiction of Parliament; and, if not, what amendment could be made to require that to occur in Western Australia? Also, is there a requirement in the national law to require the report of the review to be tabled with the commonwealth Parliament? I will take that as question on notice 21.

My next question is: why has the ministerial council opted for this scheme as opposed to using mutual recognition laws, and what benefit does the scheme provide that could not be achieved by mutual recognition laws? Are you able to answer that now or do you want to take that one on notice as well?

Mrs Cooper: I will just give you a little bit. Mutual recognition means that when you are registered here in Western Australia, you are registered under whatever state legislation we have with whatever requirements we have in WA. It does not necessarily mean that you are at the same level as somebody in Victoria and vice versa. So you are still operating under schemes that are different across every jurisdiction so it is not uniform and it is not exactly the same for every single person, so mutual recognition does not actually give you uniformity across all of the professions as to registration.

[2.30 pm]

The CHAIRMAN: No, but it does give you mutual recognition, so that if you are registered in WA, for example, as a medical practitioner, you will be able to be registered in New South Wales as a medical practitioner.

Mrs Cooper: Yes, and you pay the extra registration fee.

The CHAIRMAN: For New South Wales?

Mrs Cooper: For New South Wales, so you would still pay two rather than just pay the one under the national scheme.

The CHAIRMAN: But it might still be cheaper to pay two than it is a 70 per cent increase under the national scheme.

Mrs Cooper: I do not think that everybody will be getting a 70 per cent increase. Some of them went up, but some of the registration boards in other states are funded through the government, so that is why some of them are low and some of them are a bit higher. My understanding of the way it was going to work is that they would try to bring them up into a median level. Because it is a self-funding scheme that government will not be asked, as I understand it, to put any money into, it needs to have a level of funding to actually enable them to provide the services that they will be providing.

The CHAIRMAN: Other than the requirement to register separately in each jurisdiction, the national scheme does not really provide any additional benefit. I suppose it does provide one additional benefit, and that is that the qualifications for registration right across the nation in each jurisdiction would need to be identical.

Mrs Cooper: Yes, and they would say it is the mobility of the profession to move the workforce, because the workforce changes and those sorts of things, and it would be easier to move between.

The CHAIRMAN: But you could still do that under mutual recognition laws.

Mrs Cooper: Except that you do have to apply and you would also have time factors, depending on where you go, I suppose, as to that happening.

The CHAIRMAN: The national law and scheme provides for a two-tier structure, where it is got the national board and then it has got state boards, and together with that a national bureaucracy to serve the national board. How is it proposed that the national scheme is more efficient and simpler than the existing arrangement, because currently we have a single-tier structure, which is all handled in the state, and one of the objects of the national scheme was to actually have a more efficient and simpler scheme in place? But it seems to me that it has actually got more complicated and more costly because you have now introduced a two-tier structure which has state boards and also has a whole new national bureaucracy to support the national authority, whereas under the existing arrangements where each state has its own registration that is not required. So it seems to me that it is actually more costly and less efficient and more complex than the current system. Does anyone want to be brave enough to answer that question?

Mrs Cooper: I think we will take that as a question on notice.

The CHAIRMAN: Okay. That will be questioned on notice 22. Tied into that is the question: would it not be the case that state boards and mutual recognition laws would achieve greater efficiency and a simpler system and a less costly system? I will try that into question 22.

Mrs Cooper: Okay.

The CHAIRMAN: I just want to have a look at the complaints management issue. Will the Western Australian state board manage complaints?

Mrs Cooper: Yes, the state office has actually appointed a person to manage complaints. That person is currently employed by one of the registration boards here in WA. I do not actually know if I am allowed to say their name and things like that.

The CHAIRMAN: There is no need to identify the person by name. The question is simply: all WA state boards will manage their own complaints within that profession. Is that the situation?

Mrs Cooper: It goes through to the state agency that the board themselves will actually be looking at the complaints, as I understand it, yes.

Hon LIZ BEHJAT: Just following on from that, again it is the psychologists who have huge problems with this legislation.

The CHAIRMAN: I have some questions about —

Hon LIZ BEHJAT: The joint Western Australia–South Australia —

The CHAIRMAN: Yes.

Hon LINDA SAVAGE: Can I ask then just about the complaints?

The CHAIRMAN: Yes, I am coming to that. Can I just clarify that it will be the case that the WA state boards will handle all complaints within the profession for which they have responsibility?

Mrs Cooper: There are actually only going to be four state boards in WA. There will be the dental, physio, nurses and midwives, and medical practitioners that are going to be set up, and one regional board, which will be the psychologists' board with WA and South Australia. It is my understanding

that the complaints will go through to the state office and then the complaints will be dealt with by the state board here in WA.

The CHAIRMAN: Can we take that as question on notice 23, because I need a bit more certainty than just your understanding, Anne. I know that you are giving us the best answers you can in the circumstances, but we need to report to Parliament, and so we need some certainty. If it is the case that WA state boards have the authority to manage complaints themselves, can you tell me where in the national bill it actually provides that power for the state boards to manage complaints?

Mrs Cooper: It is actually under a delegation from the national board down to the state.

The CHAIRMAN: Is the head of power to allow that delegation from the national board to the state board provided for in the national law?

Mrs Cooper: I am pretty sure that it is. There are delegations on what the national boards will be. Delegations are under clause 37 of the schedule, and they will be delegating. We can provide you with some more information on that, if you like.

The CHAIRMAN: Perhaps we could just take that as part of question on notice 23. If the state boards are managing complaints is the first question; and, if so, where is the power and is it specified in the legislation or is it by delegation from the national board; and, if it is the latter, where is that specified in the national law? That is question on notice 23. I am not clear that is in the national law bill. The next question is: is the authority of state boards to manage complaints in any way limited or restricted? Are there certain complaints that they can deal with and other complaints that they cannot? Can we take that as question on notice 24. In relation to the regional board, where we have got the joint South Australia and Western Australia psychology board, which is located in South Australia, or will be, how will that work in terms of the management of complaints and what additional costs may be imposed on WA psychologists as a result of the regional board in terms of hearings being held in South Australia or the board having to travel to WA for hearings? I will take that as question on notice 25.

Hon LINDA SAVAGE: My question about regional boards is the point that Adele has raised about complaints, and I assume that is complaints about the practitioners. Currently, as I understand it, and I am wondering if you can confirm it, the Medical Board only deals with a certain range of complaints and the more serious complaints go directly to the State Administrative Tribunal. I am assuming, and perhaps it could be confirmed, that that remains the same.

Mrs Cooper: Yes, the more serious complaints will go to the State Administrative Tribunal.

Hon LINDA SAVAGE: That is the current situation, and so that is not changing.

Mrs Cooper: Yes.

The CHAIRMAN: Where in the national law bill does that protection exist? As I understand it, we have just heard in evidence that the state boards have responsibility for managing complaints under delegated authority from the national board. Where is it specified that more serious complaints will be dealt with by the State Administrative Tribunal?

Mrs Cooper: The responsible tribunal for Western Australia is under clause 6, and the act is the SAT, and then clause 11 gives them the review of decisions also to the SAT, and under the national law SAT is division 12, clause 193, which is matters to be referred to the responsible tribunal.

Hon LINDA SAVAGE: So nothing changes essentially then.

The CHAIRMAN: Thank you for that, Anne. I understand that in the case of New South Wales it has opted out of the national regulation of complaints. Is that correct?

Mrs Cooper: That is correct.

The CHAIRMAN: Has WA opted out of the national regulation of complaints?

Mrs Cooper: No, we do not have the same system in place that New South Wales has. They have a health complaints commission. I am not actually sure of the whole thing, but they actually do have a whole system that deals with complaints. They are a co-regulatory jurisdiction, New South Wales, so they will be continuing to run that complaints system for all of their practitioners through that body.

The CHAIRMAN: Can I ask then: in a situation of a practitioner who is resident in Western Australia and whose main practice is in Western Australia, who travels to New South Wales to undertake a procedure in New South Wales and then there is a complaint filed against that procedure that occurred in New South Wales, is the complaint lodged with the New South Wales complaints system or is it lodged with the Western Australian complaints system, given that he is resident in Western Australia and his practice is in Western Australia? Who actually hears the complaint: is it New South Wales Western Australia? Do you want to take that on notice?

Mrs Cooper: Yes.

The CHAIRMAN: It will be question on notice 26. In the submission I received from the AMA the AMA claim that the Minister for Health and the health department legal section agreed to amend clause 3.3(c), to delete the words "and are of an appropriate quality" and replace them with the words "consistent with best practice standards". My question is: was this undertaking given by the Minister for Health and the department's legal section; and, f that is the case, why has the amendment not be made to the bill? Do you want to take that on notice?

Mr Ashburn: No, I can answer that now. I have certainly not given that undertaking. If the AMA are claiming that I have, that is not correct.

The CHAIRMAN: Are you the only person in the health department legal section?

Mrs Cooper: I have not given that undertaking. We are the only two people, I think.

Mr Ashburn: As far as I am aware, it was not given prior to my involvement in this matter from the beginning of March. I do not believe that the minister has given such an undertaking and, in fact, in responses to the AMA has stated that the words which the AMA wishes to amend were words that were approved by the presidents of the medical colleges and were used at the request of those presidents of the medical colleges.

[2.45 pm]

The CHAIRMAN: I take it from that that there is no intention to amend clause 3(3)?

Mr Ashburn: No, not that I am aware of.

The CHAIRMAN: Okay, that is fine. My next question is: why is not the title "physician" listed in section 113(3)?

Mrs Cooper: I am not sure that "physician" is under the WA one, but the title is not in 113. I am not sure whether it is included as part of the specialist registration standards, because medical practitioners use it in conjunction with other words. I do not think I have provided the committee with the registration standards that deal with the specialist titles that the Medical Board of Australia and the ministerial council have approved. I think we should provide the committee with those; they should be in there.

The CHAIRMAN: Okay, we will take that as question on notice 27, and you can provide the additional information as part of that. My next question relates to the intention of including Chinese medicine under the auspices of the national law in 2012. I am a bit curious as to why Chinese medicine is getting special consideration as opposed to other ethnic medical practices, and whether Chinese medicine is actually an internationally recognised form of medicine. Are you able to answer that?

Mrs Cooper: I think WA, under the previous government, was going to introduce legislation to regulate the profession of Chinese medicine—herbalists and acupuncturists et cetera. It has been agreed to at ministerial council, I presume, as something that has been discussed at that level.

The CHAIRMAN: I suppose I am curious to know why we are therefore not looking to regulate natural therapists who provide herbal therapy treatments right across the board—why is it just Chinese medicine?

Mrs Cooper: There has also been some evidence that there has been a death from aconite as a result of Chinese herbal medical treatment. There are complications when they take those medicines in conjunction with Western medicine, so it is a public safety issue to regulate them so that there are some standards as to what is actually being provided to the public.

The CHAIRMAN: Is there a need to also regulate natural therapists who dispense herbal medicine?

Mrs Cooper: That could be a possibility for inclusion in the future, if the ministerial council agrees to it.

The CHAIRMAN: But has it been considered by the ministerial council to date?

Mrs Cooper: I have not seen any documentation on that aspect. I do not know if it was before my time.

The CHAIRMAN: My next question is in relation to the structure and membership of state boards. Is there some reason why that has not been detailed in the legislation?

Mrs Cooper: All of the current board members will transition across to the new state boards, or they have been offered positions on the panels that actually look into and investigate the complaints—those things.

The CHAIRMAN: What concerns me—you have given that evidence at the previous hearing—is that it does not seem to be stipulated anywhere that a state board will consist of a specified number, and it seems to me that if we actually want a board to operate well, there is an optimum number at which things start to become dysfunctional, and a preferred size of a board. There is nothing specified about the size of the board. In the case of the regional board with South Australia, there is nothing stated in the legislation to ensure that there is equal membership from both states on the board, and the size of the board. It just seems to me a real failing in the national bill that this level of detail is not stipulated in the bill; it normally is. In most bills that establish structures such as boards, it is stipulated that, for example, there will be a chairman and six members, and it might even specify the areas of expertise that a person needs to have in order to be considered a member of the board. It seems to me to be a real failing that this bill does not address any of that. I have that concern in relation to the state boards, but my concern is even greater in relation to the regional board with South Australia for psychologists, because I can see it becoming an issue into the future, and I really would like to know why this level of detail is not specified in the bill, and I am happy for you to take that as question on notice 28.

Hon LIZ BEHJAT: On that specific point, I share that same concern. Also, under clause 36(1) of the schedule, it says only that a national board may establish a committee; it does not say that it will. There is no certainty for me surrounding state and territory boards. What is to stop the national board, at some time in the future, saying, "You know what? We don't want to have a state board anymore." That concern is why the word "may" has been used, and not the word "will".

The CHAIRMAN: Can we incorporate that as part of question on notice 28?

Hon LIZ BEHJAT: The minister is given power to appoint members to state and territory boards, but there seems to be no power for the minister to remove people from the board, either, and how would that occur? It seems that if we give the minister the power to do something in the positive,

there should also be the reverse, to remove people as well. Can I incorporate that into the question on notice?

The CHAIRMAN: That is fine. That will be incorporated into question on notice 28—why the bill is lacking detail on the structure and membership of state boards and regional boards, why it has not been detailed in the legislation, and concern about the fact that the legislation provides that national boards may establish state boards, but that there is no certainty that they have to. The third part of the question is that the legislation details that the minister appoints members of the state board or territory, but does not actually make any comment about the ability of the minister to remove members of the board; nor does it actually stipulate the term of service of board members, so is this a life appointment? We will make question on notice 28 a four-part question. My next question is in relation to the national board. How is the Western Australian representative on the national board selected and appointed?

Mrs Cooper: The person is actually appointed by the national board. They are put up for nomination and appointed by the Minister for Health of WA. Were you asking about the national board?

The CHAIRMAN: The national board.

Mrs Cooper: Clause 33 deals with membership of the national boards. They are appointed in writing by the ministerial council, and there is one appointed from each large participating jurisdiction, of which Western Australia is one.

The CHAIRMAN: Can we put that as question on notice 29 and get clarification of who nominates the Western Australian representative on the national board and whether nomination by the Western Australian minister is sufficient, or whether there is some power of veto by the ministerial council as to who that person may be? My next question relates to the interplay between the state boards and the national board. It seems to me that there is quite a separate process of appointment for both and there may be no overlapping membership between a state board and the national board. One of the submissions indicated that it might actually be a better arrangement to have the chairs of the state boards as the state representatives on the national boards. It seemed to me, when I read it, that there was some merit to that argument, because at least there would be some consistency and linkup between the national board and the state boards, if that were to be the case. I am just wondering whether that was considered by the ministerial council and if it was rejected for any particular reason. Do you want to take that as question on notice 30?

You will be pleased to know that this is my lucky last question! At the last hearing you indicated that if the Health Practitioners Regulation National Law (WA) Bill 2010 is not passed by 1 July 2010, it would have implications for international medical graduates because they are waiting for the national registration, and if Western Australia is not part of the national scheme, the international medical graduates may not apply to Western Australia. I am curious to know how many international medical graduates Western Australia takes each year.

Mrs Cooper: I do not know that off the top of my head.

The CHAIRMAN: Okay, I will take that as question on notice 31.

Mrs Cooper: I should imagine we would take a few for our rural areas.

The CHAIRMAN: I would just be interested to know what the implication of that really is in a practical way. That concludes my questions. Do members have any additional questions? No?

We have a bit of a timing issue in terms of trying to finalise the report for Parliament. Is it at all possible to get answers to the questions by the close of business on Friday?

Mrs Cooper: We will do our very best.

Mr Ashburn: I would think that the majority of answers would be ready by then. There may be some that are not, but we will identify them and try to get an indication of when we will get an answer and why the delay.

The CHAIRMAN: Okay. Susan has just indicated that she will get the written questions to you first thing in the morning. Are there any further comments that either of you would like to make to the committee?

Mr Ashburn: No, thank you.

The CHAIRMAN: On behalf of the committee, I would like to thank you very much for being so cooperative and for your forbearance with the many questions that we have asked, and for your openness in answering the questions and trying to help the committee in its deliberations on the matter. Thank you very much.

Mr Ashburn: Thank you.

Hearing concluded at 2.58 pm