



KEY DIRECTIONS

REVIEW OF WESTERN AUSTRALIAN HEALTH PRACTITIONER LEGISLATION

**LEGAL AND LEGISLATIVE SERVICES BRANCH
HEALTH DEPARTMENT OF WESTERN AUSTRALIA**

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FOREWORD

I am pleased to advise you that the State Government recently approved the drafting of new health practitioner Acts based on the outcome of the Review of Western Australian Health Practitioner Legislation (the Review). The effect of this approval is that replacement legislation will be developed for health professions regulated under the following Acts; *Chiropractors Act 1964; Dental Act 1939; Dental Prosthetists Act 1985; Nurses Act 1992; Occupational Therapists Registration Act 1980; Optometrists Act 1940; Osteopaths Act 1997 (amendment only); Physiotherapists Act 1950; Podiatrists Registration Act 1984 and Psychologists Registration Act 1976.*

This *Key Directions* paper outlines the policy framework upon which new health practitioner registration Acts will be based. The next step in the process is for the commencement of the drafting process. I have instructed the Health Department of Western Australia to commence this process.

I thank you for your patience over the course of this Review. This Government has moved quickly to progress the Review to ensure effective legislation for health professionals and health consumers in Western Australia.

Most of the health practitioner registration Acts are now at least over 20 years old. To adequately meet the needs of the community as we move in to the 21st century the Acts require replacement. The policy framework for replacement legislation aims to satisfy the principal objectives of this Review by providing an effective regulatory scheme for the regulation of health practitioners and enhancing the protection of health consumers.

In formulating final proposals national competition policy principles have been taken into account.

The discussion paper released in 1998 gave health professions, health consumers and interested parties an opportunity to participate in the review process. Approximately 500 copies of the discussion paper were distributed, over 70 submissions were received and the relevant internet site was accessed over 200 times.

I appreciate the time and effort that many stakeholders and interested parties devoted to providing comprehensive submissions to this Review. I look forward to working with the health professions in the development of this legislation and thank you for your input to date.



Bob Kucera APM MLA
MINISTER FOR HEALTH

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1. INTRODUCTION

1.1 Summary

This paper provides an overview of the key changes to be made to the Template legislation. These changes result from a detailed examination of the regulatory issues and the views expressed by interested parties during the consultation process. The paper also highlights a number of significant changes that are a consequence of the current health practitioner legislation being replaced by the Template.

The following structure is followed by this paper:

- *Section 1* – Introduction and overview of the health practitioner legislation review.
- *Section 2 - Glossary Of Key Changes*: an alphabetical listing and brief description of the main changes resulting from the Review and the adoption of the new Template.
- *Section 3 - Status Of Template Provisions*: lists the sections of the Template and corresponding areas where amendments will be made.

1.2 Aims of review

The aims of the health practitioner legislation review were as follows:

- to enhance protection for health consumers in Western Australia by:
 - regulating harmful practices;
 - establishing a flexible, fair and effective disciplinary system; and
 - enhancing the ability of registration boards to ensure registrants meet and continue to meet appropriate qualification and competency standards.
- to satisfy the National Competition Policy (NCP) legislation review requirements by:
 - repealing or not enacting provisions which are anti-competitive, impose unnecessary restrictions and cannot be justified in terms of public benefit or achieved by non-legislative means; and
 - removing unnecessary restrictions on practice by non-registrants.
- to recognise the significant contribution made by members of registration boards by providing them with legislation that:
 - facilitates administrative efficiency; and
 - incorporates appropriate indemnities and protections.
- to provide the health consumers of Western Australia with effective, readily understandable and, so far as possible, uniform health practitioner legislation.

1.3 Consultation process

In October 1998, the Discussion Paper, *Review of Western Australian Health Practitioner Legislation* was released. The Discussion Paper invited comments and submissions on the *Osteopaths Act 1997*. This Act, referred to as the Template legislation, was identified as the model legislation for the other health professions.

Approximately 500 copies of the Discussion Paper were distributed to health professionals, registration boards, professional associations, members of the public and other interested parties. The Discussion Paper was also made available on the Internet. A public seminar and a number of meetings with interested groups were held during the

consultation period. By the end of the consultation phase, over 70 submissions had been received.

1.4 Legislation to be replaced

Following from the Review, a number of amendments are to be made to the Template. Once amended, the Template will be used as the model for all new health practitioner legislation.

It is emphasised that if a matter is not provided for in the Template, including the amendments resulting from the Review, it will not be provided for in new health practitioner legislation.

Based on the amended Template, Bills will now be drafted to replace the following legislation:

- *Chiropractors Act 1964*
- *Dental Act 1939*
- *Dental Prosthetists Act 1985*
- *Nurses Act 1992*
- *Occupational Therapists Registration Act 1980*
- *Optometrists Act 1940*
- *Osteopaths Act 1997¹*
- *Physiotherapists Act 1950*
- *Podiatrists Registration Act 1984*
- *Psychologists Registration Act 1976*

Hence, with the exception of hypnotists, all health practitioners currently regulated will continue to be regulated by statute.

1.5 Other legislation

A comprehensive review of the *Medical Act 1894* is currently underway. It is anticipated that the working party will report to the Minister for Health in the near future.

A Review of Pharmacy legislation is being conducted on a national basis. The recommendations of this review will be considered by the State and Territory governments. Pending the outcome of this, the *Pharmacy Act 1964* will remain in effect.

The *Optical Dispensers Act 1966* will remain in effect for 12 months from the completion of the Review in order to provide practitioners and other interested parties the opportunity to provide submissions as to why this health practitioner group should remain regulated.

¹ The *Osteopaths Act 1997* will only require amendment.

2. GLOSSARY OF KEY CHANGES

Advertising

As per the Template, only limited restrictions on advertising will apply. The Board is able to make rules, to be approved by the Minister, regulating advertising. This will ensure such advertising is not:

- false, misleading or deceptive,
- creates an unjustified expectation of beneficial treatment, or
- promotes the unnecessary or inappropriate use of a health practitioner's services.

Appeals to Board decisions - conditional registration

The Template will be amended to provide a statutory right of appeal against a decision of the Board to cancel condition registration, or revoke or vary a condition or restriction. The Board must establish reasonable grounds for varying or revoking a condition of registration.

Appeal provisions

The Template will be amended to provide health practitioners with a right of appeal from those Board decisions that can be appealed, to the District Court.

Appointments To Registration Board

- Appointments to the Board will be for three years with a maximum of three terms.
- All Board members to be appointed by the Minister.
- As recommended in the NCP *Review of the Osteopaths Act 1997* and endorsed by Cabinet, associations will cease to have a statutory role in recommending candidates to the Minister.
- Appointments to be staggered so that no more than half of the Board members are due to retire at any one time.

Board Membership

The membership of registration boards will be amended to provide for the addition of a consumer representative and a legal practitioner to each Board. The majority of Board members will be drawn from the respective health profession. (see Appendix 1)

Body Corporate

The requirement in the Template for bodies corporate to be registered is to be removed. A provision will be inserted noting that a non-registrant employer is not deemed to be carrying on the health practice of a registered practitioner as a consequence of employing a registered practitioner.

Code of Practice

The new legislation will provide Boards with the authority to prepare and circulate, with the approval of the Minister, codes of practice for registrants. Where issued, the codes of practice will relate only to matters of clinical concern.

Complaints Reporting

The Board's annual report is to include information about complaints received and the action taken in response by the Board.

Conciliation

Where the Board determines that conciliation is the appropriate course of action, then the matter will be referred to the Office of Health Review.

Continuing Professional Education

Continuing professional education will not be a statutory requirement

Core Practice Protection

Core practices are those activities that, because of their potential to cause harm, need to be restricted to specific health practitioners. A project to assist professions identify core practices within three years of the completion of this Review will be facilitated by HDWA. If professions are not able to determine core practices within three years, the existing practice protection will be removed from the legislation.

Definitions

Comprehensive definitions of practice are to be replaced by the specification of core practices within three years of the end of this Review. With the exception of physiotherapy, health professions that are currently defined will retain a definition as detailed in the current draft Bills (see Appendix 2) or where no current Bill exists, in accordance with Current Health Legislation.

The definition of dental prosthetics will be amended to encompass the construction and fitting of partial dentures. Acts that may be performed by dental hygienists, dental therapists and school dental therapists, as listed in Schedule 2 of the *Dental Act 1939*, will be incorporated in the new dental legislation.

Delegation by Boards

The Template is to be amended to prohibit Boards from delegating the functions relating to registration.

Dental

- **Dental Therapists & Dental Hygienists**

The current restriction on the number of dental therapists and dental hygienists that may be employed by a dentist will not be brought forward to the new legislation.

- **Dental Prosthetists**

Dental Prosthetists will be permitted to construct and fit partial dentures providing the practitioner meets specific training requirements established by the Board.

- **Merger of Acts**

The *Dental Act 1939* and the *Dental Prosthetists Act 1985* will be merged into a single Act based on the Template. As a result, there will be one registration board for the governance of all dental practitioners.

- **Ownership**

The current restriction on ownership of dental practices will not be progressed to the new legislation.

- **School Dental Therapists**

The current restriction of school dental therapists to the public sector will not be brought forward to the new legislation.

Disciplinary Matters

As per the Template, a Complaints Assessment Committee is to be established by the Board to manage complaints.

The disciplinary matters provided for in the Template will be amended to include a provision that it is unprofessional conduct to provide a person with health services of a kind that are excessive, unnecessary or not reasonably required for a person's well being.

Functions of Board

It is intended to expand the functions of the Board to include:

- promoting the continuing competence of registered persons;
- prosecuting persons who commit offences against the Act; and
- establishing codes of practice subject to approval by the Minister

Impairment Process

The Template will be amended to provide for a separate process to manage, investigate and inquire into matters of impairment. Central to this will be the convening of an impaired practitioners panel by the Board. Appropriate matters will be referred to the panel by the Complaints Assessment Committee. Matters of impairment will be defined under the new health practitioner legislation

Insurance

A condition of registration will be the requirement that health practitioners hold occupational liability insurance. This requirement will be satisfied if the practitioner is indemnified by his or her employer.

Name of Practice

The role of the Board in approving a practice name other than the name recorded in the register will be discontinued.

Optical Dispensers

The prospect of merging the *Optometrists Act 1940* and the *Optical Dispensers Act 1966* has been raised. No further action on this matter will be taken at this stage and optical dispensers will remain on their current legislation pending determination of whether continued regulation is necessary. A review to this effect, to be facilitated by HDWA, is to conclude within twelve months.

Ownership

As per the Template, restrictions limiting ownership of practices to health practitioners will be removed. The current restrictions on pharmacy ownership will remain pending the outcome of the national review.

Pharmacy

A national review of pharmacy is still in progress. Consequently the status quo will remain pending the conclusion of this review.

Practice Protection

(see also 'core practice protection')

Subject to the determination of core practices, all health professions will retain their current level of practice protection (except physiotherapy). Accordingly, in new health practitioner legislation practice protection will be retained for:

- dental prosthetists,
- dentists,
- nurses,
- occupational therapists,
- optical dispensers,
- optometrists,
- osteopaths,
- physiotherapists,
- podiatrists, and
- psychologists.

Registrar

Boards will be able to engage a registrar on either an employment contract or a service contract.

Registration - deemed

Nurses registered in other Australian jurisdictions or New Zealand and responding to an emergency or retrieving organs in Western Australia will be deemed to be registered in this State.

Title Protection

Titles to be protected will be those listed in the following table:

Health practice	Titles to be protected
Chiropractor	Chiropractor
Dental	Dentist, dental surgeon, dental therapist, dental hygienist, school dental therapist and dental prosthetist.
Nurse	Nurse
Occupational therapist	Occupational therapist
Optical dispenser	Optical dispenser
Optometrist	Optometrist, optician
Osteopath	Osteopath
Physiotherapist	Physiotherapist, physical therapist
Podiatrist	Podiatrist, chiropodist
Psychologist	Psychologist

Title - 'Doctor'

Section 19 of the *Medical Act 1894* prohibits any person from using the title 'doctor' unless they are a registered medical practitioner. This is with the exception of dietitians and chiropractors providing (respectively) dietetic or chiropractic advice or services. The Medical Act Review proposes that the prohibition on the use of the title 'doctor' be removed from the *Medical Act*, however, it will be an offence for a person to use the title medical practitioner or any other title calculated to induce a belief that a non-registrant is a medical practitioner.

3. STATUS OF TEMPLATE PROVISIONS

SECTION	DESCRIPTION	STATUS OF SECTION
	Title	Amended. [health profession] Registration Act
PART 1	PRELIMINARY	
1	Short title	Retained
2	Commencement of the Act	Retained
3	Interpretation of terms used in the Act	Retained
	Definition of chiropractic, dental prosthetics, dentistry, occupational therapy, optometry and podiatry.	Amended. The definition of these health practices be amended to reflect the definitions in the current draft Bills, or where no current Bill exists, in accordance with Current Health Legislation.
4	Application of the Act	Retained
PART 2	THE REGISTRATION BOARD AND COMMITTEES	
5	Establishment of the Board	Retained
6	Membership of the Board	Amended. This section will be amended to reflect that while the majority of members will continue to be health practitioners, the associations and groups that the practitioners are drawn from will not be mandated. A legal practitioner and consumer representative will be added to the Board.
7	Presiding member and deputy presiding member of the Board	Retained
8	Constitution and proceedings of the Board	Retained
9	Remuneration	Retained
10	Functions of the Board	Functions of the Board be expanded to include: <ul style="list-style-type: none"> ▪ promoting the continuing competence of registered persons; ▪ prosecuting persons who commit offences against the Act; and ▪ establishing codes of practice subject to approval by the Minister.
11	Delegation by the Board of its functions	Amended. The Board will not be able to delegate the function of registration, including the imposition of conditions on registration and the renewal of registration.
12	Directions by Minister to the Board	Retained
13	Disclosure of interests of Board members	Retained
14	Duty of Board member not to make improper use of information	Retained
15	Board meetings and minutes of meetings	Retained
16	Establishment of complaints assessment committee	Retained
17	The establishment of other committees	Retained

	Dental Board – committees	The new Dental Board to establish two advisory committees to provide expert advice on dental care provided by: <ul style="list-style-type: none"> ▪ registered dental auxiliaries; and ▪ dental prosthetists.
18	Provisions relating to committees	Retained
19	Registrar and staff of the Board	Amended. The section will be amended to provide for the appointment of a registrar and staff under a contract for services or a contract of employment.
PART 3	REGISTRATION OF HEALTH PRACTITIONERS	
20	Registration requirements for natural persons	Retained
21	Registration of body corporate	Removed
22	Registration based on registration elsewhere in Australia	Retained
23	Conditional registration	Amended. The section will be amended to provide that the Board must establish reasonable grounds for determining that conditional registration should be cancelled or conditions should be varied or revoked.
	Provisional registration	Provision to be added which will empower the Board to grant a certificate of registration in circumstances where a person is entitled to general registration but it is not practical to wait until the Board can consider the decision.
24	Application for registration	Retained
25	Effect of registration	Retained
26	Renewal of registration	Retained
	Nurses – deemed registration	A provision be added to the new nurses legislation deeming registered any nurse who is registered in another Australian jurisdiction or New Zealand and who is responding to an emergency or retrieving organs in Western Australia.
27	Occupational liability insurance	A condition of registration will be the requirement that health practitioners hold occupational liability insurance. This requirement will be satisfied if the practitioner is indemnified by his or her employer.
28	The register	Retained
29	Inspection of the register	Retained
30	Certificate of registration	Retained
31	Voluntary removal from the register	Retained
32	Amendment of particulars on the register	Retained
33	Removal of names from the register of deceased persons and defunct bodies corporate	Retained
34	Removal of names from the register of person who has not practised, or trained, for 5 years	Retained
35	Effect of removal or striking off from the register	Retained

36	Restoration of name to the register	Retained
37	Suspension of practitioner	Retained
38	Insolvency of practitioner	Retained
39	Civil or criminal proceedings	Retained
40	Notices and returns by registered body	Removed
PART 4	FINANCE AND REPORTS	
41	Funds of the Board	Retained
42	Accounts of the Board	Retained
43	Audit of the Board's accounts and financial statements	Retained
44	Annual report and other reports	The section will be amended to provide that a registration board's annual report is to include information about complaints received by the Board and the action taken by the Board in response to such complaints.
45	Minister to have access to information of the Board	Retained
PART 5	DISCIPLINARY PROCEEDINGS	
46	Disciplinary matters	This section will be amended to add that it is unprofessional conduct to provide a person with health services of a kind that are excessive, unnecessary or not reasonably required for the person's well being. Matters of impairment be defined as the matters listed in section 46(a) and (b).
47	Complaints	Retained
	Impairment process	A separate process to manage, investigate and inquire into matters of impairment be added.
	Impaired practitioners panel	An impaired practitioners panel to be established under the Template.
48	Medical or psychiatric examination of practitioner	Amended
49	Committee to determine action required	Retained
50	Investigation of complaint and recommendation	Retained
51	Committee may reject certain complaints	Retained
52	Role of Board with respect to complaints	Retained
53	Board may deal with matter	Retained
54	Power of Board to order a practitioner to cease activity or order an interim restriction on practice	This section will be amended to remove subsection (1)(b). Also, if the Board decides not to make an order under subsection 54(1) of the Template the Board is to have the discretion to refer the matter to the impaired practitioners panel.
55	Formal inquiry with respect to section 54 order	Retained
56	Interpretation for the purpose of the Investigation Division	Retained
57	Investigator	Retained

58	Report of investigator	Retained
59	Powers of investigator	Retained
60	Warrant to enter premises of practitioner	This section will be amended to ensure that only the Board can approve an application by an investigator to a magistrate for a warrant to enter premises in the course of conducting an investigation.
61	Issue of warrant by magistrate	Retained
62	Execution of warrant	Retained
63	Conciliation	Removed. All matters for conciliation to be referred to the Office of Health Review.
64	Action if conciliation fails	Removed
65	Board to hold formal inquiry	Retained
66	Hearings generally not to be in public	Retained
67	Representation of persons involved	Retained
68	Procedure and evidence at a formal inquiry	Retained
69	Power to summons etc for the purposes of conducting a formal inquiry	Retained
70	Disciplinary powers of Board	Retained
71	Costs and recovery	Retained
72	Failure to comply with order of the Board	Retained
73	Transcript of formal inquiry	Retained
74	Reciprocal enforcement of orders of the Board	Retained
75	Surrender of certificate of registration	Retained
PART 6	OFFENCES	
76	Only registered person may practise the health practice	Retained. However, within three years of this Review, the professions through their respective registration boards are to determine the core practices to be reserved to them exclusively in order to meet the public protection objective of new health practitioner legislation. If the core practices are not able to be determined within this period, then practice protection is to be removed from the legislation.
	Deeming provision	A new provision will be added to the Template that a non registrant employer is not deemed to be carrying on the practice of a health practitioner as a consequence of employing a registered practitioner.
77	Use of title or pretending to be registered	Retained
78	Name in which practice may be carried on	Removed
79	Failure to comply with order	Retained
80	False statements	Retained
81	Failure to attend, take oaths etc.	Retained
82	Obstruction of investigator	Retained
83	Misbehaviour at a formal inquiry	Retained

84	Execution of warrant	Retained
85	Information that may be withheld	Retained
86	Legal professional privilege	Retained
PART 7	MISCELLANEOUS	
87	Protection of persons acting in good faith	Retained
88	Decisions to be notified	This section will be amended to include a reference to conditional registration.
89	Appeals	Retained
90	Publication of proceedings	Retained
91	Legal proceedings for an offence under the Act	Retained
92	Liability of officers	Removed
93	Common seal and execution of documents by Board	Retained
94	Rules of the Registration Board	Retained
95	Regulations made by the Governor	Retained
96	Transitional	Retained
97	Consequential amendments	Retained
98	Review of Act	Retained
	SCHEDULES	
Schedule 1	Constitution and proceedings of Board	This Schedule will be amended to reflect that Board members are to be appointed for a maximum of three terms, consecutive or otherwise.
Schedule 2	Requirements for registration of body corporate	Removed
Schedule 3	Transitional provisions	Amended. Transitional provisions in the Template will provide for the continuity of: <ul style="list-style-type: none"> ▪ the Board and the term of Board members; ▪ complaints being investigated and proceeded with by the Board; ▪ the register; and ▪ the funds, including liabilities, of the Board.
Schedule 4	Consequential amendments	Amended as necessary.

APPENDIX 1

BOARD MEMBERSHIP PROVISIONS

HEALTH PROFESSION	MEMBERSHIP OF THE BOARD (Note that all members of the Boards are to be appointed by the Minister)
Chiropractors	<p>8 members</p> <ul style="list-style-type: none"> ▪ 6 are to be chiropractors ▪ 1 is to be a consumer representative ▪ 1 is to be a legal practitioner
Dental practitioners	<p>12 members</p> <ul style="list-style-type: none"> ▪ 6 are to be dentists ▪ 2 are to be dental prosthetists ▪ 1 is to be a representative of dental therapists and dental hygienists ▪ 1 is to be a school dental therapist ▪ 1 is to be a consumer representative ▪ 1 is to be a legal practitioner
Nurses	<p>12 members</p> <ul style="list-style-type: none"> ▪ 7 are to be nurses ▪ 1 is to be a midwife ▪ 1 is to be mental health nurse ▪ 1 is to be an enrolled nurse ▪ 1 is to be a consumer representative ▪ 1 is to be a legal practitioner
Occupational Therapists	<p>8 members</p> <ul style="list-style-type: none"> ▪ 6 are to be occupational therapists ▪ 1 is to be a consumer representative ▪ 1 is to be a legal practitioner
Optical Dispensers	The <i>Optical Dispensers Act 1966</i> will remain in effect pending outcome of discussions referred to in NCP Review.
Optometrists	<p>8 members</p> <ul style="list-style-type: none"> ▪ 6 are to be optometrists ▪ 1 is to be a consumer representative ▪ 1 is to be a legal practitioner

Osteopaths	8 members - <ul style="list-style-type: none"> ▪ 6 are to be osteopaths ▪ 1 is to be a consumer representative ▪ 1 is to be a legal practitioner
Physiotherapists	8 members - <ul style="list-style-type: none"> ▪ 6 are to be physiotherapists ▪ 1 is to be a consumer representative ▪ 1 is to be a legal practitioner
Podiatrists	8 members <ul style="list-style-type: none"> ▪ 6 are to be podiatrists ▪ 1 is to be a consumer representative ▪ 1 is to be a legal practitioner
Psychologists	8 members <ul style="list-style-type: none"> ▪ 6 are to be psychologists ▪ 1 is to be a consumer representative ▪ 1 is to be a legal practitioner

APPENDIX 2

DEFINITIONS

HEALTH PRACTICE	CURRENT DRAFT BILL
Chiropractic	<p>Chiropractors Bill 1996</p> <p>“... a system of examining and adjusting the human spinal column and associated structures, for the purpose of diagnosing and correcting, without the use of drugs or operative surgery, interference to nerve transmission and normal joint function.”</p>
Dentistry	<p>Dental Bill 1996</p> <p>“(a) any operation on or service in connection with the human teeth or jaws and associated structures; (b) the artificial restoration of lost or removed teeth, or jaws; (c) the treatment of diseases or lesions, and the correction of malpositions in human teeth or jaws; (d) any operation, treatment, or service on or to any person as preparatory to or for the purpose of or in connection with the fitting, insertion, or fixing of artificial teeth; and (e) every dental service, act, or operation of any kind or nature whatsoever, but does not include the mechanical constructions of artificial dentures by an artisan employed or engaged by a dentist.”</p>
Occupational Therapy	<p>Occupational Therapists Registration Bill 1995</p> <p>“(a) the promotion or resolution of occupational performance, health and well-being, at an individual, organisational or community level to enhance satisfaction in valued life role; and (b) the resolution of problems related to functional or adaptive behaviour in persons whose ability to engage in any occupation is impaired by illness, handicap, emotional disorder, development disability, social disadvantage or the ageing process.”</p>
Optometry	<p>Optometrists Bill 1995</p> <p>“(a) the employment of methods, other than any method which involves the use of any drug, for the measurement of the powers of vision; (b) the adaptation of lenses and prisms for the aid of the powers of vision; (c) lens-grinding and spectacles-making; (d) optical dispensing.”</p>
Podiatry	<p>Podiatrists Bill 1995</p> <p>“is synonymous with “chiropody” and means - (a) the employment of medical, surgical, electrical, mechanical or manual methods for the diagnosis and treatment of ailments or abnormal conditions of the human foot or ankle, including the analysis of gait and other factors influencing disorders of the foot or ankle; and (b) appropriate preventative education and treatment in relation to ailments or abnormal conditions of the human foot or ankle.”</p>