Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022

Explanatory Notes

Short title

The short title of the Bill is the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022 (the Bill).

Policy objectives and the reasons for them

National Law

The Bill amends the Health Practitioner Regulation National Law (National Law), as agreed by Australian Health Ministers on 18 February 2022. The Bill also makes related amendments to the *Health Ombudsman Act 2013* and the local modification provisions of the National Law to ensure the National Law amendments operate effectively in Queensland. Modifications to the National Law are contained in the *Health Practitioner Regulation National Law Act 2009* (the Queensland National Law Act).

The amendments strengthen public protection and increase public confidence in health services provided by practitioners registered under the National Registration and Accreditation Scheme for health professions (National Scheme). The amendments also implement reforms to improve governance and promote the efficient and effective operation of the National Scheme, while ensuring the scheme remains up to date and fit for purpose.

Overview of the National Scheme and National Law

Australia's National Scheme for health professions commenced in 2010 with the adoption of the National Law by all participating jurisdictions. The scheme was established under the *Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions* (Intergovernmental Agreement) between all states and territories and the Commonwealth in March 2008.

The National Scheme ensures that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered. It allows health practitioners to have a single registration recognised anywhere in Australia and provides for uniform standards for the registration of health practitioners and the accreditation of health education providers. The National Scheme also supports the continuous development of a flexible, responsive and sustainable health workforce. It promotes innovation in the education and training of health practitioners and in the delivery of health services. The scheme is a 'protection of title' model, with powers to prosecute persons who falsely hold out to be registered or use a protected title.

The National Law sets out the legal framework for the National Scheme. It establishes National Boards as the principal regulatory decision-makers for each registered health profession. The National Boards are supported by the Australian Health Practitioner Regulation Agency, which is referred to in the National Law and these explanatory notes as the National Agency. The National Law also establishes:

- a framework for approving registration standards, codes and guidelines;
- accreditation authorities and functions to support education and training;
- title protections for the registered health professions;
- complaint processes for managing health, conduct, and performance matters; and
- investigation powers and procedures.

Under the Intergovernmental Agreement, Queensland is the host jurisdiction for the National Law. The National Law is set out in the schedule to the Queensland National Law Act, as amended from time to time and applied as a law of each participating jurisdiction, with local variations. Western Australia does not directly apply the National Law but has enacted corresponding legislation.[1]

Queensland's co-regulatory arrangements

Queensland is a co-regulatory jurisdiction under the National Law. In most other jurisdictions, notifications about a registered health practitioner's health, conduct or performance are dealt with exclusively by the National Agency and the National Boards. Queensland has modified the National Law to adopt a co-regulatory model for dealing with these matters.

Queensland's co-regulatory model means there are two entities—the Office of the Health Ombudsman (OHO) and the National Agency—that deal with notifications about a registered health practitioner's health, conduct or performance. These notifications are referred to as 'complaints' under the Health Ombudsman Act.

Under the Health Ombudsman Act, OHO has primary responsibility for managing complaints about registered health practitioners. OHO also regulates unregistered health practitioners, such as speech pathologists, massage therapists and naturopaths.

Notifications about registered health practitioners are made to OHO, which has broad powers to deal with health, conduct and performance issues. OHO must consult with the National Agency to decide which regulator is best placed to respond to the issues raised. In appropriate circumstances, OHO may refer matters to the National Agency. The National Agency then works with and on behalf of the National Board for the relevant profession to resolve the matter under the processes set out in part 8 of the National Law. Generally, the National Agency deals with matters involving a practitioner's health and with less serious conduct and performance issues, while OHO retains responsibility for investigating and prosecuting the most serious allegations of misconduct.

[1] *Health Practitioner Regulation National Law (WA) Act 2010* (WA).

Basis of the reforms

The National Scheme commenced in July 2010 with approximately 500,000 health practitioners registered in 10 health professions. The National Scheme now has over 800,000 registered health practitioners across 16 professions. At its commencement, Health Ministers committed to continually improve the National Scheme and ensure it continues to provide protection for the public in a responsive, accountable, and sustainable way.

The reforms in the Bill build on previous reforms arising out of recommendations from the *Independent Review of the National Registration and Accreditation Scheme for health professions* (the Independent Review).[2] Other reforms are based on consequent reviews of the National Scheme's governance and accreditation systems or address other priority issues identified by Health Ministers.

Independent Review

When establishing the National Scheme, Health Ministers scheduled a review to assess whether the National Scheme was meeting its objectives after its initial operation. The Independent Review, conducted by Mr Kim Snowball, a former Director-General of Health in Western Australia, made 33 recommendations. The recommendations covered issues including governance, accountability, management of complaints and notifications, and public protection mechanisms.

Health Ministers accepted, or accepted in principle, 20 recommendations, deferred decisions on seven recommendations pending further advice, and did not accept six recommendations.

The recommendations accepted from the Independent Review are being progressed in stages. The first stage of reforms (Stage 1 reforms) was made in 2017 when the National Scheme was extended to include registration of paramedics and to strengthen the complaints management, disciplinary and enforcement powers of the National Agency and National Boards. In 2018, amendments were made to the mandatory reporting requirements in the National Law and to increase penalties for falsely holding oneself out as a registered health practitioner and other related offences (Stage 1A reforms).

The Bill contains the second major stage of reforms to the National Law (Stage 2 reforms) arising from the Independent Review.

Governance Review

The *Review of Governance of the National Registration and Accreditation Scheme* (Governance Review) was established in 2016 following Health Ministers' response to the Independent Review. The Governance Review examined ministerial responsibility for the achievement of statutory objectives and the efficiency and effectiveness of National Scheme entities. Targeted stakeholder consultation informed the review.

The final report of the Governance Review, issued in November 2017, made 14 recommendations. The recommendations related to the overall governance of the National Scheme, the role and functions of national scheme entities, the National Scheme's

[2] *Independent Review of the National Registration and Accreditation Scheme for health professions*, Independent Reviewer Mr Kim Snowball commissioned by the Australian Health Ministers' Advisory Council, December 2014.

interactions with states and territories, and the appointment of state, territory and regional Boards. On 31 January 2020, Health Ministers considered the report and agreed to accept all 14 recommendations. Some of the recommendations require amendment of the National Law and are included in this Bill.

Accreditation Systems Review

The Independent Review identified several opportunities to reform accreditation processes under the National Scheme. On 10 October 2016, at the direction of Health Ministers, the then Australian Health Ministers' Advisory Council (AHMAC) commissioned the *Independent Review of Accreditation Systems within the National Registration and Accreditation Scheme for health professions* (Accreditation Systems Review). The review made 32 recommendations to strengthen the education of the health workforce by increasing the efficiency and effectiveness of accreditation functions and improving the relevance and responsiveness of health profession education.

Health Ministers released the final report of the Accreditation System Review in October 2018 and asked AHMAC to undertake further targeted stakeholder consultation on the costs, benefits and risks of implementing the recommendations and the proposed governance models. Following consultation, Health Ministers agreed to several reforms to the accreditation system, including some legislative reforms included in the Bill.

Achievement of policy objectives

The Bill implements a range of reforms to update and improve the regulation of Australia's health professions. Broadly, the main objectives are to:

- strengthen public safety and confidence in the provision of health services;
- improve the governance of the National Scheme; and
- enhance the effectiveness and efficiency of the scheme.

To accomplish these objectives, the Bill provides additional powers for regulators to respond to risks to public safety and to take action against persons who falsely hold themselves out as registered health practitioners or contravene other public protections under the National Law. The Bill also makes important updates to the governance and administrative operations of the National Scheme; implements measures to improve registration and disciplinary processes; enables better information sharing between regulators, government agencies and other entities; and addresses other important issues such as cultural safety for Aboriginal and Torres Strait Islander Peoples who access services provided by registered health practitioners.

Key reforms in the Bill, and how these reforms achieve the policy objectives, are outlined below.

Strengthening public safety and confidence

Many of the amendments in the Bill implement measures to strengthen public safety and confidence in regulated health services. They do this through—

- refocusing the guiding principles and objectives of the National Law;
- strengthening the registration process;

- increasing and strengthening the regulatory responses available to respond to risks; and
- improving information sharing to protect the public.

Refocusing the guiding principles and objectives

The Bill updates the guiding principles and objectives of the National Law to strengthen the focus on public safety and confidence in health services.

The guiding principles of the National Law guide all regulatory decision-making by entities in the National Scheme. They apply to a broad range of decisions, including decisions about accreditation and registration standards, registration decisions and decisions to take health, conduct or performance action against a practitioner.

The Bill inserts a new paramount principle making protection of the public and public confidence in the safety of services provided by registered health practitioners and students paramount considerations. This places an explicit legislative obligation on entities performing functions under the National Law to place protection of the public and public confidence foremost in all decisions and actions. With this amendment, Queensland's existing modification making health and safety of the public a paramount principle is no longer necessary, so a separate amendment in the Bill removes the modification from the Queensland National Law Act.

Additionally, the Bill adds a new objective and guiding principle to the National Law that acknowledges the National Scheme's role in ensuring the development of a culturally safe and respectful health workforce that is responsive to Aboriginal and Torres Strait Islander Peoples and their health and that contributes to the elimination of racism in the provision of health services. The new objective and guiding principle will set clear expectations for National Scheme entities to foster cultural safety for Aboriginal and Torres Strait Islander Peoples accessing health services and to consider how regulatory decisions may impact the health and wellbeing of Aboriginal and Torres Strait Islander Peoples and their confidence in the safety of health services.

Strengthening the registration process

The Bill includes two reforms to strengthen the registration process to protect the public.

The first empowers a National Board to withdraw a practitioner's registration if the Board reasonably believes the registration was improperly obtained because of the provision of false or misleading information. This will allow a swifter and more appropriate response to managing falsely obtained registrations, helping to ensure that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered. To ensure procedural fairness, the power will be subject to a show cause process and appeal to a responsible tribunal. The show cause process will not prevent a National Board from taking other immediate action available under the National Law.

The second reform clarifies that suspended practitioners whose registration otherwise would have expired during their period of suspension must apply to renew their registration within one month of their suspension ending. These practitioners will need to provide the same information required for all renewals, including an annual statement with information about their criminal history, continuing professional development and recency of practice. This amendment will ensure that National Boards are provided with timely information by

formerly suspended practitioners, helping Boards to address any regulatory issues affecting suitability to practise that may have arisen during a suspension period.

Increasing and strengthening regulatory responses to risk

The Bill includes several reforms to increase and strengthen regulatory responses to risks to the public.

Interim prohibition orders and prohibition orders

The Bill inserts new division 7A into part 8 of the National Law to introduce a power for the National Agency and National Boards to issue interim prohibition orders (IPOs) to unregistered practitioners, including practitioners whose registration has lapsed or been suspended. These powers will complement the existing powers of the Health Ombudsman to issue interim prohibition and prohibition orders.

Under the amendments, an IPO issued by the National Agency or a National Board can prohibit or restrict a person from providing a specified health service or all health services and prohibit a person from using protected titles. This will allow regulators to take swift action to control a serious risk while other action is being finalised or a matter is handed over to another regulator better placed to undertake more comprehensive regulatory action.

The amendments require a show cause process to be undertaken as part of the process of issuing an IPO. A regulator will be able to issue an IPO before a show cause process only if it reasonably believes it is necessary to take such urgent action to protect public health or safety. Decisions to issue or extend an IPO will be subject to appeal. Contravention of an IPO will be an offence with a maximum penalty of $60,000, 3 years imprisonment or both.

The Bill also amends section 196 of the National Law to allow a prohibition order issued by a tribunal to place restrictions on a practitioner's provision of health services. This complements the existing power of the tribunal to make an order that completely prohibits a practitioner from providing all or specified health services or using a protected title. This amendment aligns prohibition orders with IPOs and provides further flexibility for tribunals to tailor their decisions to the individual circumstances giving rise to an order.

Public statements

The Bill inserts new division 7B into part 8 of the National Law and new part 8AA into the Health Ombudsman Act to empower the National Agency, National Boards and Health Ombudsman to issue public statements about persons, including registered practitioners, who are the subject of investigations or disciplinary proceedings, and whose conduct poses a serious risk to public health and safety. This will allow regulators to warn the public about the risks posed by the person. For example, if an investigation reveals that a practitioner routinely failed to follow sterilisation procedures and potentially exposed patients to an infectious disease, the regulator would be able to notify the community of their potential health risk while also undertaking disciplinary proceedings against the person. The decision to issue a public statement will be subject to a show cause process and will be subject to appeal to a relevant tribunal.

Disciplinary action in relation to health practitioners while unregistered

The Bill amends the National Law to allow National Boards to take disciplinary action against persons who continue to practice or use a protected title after their registration has lapsed. It also clarifies when disciplinary proceedings can be undertaken against a registered practitioner for behaviour that occurred while the practitioner was unregistered.

A practitioner should not continue to practise or use a protected title after their registration has lapsed. However, if a National Board becomes aware that a health practitioner who is currently registered had previously practised during a period when their registration had lapsed, the only existing powers for dealing with this are to prosecute the practitioner for an offence, or to impose conditions on the practitioner's registration if and when they apply to renew their registration. This could be many months after the practitioner's conduct is discovered.

If a practitioner has failed to renew their registration on time and the lapse in registration was brief and inadvertent, it might be unnecessarily punitive to prosecute them for an offence. Waiting to impose a condition when the practitioner applies to renew their registration could put the public at risk of harm until that action is taken. In these circumstances, a more appropriate regulatory response may be for a National Board to take disciplinary action against the practitioner under the National Law.

The Bill will allow National Boards to take disciplinary action against a registered health practitioner who continues to practise after their registration has lapsed. The draft amendments clarify that a practitioner who continues to practice or use a protected title while their registration has lapsed is engaging in unprofessional conduct. This provides an alternative to prosecuting these matters under the National Law's title and practice protection provisions or imposing conditions on a practitioner's registration at the time of renewal, which are not appropriate regulatory responses in some cases.

The amendments will ensure that National Boards can respond to a practitioner's failure to renew their registration on time in a manner that is proportionate to the severity of the practitioner's conduct and that takes into account other relevant considerations, including competing enforcement priorities and the need to provide effective deterrents to protect the public and promote confidence in the National Scheme.

The amendments are not intended to preclude or discourage the National Agency from investigating and prosecuting offences or the National Boards from imposing conditions on a practitioner's registration in appropriate cases. The National Agency and the National Boards will retain these powers and will be able to apply them in addition to, or instead of, any disciplinary action taken by a Board in relation to the same conduct.

Penalties

The Bill increases the maximum penalties applicable for both advertising[3] and direct and incite offences[4] under the National Law. The maximum penalty for breaching advertising restrictions will be raised from $5,000 for an individual and $10,000 for a body corporate to $60,000 for an individual and $120,000 for a body corporate. The maximum penalty for

[3] Section 133 of the National Law.
[4] Section 136 of the National Law.

direct and incite offences will also be increased from $30,000 for an individual and $60,000 for a body corporate to $60,000 for an individual and $120,000 for a body corporate. These changes bring the penalties into line with the penalties for other serious offences under the National Law and underscore the focus on deterring unscrupulous practices.

Additionally, the Bill increases the penalties under the Health Ombudsman Act for contravening an IPO and prohibition order. The penalties are raised from 200 penalty units to 450 penalty units or three years imprisonment, which is the same as the penalties for the equivalent offences in the National Law. The increase in penalties reflects the seriousness of these offences, which apply to persons who wilfully ignore a lawful order and continue to practise in a way that could seriously harm the public. The amendments also ensure that the same conduct is not subject to different penalties depending on which regulator issues an order.

The Bill further designates the offences of contravening an IPO and prohibition order under the Health Ombudsman Act as indictable offences that are misdemeanours. This is consistent with the designation of related offences under the National Law that are subject to similar penalties. Under the Bill's amendments to the proceedings for indictable offences under the Health Ombudsman Act, these offences are to be heard and decided summarily, unless the Magistrates Court abstains from exercising jurisdiction. The Court must abstain from dealing summarily with a charge of an indictable offence if it is satisfied that there are exceptional circumstances such that the charge should not be heard or decided summarily, or where the Court is satisfied the defendant, if convicted, may not be adequately punished on summary conviction. The Bill provides that the maximum penalty that may be imposed on a summary conviction for an indictable offence is 165 penalty units. Thus, the full available penalty for contravening an interim prohibition order or prohibition order under the Health Ombudsman Act will be limited to cases where the Magistrates Court considers there are exceptional circumstances or that an adequate punishment may not otherwise be obtained.

Improving information sharing to protect the public

The Bill includes several amendments to improve information sharing to protect the public.

Reporting of scheduled medicine offences

The Bill amends section 130 of the National Law to require health practitioners and students to report to the relevant National Board charges and convictions of offences related to regulated medicines and poisons. This amendment was recommended by the Queensland Office of the Health Ombudsman in its *Investigation report: undoing knots constraining medicine regulation in Queensland*, which highlights the risks drug impaired practitioners may present to themselves and the public. Many offences related to regulated medicines and poisons (scheduled medicines) are punishable by payment of a fine rather than imprisonment and are therefore not reportable under the existing legislation. As a result, National Boards may not be notified of a practitioner's or student's scheduled medicine offence history, even though it may be relevant to the person's suitability to hold registration. Early reporting of these offences will allow National Boards to respond quickly to risks posed to the public by practitioners or students who misuse scheduled medicines.

Because there are significant differences in the types of offences that exist under each jurisdiction's medicines and poisons laws, the Bill will allow a participating jurisdiction to declare that offences defined under the law of that jurisdiction are not scheduled medicine offences for purposes of the reporting requirements in the National Law. This will ensure that

the new reporting requirements relate to relevant offences and are no broader than necessary to protect the public.

To give effect to this provision in Queensland, the Bill inserts a general regulation-making power into the Queensland National Law Act. This will ensure that regulations can be made in the future, if necessary, and aligns Queensland with most other jurisdictions, which already have a general regulation-making power under the National Law.

Disclosure of information to protect the public

The Bill makes several amendments to the National Law to increase the ability of National Boards to share information with certain individuals and entities who have an employment or other practice arrangement with a registered health practitioner in the event that the practitioner is subject to disciplinary action or may pose or have posed a risk to persons or the public.

Under the existing legislation, National Boards can require registered health practitioners to provide information about their current employment and practice arrangements. This includes identifying employers and other entities for whom the practitioner provides health services, whether compensated or in a voluntary or honorary capacity. If the practitioner is self-employed, they may be required to provide the names of other registered health practitioners with whom they share premises and the cost of those premises. If a regulator decides to take health, conduct or performance action against a practitioner, the National Board can notify these persons so that they can take action to protect their patients and the community.

The Bill extends these information sharing powers by allowing National Boards to request information about former practice arrangements, including entities that previously had an employment or other practice arrangement with the practitioner, and other registered health practitioners with whom they previously shared premises and the costs of premises. A National Board will be able to notify these persons if action is being taken against a registered practitioner. The power to notify affected persons is discretionary and available only if the Board reasonably believes the practitioner's conduct posed a risk of harm at the time of the prior employment, practice arrangement, or sharing of premises. This amendment will capture those circumstances in which practitioners have caused harm to patients through successive workplaces. It will improve information sharing between employers and regulators and allow for identification of previously unknown risks to the public.

The Bill also extends the information sharing provisions to permit, or in some cases require, National Boards to disclose serious risks posed by a registered practitioner prior to taking disciplinary action. Where a National Board reasonably believes that a registered practitioner's health, conduct or performance poses a serious risk to persons, and notice is necessary to protect the public, the Board must give written notice of the risk and relevant information about the practitioner to their current employer and to other relevant entities with whom the practitioner has a current practice arrangement. The National Board may also give written notice of the risk and relevant information about the practitioner relating to the risk to other registered health practitioners who currently share premises and the cost of premises with the practitioner. This will improve protections for the public in those small number of cases where a regulator has formed a reasonable belief that a practitioner poses a serious risk to the public but has yet to take action, including where the regulator is waiting for further information to finalise a complex matter involving multiple health, performance or conduct concerns. Notifying these persons that a practitioner is under investigation for a relevant

serious matter will allow them to take action to protect the public, such as by enabling a practitioner's employer to implement training or supervision requirements.

The Bill also amends the National Law to allow the National Agency or a National Board to disclose information about serious risks posed by unregistered persons who are being investigated or prosecuted for a breach of part 7 of the National Law (for example, for holding themselves out as a registered practitioner). The amendments will enable this information to be shared with current employers, other entities that have a practice arrangement with the person, and registered health practitioners with whom the person shares premises and the cost of those premises. The power is discretionary and can only be exercised if the regulator reasonably believes that the person poses a serious risk and that it is necessary to give the notice to protect public health or safety. Enabling regulators to disclose that an unregistered person is under investigation or prosecution for an offence will allow employers and other persons to take necessary actions to protect the public, such as restricting the health services that an unregistered practitioner may provide.

Similar amendments are also made to the Health Ombudsman Act to enable the Health Ombudsman to notify previous employers and those who share or have shared premises with a practitioner about particular serious matters or tribunal decisions.

Mandatory notification by employers

The Bill adds a notation to section 142 of the National Law providing an example of when an employer must notify the National Agency of notifiable conduct by a practitioner-employee. The example illustrates that an employer of a registered health practitioner must notify the agency if the employer takes action against the practitioner, such as withdrawing or restricting the practitioner's clinical privileges, because the employer reasonably believes the public is at risk of harm because the practitioner has significantly departed from accepted professional standards.

The current wording of the National Law does not effectively communicate the requirements for employers to make mandatory notifications. Some employers are unaware that when an employer takes certain restrictive or remedial actions against a practitioner-employee, the mandatory notification requirements continue to apply. Employers may be unaware of their obligations or confused about whether and under what circumstances a practitioner's behaviour meets the definition of notifiable conduct and must be reported.

The inserted notation complements broader efforts to educate employers and raise awareness about their mandatory notification obligations. The notation will alert employers to the fact that they may have a duty to report certain employer actions to the National Agency. This will encourage them to review guidance and other resources about employer notification requirements published by the agency and the National Boards.

Alternative name

The Bill enables the public to search the public register for alternative names of practitioners. Amendments in the Bill allow practitioners to practise under an alternative name and to have that alternative name published on the public register alongside their legal name. Practitioners must formally nominate an alternative name, and only one alternative name will be permitted. This amendment will provide flexibility for practitioners who practise under an alternative name for legitimate reasons, such as adopting an anglicised name. It will also increase safety for the public by allowing people to verify a practitioner's registration under their alternative

name and see any relevant conditions or other restrictions on their registration. A National Board may refuse to record a nominated name in the public register or on the certificate of registration for several reasons, including if it is obscene or offensive, resembles a protected or specialist title, or is contrary to the public interest.

Removing the prohibition of testimonials

To better balance public protection and consumer preferences, the Bill amends section 133 of the National Law to remove the prohibition against using testimonials in advertisements about regulated health services.

The prohibition is out of step with consumer expectations and current marketing and advertising practices. Testimonials and reviews are common online, and new forms of advertising, particularly on social media, have blurred the lines between information and advertising. Consumers increasingly expect to have access to reviews and testimonials when purchasing health services and expect to be able to share their views about health services and practitioners.

As a result of this amendment, testimonials will be treated the same as other forms of advertising. This is consistent with the treatment of testimonials under general consumer law. Advertisements, including those that use testimonials, will be prohibited if they are false, misleading or deceptive; offer a gift or inducement without stating the terms and conditions; create an unreasonable expectation of beneficial treatment; or encourage the unnecessary use of regulated health services.

Exclusion of information from public register

The Bill gives discretion to National Boards to remove information about a registered health practitioner from the public register if the publication of that information presents a serious risk to the health or safety of a family member or associate of the practitioner. The existing legislation already provides discretion to remove information if it presents a serious risk to the practitioner. This amendment will broaden the scope of the Board's ability to respond to safety concerns.

Improving the governance of the National Scheme

Redefining the Ministerial Council

The Bill updates the definition of 'Ministerial Council' in section 5 of the National Law to reflect recent changes in the governance arrangements for intergovernmental relations. The amendments remove reference to the Council of Australian Government (COAG), which has now been dissolved. Instead, the Bill defines the Ministerial Council as a body, however named, that is constituted by Health Ministers of the participating jurisdictions and the Commonwealth.

Allowing the delegation of the Ministerial Council's power to approve registration standards

The Bill amends section 12 of the National Law to allow the Ministerial Council to delegate its power to approve registration standards.

Registration standards for health practitioners are drafted by National Boards and submitted to the Ministerial Council for approval. Currently even minor updates and other amendments with no significant policy implications must be approved by Ministers.

To streamline the process for approving registration standards and reduce delays, particularly for minor or non-controversial standards, the Governance Review recommended that the Ministerial Council be able to delegate its power to approve standards. On 31 October 2019, Health Ministers agreed to this recommendation.

The Bill will allow the Ministerial Council to delegate its powers to approve registration standards to any entity it considers appropriate to exercise those powers. For example, the Ministerial Council may consider delegating certain powers to the Agency Management Committee (being re-named by the Bill to the Agency Board) acting on the advice of the National Agency and jurisdictions, or to the Health Chief Executives Forum. Under section 29 of the National Law, a formal instrument of delegation will be established should Ministers choose to delegate these powers, and the Ministerial Council will retain its obligation to ensure that the function is properly exercised. Section 29 also prohibits sub-delegation of the powers.

Updating the functions of the National Agency

The Bill amends section 25 of the National Law to update the National Agency's functions.

The Governance Review found that the role of the National Agency is not well articulated in the National Law. In particular, the current functions of the National Agency include advising the Ministerial Council on administrative matters. In contrast, the National Boards' functions include a broader role advising the Ministerial Council on all matters related to the National Scheme.

In practice, the National Agency provides a central line of accountability and advice to Health Ministers for the entire operation of the National Scheme. This role is not limited to administrative matters. The National Agency performs a wide range of functions on behalf of National Boards and is held accountable for meeting ministerial expectations of the Boards and other National Scheme entities. The National Agency manages this through its co-operative arrangements with the Boards. When Boards or other National Scheme entities do not meet expectations, the National Agency communicates this to those entities on behalf of the Ministerial Council.

To better reflect the National Agency's central role in managing the National Scheme, the Bill amends section 25 to recognise the National Agency's broad advisory function. The agency will have the function of providing advice to the Ministerial Council on all matters relating to the National Scheme, not only matters that pertain to the scheme's administration.

In addition, the Bill clarifies that the National Agency may do anything necessary or convenient for the effective and efficient operation of the National Scheme, within the scope of the National Law.

Re-naming the Agency Management Committee

The Agency Management Committee is the National Agency's governing body. Its role is to oversee the agency's operations and set the strategic direction for the National Scheme.

The current title of the committee does not appropriately reflect its role, function or governance arrangements. The inclusion of the word 'management' implies that the committee's role is the operational management of the National Agency. This is not the case, and feedback from stakeholders suggests that the committee's title frequently confuses practitioners, registrants and the public about the committee's role and the agency's lines of accountability.

The Bill changes the name of the Agency Management Committee to 'Agency Board'. This title better reflects the body's role and functions, including governance for the National Scheme.

Dissolving the Australian Health Workforce Advisory Council

The Bill removes the provisions in the National Law that establish the Australian Health Workforce Advisory Council.

The Australian Health Workforce Advisory Council was formed to provide independent advice to the Ministerial Council on certain matters. The Ministerial Council only sought advice from the Council on one occasion, with the advice provided in October 2011. The Council has been in abeyance since August 2012.

In practice, the Ministerial Council receives advice on most matters relating to the National Scheme from the National Agency and the Health Chief Executives Forum and its subcommittees. The Governance Review concluded that the Australian Health Workforce Advisory Council is not necessary for the effective governance of the National Scheme and recommended removal of the provisions establishing it.

Enhancing the efficiency and effectiveness of the National Scheme

The Bill makes additional amendments to enhance the efficiency and effectiveness of the National Scheme.

Allowing flexibility to the timeframes for commencing registration

The Bill amends sections 61, 64, 72 and 76 of the National Law to allow the commencement of specialist, provisional, limited and non-practising registrations to be post-dated up to 90 days after a registration decision is made. This amendment will resolve certain administrative challenges and align the commencement timeframes with those applicable to general registration under section 56 of the National Law.

Increasing the use of undertakings

The Bill amends the National Law to allow National Boards to accept an undertaking from a person when deciding the person's application for registration.

Under the existing law, National Boards can impose a condition on a practitioner's registration but cannot accept an undertaking during the registration process. In many cases, an undertaking would be enough to restrict the practitioner's practice without a condition being required. The Bill will allow National Boards to accept undertakings from practitioners applying for registration, endorsement of registration and renewal of registration.

Due to the requirement to observe natural justice, placing a condition on a practitioner's registration when they register or renew their registration can be time consuming and

resource intensive. Allowing National Boards to accept undertakings from practitioners, where appropriate, will free up resources for managing other priorities. The amendment will also increase the use of undertakings as they will no longer be solely a disciplinary measure. Practitioners may be more willing to provide an undertaking than have a condition imposed on their registration because this will avoid delays in registration and increase their involvement in the process.

Related amendments in the Bill allow the Health Ombudsman to accept undertakings as an immediate registration action to mitigate risks to the public. This provides the Health Ombudsman with the same powers the National Boards already possess in relation to accepting an undertaking as a disciplinary measure.

Under the amendments to the Health Ombudsman Act, an undertaking from a registered practitioner can be accepted if the Health Ombudsman reasonably believes the practitioner poses a serious risk to persons and that accepting the undertaking is necessary to protect public health or safety. Registered practitioners are able to apply to vary or revoke an undertaking given to the Health Ombudsman, and a decision to refuse to vary or revoke the undertaking is subject to a show cause process and appeal.

To strengthen the value of undertakings, the amendments will allow a National Board to refuse to renew a practitioner's registration if the practitioner has contravened an undertaking they have given.

Clarifying the process for changing or removing conditions on endorsements of registration

The National Law already sets out a process for National Boards to change or remove a condition on registration, but it does not establish the process for changing or removing a condition on endorsements of registrations. The Bill clarifies that the process for a National Board to change or remove a condition on an endorsement is the same as for changing or removing a condition on registration.

Allowing National Boards to require records at preliminary assessment

The Bill inserts new sections 149A and 149B into the National Law, allowing National Boards to require practitioners to provide information during a preliminary assessment of a notification.

When conducting a preliminary assessment of a notification, a National Board can request information from practitioners. However, confidentiality restrictions mean that some clinical records can only be provided if the notification was made by a patient and the patient consents to the disclosure of the records. As there is no ability for National Boards to compel disclosure of documents at the preliminary assessment stage, practitioners cannot provide Boards with confidential information that may be relevant and enable efficient resolution of the notification. Instead, Boards may be required to commence an investigation to obtain the information necessary to determine whether regulatory action is needed.

The Bill gives regulators the power to require practitioners to provide information or documents, including patient and practitioner records, to support a preliminary assessment of a notification. However, practitioners will not need to provide the information if it might incriminate them.

The amendments do not affect the types of documents or other information the National Boards can access; they simply bring forward the point in time at which National Boards can require the information to be produced. This will increase the efficiency of the preliminary assessment process and support timely resolution of matters, which is likely to improve the experience of both practitioners and notifiers.

These changes already apply in Queensland under the Health Ombudsman Act.

Increasing the responsiveness of show cause processes

The Bill amends sections 179 and 180 of the National Law to allow a National Board to take appropriate action against a registered health practitioner under the health, conduct and performance provisions in part 8 of the National Law, even if the Board initially proposed to take a different regulatory action under division 10 of part 8.

Currently, once a National Board proposes to take 'relevant action' and initiates a show cause process under division 10, it must either take the proposed action, take no further action, or take a different relevant action under the same division. This could preclude the National Board from taking action under a different division, such as investigating a matter under division 8 or initiating a health or performance assessment under division 9. This may be appropriate where, for example, new information comes to light in the show cause process that warrants further investigation or assessment. The amendments in the Bill will ensure that National Boards can take the most appropriate regulatory action based on all relevant information available to them at any time.

Relatedly, when taking a relevant action under division 10 of part 8, National Boards will no longer be exempt from the show cause process requirements of section 179 when they have already investigated the relevant matter or completed a health or performance assessment of the registered health practitioner or student. In practice, National Boards always afford practitioners opportunity to show cause, so this amendment brings the National Law into line with current practice.

Allowing National Boards to refer matters to other entities at preliminary assessment

The Bill inserts new section 150A to the National Law, allowing National Boards to refer matters to another entity after a preliminary assessment of a notification.

The National Agency and National Boards both receive and respond to notifications about registered health practitioners. Notifications can be made by anyone on a number of grounds, including concerns about a health practitioner's professional conduct, knowledge, skill or suitability to hold registration. The National Agency must refer notifications to a National Board established for the practitioner's or student's health profession or, in co-regulatory jurisdictions, to the co-regulatory authority.

Upon receipt of a referred notification, National Boards must conduct a preliminary assessment to determine:

- whether the notification relates to a health practitioner or student registered in the health profession for which the Board was established;
- whether a ground for the notification exists;
- whether the notification could also be made to a health complaints entity.

During the preliminary assessment of a notification, National Boards can refer a notification to another Board if the notification relates to a person registered in the health profession for which the other Board was established. National Boards can also refer a notification to a jurisdiction's health complaints entity if the notification would provide a ground for such a referral.

Except in the limited circumstances noted above, National Boards are currently unable to refer a notification to another entity or for another purpose at the preliminary assessment stage. This means that matters may unnecessarily proceed down the National Board's notification pathway even though it is clear during preliminary assessment that another entity is better placed to manage issues raised by the notification. This prolongs the process for the notifier and practitioner and diverts resources from other aspects of the National Scheme. In contrast, following an investigation a National Board may refer a matter to another entity for further investigation or action.

The Bill will allow National Boards to refer notifications to another entity following preliminary assessment. This will reduce the number of notifications that proceed to further assessment or investigation and speed up the notification process. The amendments do not limit the entities to which a National Board may refer a notification. Entities may include the police, courts, jurisdictional health complaints entities, other health regulators such as state-based medicines and poisons regulators, health services or employers, as appropriate.

If a National Board decides to refer a notification or part of a notification to another entity, this will not prevent the Board from continuing to deal with that notification or elements of it if it decides it should do so.

The Bill also empowers National Boards to ask another entity to whom it has made a referral for information about how the entity has resolved the referred matter. This will allow National Boards to monitor the conclusion of a notification and assist their decision-making with respect to future referrals.

Giving regulators limited discretion not to refer matters to responsible tribunal

The Bill inserts new section 193A to the National Law, allowing National Boards to decide not to refer matters to a tribunal where there is no public interest in such a referral.

Under the existing legislation, National Boards must refer all professional misconduct cases to a responsible tribunal. They do not have any discretion to take another action or to decide not to take any further steps with respect to the matter. In most cases, it will be appropriate to refer the matter to a tribunal. Referral to a tribunal acknowledges the seriousness of professional misconduct and allows for the imposition of the most severe penalties under the National Law. However, tribunal proceedings are time consuming and expensive for all parties.

In certain cases, a National Board may form a reasonable belief that there is no public interest in referring a matter to a tribunal and that there is no risk to the health and safety of the public in not referring the matter. This may occur, for example, where a National Board is investigating a health practitioner for charging excessive fees and the health practitioner agrees to tender their registration and cease practicing. Despite there being no ongoing risks to the public in cases such as these, Boards currently do not have discretion not to refer the matter to a tribunal. The ensuing proceedings can be time-consuming and resource-intensive,

both for National Boards and responsible tribunals, including the Queensland Civil and Administrative Tribunal (QCAT).

The Bill addresses this inefficiency by giving National Boards limited discretion to decide not to refer professional misconduct cases to the responsible tribunal. To protect the integrity of the National Scheme and the health and safety of the public, National Boards will only be able to exercise such discretion if they conclude that there is no public interest in referring the matter to a tribunal.

To determine whether there is public interest in referring a matter to the tribunal, National Boards will need to consider:

- whether failure to refer the matter to a tribunal will put the health and safety of the public at risk;
- the nature and seriousness of the conduct, including whether the practitioner engaged in wilful misconduct or has multiple complaints against them;
- whether the practitioner is still registered and, if not, the likelihood that the practitioner may seek registration in the future;
- whether failure to refer the matter to a tribunal would deprive the public of a benefit, including the benefit of a public decision on the matter; and
- any other matters the Board considers relevant.

This amendment will ensure that the most serious professional misconduct matters continue to be heard by a tribunal, but resources will not be used pursuing matters where there is no risk to the public and no public interest in having the matter heard by the tribunal.

To ensure the discretion not to refer matters to a responsible tribunal is exercised in a manner that is appropriate, accountable, and transparent, the National Agency will be required to publish information about these decisions in its annual report.

Removal of endorsements of registrations for midwife practitioners

The Bill removes endorsements of registrations for midwife practitioners. In 2010, when the National Scheme commenced, one practitioner was registered as a midwife practitioner under the *Nurses Act 1991* (NSW). This practitioner's registration was transitioned to the national register with an endorsement as a midwife practitioner.

Since this time, the Nursing and Midwifery Board of Australia (the NMBA) has not approved any further midwife practitioner endorsements. The NMBA does not have a registration standard for endorsement as a midwife practitioner and there are no approved programs of study that qualify a midwife to practice as a midwife practitioner.

As there is no evidence that there is a workforce requirement for such an endorsement, the Bill will repeal the section of the National Law that allows the NMBA to endorse registrations of midwife practitioners. A new savings provision will ensure that the sole registered midwife practitioner will remain able to practice under that protected title.

Minor and technical amendments

The Bill makes various minor and technical amendments to correct typographical errors, make terminology clearer or more consistent, update references and contemporise some provisions.

A minor amendment in the Bill replaces phrases indicating that a person can inspect a document held by a regulator at a 'reasonable time and place' with a reference to 'at a reasonable time and in the reasonable way' decided by the Board. These changes reflect that the inspection and copying of documents is now often done electronically, rather than in person.

The Bill also updates sections 109, 130 and 219 of the National Law as a consequence of amendments to the *Medicare Australia Act 1973* (Cth).

Alternative ways of achieving policy objectives

The Independent Review, Governance Review and Accreditation Systems Review had broad terms of reference to examine relevant improvements to the National Scheme. The reviews considered and consulted on the most appropriate ways of achieving identified improvements, including via legislative and non-legislative means.

Health Ministers had a common goal of achieving the policy objectives while minimising legislative change. For example, the Accreditation Systems Review made several recommendations around the governance of accreditation functions, including recommending the establishment of a new national health education accreditation body. This would have required significant structural and legislative reform. Health Ministers requested further consultation on the costs, benefits and risks of implementing the recommendations and the proposed governance models. Following this consultation, Health Ministers agreed not to form a new statutory entity, but to instead achieve the policy objectives through other means, including minor legislative changes, the issuance of a policy direction, and administrative changes.

In October and November 2019, Health Ministers approved a range of reforms arising from the reviews. The reforms aim to strengthen public safety and confidence in the provision of health services and improve the governance, effectiveness and efficiency of the National Scheme. The approved reforms included both amendments to the National Law as well as other non-legislative actions.

As the National Law establishes the governance and operational framework for the National Scheme and sets out the regulatory actions available to respond to risks to the public, legislation is the only feasible option for achieving the policy objectives in these areas.

Estimated cost for government implementation

The reforms included in the Bill include both cost adding and cost saving measures. It is anticipated that the overall costs to Queensland's government of implementing these proposals will be minor and met through existing budget allocations.

The National Scheme is funded by practitioners' registration fees, with fees set by each National Board to reflect the cost of regulating each profession under the National Law.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles in the *Legislative Standards Act 1992*. However, several clauses may potentially impact on particular principles. The potential departures from fundamental legislative principles are discussed below and are considered justified to support the regulation of health professions and public health and safety. All potential departures have been carefully considered in framing the Bill, and wherever possible the impact of the potential departures has been minimised.

Whether the legislation has sufficient regard to the rights and liberties of individuals (*Legislative Standards Act 1992*, s 4(2)(a))

The Bill contains several clauses that potentially impact on the fundamental legislative principle that legislation must have sufficient regard to the rights and liberties of individuals. Potential departures are discussed below.

Delegation of the approval of registration standards

Section 4(3)(c) of the Legislative Standards Act states that whether a Bill has sufficient regard to the rights and liberties of individuals depends on whether the legislation allows for the delegation of administrative power only in appropriate cases and to appropriate persons.

Clause 54 of the Bill amends section 12 of the National Law to provide a power for the Ministerial Council to delegate its powers to approve registration standards to an entity it considers appropriate to exercise the power. Registration standards define the requirements that applicants and registrants need to meet to be registered under the National Scheme. They bring consistency across Australia, make National Board requirements clear, and inform decision-makers when concerns are raised about practitioners' conduct, health or performance. The sixteen health professions regulated under the National Scheme each have five core registration standards.

The inclusion of this delegation power is justified as there are a range of administrative powers under the Act, and it is impractical for the Ministerial Council to exercise day-to-day functions under the Act personally. This was recognised in the *Review of Governance of the National Registration and Accreditation Scheme*, which found that the approval process for registration standards generates unnecessary amounts of work and bureaucracy, resulting in delays in approvals. The Bill implements a recommendation from the review to allow the Ministerial Council to delegate its powers to approve registration standards.

Under section 29 of the National Law, a formal instrument of delegation will be established should Ministers choose to delegate these powers, and the Ministerial Council will retain its obligation to ensure that the function is properly exercised. Section 29 also prohibits sub-delegation of the powers. The Ministerial Council also retains the power to ask a National Board to review an approved or proposed registration standard.

Acceptance of undertakings

Section 4(3)(a) of the Legislative Standards Act states that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

Clause 7 of the Bill, when read together with section 58 of the Health Ombudsman Act, provides that the Health Ombudsman may accept an undertaking from a registered health practitioner as an immediate registration action to mitigate risks to the public. Chapter 3, part 9 of the Bill permits National Boards to accept undertakings from practitioners applying for registration or endorsement of registration. Clauses 66 and 133 allow a National Board to refuse to renew a practitioner's registration if the practitioner has contravened an undertaking they have given to a National Board or the Health Ombudsman.

These provisions provide an alternative to the existing provisions allowing the imposition of a condition on registration and support the operation of the National Scheme by providing regulators with the flexibility to address risks appropriately and proportionally.

Appropriate safeguards are included in relation to these provisions. In order for the Health Ombudsman to accept an undertaking from a practitioner, section 58(1) of the Health Ombudsman Act requires the Health Ombudsman to reasonably believe that the practitioner's health, conduct or performance poses a serious risk to persons and that it is necessary to accept the undertaking to protect public health and safety. Further, health practitioners are able to apply to vary or revoke an undertaking given to the Health Ombudsman or National Board, and a refusal to vary or revoke an undertaking may be appealed.

Public statements

Clauses 20 and 100 introduce a power for regulators to issue public statements about a person. These clauses touch on several fundamental legislative principles. Section 4(3)(b) of the Legislative Standards Act states that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation is consistent with principles of natural justice. Section 4(3)(h) of the Legislative Standards Act states that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation does not confer immunity from proceeding or prosecution without adequate justification. In addition, the right to privacy and the disclosure of private or confidential information have generally been identified as relevant to consideration of whether legislation has sufficient regard to individuals' rights and liberties.

Under the amendments, the National Agency, National Boards, and Health Ombudsman can make a public statement about a person, including a registered practitioner, if they become aware of a serious risk to public health or safety during an investigation, prosecution or other disciplinary proceeding caused by the person's conduct. The statement may identify and give warnings or information about the person and health services provided by the person. However, a public statement can only be made if the regulator—

- reasonably believes the person has contravened specific provisions of the National Law, or the person's health, conduct or performance is the subject of an assessment, investigation, or other proceeding; and
- the person poses a serious risk to persons because of their conduct, performance, or health; and
- it is necessary to issue a public statement to protect public health or safety.

No liability is incurred by the regulator or the state for the making of, or for anything done for the purpose of making, a public statement under the clause in good faith.

Potential departures from fundamental legislative principles are considered justified on the basis that any publication is restricted to matters that meet a high threshold of risk. The regulator must reasonably believe it is necessary to make a public statement to protect health or safety and that a person's conduct, performance or health pose a serious risk to others. With this threshold, the circumstances for issuing a public statement are inherently serious and have potentially serious public health consequences. For example, a public statement warning that a practitioner routinely failed to follow sterilisation procedures and potentially exposed patients to an infectious disease, may notify members of the community of their potential exposure and allow them to receive early treatment to mitigate the risks to their health.

The legislation also includes other safeguards, including making a public statement subject to a show cause process and requiring a regulatory body to revoke a public statement if satisfied the grounds for the statement no longer exist or did not exist at the time the statement was made. In such cases, the statement must be revoked publicly in the same way or in a similar way to how it was made. A decision to make a public statement can also be appealed.

Similar provisions have been included in other Queensland legislation, including section 127 of the *Medicines and Poisons Act 2019*, and have been found to be consistent with fundamental legislative principles.[5]

Notifications of risk

The right to privacy and the disclosure of private or confidential information have generally been identified as relevant to consideration of whether legislation has sufficient regard to individuals' rights and liberties.

The Bill makes several amendments to the National Law and Health Ombudsman Act to increase the ability of National Boards to share information with certain individuals and entities who have an employment or other arrangement with a health practitioner in the event the practitioner is subject to disciplinary action or may pose or have posed a risk to persons or the public (see clauses 29, 30, 84, 110 and 111 of the Bill). These provisions are necessary to enable regulators to share information with relevant persons in a timely manner to mitigate ongoing health risks and avert harm to patients and the public.

The amendments extend existing information sharing powers by allowing National Boards and the Health Ombudsman to notify certain persons about regulatory action taken against a registered health practitioner with whom they previously had an employment or other practice arrangement, or with whom they shared premises and the cost of premises. Information about regulatory actions is already published in the register of practitioners maintained by the National Agency on behalf of the National Boards. The amendments authorise regulators to inform particular persons about this publicly accessible information.

This power is discretionary and subject to appropriate safeguards. Importantly, a notification can be made only to specific persons, such as former employers and associates of the practitioner, and only if the Health Ombudsman or Board reasonably believes the

[5] See Report No. 32, p.45, 56TH PARLIAMENT, State Development, Natural Resources and Agricultural Industry Development Committee, https://documents.parliament.qld.gov.au/tableOffice/TabledPapers/2019/5619T1054.pdf (last accessed 9 March 2022).

practitioner's conduct posed a risk of harm at the time the practitioner had an employment or other arrangement with those persons. The powers do not require notice to the relevant practitioner or a show cause process to be undertaken as this would prevent the timely sharing of information necessary to protect the public and could also compromise an ongoing investigation. The power is necessary to improve information sharing between employers and regulators and allow for identification of previously unknown risks to the public. The persons who can be notified are restricted to those that are in a position to act to protect the public.

The Bill also extends the information sharing provisions to permit, or in some cases require, National Boards to notify current employers and associates of a registered health practitioner of serious risks posed by the practitioner before any formal regulatory action has been taken. Where a National Board reasonably believes that a registered practitioner's health, conduct or performance poses a serious risk to persons, and notice is necessary to protect the public, the Board must give written notice of the risk and relevant information about the practitioner to their current employer. The National Board may also give written notice of the risk and relevant information about the practitioner to practitioners who share premises and the cost of premises with the practitioner. This power is necessary to improve protections for the public in cases where the Board has formed a reasonable belief that a practitioner poses a serious risk but is still finalising other regulatory action. Notifying current employers and associates that a practitioner is under investigation for a relevant serious matter will allow employers to take prompt action to protect the public, such as implementing training or supervision requirements.

The Bill also amends the National Law to allow the National Agency or a National Board to notify employers and associates about serious risks posed by unregistered persons who are being investigated or prosecuted for a breach of part 7 of the National Law (for example, for holding themselves out as a registered practitioner). The power to notify employers and associated practitioners is discretionary and can only be exercised if the regulator reasonably believes that the person poses a serious risk and that it is necessary to give the notice to protect public health or safety. Notifying employers that an unregistered person is under investigation or prosecution for an offence will allow employers to take any action they consider necessary to protect the public, such as restricting their scope of practice.

Powers to require production of documents and information

Section 4(3)(e) of the Legislative Standards Act states that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.

Section 4(3)(f) of the Legislative Standards Act provides that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether it provides appropriate protection against self-incrimination.

The Bill includes a power for a National Board to require a person to provide information or documents during a preliminary assessment of a notification, unless they have a reasonable excuse (see insertion of new sections 149A and 149B at clause 92 of the Bill). Under new section 149A(3), it is a reasonable excuse for a person not to give information or documents if it might tend to incriminate them. Under new section 149B, if a document is produced to the National Board, the Board may inspect it, make a copy of it, or keep it while necessary

for the preliminary assessment. If the Board keeps the document, it must permit a person otherwise entitled to the document to inspect and make a copy of it.

Under the current preliminary assessment process, confidentiality restrictions mean that some information and documents, such as patient records, cannot be provided, except in limited circumstances. Consequently, even if a practitioner wishes to provide this information to the Board, they are prevented from doing so during the preliminary assessment process. This has the effect of requiring Boards to commence an investigation to obtain the information necessary to determine whether regulatory action is needed, thus delaying resolution of matters to the detriment of both practitioners and notifiers.

The amendments do not affect the types of documents or other information the National Boards can access; they simply bring forward the point in time at which National Boards can require the information to be produced. The powers are justified as Boards require correct information to effectively assess compliance and risk. The amendments also align with the powers given to the Health Ombudsman under section 48 of the Health Ombudsman Act and with other similar powers in other legislation, such as at part 4, division 5 of the *Medicines and Poisons Act 2019*.

Withdrawal of registration

Section 4(3)(a) of the Legislative Standards Act states that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

Clause 70 of the Bill provides a power to National Boards to withdraw a practitioner's registration if the Board reasonably believes the registration was improperly obtained because of the provision of false or misleading information or documents.

This power is necessary to fulfill the objective of the National Scheme of ensuring only suitably trained and appropriately qualified practitioners are registered. Currently the National Board is unable to re-consider a decision to approve a practitioner's registration, even if it becomes aware that the information it based its decision on was false or misleading. It must, instead, take other disciplinary action, such as suspending the practitioner and initiating proceedings before a tribunal.

To ensure procedural fairness, the power is subject to a show cause process (clause 70, new section 85B) and is appellable to QCAT (clause 74).

Offence provisions

The Bill increases penalties for several existing offences and includes a new offence in the National Law of contravening an IPO. Although the Legislative Standards Act does not explicitly provide a fundamental legislative principle for offence provisions, the inclusion of new offences in a legislative scheme have generally been identified as relevant to the consideration of whether legislation has sufficient regard to individuals' rights and liberties.

New offences are required to be appropriate and reasonable in light of the conduct that constitutes the offence. Penalties are required to be consistent and proportionate to the offence. A discussion of the new offences and increased penalties in the Bill is below.

Increased penalties for breaches of advertising offences

Clause 85 of the Bill increases the maximum penalty for advertising offences from $5,000 for an individual and $10,000 for a body corporate to $60,000 for an individual and $120,000 for a body corporate.

The current penalties for advertising offences are not considered a sufficient deterrent.

The increase in penalties is appropriate and reasonable in light of the harms that could arise from misleading advertising about health services. The new penalty also aligns with other serious offences in the National Law, such as those for misusing a protected title in section 113.

The current penalties under the National Law are significantly lower than the penalties for engaging in misleading or deceptive conduct under the Australian Consumer Law, which can exceed $10 million for corporations and be as much as $500,000 for individuals. Misleading or deceptive advertising relating to sale of food under section 37 of the *Food Act 2006* has a maximum penalty of 500 penalty units (or $68,500).

Increased penalties for direct and incite offences

Section 136 of the National Law makes it an offence for a person to direct or incite a health practitioner to do anything in the course of their practice that amounts to unprofessional conduct or professional misconduct. Clause 86 of the Bill increases the maximum penalty for this offence from $30,000 for an individual or $60,000 for a body corporate to $60,000 for an individual and $120,000 for a body corporate.

Direct and incite offences were included in the National Law to address concerns about the increased corporatisation of health services and the potential for non-practitioner directors and managers to influence employee health practitioners to practise in a way that compromises client care and clinical independence.

The amendment brings the penalty for direct and incite offences into line with the penalties for other serious offences under the National Law.

Increased penalties under the Health Ombudsman Act for contravening orders

Clauses 18 and 21 of the Bill increase the penalties under the Health Ombudsman Act for contravening an IPO and prohibition order. The penalties are raised from 200 penalty units to 450 penalty units or three years imprisonment. These are the same penalties that apply for the equivalent offences in the National Law.

Penalties for contravening similar orders in other Queensland legislation varies considerably. For example, the maximum penalty for contravening a court issued prohibition order under section 187 of the *Animal Care and Protection Act 2001* is 300 penalty units or 1 year imprisonment, and the maximum penalty for contravening a prohibition notice issued by an authorised officer under section 576C of the *Heavy Vehicle National Law Act 2012* is $10,000.

The increase in penalties under the Health Ombudsman Act is considered reasonable and appropriate in light of the seriousness of the offences, which apply to persons who wilfully ignore a lawful order and continue to practise in a way that could seriously harm the public.

The alignment of penalties with the National Law also avoids having different penalties apply to the same conduct depending on which regulator issues an order.

Clause 28 of the Bill further designates the offences of contravening an IPO and prohibition order under the Health Ombudsman Act as indictable offences that are misdemeanours. This is consistent with the designation of related offences under the National Law that are subject to similar penalties. Under the Bill's amendments to the proceedings for indictable offences under the Health Ombudsman Act, these offences are to be heard and decided summarily, unless the Magistrates Court abstains from exercising jurisdiction.

The Court must abstain from dealing summarily with a charge of an indictable offence if it is satisfied that there are exceptional circumstances such that the charge should not be heard or decided summarily, or where the Court is satisfied the defendant, if convicted, may not be adequately punished on summary conviction. The Bill provides that the maximum penalty that may be imposed on a summary conviction for an indictable offence is 165 penalty units. Thus, the full available penalty for contravening an interim prohibition order or prohibition order under the Health Ombudsman Act will be limited to cases where the Magistrates Court considers there are exceptional circumstances or that an adequate punishment may not otherwise be obtained.

Power for national regulators to issue IPOs

Chapter 3, part 21 of the Bill inserts new division 7A into part 8 of the National Law to introduce a power for the National Agency and National Boards to issue IPOs to unregistered practitioners where there is a reasonable belief the person poses a serious risk to persons. The Health Ombudsman already has the power to issue IPOs.

Under the amendments, an IPO issued by the National Agency or a National Board can prohibit or restrict a person from providing a specified health service or all health services and prohibit a person from using protected titles.

Appropriate safeguards are included in the Bill, including the requirement for a show cause process to be undertaken as part of the process of issuing an IPO. A regulator will be able to issue an IPO before a show cause process only if it reasonably believes it is necessary to take such urgent action to protect public health or safety. A decision to issue or extend an IPO will be subject to appeal.

Under new section 159O of the National Law, contravention of an IPO is an offence with a maximum penalty of $60,000, 3 years imprisonment or both. This penalty aligns with the penalty for contravening a prohibition order under the National Law and reflects the seriousness of the offence, as discussed above.

Whether the legislation has sufficient regard to the institution of Parliament (*Legislative Standards Act 1992*, s 4(2)(b))

Regulation-making power

Section 4(4)(c) of the Legislative Standards Act states that whether legislation has sufficient regard to the institution of Parliament depends on whether the legislation authorises the amendment of an Act only by another Act.

Clause 147 of the Bill provides a head of power for regulations to be made under the Act. This provision ensures that, where appropriate, regulations can be made to accommodate matters contemplated by the Act and within the authority of the Act. General powers to make regulations are common in Queensland Acts and provide much needed flexibility given the nature and complexity of modern legislation. All regulations made under this provision will be tabled in the Legislative Assembly and will be subject to Parliamentary scrutiny and disallowance procedures and to the fundamental legislative principles applicable to subordinate legislation.

Exempting scheduled medicine offences

As mentioned above, section 4(4)(c) of the Legislative Standards Act states that whether legislation has sufficient regard to the institution of Parliament depends on whether the legislation authorises the amendment of an Act only by another Act.

Clause 81 of the Bill amends section 130 of the National Law to require registered health practitioners and students to notify the relevant National Board of any charges, convictions or findings of guilt for a scheduled medicine offence. A scheduled medicine offence is defined broadly to include offences against a law of a participating jurisdiction that relate to administering, obtaining, possessing, prescribing, selling, supplying or using a scheduled medicine. Because there are significant differences in the types of offences that exist under each jurisdictions' medicines and poisons laws, the Bill will allow jurisdictions to exempt specific offences by means of an Act or regulation of that jurisdiction. For example, a state or territory may exempt the reporting of very minor offences or offences that are not relevant to a practitioner's health, professional conduct or performance.

Allowing jurisdictions to exempt specific offences via a local Act or regulation may be viewed as a departure from the fundamental legislative principle that sufficient regard be given to the institution of Parliament. However, permitting a jurisdiction to exempt specific offences provides a practical solution to the variation in state and territory laws, and will encourage national consistency while still preserving some flexibility to accommodate jurisdictional differences. The flexibility will ensure that the new reporting requirements are no broader than necessary to protect the public and will also provide the necessary flexibility to accommodate changes in offences. As noted above, any regulations to exempt the reporting of scheduled medicine offences will be subject to tabling and disallowance procedures, ensuring that Parliament has sufficient oversight of these matters.

Consultation

The reforms included in this submission have been developed with extensive community consultation. In April and May 2017, targeted consultation was undertaken with stakeholders about the proposal to give the National Agency powers to issue interim prohibition orders. Consultation documents were available on the then COAG Health Council website, three national consultation forums were held by teleconference and 36 written submissions were received. COAG Health Council considered advice about the outcomes of consultation in approving the reform.

Consultation on the full range of proposed Stage 2 reforms to the National Law began with the July 2018 release of the consultation paper, *Regulation of Australia's health professions: keeping the National Law up to date and fit for purpose*. In addition to the consultation paper, eight consultation forums were held across all Australian states and territories.

Approximately 300 people attended these forums, with representation from professional associations, specialist colleges, regulators, medical indemnity insurers, practitioners, unions, health complaint entities, research institutions, public entities and health consumers. To ensure the perspectives of consumers were adequately represented, additional targeted consultation was undertaken with organisations and individuals representing healthcare consumers.

Almost 100 organisations and individuals provided feedback on the policy proposals canvassed in the consultation paper. These submissions were analysed to inform the policy proposals and recommendations for consideration by Health Minsters.

Targeted consultation on a consultation draft Bill of the National Law amendments was then undertaken between 26 February 2021 and 27 April 2021. Consulted stakeholders included national and state regulators, professional associations, professional indemnity insurers, the National Health Practitioner Ombudsman, medical colleges, patient safety bodies and health consumer bodies.

Stakeholders were provided consultation drafts of the Bill as well as a supporting document summarising the reforms and their rationales. Two national webinar sessions were held on 7 and 8 April 2021 to explain the proposed amendments and respond to stakeholder questions. Some jurisdictions also provided briefings to local stakeholders.

A total of 50 written stakeholder submissions were received from a broad cross-section of stakeholders.

Stakeholder submissions largely indicated support for the draft Bill. Some stakeholders suggested changes to the drafting to improve its operation or to address specific issues or concerns. A small number of stakeholders opposed the inclusion of one or more of the reforms in the Bill. Some issues regarding implementation of specific reforms were identified by stakeholders, as well as potential unintended effects.

The Bill was updated, where appropriate, to reflect some of the feedback received.

Below is a summary of key issues raised by stakeholders and the outcome of consideration of the feedback on those issues.

Paramount principle

The Bill will insert a new paramount principle into the National Law to make public protection and confidence in the safety of services paramount considerations in administering the Act.

Most stakeholders supported the amendment. A few stakeholders raised concerns about potential conflicts with the existing guiding principles in the National Law. Some of these stakeholders contended that the concept of ‘public confidence’ is vague and difficult to assess.

No changes to the draft Bill were made. The Bill provides a clear legislative direction to National Scheme entities to prioritise public safety and public confidence in their decision-making. Existing modifications to the National Law in Queensland include a similar paramount principle, which has benefitted those administering and engaging with the Scheme.

Ministerial Council

The Bill will allow the Ministerial Council to delegate its power to approve registration standards to an entity it deems appropriate.

A few stakeholders raised concerns about the scope of the delegation power and advocated for increased transparency in delegation decisions. Some stakeholders recommended including a threshold for decisions that could be delegated, and that decisions about who would be delegated these powers should be subject to consultation. One stakeholder recommended that all delegated decisions regarding approval of registration standards should be publicly reported.

The National Agency and the National Boards recommended a general delegation power rather than the proposed limited delegation for approval of registration standards.

No changes to the draft Bill were made. The Bill provides flexibility for the Ministerial Council to delegate its powers to approve registration standards in the way that it considers most appropriate in the circumstances. The amendment is intended to reduce delays in the setting of registration standards. It is understood that consultation with relevant entities will inform delegation decisions.

Regarding the public reporting of delegated decisions, existing provisions of the National Law will require such decisions to be published.

A more general delegation power has not been included. Some of the Ministerial Council's powers in the National Law, such as the power to make regulations and to issue policy directions, cannot be delegated. A separate review is being undertaken to explore the benefits of allowing delegation of other powers. If further delegation powers are recommended out of this review, they can be included in a future Bill.

Scheduled medicine offences

The Bill will require health practitioners and students to report offences related to regulated medicines and poisons to the relevant National Board. This includes scheduled medicine offences with which they are charged or of which they are convicted or otherwise found guilty.

Approximately half of the submissions commented on this reform. The majority of these respondents supported the proposed amendments on the basis that the amendments will help ensure patient safety and practitioner wellbeing. However, some stakeholders raised concerns about the reform, including about the mandatory reporting of charges and the low threshold for reportable offences. One stakeholder recommended an alternative approach of allowing drugs and poisons regulators discretion to share information with National Boards or the National Agency where they believe there is a serious risk of harm.

Minor changes to the drafting of the amendments were made to clarify the provisions. The reform arose out of a recommendation from the Queensland Health Ombudsman's 2016 Investigation *Report: Undoing the knots constraining medicine regulation in Queensland*. The reforms will increase the visibility of practitioners who may pose public safety issues stemming from their misuse of medicines.

Disclosure of information to protect the public

The Bill will:

- provide discretion to National Boards to notify former employers and associates of action being taken against a practitioner;
- enable National Boards to disclose information about registered practitioners to employers and those who have a practise arrangement with the practitioner in certain circumstances; and
- enable National Boards to disclose information about unregistered persons to employers and those who have a practise arrangement with the person in certain circumstances.

Most stakeholders supported these amendments as drafted. Some of the issues raised in opposition included:

- concerns about the possible reputational damage to a practitioner or unregistered person without providing them natural justice;
- impingements on a practitioner's right to privacy;
- concern that the discretionary power is too broad;
- concern for liability and risk that may be imposed on employers; and
- that information should be able to be disclosed to a wider range of entities, including those that have a voluntary arrangement with a practitioner or unregistered person.

Minor changes to the drafting of the amendments were made to clarify the provisions. The discretion given to National Boards is constrained, in that there is a high threshold for National Boards to disclose information. For example, to make a disclosure about an unregistered person, a National Board must have a reasonable belief that it is necessary to give notice to protect public health or safety because the unregistered person poses a serious risk to persons.

The Bill will enable a National Board to disclose information (provided the threshold test is met) to an entity that has a current 'practice arrangement' with the practitioner or unregistered person. This includes those who have an employment relationship or an agreement with the practitioner to provide services on behalf of the entity, whether in an honorary capacity, as a volunteer, or otherwise. This strikes the right balance between clearly identifying the scope of entities to whom information may be disclosed and limiting the provision to those entities that are best positioned to act on disclosures to directly protect the public.

Stakeholder communications and educational materials will be provided to employers and registered health practitioners to help them understand their responsibilities should they receive a notification about a practitioner or unregistered person.

Advertising offences

The Bill will allow certain testimonials to be used in advertisements of health services and increase the maximum penalty for breaching advertising restrictions.

Slightly more than half of the respondents commented on this proposal, with a majority in support of the reforms.

Some stakeholders opposed the reforms, in part or in full. Arguments raised in opposition to allowing testimonials in health service advertisements included that testimonials are inherently open to abuse, easily faked, and difficult to regulate. Several stakeholders also noted that updated guidance material and extensive education will need to precede the proposed changes to allow the use of testimonials. Arguments in opposition to the increase in penalties included objections to the magnitude of the change, the need for a more careful calibration and range of penalties according to the degree of infringement, and that the focus of enforcement should instead be on repeat offenders.

No changes to the draft Bill were made. Testimonials will be regulated in the same way as other health service advertising: false or misleading health service advertising, including false or misleading testimonials, will be prohibited. The penalties are commensurate with others in the National Law of similar severity, and with analogous offences in other legislation. It is intended that updated guidance and other stakeholder education will occur prior to commencing the provisions of the Bill allowing testimonials.

Interim prohibition orders (IPOs)

About half of respondents commented on the proposed amendments giving the National Agency and National Boards the power to issue IPOs to unregistered practitioners, or to practitioners whose registration has lapsed or been suspended, preventing persons from being able to use a protected title or provide health services. Most commenters supported these provisions of the Bill as drafted.

Some stakeholders recommended measures be put in place to increase oversight and transparency of decision-making about the issuance of IPOs. Additionally, a few stakeholders who opposed the inclusion of IPOs in the Bill indicated that alternative mechanisms already exist to assist in managing the issues IPOs are seeking to address. Another stakeholder considered the penalty for contravening an IPO to be too high.

No relevant changes to the draft Bill were made. The amendments provide an additional regulatory tool to protect the public. Safeguards, including a show cause process and requirement for tribunal review to extend an IPO beyond 120 days, provide reasonable protections for persons issued an IPO. Although an IPO can be issued before a show cause process, this can only be done in limited circumstances where necessary to protect public health or safety. A decision to issue an IPO is also appellable.

The penalties for contravening an IPO reflect the seriousness of the offence and are in line with penalties for contravening a prohibition order and analogous provisions in other legislation.

Public statements

More than half of respondents provided comments on the proposed amendments to allow public statements to be made about a registered health practitioner if the practitioner's conduct is placing persons at serious risk of harm. Most respondents supported the reform as drafted.

Some stakeholders recommended that additional safeguards be put in place for practitioners, in recognition that a public statement may impact a practitioner's reputation and wellbeing. One stakeholder recommended that the criteria for issuing a public statement include that there is no other reasonably available way to address the serious risk to persons. Other stakeholders argued that public statements should not be issued prior to a finding that a practitioner engaged in professional misconduct.

No relevant changes to the draft Bill were made. The provisions strike the appropriate balance between the rights of practitioners and the safety of the public. The conditions for issuing a public statement are consistent with those for issuing an IPO and include a show cause process and opportunity for appeal. Prior to issuing a public statement, the regulatory body must reasonably believe that a person poses a serious risk to persons because of their conduct, performance, or health and that it is necessary to issue a public statement to protect public health or safety. This is a high bar that provides reasonable protection to practitioners.

Consistency with legislation of other jurisdictions

If the Bill is passed in Queensland, the changes to the National Law apply automatically in all other states and territories, except for Western Australia, which must pass its own separate legislation, and South Australia, where amendments must be made by regulation.

Due to the co-regulatory arrangements in New South Wales, New South Wales does not participate in the health, performance, and conduct process of part 8 of the National Law. Instead, the Health Care Complaints Commission in New South Wales assesses and manages complaints about registered health practitioners in conjunction with the relevant health professional council. As such, the relevant changes to part 8 of the National Law will not apply to New South Wales practitioners.

Notes on provisions

Chapter 1 Preliminary

Short title

Clause 1 provides that, when enacted, the short title of the Act will be the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022*.

Commencement

Clause 2 provides for the commencement of the Act.

The Act will commence on the date of its assent, except for the following provisions, which will commence by proclamation—

- chapter 2
- chapter 3, parts 7 to 11, 13 to 15, 18, 20, 21 and 23 to 30
- section 85(1) and (4)
- section 99(3) and (4)
- sections 117(2), 119, 124, 127 and 128
- chapter 4, parts 4 to 10.

Commencement of these provisions by proclamation will allow time for administrative systems to be put in place and, where relevant, stakeholder education to occur.

Chapter 2 Amendment of Health Ombudsman Act 2013

Act amended

Clause 3 states that this chapter amends the *Health Ombudsman Act 2013*.

Amendment of s 14 (Dealing with health service complaints and other matters)

Clause 4 amends section 14 of the Health Ombudsman Act, which provides an overview of how the Health Ombudsman for Queensland can deal with health service complaints and other matters.

Subclause (1) amends section 14(3)(a) to add that one of the immediate actions available to the Health Ombudsman to deal with a complaint or other concern about a registered health practitioner is to accept undertakings from the practitioner. Accepting undertakings from a registered health practitioner is included in the range of immediate registration actions available by the amendments at clause 5.

Subclause (2) makes a minor grammatical change to section 14(3)(b).

Amendment of s 37 (Matters referred by National Boards or government entities)

Clause 5 amends section 37 of the Health Ombudsman Act, which sets out how the Health Ombudsman may deal with matters referred by National Boards or government entities.

Section 37 currently allows the Health Ombudsman to deal with a matter referred by a National Board or government entity as if it were a complaint and the person were the complainant. Amendments at clause 142 will allow the National Agency and National Board to refer certain matters to the Health Ombudsman while an interim prohibition order is in effect. As a consequence of these amendments, section 37 of the Health Ombudsman Act is being amended to recognise that referrals to the Health Ombudsman will now also be possible from the National Agency, and not just from the National Boards.

Insertion of new pt 7, div 1, sdiv 1, hdg

Clause 6 inserts a new subdivision into division 1 of part 7 of the Health Ombudsman Act. The heading of the new subdivision is 'Subdivision 1 – General provisions.' The new subdivision will contain existing sections 57 through 65 of the Health Ombudsman Act, some of which are amended by the Bill.

A new subdivision 2 is inserted by clause 16.

Amendment of s 57 (Meaning of *immediate registration action*)

Clause 7 extends the meaning of *immediate registration action* set out in section 57 of the Health Ombudsman Act to include accepting an undertaking from a registered health practitioner.

By giving an undertaking, registered health practitioners would be agreeing to do, or to not do, something in relation to their profession to protect the public. The ability to accept an undertaking complements the other immediate registration actions available, including suspending, or imposing conditions on, a registered health practitioner's registration or, for non-registered health practitioners, prohibiting, or imposing restrictions on, the practitioner's practice. Under section 58 of the Health Ombudsman Act, an immediate registration action can only be taken if the Health Ombudsman is satisfied the practitioner's health, conduct or performance poses a serious risk to persons and the action is necessary to protect public health or safety.

This amendment recognises that, in many cases, an undertaking will be enough to protect the public without a condition being required. Imposing a condition on registration is generally a more time consuming and resource-intensive process than accepting undertakings. Allowing the Health Ombudsman to accept undertakings from practitioners, where appropriate, will free up resources for managing other priorities.

This amendment will also provide the Health Ombudsman with equivalent powers to those already held by National Boards. Under section 156 of the National Law, a National Board can accept an undertaking from a registered health practitioner when it considers the practitioner's conduct, performance or health poses a serious risk to persons and the Board considers it necessary to take immediate action to protect public health or safety.

To strengthen the value of undertakings, amendments to the National Law at clause 66 will allow a National Board to refuse to renew a practitioner's registration if the practitioner has contravened an undertaking they have given to the Board. Modifications of the National Law at clause 133 will allow National Boards to also consider contraventions of undertakings given to the Health Ombudsman in decisions on renewals.

Amendment of s 58A (Varying immediate registration action on health ombudsman's own initiative)

Clause 8 amends section 58A of the Health Ombudsman Act, which sets out the process for the Health Ombudsman to vary an immediate registration action on their own initiative. The amendments exclude the new immediate registration action of accepting an undertaking from the procedures set out in the section. Instead, the process for varying and revoking undertakings is set out in new part 7, division 1, subdivision 2 of the Health Ombudsman Act, as inserted by clause 16.

The amendments also include consequential re-numbering of the sub-sections within this section.

Amendment of s 58B (Varying immediate registration action on application by registered health practitioner)

Clause 9 amends section 58B of the Health Ombudsman Act, which sets out the process for a registered health practitioner to apply to vary an immediate registration action. The amendments exclude varying the immediate registration action of accepting an undertaking from the procedures set out in the section. Instead, the process for varying and revoking undertakings is set out in new part 7, division 1, subdivision 2, inserted by clause 16.

The amendments also include consequential re-numbering within section 58B.

Amendment of s 59 (Show cause process)

Clause 10 amends section 59 of the Health Ombudsman Act, which requires the Health Ombudsman to undertake a show cause process before taking immediate registration action, unless an exception applies. The amendment provides that the section does not apply to the immediate registration action of accepting an undertaking from a practitioner. Because an undertaking is voluntarily given by the practitioner, a show cause process is unnecessary and inappropriate.

The amendments also include consequential re-numbering within section 59.

Minor drafting changes to section 59 also clarify that the period in which a practitioner may make a submission in response to a show cause notice starts after the notice is given.

Amendment of s 60 (Notice about immediate registration action)

Clause 11 amends section 60 of the Health Ombudsman Act, which requires the Health Ombudsman to give notice of a decision to take immediate registration action to the relevant practitioner.

Generally, a notice about a decision to take immediate registration action must state that the practitioner may apply to the Queensland Civil and Administrative Tribunal (QCAT) for a

review of the decision, as well as how and in what period such an application may be made. Because the acceptance of an undertaking from a practitioner is not subject to review, the amendments provide that a notice of the Health Ombudsman's acceptance of an undertaking from a practitioner does not need to state that the practitioner may apply to QCAT for a review of the decision or how such an application can be made.

This clause also amends the note under section 60(4) of the Health Ombudsman Act. The note currently indicates that section 279 of the Health Ombudsman Act requires, or in some cases, permits the Health Ombudsman to also give notice of a decision to take immediate registration action to employers of a practitioner and other persons. As the persons to whom notice may be given under section 279 is broadened by the amendments at clause 29, the note is amended to refer more generally to section 279.

Amendment of s 61 (Show cause process after taking action)

Clause 12 makes consequential amendments to section 61 of the Health Ombudsman Act. Section 61 of the Health Ombudsman Act sets out the process for undertaking a show cause process after taking immediate registration action in the exceptional circumstances set out in section 59. The amendments update cross-references to section 59 given the amendments at clause 10.

Additional drafting changes to section 61 also clarify that the period in which a practitioner may make a submission in response to a show cause notice starts after the notice is given.

Amendment of s 62 (Period of immediate registration action)

Clause 13 amends section 62 of the Health Ombudsman Act, which sets out the period of immediate registration action. Section 62(1) remains unchanged, providing that a decision of the Health Ombudsman to take immediate registration action, including accepting an undertaking, takes effect on the day notice is given under section 60 or a later day if specified in the notice. The amendments to subsection (2) provide that the decision continues to have effect until QCAT sets the decision aside, the Health Ombudsman ends the immediate registration action under section 65, or the Health Ombudsman grants an application to revoke the immediate registration action under new section 65B, inserted by clause 16.

Amendment of s 63 (Application to QCAT for review)

Clause 14 amends section 63 of the Health Ombudsman Act, which provides that a registered health practitioner may apply to QCAT for a review of a decision by the Health Ombudsman to take immediate registration action. The amendment excludes the section from applying to accepting an undertaking from a registered health practitioner. Because an undertaking is voluntarily given by the practitioner, it is not necessary or appropriate to allow for tribunal review of a decision to accept an undertaking. However, new part 7, division 1, subdivision 2 (inserted by clause 16) enables the health practitioner to apply to have an undertaking varied or revoked. If such application is not granted, the health practitioner can then apply to QCAT to have that decision reviewed.

Amendment of s 65 (Health ombudsman may end immediate registration action)

Clause 15 amends section 65 of the Health Ombudsman Act, which applies when the Health Ombudsman is satisfied an immediate registration action is no longer necessary on the

grounds mentioned in section 58. The amendments require the Health Ombudsman to revoke its acceptance of an undertaking when satisfied that the undertaking is no longer necessary.

The amendments do not change the requirement for the Health Ombudsman to revoke a suspension or remove a condition if satisfied those immediate registration actions are no longer necessary.

The heading of the section is also amended to reflect that the Health Ombudsman must, rather than may, end the immediate registration action when this section applies.

Insertion of new pt 7, div 1, sdiv 2

Clause 16 inserts a division 1, subdivision 2 into part 7 of the Health Ombudsman Act. This new subdivision establishes a process for varying and revoking undertakings accepted as immediate registration action.

New section 65A permits a registered health practitioner to apply to the Health Ombudsman to vary or revoke an undertaking because there is a material change in relation to the matter. The application must be in the approved form and accompanied by any other information reasonably required by the Health Ombudsman. An application made under this section is referred to with the term *undertaking application*.

New section 65B requires the Health Ombudsman to consider an *undertaking application*, and decide whether to grant, or refuse to grant, the requested variation or revocation. The Health Ombudsman may only grant the application if satisfied there is a material change in relation to the matter that justifies the variation or revocation.

New section 65C requires the Health Ombudsman to undertake a show cause process if it proposes to refuse to grant an *undertaking application*. The Health Ombudsman must give the practitioner a notice of the proposed decision and invite the practitioner to make a submission within a stated period of at least 5 business days. Submissions by the practitioner may be made orally or in writing. The Health Ombudsman must consider any submissions made by the practitioner before making a final decision on the application.

New section 65D requires the Health Ombudsman to give notice to the practitioner of their decision to grant, or refuse to grant, an *undertaking application*. If the decision is to grant an undertaking, the Health Ombudsman must also give a copy of the notice to the relevant National Board. Amendments at clause 133 allow a National Board to consider contraventions of undertakings given to the Health Ombudsman when deciding whether to renew a practitioner's registration, so the National Board must be made aware of any variation or revocation of such undertakings. If the decision is to refuse to grant the application, the notice must state the reasons for the refusal, that the practitioner may apply to QCAT for a review of the decision, and how and when the practitioner may apply for review.

New section 65E applies if the Health Ombudsman grants a practitioner's application to vary an undertaking. It provides that the variation takes effect on the day notice of the decision was given to the practitioner or, if a later day is stated in the notice, on that later day. The variation has effect until the variation is either further varied or revoked because of a subsequent application by the practitioner, or the Health Ombudsman revokes the undertaking under section 65 of the Health Ombudsman Act.

New section 65F provides that a practitioner may apply to QCAT to review a decision by the Health Ombudsman to refuse to grant an *undertaking application*.

Amendment of s 71 (Notice to complainant)

Clause 17 amends the note under section 71 of the Health Ombudsman Act. Section 71 requires the Health Ombudsman to give notice to a practitioner of the issuance of an interim prohibition order in response to a complaint. The note indicates that section 279 of the Health Ombudsman Act also requires or permits the Health Ombudsman to give notice to employers and other health practitioners with whom the health practitioner shares premises. As the persons to whom notice may be given under section 279 is broadened by the amendments at clause 29, the note is amended to refer more generally to section 279.

Amendment of s 78 (Offence of contravening order)

Clause 18 increases the penalty for contravening an interim prohibition order under the Health Ombudsman Act or corresponding interstate interim order from 200 penalty units to 450 penalty units or 3 years imprisonment. This penalty aligns with the penalty being introduced for contravening an interim prohibition order under the National Law (see clause 94). It also reflects the seriousness of the offence.

Clause 28 makes the offence of contravening an interim prohibition order an indictable offence.

Amendment of s 79 (Publication of orders)

Clause 19 amends section 79 of the Health Ombudsman Act, which sets out the information the Health Ombudsman must publish about each current interim prohibition order. The amendment requires the Health Ombudsman to also publish any alternative name for the practitioner recorded in a National Register or Specialists Register under the National Law. Chapter 3, part 29 of the Bill amends the National Law to allow a registered health practitioner to nominate an alternative name that the practitioner may practise under.

Insertion of new pt 8AA

Clause 20 inserts new part 8AA to the Health Ombudsman Act, which gives the Health Ombudsman power to make a public statement about a person in certain circumstances. These provisions are similar to the powers being introduced for the National Agency and National Boards in chapter 3, part 23 of the Bill.

New section 90AA provides that the Health Ombudsman may make a public statement about a person if either of the following applies—

- the Health Ombudsman reasonably believes the person is contravening, or has contravened, a relevant provision; or
- the person's conduct, performance or health is the subject of an assessment under part 5 or an investigation under part 8 of the Health Ombudsman Act.

A relevant provision is defined in subsection (5) to mean any of the following sections of the National Law: 113, 115 to 119, 121 to 123, 133, and 136.

The Health Ombudsman must also reasonably believe that the person poses a serious risk to persons because of their conduct, performance or health and that a public statement is necessary to protect public health or safety.

A public statement can be made in a way the Health Ombudsman considers appropriate. It may give warnings or information about a person or health services provided by a person, if the Health Ombudsman considers it appropriate to do so in the circumstances.

This amendment will allow the Health Ombudsman to warn the public about risks posed by a person. For example, if an investigation reveals that a practitioner routinely failed to follow sterilisation procedures and potentially exposed patients to an infectious disease, the Health Ombudsman would be able to notify the community of the potential health risk while also undertaking disciplinary proceedings against the person.

No liability is incurred by the Health Ombudsman for the making of, or for anything done for the purpose of making, a public section under this section in good faith.

Inserted section 90AB requires the Health Ombudsman to undertake a show cause process prior to making a public statement. The Health Ombudsman must give a person a notice stating that the Ombudsman proposes to make a public statement about the person, the way in which it is proposed to make the statement, and the content of the proposed statement. The notice must also invite the practitioner to make written or verbal submissions about the proposed public statement to the Health Ombudsman within a reasonable time.

After considering any submission made by the person, the Health Ombudsman must decide whether to make the public statement as proposed, not to make the public statement, or to make the public statement in a different way or with different content.

The Health Ombudsman must give notice of this decision to the person. The notice of decision must include the reasons for the decision. If the decision is to make the public statement, the notice must also include information that the person may appeal against the decision, and how and when such an appeal can be made. This notice must be given as soon as practicable after the decision is made and at least one business day before a public statement is to be made.

New section 90AC provides that the Health Ombudsman may revise a public statement if the Ombudsman reasonably believes it is necessary in the circumstances. If the proposed revision changes the public statement in a material way, a show cause process must be undertaken.

New section 90AD requires the Health Ombudsman to revoke a public statement if the Ombudsman is satisfied the ground on which the statement was made no longer exist or did not exist at the time the statement was made. After making a decision to revoke a public statement, the Ombudsman must give the person a notice stating the decision and the date on which the public statement will be revoked. The Health Ombudsman must make a public statement revoking the original public statement in the same way, or a similar way, to the way in which the original statement was made.

Amendment of s 90P (Offence of contravening prohibition order)

Clause 21 increases the penalty for contravening a prohibition order under the Health Ombudsman Act or corresponding interstate order from 200 penalty units to 450 penalty units or 3 years imprisonment. This penalty aligns with the penalty for contravening a prohibition order under section 196A of the National Law. It also reflects the seriousness of the offence.

Clause 28 makes the offence of contravening a prohibition order an indictable offence.

Amendment of s 90Q (Publication of prohibition orders)

Clause 22 amends section 90Q of the Health Ombudsman Act, which sets out the information the Health Ombudsman must publish about each current prohibition order. The amendment requires the Health Ombudsman to also publish any alternative name for the practitioner recorded in a National Register or Specialists Register under the National Law. Chapter 3, part 29 of the Bill amends the National Law to allow a registered health practitioner to nominate an alternative name that the practitioner may practise under.

Amendment of s 91C (Complaint or matter indicating serious matter must not be referred)

Clause 23 amends section 91C of the Health Ombudsman Act, which sets out the circumstances in which the Health Ombudsman must not refer a health service complaint or other matter to the National Agency. The amendment provides that a complaint or matter must not be referred "to the extent it relates" to a matter the Health Ombudsman is satisfied should be dealt with by the Health Ombudsman and is a matter that indicates either or both of the following—

- the registered health practitioner may have behaved in a way that constitutes professional misconduct;
- another ground may exist for the suspension or cancellation of the practitioner's registration.

This amendment is necessary because clause 70 amends the National Law to allow a National Board to withdraw a practitioner's registration if it was improperly obtained because of the provision of false or misleading information or documents. As the decision to withdraw a practitioner's registration is a matter for the National Board that registered the practitioner, the Health Ombudsman should be able to refer the matter to the National Board, even if there are also grounds to suspend or cancel the practitioner's registration. The amendment clarifies that section 91C does not prevent the Health Ombudsman from referring such matters to the National Agency so that a National Board may decide whether to withdraw a practitioner's registration that was improperly obtained. However, section 91C will continue to require that the matter be dealt with by the Health Ombudsman to the extent that it involves professional misconduct or another ground for suspension or cancellation of the practitioner's registration.

Amendment of s 94 (QCAT's jurisdiction)

Clause 24 amends section 94 of the Health Ombudsman Act, which provides QCAT with jurisdiction to review certain decisions by the Health Ombudsman. The amendments exclude decisions to accept an undertaking from QCAT's jurisdiction but provide QCAT with jurisdiction to review a decision to refuse an application by a practitioner to vary or revoke an undertaking. Because undertakings are voluntarily given by practitioners, it would be inappropriate for these to be subject to review. However, it is appropriate for practitioners to have a right of review for decisions to refuse an application to vary or revoke an undertaking.

This clause also amends section 94 of the Health Ombudsman Act to add that a decision by the Health Ombudsman to make or revise a public statement about a person is reviewable by QCAT.

Amendment of s 97 (Constitution of QCAT)

Clause 25 amends section 97 of the Health Ombudsman Act, which sets out the proceedings for which QCAT must be constituted by a judicial member.

The amendments exclude the review of a decision of the Health Ombudsman, National Agency, or National Board to make or revise a public statement about a person from the requirement for QCAT to be constituted by a judicial member.

It further provides that a judicial member is not required for the review of an appellable decision by the National Agency or a National Board to make or extend an interim prohibition order under new part 8, division 7A of the National Law. Division 7A of the National Law is inserted by the amendments at clause 94. This amendment aligns with the QCAT constitution requirements for appellable decisions made by the Health Ombudsman about interim prohibition orders and prohibition orders under the Health Ombudsman Act.

Amendment of s 262 (Offence for taking reprisal)

Clause 26 removes subsection 262(2) of the Health Ombudsman Act. The subject matter of subsection (2) is now covered by new section 271(1), inserted by clause 28.

Amendment of s 269 (Summary offences)

Clause 27 amends section 269 of the Health Ombudsman Act, which establishes which offences against the Act are to be heard and decided summarily.

The amendments exclude the indictable offences of contravening an interim prohibition order at section 78 and contravening a prohibition order at section 90P from being summary offences, in addition to the existing exclusion of the indictable offence for taking reprisal at section 262. All other offences against the Health Ombudsman Act are considered summary offences.

The heading of section 269 is also amended to 'Proceedings for summary offences.'

Replacement of s 271 (Proceedings for indictable offences)

Clause 28 replaces section 271 of the Health Ombudsman Act, which sets out how proceedings for indictable offences are to be taken. The amendments align the proceedings for indictable offences under the Health Ombudsman Act with those under the modifications to the National Law at section 241A of the Queensland National Law Act.

Subclause (1) provides that the offences of contravening an interim prohibition order at section 78, contravening a prohibition order at section 90P, and taking reprisal at section 262 are indictable offences that are misdemeanours. These offences all have maximum penalties of either 200 or 450 penalty units and potential imprisonment of two or three years.

Subclause (2) provides that a proceeding for an indictable offence is to be heard and decided summarily, except as provided for under subclause (3).

Subclause (3) sets out when a Magistrates Court must abstain from dealing summarily with a charge of an indictable offence. It must do so if satisfied—

- based on an application by the prosecution or defence, that the charge should not be heard and decided summarily because of exceptional circumstances, including to allow multiple offences to be tried together or because it involves an important issue of law or of public interest; or
- if satisfied the defendant, if convicted, may not be adequately punished on summary conviction because of the nature or seriousness of the offence or any other relevant consideration.

Subclause (4) sets out what must happen if a Magistrates Court abstains from exercising jurisdiction. In these circumstances—

- the court must stop treating proceeding as a summary proceeding;
- the proceeding for the charge must be conducted as a committal proceeding;
- the defendant's plea at the start of the hearing must be disregarded;
- the evidence already heard by the court is taken to be evidence in the committal proceeding; and
- the *Justices Act 1886*, section 104 (Proceedings upon an examination of witnesses in relation to an indictable offence) must be complied with for the committal proceeding.

Subclause (5) provides that the maximum penalty that may be imposed on a summary conviction for an indictable offence is 165 penalty units.

Subclause (6) provides that a Magistrates Court that summarily deals with a charge of an indictable offence must be constituted by a magistrate and has jurisdiction despite the time that has elapsed from the time when the matter arose.

Amendment of s 279 (Notice to employers about particular serious matters)

Clause 29 amends section 279 of the Health Ombudsman Act, which allows, and at times requires, the Health Ombudsman to provide notice to employers about particular serious matters. The relevant serious matters for which notice may, or in some cases must, be given are:

- the taking of immediate action under part 7;
- investigations of a health service complaint or other matter under part 8 where the practitioner may have behaved in a way that constitutes professional misconduct, another ground may exist for the suspension or cancellation of the practitioner's registration, or a ground may exist for the issuance of an interim prohibition order or prohibition order;
- the issuance of a prohibition order;
- the variation of a prohibition order.

The amendments at subclause (1) are minor drafting changes that are not intended to affect the substance of subsection 279(2).

The amendments at subclause (2) broaden the range of persons to whom the Health Ombudsman may give notice about the relevant serious matters. Currently, the Health Ombudsman must give notice to each person who the Ombudsman believes is an employer of the practitioner. The Health Ombudsman may also currently give notice to health

practitioners with whom the practitioner shares premises, if the practitioner is self-employed and shares the cost of the premises with the other health practitioners.

Under the amendments, notice may also be given to people who the Health Ombudsman believes had previously been an employer of the practitioner and other health practitioners with whom the practitioner previously shared premises and the cost of those premises while the practitioner was self-employed.

However, as per the amendments at subclause (3), notice may only be given to previous employers and previous practitioners who shared premises with the practitioner if the Health Ombudsman believes the practitioner's health, conduct or performance posed a risk of harm to a person or class of persons or a risk to public health or safety at the time of those of the previous employment or shared premises arrangement. This limitation balances public safety and the risk of harm to a practitioner's reputation. It also ensures that any infringement of a practitioner's privacy is done only when considered necessary.

These amendments are similar to amendments made to the National Law at clause 110. In contrast to those amendments, the amendments to section 279 do not provide for information to be shared with entities that have a current or former 'practice arrangement' with a registered health practitioner. This is because the definition of an 'employer' under the Health Ombudsman Act already captures these entities.

The amendments are intended to promote public safety by capturing those circumstances in which practitioners may have caused harm to patients in the past or through successive workplaces. They will also improve information sharing between employers and regulators and allow for identification of previously unknown risks to the public.

The amendments also include consequential re-numbering within section 279.

Amendment of s 280 (Notice to employers about particular QCAT decisions)

Clause 30 amends section 280 of the Health Ombudsman Act, which permits, and in some instances requires, the Health Ombudsman to give notice to certain persons about a QCAT decision on a matter involving a registered health practitioner where the Health Ombudsman was a party to the proceedings.

Section 280 currently requires the notice of the decision to be given to each person who the Health Ombudsman believes is an employer of the practitioner and gives discretion to give notice to other health practitioners with whom the practitioner shares premises if the practitioner is self-employed and shares the cost of the premises with the other practitioners.

The amendments broaden the range of people to whom the Health Ombudsman has discretion to give notice. Under the amendments, the Health Ombudsman may also give notice of the QCAT decision to people whom the Health Ombudsman believes had previously been an employer of the practitioner, and to other health practitioners with whom the practitioner previously shared premises and the cost of those premises while the practitioner was self-employed.

The discretion to disclose this information is subject to new subclause 280(4), which provides that notice may only be given to previous employers and previous practitioners who shared premises with the practitioner if the Health Ombudsman believes the practitioner's health, conduct or performance posed a risk of harm to a person or class of persons or a risk to public

health or safety at the time of the previous employment or shared premises arrangements. This limitation balances public safety and the risk of harm to a practitioner's reputation. It also ensures that any infringement of a practitioner's privacy is necessary to respond to identified risks, and that information about the practitioner is only disclosed to a limited class of persons who are most likely to be affected by and in a position to mitigate those risks.

These amendments are similar to amendments made to the National Law at clause 84 and are intended to promote public safety by capturing those circumstances in which practitioners may have caused harm to patients in the past or through successive workplaces. It will also improve information sharing between employers and regulators and allow for identification of previously unknown risks to the public.

Amendment of sch 1 (Dictionary)

Clause 31 amends the dictionary in schedule 1 of the Health Ombudsman Act.

It defines the term *undertaking application* by reference to new section 65A(4), inserted by clause 16.

It also amends the definition of *reasonably believes* by removing the reference to 'for part 15' from the definition, as the term is now used in multiple parts of the Act.

Chapter 3 Amendment of Health Practitioner Regulation National Law

Part 1 Preliminary

Law amended

Clause 32 states that this chapter amends the Health Practitioner Regulation National Law (National Law). The National Law is set out in the schedule to the *Health Practitioner Regulation National Law Act 2009* (Qld).

Part 2 Paramount principle

Amendment of s 3 (Objectives and guiding principles)

Clause 33 amends section 3 of the National Law. The amendment separates the objectives and guiding principles of the national registration and accreditation scheme for the health professions (National Scheme) into two different sections. The guiding principles are moved to new section 3A as per clause 34 of this Bill.

Insertion of new s 3A

Clause 34 inserts new section 3A to the National Law setting out the guiding principles of the national registration and accreditation scheme. The guiding principles of the National Scheme guide all regulatory decision-making by entities in the Scheme. They apply to a broad range of decisions, including decisions about accreditation and registration standards, registration decisions and decisions to take health, performance or conduct action against a practitioner.

The guiding principles in new section 3A include the three principles relocated from section 3 of the National Law as well as a new main guiding principle. The main guiding principle

makes protection of the public and public confidence in the safety of services provided by registered health practitioners paramount.

The new main guiding principle encourages a responsive, risk-based approach to regulation across all health professions within the National Scheme. It also acknowledges the importance of community confidence in the health professions to achieving good health outcomes.

This amendment reflects policy directions issued by Health Ministers in January 2020 which provide a clear mandate to the National Boards and the National Agency to prioritise public protection in the work of the National Scheme (see COAG Health Council Policy Directions 2019-1 and 2019-2).

Amendment of s 4 (How functions to be exercised)

Clause 35 makes consequential amendments to section 4 of the National Law to recognise the separation of the objectives and guiding principles into two sections. Amended section 4 will provide that entities are to exercise their functions under the National Law with regard to the objectives in section 3 and the guiding principles in new section 3A.

Part 3 Cultural safety for Aboriginal and Torres Strait Islander Peoples

Amendment of s 3 (Objectives)

Clause 36 inserts a new objective into section 3 of the National Law. The amendment makes it an explicit objective of the National Scheme to build the capacity of the Australian health workforce to provide culturally safe health services to Aboriginal and Torres Strait Islander Peoples.

This new objective recognises that the National Scheme is well-placed to promote safe, quality care and positive health outcomes for Aboriginal and Torres Strait Islander Peoples, particularly by helping to make the national health workforce culturally safe and responsive through its regulatory framework.

This amendment, as well as the amendment made in clause 37 below, aligns with the commitments made by the Commonwealth and all Australian states and territories to improve health equity for Aboriginal and Torres Strait Islander Peoples and ensure institutions are culturally safe and responsive for Aboriginal and Torres Strait Islander Peoples (see, for example, the National Agreement on Closing the Gap, July 2020).

Amendment of 3A (Guiding principles)

Clause 37 amends section 3A of the National Law to insert a new guiding principle for the National Scheme. The new principle provides that the National Scheme is to ensure the development of a culturally safe and respectful health workforce that is responsive to Aboriginal and Torres Strait Islander Peoples and their health and that contributes to the elimination of racism in the provision of health services.

This new principle sets clear expectations for National Scheme entities and decision-makers to foster cultural safety for Aboriginal and Torres Strait Islander Peoples accessing health services and to consider how regulatory decisions may impact the health and wellbeing of

Aboriginal and Torres Strait Islander Peoples. It recognises that all entities operating under the National Law should contribute to achieving health equity for Aboriginal and Torres Strait Islander Peoples.

Part 4 Disestablishment of Australian Health Workforce Advisory Council

Amendment of s 5 (Definitions)

Clause 38 omits the definition of *Advisory Council* from section 5 of the National Law. This is consequential to the amendment at clause 39 dissolving the Advisory Council.

Omission of pt 3 (Australian Health Workforce Advisory Council)

Clause 39 removes part 3 of the National Law, which establishes the Australian Health Workforce Advisory Council (Advisory Council).

The Advisory Council was formed to provide independent advice to the Ministerial Council on certain matters. The Ministerial Council only sought advice from the Advisory Council on one occasion, and the Advisory Council has been in abeyance since August 2012. In practice, the Ministerial Council receives advice on most matters relating to the National Scheme from the Australian Health Practitioner Regulation Agency and the Health Chief Executives Forum and its subcommittees.

The dissolution of the Advisory Council is consistent with the November 2017 final report on the *Review of Governance of the National Registration and Accreditation Scheme*, which concluded that the Advisory Council is not necessary for the effective governance of the National Scheme and recommended that the provisions of the National Law establishing the Advisory Council be removed.

Amendment of s 236 (Protection from personal liability for persons exercising functions)

Clause 40 amends section 236(3) to remove a reference to a member of the Advisory Council being a *protected person* who is not personally liable for things done or omitted to be done in good faith under the National Law. This is consequential to the amendment at clause 39 dissolving the Advisory Council.

Omission of sch 1 (Constitution and procedure of Advisory Council)

Clause 41 removes schedule 1 to the National Law, which sets out the Constitution and procedure of the Advisory Council. This is consequential to the amendment at clause 39 dissolving the Advisory Council.

Part 5 Agency Management Committee

Amendment of s 5 (Definitions)

Clause 42 replaces the term *Agency Management Committee* with the term *Agency Board* in section 5 of the National Law. It also defines *Agency Board* to be the Australian Health Practitioner Regulation Agency Board established by section 29 of the National Law.

The effect of this amendment, as well as the other amendments in this part, is to rename the National Agency's governing body.

The current title, *Agency Management Committee*, does not reflect the role, function or governance arrangements of the committee. The inclusion of the word 'management' implies that the committee's role is the operational management of the National Agency. This is not the case, and the committee's title can confuse health practitioners, registrants and the public about the committee's role and the agency's lines of accountability.

The name *Agency Board* better reflects the role and functions of the body, including overseeing the National Agency's operations and setting the strategic direction for the National Scheme.

Amendment of s 17 (Notification and publication of directions and approvals)

Clause 43 replaces the reference to the term *Agency Management Committee* in section 17(1)(a) of the National Law with a reference to the term *Agency Board*. This is consequential to the amendment at clause 42 to change the name of the National Agency's governing body to *Agency Board*.

Replacement of pt 4, div 2, hdg (Agency Management Committee)

Clause 44 amends the heading of part 4, division 2 of the National Law to replace the term *Agency Management Committee* with the term *Agency Board*. This is consequential to the amendment at clause 42 to change the name of the National Agency's governing body to *Agency Board*.

Amendment of s 29 (Agency Management Committee)

Clause 45 amends section 29 of the National Law to replace all references to the *Agency Management Committ*ee with references to the *Agency Board*, including in the heading of the section. It likewise replaces a reference in section 29(1) to the *Australian Health Practitioner Regulation Agency Management Committee* with the *Australian Health Practitioner Regulation Agency Board*.

These changes are consequential to the amendment at clause 42 to change the name of the National Agency's governing body to *Agency Board*.

Amendment of s 30 (Functions of Agency Management Committee)

Clause 46 amends section 30 of the National Law to replace all references to the *Agency Management Committee* with references to the *Agency Board*, including in the heading of the section. It likewise replaces a reference in section 30(1)(c) to the *Committee* with a reference to the *Board*.

These changes are consequential to the amendment at clause 42 to change the name of the National Agency's governing body to *Agency Board*.

Amendment of s 33 (Membership of National Boards)

Clause 47 amends section 33(8) of the National Law to replace the reference to the *Agency Management Committee* with a reference to the *Agency Board*. This change is consequential

to the amendment at clause 42 to change the name of the National Agency's governing body to *Agency Board*.

Amendment of s 236 (Protection from personal liability for persons exercising functions)

Clause 48 amends section 236(3) of the National Law to replace the reference to the *Agency Management Committee* with a reference to the *Agency Board*. This change is consequential to the amendment at clause 42 to change the name of the National Agency's governing body to *Agency Board*.

Insertion of new pt 14

Clause 49 inserts new part 14 to the National Law with the heading 'Transitional provisions for Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022.'

It also inserts new section 324 to the National Law to provide that the renaming of the Agency Management Committee to the Agency Board does not affect the validity of an appointment of a person to the Committee before the renaming. Those appointed to the Agency Management Committee will be considered to be appointed to the Agency Board.

Amendment of sch 2 (Agency Management Committee)

Clause 50 amends schedule 2 of the National Law to replace all references to the *Agency Management Committee*, or the *Committee*, with references to the *Agency Board*, including in the heading. These changes are consequential to the amendment at clause 42 to change the name of the National Agency's governing body to *Agency Board*.

Amendment of sch 3 (National Agency)

Clause 51 amends schedule 3 of the National Law to replace a reference to the *Agency Management Committee* with a reference to the *Agency Board*. This change is consequential to the amendment at clause 42 to change the name of the National Agency's governing body to *Agency Board*.

Part 6 Functions of National Agency

Amendment of s 25 (Functions of National Agency)

Clause 52 amends section 25 of the National Law, which sets out the functions of the National Agency.

First, the amendments replace section 25(j) to broaden the advice-giving function from giving advice to the Ministerial Council only on matters related to the administration of the National Scheme to giving advice on any issues related to the National Scheme.

The *Review of Governance of the National Registration and Accreditation Scheme* (November 2017) found that the role of the National Agency is not well articulated in the National Law, particularly with regard to providing advice to Health Ministers. In practice, the National Agency provides a consolidated line of accountability and advice to Health Ministers for the entire operation of the National Scheme. This is not limited to

administrative matters. It includes, for example, advising on the achievement of statutory objectives by National Boards and other scheme entities. As such, it is appropriate for the National Agency to have comparable advice-giving functions as the National Boards. Under section 35 of the National Law, the functions of National Boards include giving advice to the Ministerial Council on issues relating to the National Scheme. This is the equivalent to the function given to the National Agency under the amendments to section 25(j).

Second, the amendments add new section 25(ka), establishing a function of the National Agency to do anything else necessary or convenient for the effective and efficient operation of the National Scheme.

This amendment was also recommended in the *Review of Governance of the National Registration and Accreditation Scheme*, in recognition of the National Agency's coordinating role in administering the National Scheme.

The National Agency performs a wide range of functions and is held accountable for meeting ministerial expectations of the National Boards and other National Scheme entities. The agency manages this through its cooperative arrangements with the Boards. Providing the ability to do all things 'necessary or convenient' will support the National Agency to perform its statutory functions.

It is not intended that the new function extend the scope of the National Agency's powers. Instead, it is intended to recognise that the agency may do anything incidental or ancillary to fulfil the specific powers and functions conferred on it. For example, as part of the agency's response to the COVID-19 pandemic, it worked with and on behalf of the National Boards to enable the establishment of a pandemic sub-register and enabled communications with practitioners in response to the requests of jurisdictions. A function to do anything 'necessary or convenient' for the effective and efficient operation of the National Scheme recognises the value of this work to the National Scheme.

The amendment also parallels the existing function given to National Boards by section 35, which is appropriate given its role in administering the National Scheme.

Part 7 Ministerial Council

Amendment of s 5 (Definitions)

Clause 53 amends the definition of 'Ministerial Council' in section 5 of the National Law.

Ministerial Council is currently defined as the 'COAG Health Council, or a successor of the Council by whatever name called, constituted by Ministers of the governments of the participating jurisdictions and the Commonwealth with portfolio responsibility for health.'

On 29 May 2020, National Cabinet agreed to the formation of the National Federation Reform Council (NFRC) and the cessation of the Council of Australian Governments (COAG). On 23 October 2020, National Cabinet accepted the recommendations of the Conran review[6] of the former COAG Councils and Ministerial Forums. Under the new

[6] On 26 June 2020, National Cabinet agreed that former Director-General of the Western Australian Department of Premier and Cabinet and former Commonwealth Cabinet Secretary Mr Peter Conran AM would lead a review of the former COAG Councils and Ministerial Forums with a view to rationalising and resetting their

proposed arrangements, relevant portfolio health ministers in each jurisdiction will meet in several different forums, including as a National Cabinet Reform Committee (NCRC) and as separate Health Ministers' Meetings. These separate Health Ministers' Meetings are intended to progress matters outside of the National Cabinet system, including deciding matters of common interest or requiring a national approach and undertaking national regulatory responsibilities established under national or state and territory legislation.

As a result of the changes to federal governance arrangements, the Bill redefines the Ministerial Council to remove the reference to COAG Health Council. The new definition refers to 'a body, however described' constituted by Health Ministers from the participating jurisdictions and the Commonwealth.

The amended definition is intentionally flexible to cover a range of ways in which Health Ministers of the participating jurisdictions and the Commonwealth may meet as the 'Ministerial Council' for the National Law. It is also intended to capture further potential changes to federal governance arrangements.

Amendment of s 12 (Approval of registration standards)

Clause 54 amends section 12 of the National Law to allow the Ministerial Council to delegate its power to approve registration standards to an entity it considers appropriate to exercise those powers.

Registration standards for health practitioners are drafted by National Boards and submitted to the Ministerial Council for approval. Currently even minor updates and other amendments with no significant policy implications must be approved by Ministers.

To streamline the process for approving registration standards and reduce delays, while still maintaining oversight of the standards, the *Review of Governance of the National Registration and Accreditation Scheme* recommended that the Ministerial Council be able to delegate its power to approve standards. The amendment to section 12 of the National Law reflects the recommendation of the Review.

Part 8 Commencement of registration

Amendment of s 56 (Period of general registration)

Clause 55 amends section 56 of the National Law to clarify that, where a National Board specifies a day for which a period of general registration for a health practitioner commences, the registration commences on that day. This day must be no later than 90 days after the Board makes the decision to grant general registration in a health profession. If a day is not specified by the Board, the period of general registration commences on the day the Board makes the decision to grant general registration for the health practitioner.

The changed drafting of this section aligns with the amendments being made for commencement of specialist, provisional, limited, and non-practising registration, as per clauses 56-59 of the Bill.

work. The Terms of Reference for this review and the Final Report can be found at: https://www.pmc.gov.au/domestic-policy/effective-commonwealth-state-relations#conran.

Amendment of s 61 (Period of specialist registration)

Clause 56 amends section 61 of the National Law to allow the commencement of specialist registration to be post-dated up to 90 days after a registration decision is made by a National Board.

Allowing a short delay in registration decisions taking effect will resolve some administrative challenges. The amendment is also consistent with the period of registration that applies to a health practitioner granted general registration (see section 56 of the National Law and clause 55 of the Bill). Clauses 57-59 of the Bill make equivalent changes for provisional, limited, and non-practising registrations.

Amendment of s 64 (Period of provisional registration)

Clause 57 amends section 64 of the National Law to allow the commencement of provisional registration to be post-dated up to 90 days after a registration decision is made by a National Board.

Allowing a short delay in registration decisions taking effect will resolve some administrative challenges. The amendment is also consistent with the period of registration that applies to a health practitioner granted general registration (see section 56 of the National Law and clause 55 of the Bill). Clauses 56, 58 and 59 of the Bill make equivalent changes for specialist, limited, and non-practising registrations.

Amendment of s 72 (Period of limited registration)

Clause 58 amends section 72 of the National Law to allow the commencement of limited registration to be post-dated up to 90 days after a registration decision is made by a National Board.

Allowing a short delay in registration decisions taking effect will resolve some administrative challenges. The amendment is also consistent with the period of registration that applies to a health practitioner granted general registration (see section 56 of the National Law and clause 55 of the Bill). Clauses 56, 57, and 59 of the Bill make equivalent changes for specialist, provisional, and non-practising registrations.

Amendment of s 76 (Period of non-practising registration)

Clause 59 amends section 76 of the National Law to allow the commencement of non-practising registration to be post-dated up to 90 days after a registration decision is made by a National Board.

Allowing a short delay in registration decisions taking effect will resolve some administrative challenges. The amendment is also consistent with the period of registration that applies to a health practitioner granted general registration (see section 56 of the National Law and clause 55 of the Bill). Clauses 56-58 of the Bill make equivalent changes for specialist, provisional, and limited registrations.

Part 9 Undertakings

Amendment of s 52 (Eligibility for general registration)

Clause 60 amends section 52 of the National Law. The amendment allows National Boards to decide a person is eligible for general registration by accepting an undertaking from the person under new section 83A (see clause 64).

National Boards can already decide a person is eligible for general registration by imposing a condition on their registration (see section 52(2) of the National Law). However, placing a condition on a practitioner's registration when they register or renew their registration can be time consuming and resource intensive. In many cases, an undertaking would be enough to restrict the practitioner's practice without a condition being required.

By giving an undertaking, registrants would be agreeing to do, or to not do, something in relation to their profession to protect the public. Allowing National Boards to accept undertakings from practitioners, where appropriate, will free up resources for managing other priorities.

Equivalent amendments are made under clauses 61-63 to allow the acceptance of an undertaking as part of determining eligibility for specialist, provisional, and limited registrations.

Amendment of s 57 (Eligibility for specialist registration)

Clause 61 amends section 57 of the National Law. The amendment allows National Boards to decide a person is eligible for specialist registration by accepting an undertaking from the person under new section 83A (see clause 64).

National Boards can already decide a person is eligible for specialist registration by imposing a condition on their registration (see section 57(2) of the National Law). However, placing a condition on a practitioner's registration when they register or renew their registration can be time consuming and resource intensive. In many cases, an undertaking would be enough to restrict the practitioner's practice without a condition being required. By giving an undertaking, registrants would be agreeing to do, or to not do, something in relation to their profession to protect the public. Allowing National Boards to accept undertakings from practitioners, where appropriate, will free up resources for managing other priorities.

Equivalent amendments are made under clauses 60, 62, and 63 to allow the acceptance of an undertaking as part of determining eligibility for general, provisional, and limited registrations.

Amendment of s 62 (Eligibility for provisional registration)

Clause 62 amends section 62 of the National Law. The amendment allows National Boards to decide a person is eligible for provisional registration by accepting an undertaking from the person under new section 83A (see clause 64).

National Boards can already decide a person is eligible for provisional registration by imposing a condition on their registration (see section 62(2) of the National Law). However, placing a condition on a practitioner's registration when they register or renew their registration can be time consuming and resource intensive. In many cases, an undertaking

would be enough to restrict the practitioner's practice without a condition being required. By giving an undertaking, registrants would be agreeing to do, or to not do, something in relation to their profession to protect the public. Allowing National Boards to accept undertakings from practitioners, where appropriate, will free up resources for managing other priorities.

Equivalent amendments are made under clauses 60, 61 and 63 to allow the acceptance of an undertaking as part of determining eligibility for general, specialist, and limited registrations.

Amendment of s 65 (Eligibility for limited registration)

Clause 63 amends section 65 of the National Law. The amendment allows National Boards to decide a person is eligible for limited registration by accepting an undertaking from the person under new section 83A (see clause 64).

National Boards can already decide a person is eligible for limited registration by imposing a condition on their registration (see section 65(2) of the National Law). However, placing a condition on a practitioner's registration when they register or renew their registration can be time consuming and resource intensive. In many cases, an undertaking would be enough to restrict the practitioner's practice without a condition being required. By giving an undertaking, registrants would be agreeing to do, or to not do, something in relation to their profession to protect the public. Allowing National Boards to accept undertakings from practitioners, where appropriate, will free up resources for managing other priorities.

Equivalent amendments are made under clauses 60-62 to allow the acceptance of an undertaking as part of determining eligibility for general, specialist, and provisional registrations.

Insertion of new s 83A

Clause 64 inserts new section 83A to the National Law. Section 83A will allow a National Board to accept any undertaking from a person that it considers necessary or desirable in the circumstances when deciding that person's registration. This amendment will function in tandem with the amendments at clauses 60-63.

The National Law already permits a National Board to accept an undertaking from a registered practitioner if it reasonably believes that the practitioner poses a serious risk to others because of their health, conduct, or performance, and that immediate action is necessary to protect the public (see section 156 of the National Law). By giving an undertaking, a practitioner agrees to limit their practice in some way, or to do, or not do, something in their profession. New section 83A extends this power by allowing a National Board to accept an undertaking during the registration process.

The amendment complements section 83 of the National Law, which empowers National Boards to place a condition on registration. Placing a condition on a practitioner's registration when they register or renew their registration can be time consuming and resource intensive. Allowing National Boards to accept undertakings from practitioners, where appropriate, will free up resources for managing other priorities, while still supporting public safety.

Existing section 125 of the National Law allows a registered practitioner to apply to a National Board to change or revoke an undertaking. Section 125 will apply to an undertaking accepted at registration. Section 199 will also apply, meaning that a decision by a National Board to refuse a practitioner's application to change or revoke an undertaking that was

imposed at the time of the person's registration will be subject to appeal. However, a National Board's initial decision whether to accept an undertaking from a practitioner, including at the time of the registration, will not be subject to appeal.

Insertion of new s 103A

Clause 65 inserts new section 103A into the National Law. This new section will empower National Boards to accept any undertaking from an applicant seeking endorsement of registration that the Board considers necessary or desirable in the circumstances.

The amendment is similar to that made by clause 64, but applies to undertakings about endorsements on registration rather than undertakings about registration itself. It also complements section 103 of the National Law, which allows a National Board to impose any conditions on endorsement that the Board considers necessary or desirable in the circumstances. Placing a condition on a practitioner's endorsement of registration can be time consuming and resource intensive. Allowing National Boards to accept undertakings from practitioners, where appropriate, will free up resources for managing other priorities, while still supporting public safety.

Existing section 125 of the National Law allows a registered practitioner to apply to a National Board to change or revoke an undertaking. Section 125 will apply to an undertaking accepted at endorsement of registration. Section 199 will also apply, meaning that a decision by a National Board to refuse a practitioner's application to change or revoke an undertaking that was imposed at the time of the person's endorsement will be subject to appeal. However, a National Board's initial decision whether to accept an undertaking on endorsement of registration will not be subject to appeal.

Amendment of s 112

Clause 66 amends section 112 of the National Law. The amendments will allow a National Board to refuse to renew a practitioner's registration if the practitioner has failed to comply with any undertaking in effect in their previous registration, or endorsement, period. This will strengthen the value of undertakings, by providing an additional means for redress in the event a practitioner contravenes an undertaking.

The amendment also provides that a renewal of registration or endorsement of registration is subject to any undertaking in place immediately before the renewal and any undertaking given by the applicant that the Board considers necessary or desirable in the circumstances. This will empower National Boards to accept an undertaking on renewal, similar to the amendments allowing National Boards to accept an undertaking on initial registration or endorsement.

The notation under section 112(3) of the National Law is also amended to clarify that failure to comply with an undertaking does not constitute an offence but may constitute behaviour for which health, conduct or performance action may be taken.

Part 10 Conditions

Amendment of s 126 (Changing conditions on Board's initiative)

Clause 67 amends section 126 of the National Law, which sets out the process for a National Board to change a condition imposed on the registration of a practitioner or student on its own initiative.

The amendment broadens section 126 to also apply to changing a condition on a practitioner's endorsement of registration. Although clause 23 of schedule 7 of the National Law likely provides National Boards the power to amend a condition on endorsement, this amendment is intended to clarify when and how a National Board should do so. Under this amendment, the rationale and process for a National Board changing a condition on endorsement is the same as for changing a condition on registration.

Amendment of s 127 (Removal of condition or revocation of undertaking)

Clause 68 amends section 127 of the National Law. Section 127 enables a National Board to remove a condition imposed on the registration of a practitioner or student if it reasonably believes such condition is no longer necessary.

The amendment extends section 127 to apply to removing a condition on a practitioner's endorsement when the National Board reasonably believes such condition is no longer necessary. Although clause 23 of schedule 7 of the National Law likely provides National Boards the power to remove a condition on endorsement, this amendment is intended to clarify when and how a National Board should do so. Under this amendment, the rationale and process for a National Board removing a condition on endorsement is the same as for removing a condition on registration.

Part 11 Withdrawal of registration

Amendment of s 74 (Unsuitability to hold non-practising registration)

Clause 69 amends section 74 of the National Law to add a circumstance for which a National Board may decide an individual is not a suitable person to hold non-practising registration in a health profession.

Under the amendment, a National Board may decide an individual is unsuitable to hold non-practising registration if the person's registration has been withdrawn under new section 85A, inserted by clause 70; that is, because the registration was improperly obtained because of the provision of false or misleading information.

Insertion of new pt 7, div 6A

Clause 70 inserts new division 6A into part 7 of the National Law to provide National Boards with the ability to withdraw a practitioner's registration if it was improperly obtained. The amendment will enable National Boards to quickly respond in an appropriate way in situations where a practitioner has been granted registration on the basis of information or documents that are later discovered to have been false or misleading in a material particular.

Under the existing provisions of the National Law, a National Board cannot reconsider its decision to grant a practitioner's application for registration, even if it becomes aware that the

information on which the decision was based was materially false or misleading. While the National Board can refuse to grant a subsequent application from the practitioner to renew their registration, the Board's only recourse in the interim is to take disciplinary action under part 8 of the National Law, such as by suspending the practitioner and initiating proceedings before a responsible tribunal. The proceedings may last many months, during which time the status of the practitioner's registration remains uncertain and the practitioner is afforded the same procedural rights as practitioners who obtained their registrations properly.

The amendments will enable National Boards to deal with these situations more effectively and to do so in a manner that protects the integrity of the registration process.

Under new section 85A, a National Board will have the power to withdraw a practitioner's registration if it reasonably believes the registration was improperly obtained because the practitioner or another entity gave the Board materially false or misleading information or documentation. A decision to withdraw registration will be subject to appeal under amendments made at clause 74.

The term 'withdraw' makes clear that the decision to withdraw a practitioner's registration is an exercise of the National Board's registration powers under part 7 of the National Law, as distinguished from the National Board's powers to take disciplinary action to 'suspend' or seek the 'cancellation' of a practitioner's registration under part 8.

To ensure procedural fairness, new section 85B subjects the National Boards' power to withdraw an improperly obtained registration to a show cause process. It will require a National Board to give a practitioner written notice of a proposal to withdraw their registration, setting out the reasons for the proposal and inviting the practitioner to make a written or verbal submission to the Board about the proposal. Section 85B(3) clarifies that this show cause process does not preclude a National Board from taking immediate action under part 8, division 7 of the National Law, such as suspending the practitioner's registration or accepting an undertaking from the practitioner.

New section 85C will require a National Board to make a decision on a proposed withdrawal of registration after considering any submissions made as part of the show cause process. If the National Board decides the registration was not improperly obtained on the ground that materially false or misleading information was given, no further action is to be taken. Alternatively, if the National Board decides the registration was improperly obtained because the practitioner or another entity gave the Board materially false or misleading information or document, it must do one or more of the following—

- withdraw the practitioner's registration;
- refer the matter to a responsible tribunal;
- take other appropriate action under part 8 of the National Law.

New section 85D requires a National Board to give the registered practitioner written notice of the Board's decision as soon as practicable, but no later than 30 days after making the decision. If the decision is to withdraw the practitioner's registration, the notice must state the reasons for the decision, that the practitioner may appeal the decision, and how and when the appeal may be made.

New section 85E provides that a National Board's decision to withdraw a person's registration takes effect on the day notice of the decision is given to the person or on a later day stated in that notice.

Amendment of s 178 (National Board may take action)

Clause 71 amends section 178 of the National Law, which sets out when a National Board may take certain health, performance, and conduct action against a practitioner.

The amendment broadens section 178 to allow a National Board to take action when it reasonably believes, because of a notification or for any other reason, that a practitioner's registration was improperly obtained because the practitioner or another entity gave the Board materially false or misleading information or documents. The relevant action that may be taken includes cautioning the practitioner, imposing conditions on the practitioner's registration, or referring the matter to another entity for investigation or action. The show cause process set out in section 179 of the National Law will apply to decisions to take action under the amendments to section 178.

Action under amended section 178 could be appropriate where, for example, a practitioner who obtained their qualifications overseas mistakenly believed—and represented in their application for registration—that they met one or more requirements for registration when they did not. Depending on the requirement at issue and other relevant circumstances, it may be appropriate for a National Board to impose conditions on the practitioner's registration rather than withdrawing the practitioner's registration under the amendments made at clause 70. Appropriate conditions might include, for example, restricting the practitioner's scope of practice while they complete additional training or a period of supervised practice.

Taking action under amended section 178 is not intended to preclude a show cause process also being undertaken to withdraw a practitioner's registration because it was improperly obtained under the amendments in clause 70.

Replacement of s 190 (Referral to responsible tribunal)

Clause 72 replaces section 190 of the National Law, which sets out circumstances in which a health panel must stop hearing a matter. Health panels can be established by National Boards to consider whether a practitioner is impaired or has exhibited unsatisfactory professional performance or unprofessional conduct.

The amended section will require a health panel to stop hearing and refer a matter back to the relevant National Board if the panel reasonably believes the practitioner's registration may have been improperly obtained. This will enable the National Board to consider whether to withdraw the practitioner's registration under new section 85A, inserted by clause 70, or to take other regulatory action under section 178, as amended by clause 71. Under the amendments made by clause 73, National Boards will no longer be required to refer these matters to a responsible tribunal if they believe that it would be more appropriate to withdraw the practitioner's registration or to take another form of regulatory action.

Section 190 otherwise remains unchanged with regard to health panels requiring National Boards to refer a matter to a responsible tribunal in circumstances where the subject of the hearing requests such a referral under section 193 of the National Law or the panel reasonably believes the practitioner may have behaved in a way that constitutes professional misconduct.

Amendment of s 193 (Matters to be referred to responsible tribunal)

Clause 73 amends section 193 of the National Law to remove the requirement for a National Board to refer a matter to a responsible tribunal if it reasonably believes a practitioner's registration was improperly obtained because the practitioner or another entity gave the Board materially false or misleading information or documents.

New subsection (3) clarifies that a National Board need not make such a referral even when the Board reasonably believes the practitioner behaved in a way that constitutes professional misconduct, if the underlying behaviour consists of the registered practitioner improperly obtaining their registration due to the provision of materially false or misleading information or documents.

The amendments to section 193 of the National Law give effect to the amendments set out in clause 70 to empower National Boards to withdraw a practitioner's improperly obtained registration. While section 193 will no longer require National Boards to refer such matters to a responsible tribunal, Boards will retain the ability to refer such matters to tribunals in lieu of withdrawing a practitioner's registration. A referral to a responsible tribunal may be appropriate where the facts of the matter are especially complex or involve important points of law.

Amendment of s 199 (Appellable decisions)

Clause 74 amends section 199 of the National Law to make a decision by a National Board to withdraw a person's registration subject to appeal to the appropriate responsible tribunal. Any such appeals are to be heard by a responsible tribunal in the same manner that appeals against other registration decisions may be made under part 8, division 13.

Although a practitioner will have the right to appeal a National Board's decision to withdraw their registration, the Board's decision takes immediate effect. The practitioner's registration will be withdrawn from the date of the Board's decision and reinstated only if the responsible tribunal sets aside the Board's decision on appeal or the practitioner later reapplies for and is granted registration in the profession.

Part 12 Endorsement as midwife practitioner

Omission of pt 7, div 8, sdiv 3 (Endorsement in relation to midwife practitioners)

Clause 75 amends the National Law to remove part 7, division 8, subdivision 3, which allows for endorsements of registrations for midwife practitioners.

When the National Scheme commenced in 2010, one practitioner was registered as a midwife practitioner under the *Nurses Act 1991* (NSW). This practitioner's registration was transitioned to the national register with an endorsement as a midwife practitioner. Since this time, the national board for the midwifery profession, the Nursing and Midwifery Board of Australia (the NMBA), has not approved any further midwife practitioner endorsements. The NMBA does not have a registration standard for endorsement as a midwife practitioner and there are no approved programs of study that qualify a midwife to practice as a midwife practitioner.

As there is no evidence that there is a current workforce requirement for such an endorsement, this amendment repeals the section of the National Law that allows the NMBA to endorse registrations of midwife practitioners. A savings provision is inserted by clause 77 to allow the sole registered midwife practitioner to continue to practice under that protected title.

Amendment of s 102 (Decision about application)

Clause 76 makes consequential amendments to section 102 of the National Law. The amendment removes the reference to section 96 (Endorsement as midwife practitioner) in section 102(3), as section 96 will be omitted from the National Law by clause 75.

Insertion of s 325

Clause 77 inserts new section 325 to the National Law. New section 325 will enable the sole registered midwife practitioner to continue to practice and use that protected title.

The midwife practitioner must still comply with the existing requirements for registration as a midwife with endorsement as a midwife practitioner, including requirements for continuing professional development as set out in the registration standard. The continuing professional development and recency of practice requirements for the currently endorsed midwife practitioner are consistent with those required for nurse practitioners.

Part 13 Renewal of registration after suspension period

Insertion of new pt 7, div 9, sdiv 1, hdg

Clause 78 inserts a new subdivision within part 7, division 9 of the National Law. The heading of the new subdivision is 'Subdivision 1 – Renewal of registration of registered health practitioner.' It includes existing sections 107–112 of the National Law, the substance of which are otherwise unchanged.

Amendment of s 112 (Decision about application for renewal)

Clause 79 makes a consequential change to section 112(6) of the National Law to reflect the new subdivision inserted by clause 78. It clarifies that the one-year registration period for a renewed registration, including any endorsement of the registration, applies to renewal applications made under subdivision 1 of part 7, division 9.

Insertion of new pt 7, div 9, sdiv 2

Clause 80 inserts a new subdivision and new sections into part 7, division 9 of the National Law. The heading of the new subdivision is 'Subdivision 2 – Renewal of registration after suspension period.' This new subdivision sets out when and how practitioners should renew their registration when their registration otherwise would have ended during a period of suspension.

New section 112A provides that new subdivision 2 applies when a person's registration is suspended, and their registration otherwise would have ended during the period of their suspension. It also provides that section 108(2) does not apply to a registration to which this new subdivision applies.[7] Instead, new section 112C sets out when a registration covered by new subdivision 2 ends.

New section 112B sets out the application process for renewing a registration after a suspension. When a practitioner's registration is suspended, the suspension is recorded on the National Register until the suspension ends or is otherwise revoked. Once the suspension ends or is revoked, the practitioner's registration is reinstated, and the practitioner may resume their practice. New section 112B(2) allows a registered health practitioner whose registration would have ended during their suspension period one month after their suspension ends to apply to renew their registration. If the practitioner's registration has been endorsed by the National Board, the application for registration renewal is also taken to be an application for renewal of the endorsement. An application for renewal under this section must be in the form approved by the National Board, accompanied by the relevant fee, accompanied by the annual statement required under section 109 of the National Law, and accompanied by any other information reasonably required by the Board. This is the same information as is required for all renewals, and includes information about the applicant's criminal history, continuing professional development, and recency of practice.

The purpose of new section 112B is to clarify when a suspended practitioner must apply to renew their registration. It remedies a gap in the National Law arising from section 207, which is a deeming provision that provides that a suspended practitioner is taken not to be registered during the period of their suspension other than for purposes of part 8. An unintended consequence of this deeming provision is that a suspended practitioner is not subject to the annual renewal requirements that apply to registered health practitioners under the National Law. As a result, a practitioner returning from a period of suspension is not required to apply to renew their registration until the next annual renewal deadline, which may be up to 12 months after the practitioner's suspension ends. Depending on the duration of the suspension, this may result in a significant period of time before the practitioner is required to apply to renew their registration and, as part of the renewal process, to notify the relevant National Board of matters affecting the practitioner's suitability to practise. The amendment will ensure that National Boards are provided with timely information by formerly suspended practitioners, helping Boards to address any regulatory issues affecting suitability to practise that may have arisen during a suspension period.

New section 112C sets out when a practitioner's registration ends when it otherwise would have ended during a period of suspension. If a practitioner applies to renew their registration under new section 112B, the registration, including any endorsement on registration, continues in force from the day the suspension period ends until either the day a new certification of registration is issued, or the day the applicant is given notice of a decision to refuse to renew the registration. If a practitioner does not apply to renew their registration, their registration, including any endorsement of their registration, ends at the end of the day that is one month after the day their suspension period ends.

[7] Section 108 of the National Law provides that a practitioner's registration is taken to continue in force while a National Board decides the practitioner's application to renew their registration, including a late application submitted up to one month after the day the practitioner's registration would have otherwise ended.

New section 112D applies sections 109–112 of the National Law to an application for renewal of registration made under this new subdivision as if the application had been made under section 107 for a renewal of registration under subdivision 1.

The sections apply as if a reference to an applicant's previous period of registration were a reference to both the applicant's period of registration preceding their suspension period and their suspension period. This ensures that the information applicants provide as part of their renewal application, including their criminal history and completion of continuing professional development, covers their suspension period as well as their period of registration prior to their suspension.

Section 112(3)(a) applies so that any decision to renew a registration under subdivision 2, including an endorsement of registration, is subject to any condition to which the registration was subject immediately before the start of the suspension period and any other condition the National Board considers necessary or desirable in the circumstances.

Section 112(6) applies as if a reference in that subsection to subdivision 1 is a reference to new subdivision 2.

Part 14 Scheduled medicine offences

Amendment of s 130 (Registered health practitioner or student to give National Board notice of certain events)

Clause 81 amends section 130(3) of the National Law to require registered health practitioners and students to report charges and convictions related to regulated medicines and poisons to the relevant National Board. It also makes amendments to section 130 in response to amendments to the *Medicare Australia Act 1973* (Cth).

Among other matters, section 130 currently requires practitioners and students to notify the relevant National Board when they are charged with an offence punishable by 12 months' imprisonment or more. Many offences related to regulated medicines and poisons (scheduled medicines) are punishable by payment of a fine rather than imprisonment. As a result, National Boards may not be notified of a practitioner's or student's scheduled medicine offence history, even though it may be relevant to the person's suitability to hold registration.

Amended section 130(3) replaces the definition of *relevant event* to require registered practitioners and students to notify the relevant National Board if they are charged with, convicted of, or are otherwise the subject of a finding of guilt for a scheduled medicine offence. Early reporting of these offences will allow National Boards to respond quickly to risks posed to the public by practitioners or students who misuse scheduled medicines.

The Bill defines a *scheduled medicine offence* as an offence against a law of a participating jurisdiction that—

- regulates the authority of registered health practitioners or students to administer, obtain, possess, prescribe, sell, supply, or use scheduled medicines; and
- relates to registered health practitioners or students administering, obtaining, possessing, prescribing, selling, supplying, or using scheduled medicines.

A *scheduled medicine* is already defined in section 5 of the National Law to mean a substance included in a Schedule to the current Poisons Standard, which includes both medicines and poisons.

Because there are significant differences in the types of offences that exist under each state and territory's medicines and poisons laws, subparagraph (b) of the definition of *scheduled medicine offence* will allow a participating jurisdiction to declare that certain offences defined under the law of that jurisdiction are not scheduled medicine offences for purposes of the reporting requirements in the National Law. This will ensure that the new reporting requirements are no broader than necessary to protect the public. For example, a jurisdiction may exempt the reporting of very minor offences or offences that are not relevant to a practitioner's health, professional conduct or performance.

The amendment requiring reporting of scheduled medicine offences was recommended by the Queensland Office of the Health Ombudsman in its 2016 *Investigation report: undoing knots constraining medicine regulation in Queensland*, which discusses the risks drug impaired practitioners may present to themselves and the public. Requiring the early disclosure of this information will allow National Boards to respond swiftly to regulate practitioners, for example by imposing conditions restricting access to scheduled medicines.

In addition to the amendments relating to the reporting of scheduled medicine offences, this clause contains amendments to section 130 to respond to amendments to the *Medicare Australia Act 1973* (Cth). Section 130(3)(a)(v) of the National Law currently requires a registered health practitioner to inform the relevant National Board if the practitioner's billing privileges are withdrawn or restricted under the Medicare Australia Act because of the practitioner's conduct, professional performance or health. However, the Medicare Australia Act was significantly amended and re-named the *Human Services (Medicare) Act 1973* (Cth).

The Human Services (Medicare) Act establishes the office of the Chief Executive Medicare and gives investigative powers to the Chief Executive Medicare. The Human Services (Medicare) Act does not give the Chief Executive Medicare the power to withdraw or restrict a practitioner's billing privileges. These powers are conferred on the Chief Executive Medicare under the *Health Insurance Act 1973* (Cth). Under that Act, a practitioner's billing privileges may be withdrawn in the following circumstances—

- if the practitioner no longer holds the specified qualifications or requirements in relation to particular placements;
- if the practitioner has been disqualified under the Health Insurance Act because the practitioner has engaged in inappropriate practice; or
- if a practitioner is disqualified for causing, committing or permitting relevant offences or civil contraventions under the Health Insurance Act. Relevant offences include making false statements in relation to Medicare benefits, charging fees for the provision of public hospital services to public patients, or engaging in bribery.

The Bill will replace the reference to the Medicare Insurance Act with a reference to the Health Insurance Act. It also makes changes to reflect differences between the previous provisions of the Medicare Australia Act and the current provisions of the Health Insurance Act with the intent of replicating the existing reporting requirements as closely as possible. The amendments at section 130(3) require practitioners to report if, because of the practitioner's conduct, professional performance or health—

- the practitioner has been disqualified under an agreement under section 92 of the Health Insurance Act; or
- the practitioner is subject to a final determination under section 106TA of the Health Insurance Act that contains a direction under section 106U(1)(g) or (h) of that Act that the practitioner be disqualified.

Disqualification includes both full and partial disqualification, consistent with the intent of the existing reporting requirements, which apply both to the withdrawal and the restriction of billing privileges.

The Bill inserts a new subsection 130(2)(A) to clarify that a practitioner is not required to notify the National Board about a disqualification under the Health Insurance Act if the notification is prohibited by that Act.

Part 15 Previous practice information

Amendment of s 5 (Definitions)

Clause 82 inserts the defined term *practice arrangement* into section 5 of the National Law. This term is used in chapter 3, parts 15, 27, and 28 of the Bill in relation to the circumstances in which a National Board may disclose information about a practitioner to certain other entities.

A *practice arrangement* is defined broadly to mean an arrangement between a registered health practitioner or unregistered person, including a practitioner whose registration is suspended, and an entity. This includes—

- a contract of employment, contract for services, or another arrangement or agreement between the practitioner or person and the entity in relation to the provision of services; or
- an agreement for the practitioner or person to provide services for or on behalf of the entity, whether in an honorary capacity, as a volunteer or otherwise, and whether or not the practitioner or person receives payment for the services.

The definition is intentionally broad. It covers typical employment relationships, as well as other arrangements or agreements, regardless of whether the practitioner receives payment or is 'engaged by' an entity. For example, it would cover an arrangement between a private facility and a practitioner that allows a registered health practitioner to provide services at the facility. The contract or agreement must be directly related to the provision of a health service.

Amendment of s 132 (National Board may ask registered health practitioner for practice information)

Clause 83 replaces the definition of *practice information* in section 132 of the National Law. Section 132 enables a National Board to require a registered health practitioner to provide *practice information* to the Board, which may include information about the practitioner's employment, the details of other registered health practitioners with whom the practitioner shares premises and associated costs, and the details of entities with which the practitioner has a contractual or other arrangement to provide services.

Under the amended definition, *practice information* means each of the following in relation to a practitioner's current practice, and all previous practices, of the health profession for which the practitioner is registered—

- if the practitioner is, or was, self-employed: the fact that the practitioner is, or was, self-employed; the address of each place the practitioner practises or practised; each business name used, if any; and any names of other registered health practitioners with which the practitioner shares, or shared, premises and the cost of the premises;
- if the practitioner has, or had, a *practice arrangement* (as defined by clause 82) with one or more entities, the name, address, and contact details of each entity; and
- any other name or names that the practitioner practises, or practised, under.

The effect of these amendments is to allow a National Board to ask a practitioner for information about their previous practices in addition to their current practice, and to ask for such information under a broader range of practice arrangements.

The registered health practitioner must not, without reasonable excuse, fail to comply with a request for practice information from a National Board. Failure to comply does not constitute an offence but may constitute behaviour for which health, conduct or performance action may be taken.

Amendment of s 206 (National Board to give notice to registered health practitioner's employer and other entities)

Clause 84 amends section 206 of the National Law to expand the range of entities and registered practitioners that a National Board can notify about a decision by the Board or by an adjudication body to take health, conduct or performance action against a practitioner. Such notification allows entities and other practitioners to take action to protect their patients and the community.

The amendment replaces section 206(2) to provide the Board may give written notice to:

- the registered health practitioners with whom the practitioner currently shares premises and the cost of those premises (unchanged by the Bill);
- the registered health practitioners with whom the practitioner previously shared premises and the cost of those premises, but only if the Board reasonably believes the practitioner's health, conduct or performance while the practitioner shared the premises posed a risk of harm to a person or class of persons, or to public health or safety; or
- an entity with which the practitioner had a previous *practice arrangement*, as defined at clause 82 of the Bill, if the Board reasonably believes the practitioner's health, conduct or performance while the practitioner had a practice arrangement with the entity posed a risk of harm to a person or class of persons, or to public health or safety.

The power to disclose information to entities and practitioners who had a previous arrangement with a practitioner who is subject to health, conduct or performance action will be discretionary and available only if the Board reasonably believes the practitioner's conduct posed a risk of harm at the time of the prior arrangements. It is expected that the information will generally be limited to information that is relevant to the risks the practitioner poses to other persons and the possible mitigation of the risks. This would balance public safety and the risk of harm to a practitioner's reputation.

The amendment does not change the current requirement for a National Board to give written notice of a decision to take health, conduct or performance action against a practitioner to an entity that has a current *practice arrangement* with the practitioner. However, due to the expanded definition of *practice arrangement* in clause 82 of the Bill, National Boards will be required to give notice of health, conduct and performance decisions to a broader range of entities that have a current practice arrangement with the practitioner.

The amendments are intended to promote public safety by capturing those circumstances in which practitioners may have caused harm to patients in the past or through successive workplaces. It will also improve information sharing between employers and regulators and allow for identification of previously unknown risks to the public.

Part 16 Advertising offences

Amendment of s 133 (Advertising)

Clause 85 amends section 133 of the National Law to allow testimonials to be used in advertisements about regulated health services. It also increases the penalties for advertising offences.

To protect the public, the National Law restricts the way in which a person may advertise a regulated health service or a business that provides a regulated health service. Section 133(1) prohibits advertisements that are false or misleading or deceptive; offer a gift, discount or inducement without stating the terms and conditions of the offer; offer an unreasonable expectation of beneficial treatment; or directly or indirectly encourage the unnecessary use of regulated health services.

Currently, section 133(1) also prohibits the use of testimonials or purported testimonials in advertisements about regulated health services.

The advertising and social media landscape has changed significantly since 2010 when the testimonial prohibition was included. The amendment to allow testimonials in health service advertising is intended to bring advertisement restrictions into step with current marketing and advertising practices and consumer expectations.

Testimonials and reviews are common online, and new forms of advertising, particularly on social media, have blurred the lines between information and advertising. Many social media platforms, including Facebook and Google, have a review function that allows customers to share their experiences of a health service or health practitioner. And industry specific sites such as Whitecoat allow prospective customers to search for reviews of health service providers. Consumers increasingly expect to have access to reviews and testimonials when purchasing health services and expect to be able to share their views about health services and practitioners. Further, practitioners and regulators can find it difficult to distinguish testimonials about clinical care from testimonials about non-clinical care. The proliferation of online testimonials about health practitioners has negated previous policy rationales for regulating testimonials about health services differently from other forms of advertising.

Under the amendments, testimonials will be regulated in the same way as other forms of health service advertising. Thus, testimonials will be prohibited where they are false, misleading or deceptive; offer a gift, discount or inducement without stating the terms and conditions; create an unreasonable expectation of beneficial treatment; or encourage the unnecessary use of health services.

Regulating advertising is a resource intensive activity for the National Boards and the National Agency, and, in practice, regulatory action focuses predominantly on those testimonials that make false or misleading claims and pose a high level of risk to the public. The amendments will formally direct regulators to focus on the most harmful forms of advertising.

The definition of *regulated health service* in section 133(4) of the National Law is not changed by these amendments. *Regulated health service* will continue to mean a service provided by, or usually provided by, a health practitioner.

The amendments in this clause also increase the maximum penalty for breaching the advertising restrictions from $5,000 for an individual and $10,000 for a body corporate to $60,000 for an individual and $120,000 for a body corporate. This brings the penalties into line with those for other serious offences under the National Law, such as for misusing a protected title, for which the maximum monetary penalties are $60,000 for an individual and $120,000 for a body corporate (section 113 of the National Law). This will make clear that protecting consumers from false, misleading or deceptive practices is an enforcement priority under the National Law.

Part 17 Directing and inciting offences

Amendment of s 136 (Directing or inciting unprofessional conduct or professional misconduct)

Clause 86 amends section 136 of the National Law to increase the penalties for directing and inciting offences.

Section 136 makes it an offence for a person to direct or incite a health practitioner to do anything in their practice that amounts to unprofessional conduct or professional misconduct. The amendments increase the maximum penalty for this offence from $30,000 for an individual or $60,000 for a body corporate to $60,000 for an individual or $120,000 for a body corporate.

Direct and incite offences were included in the National Law to address concerns about the increased corporatisation of health services and the potential for non-practitioner directors and managers to influence employee health practitioners to practise in a way that compromises client care and clinical independence.

The amendments increase the penalties for direct and incite offences to ensure they remain an effective deterrent, and to bring the penalties into line with the penalties for other serious offences under the National Law.

Part 18 Disciplinary action in relation to health practitioners while unregistered

Amendment of s 117 (Claims by persons as to registration in particular profession or division)

Clause 87 amends the note to section 117(3) of the National Law. The amended note clarifies that a contravention of section 117(3) may also constitute unprofessional conduct for which health, conduct or performance action may be taken against a person who was previously a registered health practitioner. This amendment is consequential to the insertion of new

sections 138 and 139 at clause 90, which allows proceedings to be undertaken in certain circumstances against a person who was, but is no longer, registered in a health profession for a contravention or suspected contravention of a provision of part 7, division 10 of the National Law.

Amendment of s 118 (Claims by persons as to specialist registration)

Clause 88 amends the note to section 118 of the National Law. The amended note clarifies that a contravention of section 118 may also constitute unprofessional conduct for which health, conduct or performance action may be taken against a person who was previously a registered health practitioner. This amendment is consequential to the insertion of new sections 138 and 139 at clause 90, which allows proceedings to be undertaken in certain circumstances against a person who was, but is no longer, registered in a health profession for a contravention or suspected contravention of a provision of part 7, division 10 of the National Law.

Amendment of s 119 (Claims about type of registration or registration in recognised speciality)

Clause 89 amends the note to section 119 of the National Law. The amended note clarifies that a contravention of section 119(3) may also constitute unprofessional conduct for which health, conduct or performance action may be taken against a person who was previously a registered health practitioner. This amendment is consequential to the insertion of new sections 138 and 139 at clause 90, which allows proceedings to be undertaken in certain circumstances against a person who was, but is no longer, registered in a health profession for a contravention or suspected contravention of a provision of part 7, division 10 of the National Law.

Replacement of ss 138 and 139

Clause 90 replaces sections 138 and 139 of the National Law, which specify when notifications may be made and proceedings may be taken in relation to health, conduct and performance issues under part 8 of the National Law. The amendments allow National Boards to take disciplinary action against persons who continue to practice or use a protected title after their registration has lapsed. The amendments also clarify when disciplinary proceedings can be undertaken against a registered practitioner for behaviour that occurred while the practitioner was unregistered.

New section 138 provides that a notification may be made and proceedings may be taken under part 8 against a person who is a registered health practitioner in relation to behaviour that occurs while the practitioner is registered, occurred before the practitioner was registered, or that occurred during any other period in which the practitioner was unregistered, such as during a lapse or suspension in registration. This amendment is intended to remove doubt that proceedings may be taken against a registered health practitioner for professional misconduct with regard to behaviour that occurred before they were registered or during a gap or suspension in registration, which has been the longstanding interpretation and practise of regulators and tribunals. The section also clarifies that behaviour that occurred before a practitioner was registered may not constitute unsatisfactory professional performance or unprofessional conduct, and that behaviour that occurred during a lapse or suspension in registration may not constitute unsatisfactory professional performance or unprofessional conduct, except as provided by new section 139.

New section 139 applies when proceedings are taken under part 8 against a person who is a registered health practitioner, and the panel or tribunal is satisfied the behaviour to which the proceedings relate occurred while the practitioner continued to practise during a gap in registration. The section applies only to practitioners who are re-registered in a health profession after an earlier registration ended under section 108(2)(a) (that is, the practitioner's registration lapsed because the practitioner did not apply to renew it within one month after the term of the registration). It does not apply to practitioners who had a gap in registration because their registration ended in a different way, such as through cancellation or withdrawal.

Where section 139 applies, proceedings may be taken and findings may be made as if the practitioner were registered at the time the behaviour occurred. Section 139(3) clarifies that the section does not prevent a finding of unprofessional conduct on the basis the person was contravening a provision of part 7, division 10 of the National Law.

This section is intended to allow part 8 proceedings to be taken for behaviour that occurred during a temporary lapse in a registered health practitioner's registration. It clarifies that continuing to practise during a gap in registration may be 'unprofessional conduct,' allowing it to be subject to part 8 disciplinary action in addition to, or in place of, action under part 7. This addresses a limitation of the current law in the situation where a National Board becomes aware that a health practitioner had previously practised during a period when their registration had lapsed. Currently, the only powers for dealing with this scenario are to prosecute the practitioner for an offence under part 7 (on the basis that the practitioner was holding themselves out as a registered health practitioner or performing restricted practices) or, alternatively, to impose conditions on the practitioner's registration when they apply to renew. This could be many months after the practitioner's conduct is discovered. If a practitioner has failed to renew their registration on time or the continuation of practise was brief and inadvertent, it might be unnecessarily punitive to prosecute them for an offence, and waiting to impose a condition when the practitioner applies to renew their registration could put the public at risk of harm until that action is taken. Depending on the circumstances, a more appropriate regulatory response may be for a National Board to immediately impose conditions or take other disciplinary action part 8 of the National Law.

Importantly, the amendments will ensure that National Boards can respond to a practitioner's failure to punctually renew their registration in a manner that is proportionate to the severity of a practitioner's conduct and that takes into account other relevant considerations, including competing enforcement priorities and the need to provide effective deterrents to protect the public and promote confidence in the National Scheme.

The amendment is not intended to preclude or discourage the National Agency from investigating and prosecuting offences or the National Boards from imposing conditions on a practitioner's registration in appropriate cases. The National Agency and National Boards will retain these powers and will be able to apply them in addition to, or instead of, any disciplinary action taken by a Board in relation to the same conduct.

New sections 139A and 139B mirror existing sections 138 and 139 of the National Law, respectively, with minor stylistic changes, and are intended to preserve the operation of those sections.

New section 139A applies to a person who was, but is no longer, a registered health practitioner. It provides that a notification can be made and proceedings may be taken under

part 8 against the person as if the person were still registered in relation to behaviour that occurred while the person was registered. In such circumstances, part 8 of the National Law, other than divisions 2 and 6, apply to the person as if the person were a registered health practitioner.

New section 139B applies to a person who was registered in a health profession under a corresponding prior Act but is not, and has not been, registered in a health profession under the National Law. The section allows a notification to be made about and proceedings to be taken under part 8 against the person as if they were registered in a health profession under the National Law in relation to behaviour that occurred while the person was registered under the prior Act. This only applies to the extent a notification could have been made under the corresponding prior Act and proceedings could have been taken under the prior Act. This section replicates, with minor drafting changes, existing section 138 of the National Law, which has been replaced with the above provisions.

Part 19 Mandatory notification by employers

Amendment of s 142 (Mandatory notifications by employers)

Clause 91 inserts an example below section 142(1) of the National Law to help clarify when employers must notify the National Agency of potential misconduct by a practitioner-employee.

The mandatory notification requirements for employers, registered health practitioners and education providers create a duty to notify the National Agency if a registered health practitioner has engaged in certain types of conduct that could pose a risk to patients or the public. The current wording of the provisions may not effectively communicate the requirements for employers to make mandatory notifications.

The amendment adds an example to the National Law of when an employer must notify the National Agency of notifiable conduct. The example illustrates that an employer of a registered health practitioner must notify the National Agency if the employer takes action against the practitioner, such as withdrawing or restricting the practitioner's clinical privileges at a hospital because the employer reasonably believes the public is at risk of harm because the practitioner has significantly departed from accepted professional standards.

This amendment complements broader efforts to educate employers and raise awareness about their mandatory notification obligations.

Part 20 Requirement to provide records for preliminary assessment

Insertion of new ss 149A and 149B

Clause 92 inserts new sections 149A and 149B into the National Law.

New section 149A(1) empowers a National Board to require a person to give it specified information or documents for the purpose of conducting a preliminary assessment of a notification. The request must be made in writing and specify a reasonable time and way for the information or documents to be provided.

New section 149(2) makes it an offence for a person to fail to comply with such a request for information or documents unless they have a reasonable excuse. The maximum penalty for failure to comply is $5,000 for an individual or $10,000 for a body corporate.

New section 149(3) provides that a reasonable excuse for not complying with a request for information or documents includes, but is not limited to, that the information or documents might tend to incriminate the person.

New section 149B allows a National Board to inspect or make a copy of, or take an extract from, a document provided to it under new section 149A. It may also keep the document while it is necessary for the preliminary assessment of the notification. If a National Board keeps the document, section 149B(2) will require the Board to permit a person who is otherwise entitled to possess the document to inspect, make a copy of, or take an extract from the document at the reasonable time and in the reasonable way decided by the Board.

These amendments will increase the efficiency of the preliminary assessment process and support timely resolution of matters. Due to confidentiality provisions in the National Law and other legislation, a person may be legally prevented from providing information that is relevant to the prompt assessment and resolution of a notification unless the person is compelled by law to produce the information. For example, a practitioner may be willing, and yet unable, to provide clinical documentation that is favourable to the practitioner and would enable the National Board to resolve the notification without an investigation or other regulatory action. The amendments will allow National Boards to compel production of the information at the preliminary assessment stage, thereby avoiding the need to launch a formal investigation merely to obtain information that confirms that no further regulatory action is warranted.

The amendments are not intended to affect the types of information or documents the National Boards can access. Rather, the amendments will bring forward the point in time at which National Boards can require information to be produced.

These changes complement existing powers of the Queensland Health Ombudsman (see section 48 of the *Health Ombudsman Act 2013* (Qld)).

Part 21 Interim prohibition orders

Amendment of s 5 (Definitions)

Clause 93 inserts three new terms into section 5 of the National Law.

First, the term *interim prohibition order* is given the definition set out in new section 159B, as inserted by clause 94 of the Bill. The definition is discussed in the notes to that provision.

Second, the term *regulatory body*, in relation to a person, is defined to mean the National Agency and, for a person who is or was a registered health practitioner, the National Board for the health profession in which the person is or was registered. In some circumstances, both the National Agency and a National Board will meet the definition of a *regulatory body* in relation to a person. In these circumstances, the National Agency and the National Board will administratively determine who is best placed to manage a matter. The same will apply if a jurisdiction's health complaints entity could be involved in a matter as well, under the relevant jurisdiction's laws.

Finally, the term *relevant provision* is defined for purposes of part 8, division 7A (Interim prohibition orders) and division 7B (Public statements). For division 7A, the definition of *relevant provision* is set out in new section 159B, inserted by clause 94. For division 7B, the definition is set out in new section 159P, inserted by clause 100.

Insertion of new pt 8, div 7A

Clause 94 inserts new part 8, division 7A into the National Law. This new division introduces the power for regulators to issue interim prohibition orders to unregistered persons.

New section 159B sets out the definitions for purposes of the new division.

An *interim prohibition order*, in relation to an individual named in the order, means an order that does any or all of the following—

- prohibits an individual from providing a specified health service or all health services;
- prohibits an individual from taking or using a specified title or all titles protected under the National Law;
- imposes restrictions on the provision of a specified health service or all health services by an individual.

A *relevant provision* means any of the following provisions: section 113, sections 115–119, sections 121–123, section 133, section 136.

New section 159C sets out the circumstances in which a regulatory body may issue an interim prohibition order to an unregistered person. An interim prohibition order may be issued if the regulatory body reasonably believes both that the person poses a serious risk to others and that it is necessary that the person be subject to an order to protect public health or safety. The person must also either be someone who the regulatory body reasonably believes is or was contravening a *relevant provision* or is the subject of an assessment, investigation or other proceeding under part 8 of the National Law. Since an interim prohibition order can only be issued to an unregistered person, as defined at clause 82, the relevant proceedings under part 8 would usually involve a practitioner whose registration has been suspended, but could also include proceedings against other persons who were but are no longer registered.

New section 159D requires a show cause process to be undertaken prior to issuing an interim prohibition order, unless new section 159E applies. Under the show cause process, the National Agency or the National Board must give notice to a person to whom it proposes to issue an interim prohibition order and invite the person to make a written or oral submission within a stated time. After considering the submission, the National Agency or the National Board must decide whether or not to issue the order. Immediately after making this decision, it must give the person a written notice of the decision, including the reasons for the decision, and, if the decision is to issue an order, how to appeal that decision.

New section 159E provides an exception, in certain urgent circumstances, to the requirement in new section 159D to undertake a show cause process prior to issuing an interim prohibition order. It allows the National Agency or a National Board to issue an interim prohibition order prior to conducting a show cause process if it reasonably believes it is necessary to take urgent action to protect public health or safety. In these cases, the interim prohibition order must be accompanied by a notice inviting the person to make a written or verbal submission,

within the time stated in the notice, which must be at least seven days from the time the notice is issued. Any submission made must then be considered by the regulator within a reasonable time, and a decision must be made to either confirm or revoke the order. Similar to section 159D(4), written notice of the decision must be given to the person that includes the reasons for the decision, and, if the decision is to confirm an order, how to appeal that decision.

New section 159F sets out the duration of an interim prohibition order. An interim prohibition order starts either on the day it is issued, or the day stated in the order, whichever is later. Unless the regulatory body extends the order under new section 159H or applies to a responsible tribunal for an extension of the order under new section 159J, the order ends either 60 days after it starts, on an earlier day stated in the order, or on the day the order is revoked by the regulatory body under new section 159G. If the order is extended by the regulatory body under section 159H for a period of up to 60 days, it ends on the day decided by the regulatory body.

New section 159G applies only to interim prohibition orders that have not been extended or substituted by a responsible tribunal. The section requires a regulatory body to revoke an interim prohibition order if it is satisfied the grounds on which the order was issued no longer exist or did not exist at the time the order was issued to the person. As an alternative to revoking the order, a regulatory body may vary the grounds on which the order was issued if it is satisfied that a different or additional ground exists in relation to the person and it continues to reasonably believe that the person poses a serious risk to persons and the order is necessary to protect public health or safety. The power to vary an interim prohibition order ensures that the order can remain in effect to protect the public, and that investigations and proceedings against the person can continue, even if new evidence is uncovered that suggests the grounds for the order are different from those initially identified or have changed during the course of the regulatory body's investigation. A varied interim prohibition order must be accompanied by a notice inviting the person to make a written or verbal submission about the variation.

New section 159H permits a regulatory body to extend an interim prohibition order by a period of not more than 60 days. An order may only be extended by a regulatory body once, and only if the body reasonable believes the extension is necessary in the circumstances.

Under new section 159I, if a regulatory body issues an interim prohibition order as a result of a notification or complaint, the body may inform the notifier or person who made the complaint of the issuance or extension of the order and the reasons for the issuance or extension.

New section 159J allows a regulatory body to apply to a responsible tribunal to extend an interim prohibition order. This will be necessary to extend an order beyond its initial period of up to 60 days and the further period of up to 60 days that the order may be extended by a regulatory body under new section 159H. To apply for an extension under new section 159J, the regulatory body must apply before the order expires and must reasonably believe the grounds on which the order was issued or varied still exist and will continue to exist beyond the day the order is due to expire. If a regulatory body applies for an extension, the order continues until—

- if the tribunal confirms the order, the day the order would have ended under section 159F;
- if the tribunal extends the order, the day the tribunal decides the order will end;

- if the tribunal substitutes another interim prohibition order for the order issued by the regulatory body, the day the substituted order starts; or
- if the order is set aside, the day the order is set aside.

New section 159K sets out the requirements for responsible tribunals in deciding an application for extension of an interim prohibition order made under new section 159J. After hearing the application, the tribunal may decide whether the interim prohibition order is necessary. In making this decision, it must have regard to the nature and extent of the risk the person poses to persons or public health and safety because of their health, conduct or performance. It must also consider whether the regulatory body has acted, and is continuing to act, as quickly as practicable in the circumstances to deal with the matter. As an interim prohibition order is intended to be a temporary measure and can have significant consequences for the person to whom it applies, the tribunal's consideration of the regulatory body's actions is intended to ensure the regulatory body is acting in good faith to promptly investigate and resolve the matter.

If the tribunal decides an interim prohibition order is necessary, it may confirm the order; extend the order, with or without amendment, for as long as it considers appropriate; or substitute another interim prohibition order for the order issued by the regulatory body. A substituted order lasts until such time as the tribunal considers appropriate in the circumstances. If the tribunal decides an interim prohibition order is not necessary, the order is set aside.

A regulatory body cannot, on its own, revoke an interim prohibition order that has been extended or substituted by a responsible tribunal. However, new section 159L provides that a regulatory body may apply to the relevant tribunal to revoke such an order if it is satisfied the grounds on which the order was issued no longer exist in relation to the person or did not exist at the time the order was issued. After hearing a matter, the tribunal may decide the order continues to be necessary or is not necessary. If a tribunal decides the order is not necessary, it is revoked.

As with revocation, a regulatory body cannot, on its own, vary an interim prohibition order that has been extended or substituted by a responsible tribunal. Instead, new section 159M allows a regulatory body to apply to the tribunal for a variation. The regulatory body may apply for a variation of the order if it is satisfied a different or additional ground exists in relation to the person, the person continues to pose a serious risk to persons and an interim prohibition order continues to be necessary to protect public health and safety. After hearing an application, the tribunal may decide whether to vary the order. It can also decide that an interim prohibition order is not necessary, in which case the order is revoked.

New section 159N requires the National Agency to publish certain information on its website about a person subject to an interim prohibition order unless an exception applies. It must publish the person's name, the day the order starts, and the actions prohibited or the restrictions imposed by the order. This can be done in the public National Register or Specialists Register if the person is included in either register, which might apply for previously registered practitioners, or practitioners whose registration is suspended. An exception to the requirement to publish information is if the person subject to the order asks the regulatory body not to publish it, and the body reasonably believes publication would present a serious risk to the health and safety of the person or someone else. A regulatory body may also decide not to publish information if it issued the order prior to a show cause notice being undertaken and it reasonably believes there is no overriding public interest in the

publication of the information prior to confirming the order after a show cause process. The information must be removed the website if the relevant order is revoked or set aside either by the regulatory body or a responsible tribunal.

New section 159O makes it an offence to contravene an interim prohibition order. The maximum penalty for such an offence is $60,000, 3 years imprisonment, or both. As with a prohibition order, an interim prohibition order may prohibit or restrict the provision of all health services or only stated health services. Unless an interim prohibition order prohibits a person from providing all health services, the person may provide health services that are not prohibited or restricted. However, section 159O requires a person who is subject to an interim prohibition order to given written notice of the order to—

- any person to whom the prohibited person intends to provide a health service, or a parent or guardian of such a person under a guardianship or under 16 years;
- the prohibited person's employer, if the prohibited person will be providing a health service as an employee;
- any entity to whom the prohibited person will be providing a health service under a contract for services or other arrangement; and
- any entity to whom the prohibited person provides a health service as a volunteer.

For example, an unregistered health practitioner may be subject to an interim prohibition order that restricts them from providing any health services unless they are supervised at all times by a registered health practitioner. This unregistered health practitioner must give written notice of the interim prohibition order to their employer, if they will be providing a health services as an employee, and any person to whom the practitioner intends to provide a health service.

This provides transparency and ensures the public, employers, and other practitioners are aware that the person may not provide certain services or have other restrictions imposed on the provision of all or specified health services.

A prohibited person must also not advertise a health service to be provided by that person unless the advertisement states that the person is subject to a prohibition order.

Amendment of s 199 (Appellable decisions)

Clause 95 amends section 199 of the National Law to make a decision by a regulatory body to issue or extend an interim prohibition order appellable to a responsible tribunal.

Since not only National Boards, but also the National Agency, may issue and make decisions about interim prohibition orders, a related amendment to section 200 of the National Law provides that the National Agency is a party to the proceedings if it is the regulatory body that made the appellable decision (see clause 102 of the Bill).

Amendment of s 222 (Public national registers)

Clause 96 amends section 222 of the National Law to require a public national register for a health profession to include the names of all previously registered health practitioners (other than former specialist health practitioners) subject to an interim prohibition order.

Amendment of s 223 (Specialists Registers)

Clause 97 amends section 223 of the National Law to require a public national specialists register to include the names of all persons who were previously specialist health practitioners who are subject to an interim prohibition order.

Amendment of s 241A (Proceedings for indictable offences)

Clause 98 amends section 241A(1) of the National Law to provide that the offence of contravening an interim prohibition order is an indictable offence. Under section 242 of the National Law, an offence must be dealt with summarily unless section 241A(1) states it is an indictable offence, in which case it may be dealt with summarily or on indictment. Proceeding on indictment may be appropriate where, for example, because of the nature or seriousness of the alleged conduct, the defendant, if convicted, may not be adequately punished on summary conviction.

The offence of contravening an interim prohibition order is a new offence established by section 159O(1), as inserted by clause 94 of the Bill. It is analogous to the existing offence of contravening a prohibition order under section 196A(1) of the National Law, which is an indictable offence subject to a maximum penalty of 60,000, 3 years imprisonment or both. The amendment will ensure that contraventions of interim prohibition orders can be dealt with in the same way as contraventions of a prohibition order and other serious offences under the National Law.

Part 22 Prohibition orders

Amendment of s 196 (Decision by responsible tribunal about registered health practitioner)

Clause 99 amends section 196 of the National Law to clarify that, if a responsible tribunal decides to cancel a person's registration or the person does not hold registration, the tribunal may decide to prohibit the person, either permanently or for a stated period, from either or both providing any health service or a specified health service, or using any title or a specified title.

This clause also amends section 196 to allow a responsible tribunal to decide to temporarily or permanently impose restrictions on the provision of any health service or a specified health service by a person. This amendment is intended to provide increased flexibility for tribunals by permitting restrictions where an outright prohibition on performing a health service may not be necessary. For example, a restriction could be imposed requiring a practitioner performing specified health services to be under the direct supervision of another registered practitioner.

Part 23 Public statements

Insertion of new pt 8, div 7B

Clause 100 inserts new division 7B into part 8 of the National Law.

New section 159P sets out the definition of *relevant provision* for the new division. A relevant provision is any of the following sections of the National Law: 113, 115–119, 121–123, 133, 136.

New section 159Q will allow a regulatory body to make a public statement about a person in certain circumstances. Public statements can be made about persons who are the subject of an assessment, investigation or disciplinary proceeding, or who the regulatory body reasonably believes have contravened or are contravening a relevant provision. To make a public statement, the regulatory body must reasonably believe that the person's conduct, performance or health poses a serious risk to others and that a public statement is necessary to protect public health or safety.

This amendment will allow regulators to warn the public about the risks posed by the person. For example, if an investigation reveals that a practitioner routinely failed to follow sterilisation procedures and potentially exposed patients to an infectious disease, the regulator would be able to notify the community of the potential health risk while also undertaking disciplinary proceedings against the person.

A public statement can be made in any way the regulatory body considers appropriate, including a notice on the National Agency's website or in print or broadcast news. The statement may identify and give warnings or information about the person and or the health services provided by the person.

The regulatory body does not incur liability for the making of, or for anything done for the purpose of making, a public statement in good faith.

New section 159R requires a regulatory body to undertake a show cause process prior to making a public statement. The regulatory body must give the person written notice that it proposes to make a public statement, the way in which it proposes to make the statement, and the proposed content of the statement. The notice must also state a reasonable time for the person to make a written or verbal submission in response to the notice.

After considering any submissions received, the regulatory body must decide whether to make the public statement as proposed, not make the public statement, or make the public statement in a different way or with different content. The body must provide written notice of this decision to the person, including the reasons for the decision and, if the decision is to make a public statement, how and when an application for appeal can be made. This notice must be given as soon as practicable after the decision is made, and at least one business day before any public statement is to be made.

New section 159S will allow a regulatory body to revise a public statement if it reasonably believes revision is necessary in the circumstances. If a proposed revision changes the public statement in a material way, a new show cause process must be undertaken. A revised statement can be made in a way that the regulatory body considers appropriate and it may identify and give warnings or information about the person and or the health services provided by the person.

New section 159T requires a regulatory body to revoke a public statement if the body is satisfied the grounds on which the statement was made no longer exist in relation to the person, or did not exist at the time the statement was made. As soon as practicable after deciding to revoke a public statement, the regulatory body must give the person written notice of the decision, including the date on which the statement will be revoked. The regulatory body must make a public statement revoking the original public statement in the same way, or a similar way, to the way in which the original public statement was made.

Amendment of s 199 (Appellable decisions)

Clause 101 amends section 199 of the National Law to make a decision by a regulatory body to make or revise a public statement subject to appeal to a relevant tribunal. Since not only the National Boards, but also the National Agency, may issue and revise a public statement, a related amendment at clause 102 provides that the National Agency is a party to the proceedings if it is the regulatory body that made the appellable decision.

Amendment of s 200 (Parties to the proceedings)

Clause 102 amends section 200 of the National Law, which specifies the parties to an appeal of a decision under section 199. In general, the parties to an appeal are the person who is appealing the decision and the National Board that either made the decision or established the panel that made the decision. Because chapter 3, parts 21 and 23 of the Bill empower not only the National Boards, but also the National Agency, to make decisions about interim prohibition orders and public statements, the amendment to section 200 clarifies that the National Agency is a party to an appeal if it is the regulatory body that made the appellable decision.

Part 24 Referral to other entities

Insertion of new s 150A

Clause 103 inserts new section 150A to the National Law to allow National Boards to refer matters to another entity after a preliminary assessment of a notification.

Notifications about registered health practitioners can be made by anyone on a number of grounds, including concerns about a health practitioner's professional conduct, knowledge, skill or suitability to hold registration. The National Agency and National Boards receive and respond to notifications. The National Agency must refer notifications to a National Board established for a relevant practitioner's or student's health profession or, in co-regulatory jurisdictions, to the co-regulatory authority.

Upon receipt of a referred notification, National Boards must conduct a preliminary assessment to determine—

- whether the notification relates to a health practitioner or student registered in the health profession for which the Board was established;
- whether a ground for the notification exists; and
- whether the notification could also be made to a health complaints entity.

During the preliminary assessment of a notification, National Boards can refer a notification to another Board if the notification relates to a person registered in the health profession for which the other Board was established. National Boards can also refer a notification to a jurisdiction's health complaints entity if the notification would provide a ground for such a referral. However, National Boards are currently unable to refer a notification to another entity or for another purpose at the preliminary assessment stage.

This limited discretion to refer notifications during preliminary assessment means that matters may unnecessarily proceed down the National Board's notification pathway, even when it is clear from the Board's preliminary assessment that another entity is better placed

to manage issues within the notification. This prolongs the process for the notifier and practitioner and diverts resources from other aspects of the National Scheme. In contrast, after an investigation a National Board may refer a matter to another entity for further investigation or action.

The Bill will allow National Boards to refer a notification, or part of a notification, to another entity following preliminary assessment if it decides the subject matter may be dealt with by that entity. This will reduce the number of notifications that proceed to further assessment or investigation and speed up the notification process. It will also allow referrals of notifications that would otherwise result in no further regulatory action to entities better placed to resolve the matters raised by the notification. Approximately 65 per cent of notifications are determined not to warrant regulatory action by a National Board. Some of these matters could be more appropriately resolved at a local level through non-regulatory means, such as a health service deciding to refund fees paid.

The Bill does not limit the entities to which a National Board may refer a notification. Entities may include the police, courts, jurisdictions health complaints entities, health services or employers, as appropriate.

If a National Board decides to refer a notification or part of a notification to another entity this will not prevent the Board from continuing to deal with that notification or parts of the notification if it decides it should do so.

The Bill also gives National Boards the power to ask the other entity how the subject matter of the notification was resolved and gives the other entity the power to provide the requested information. This will allow a National Board to monitor the conclusion of a notification and assist their decision-making in making future referrals.

Amendment of s 151 (When National Board may decide to take no further action)

Clause 104 amends section 151 of the National Law to provide that a National Board may decide to take no further action in relation to a referred matter, or part of a matter, if the Board has referred the matter, or part of the matter, to another entity under new section 150A.

Part 25 Show cause processes

Amendment of s 179 (Show cause process)

Clause 105 amends section 179 of the National Law to allow a National Board to take appropriate action against a registered health practitioner under the health, conduct and performance provisions in part 8 of the National Law, even if the Board initially proposed to take a different regulatory action under division 10 of part 8.

In most circumstances, National Boards must undertake a show cause process before taking regulatory action against a practitioner or student. The show cause process gives the practitioner or student an opportunity to explain why a proposed action should not be taken.

Information may come to light in the show cause process that warrants another form of regulatory action than that which was originally proposed. Currently, once a National Board proposes to take 'relevant action' and initiates a show cause process under division 10, it must either take the proposed action, take no further action, or take a different 'relevant

action' under the same division. This could preclude the National Board from taking action under a different division, such as investigating a matter under division 8 or initiating a health or performance assessment under division 9.

The Bill will allow a National Board to take the most appropriate regulatory action based on all relevant information available to them at any time.

Separately, this clause removes section 179(3), which provides an exception to the requirement for a National Board to undertake a show cause process. With the removal of section 179(3), National Boards will no longer be exempt from the show cause process requirements when they have already investigated the relevant matter or completed a health or performance assessment of the registered health practitioner or student. In practice, National Boards always afford practitioners opportunity to show cause, so this amendment brings the National Law into line with current practice

Amendment of s 180 (Notice to be given to health practitioner or student and notifier)

Clause 106 amends section 180 of the National Law to remove the ability of National Boards to waive the show cause process when proposing to accept an undertaking, impose certain conditions on a practitioner's or student's registration, or refer a matter to another entity. In practice, National Boards always afford practitioners opportunity to show cause so this proposal will bring the National Law into line with current practice

Part 26 Discretion not to refer matters to responsible tribunal

Amendment of s 178 (National Board may take action)

Clause 107 amends section 178 of the National Law. Section 178 empowers a National Board to take relevant action in relation to a registered health practitioner or student in certain circumstances.

However, the Board may only decide to take relevant action if the matter is not required to be referred to a responsible tribunal under section 193 and the Board decides it is not necessary or appropriate to refer the matter to a panel.

The amendment allows a National Board to also take action against a registered practitioner if the matter is not required to be referred to a responsible tribunal under new section 193A, as inserted by clause 109, and the Board decides it is not necessary or appropriate to refer the matter to a panel.

Amendment of s 193 (Matters to be referred to responsible tribunal)

Clause 108 amends section 193 of the National Law to make it subject to new section 193A, as inserted by clause 109. The amendment provides an exception to the requirement for National Boards to refer certain matters about a registered health practitioner to a responsible tribunal.

Insertion of new s 193A

Clause 109 inserts new section 193A to the National Law to provide limited discretion for National Boards to decide not to refer a matter to a responsible tribunal where the Board decides there is no public interest in such a referral.

Under the current law, National Boards must refer all professional misconduct cases to a responsible tribunal. They do not have any discretion to take another action or to decide not to take any further steps with respect to the matter. Referral to a tribunal is appropriate in most cases, as it acknowledges the seriousness of professional misconduct and allows for the imposition of the most severe penalties under the National Law.

Tribunal proceedings are, however, time consuming and expensive for all parties. In a small number of cases, a National Board may form a reasonable belief that there is no public interest in referring a matter to a tribunal and that there is no risk to the health and safety of the public in not referring the matter. This may occur, for example, where a National Board is investigating a health practitioner for charging excessive fees and the health practitioner agrees to tender their registration and cease practicing. Despite there being no ongoing risks to the public in cases such as this, Boards currently have no discretion not to refer the matter to a tribunal and must pursue expensive, resource intensive and time-consuming proceedings.

To protect the impartial operation of the National Scheme and the health and safety of the public, new section 193A only permits National Boards make a decision not to refer a matter to a tribunal if it concludes that there is no public interest in doing so.

To determine whether there is no public interest in referring a matter to the tribunal, National Boards will need to consider:

- whether failure to refer the matter to a tribunal will put the health and safety of the public at risk;
- the nature and seriousness of the conduct, including whether the practitioner engaged in wilful misconduct or has multiple complaints against them;
- whether the practitioner is registered and, if the practitioner is not registered, the likelihood that the practitioner may seek registration in the future;
- whether failure to refer the matter to a tribunal would deprive the public of a benefit, including the benefit of a public decision on the matter; and
- any other matters the Board considers relevant.

The amendment will ensure that the most serious professional misconduct matters continue to be heard by a tribunal, but resources will not be used pursuing matters where there is no risk to the public and no public interest in having the matter heard by the tribunal.

The National Agency will be required to publish information about decisions not to refer a matter to a responsible tribunal in its annual report. This will provide a level of oversight and accountability with respect to National Board decisions not to refer professional misconduct cases to a tribunal. Section 8 of schedule 3 of the National Law sets out the National Agency's annual reporting obligations. Under section 9 of schedule 3, upon receiving a request from the National Agency, National Boards must provide information to allow the National Agency to compile its annual report.

Part 27 Disclosure of information about registered practitioners to protect the public

Insertion of new s 220A

Clause 110 inserts new section 220A into the National Law.

New section 220A applies in circumstances in which—

- because of a notification or investigation, a National Board reasonably believes a registered practitioner poses a serious risk to persons because of their health, conduct or performance;
- the Board reasonably believes it is necessary to give notice to others to protect public health and safety; and
- the Board has or may request *practice information*, as defined at clause 83, relevant to the practitioner.

In these cases, new section 220A will allow a National Board to notify employers or certain other associates of the practitioner of the risks stemming from the registered practitioner's health, conduct or performance prior to taking disciplinary action.

This amendment is intended to allow a National Board to share vital information in the small number of cases where it has formed a reasonable belief that a practitioner poses a serious risk to the public but has yet to take action, including where the regulator is waiting for further information to finalise a complex matter involving multiple health, performance or conduct concerns. For example, allowing early notification to employers of the risks posed by a registered health practitioner who was later sentenced to imprisonment for infecting more than 50 patients with Hepatitis C in the course of his work as an anaesthetist may have helped lead to the earlier identification and treatment of victims.[8] Notifying employers or other relevant persons or entities that a practitioner is under investigation in relation to a relevant serious matter will allow them to take immediate steps to protect the public, such as contacting persons who may be at risk; implementing restrictions or supervision requirements while the matter is investigated; and improving organisational policies, safety protocols and training requirements.

The new powers are subject to limitations to ensure that information is only shared when necessary to protect the public and that any impacts on a practitioner's privacy and reputation are no broader than necessary to respond to the specific risks identified. Disclosures under the amended provisions would generally only be made to persons who are affected by, or in a position to mitigate, the risks posed by the practitioner to whom the disclosure relates. The information provided should only include information about the practitioner and about the risks believed to be posed by the practitioner. Also, this section does not allow the Board to disclose personal health information about a patient. Further, a Board may decide not to share information under new section 220A if it decides it is not in the public interest to do so, for example where sharing the information may impact an investigation or place a notifier at risk, or where the public interest is outweighed by the practitioner's right to privacy. Finally, a Board is not required to share information under this section if it has already shared the information with the entity under another provision of the National Law.

[8] See *R v Peters* [2013] VSC 93.

Part 28 Disclosure of information about unregistered persons to protect the public

Insertion of new s 220B

Clause 111 inserts new section 220B to the National Law. This new section allows the National Agency or a National Board to notify employers and certain other persons about serious risks posed by unregistered persons who are being investigated or prosecuted for a breach of part 7 of the National Law, for example, for holding themselves out as a registered practitioner.

An unregistered person includes a person whose registration is suspended under the National Law. The persons and entities who may be notified about the unregistered person are:

- employers of an unregistered person;
- registered health practitioners who share premises and the cost of premises with the unregistered person; and
- entities who have a practice arrangement (as defined at clause 83) with the unregistered person.

The power to disclose information to these persons and entities is discretionary and can only be exercised if the regulator reasonably believes that the person poses a serious risk and that it is necessary to give the notice to protect public health or safety.

The information given to the employer or other associates can include information about the unregistered person and about the risks believed to be posed by the person. However, this section does not allow the National Agency or a National Board to disclose personal health information about a patient.

Notifying employers and other associates that a person is under investigation or prosecution for an offence will allow them to take any action they consider necessary to protect the public, such as restricting their scope of practice.

Part 29 Use of an alternative name

Amendment of s 124 (Issue of certificate of registration)

Clause 112 amends section 124 of the National Law to require a certificate of registration to include any alternative name for the practitioner that has been notified to the National Board under the amendments made by clause 114. However, the certificate does not need to include any alternative name that is a prohibited name that the National Board has decided to refuse to include on the certificate under new section 131A(2)(b), inserted by clause 114.

Amendment of s 131 (Change in principal place of practice, address or name)

Clause 113 amends section 131(1) of the National Law to require a registered health practitioner to give the relevant National Board written notice of a change in any alternative name for the practitioner. Such written notice must occur within 30 days of the change occurring and include any evidence providing proof of the change that is required by the Board.

Under section 131(2) of the National Law, failure to provide written notice of a change in alternative name does not constitute an offence but may constitute behaviour for which health, conduct or performance action may be taken.

Insertion of new ss 131A and 131B

Clause 114 inserts new sections 131A and 131B into the National Law.

New section 131A will allow a registered health practitioner or applicant for registration to nominate an alternative name by giving written notice to the relevant National Board. The National Board may decide to refuse to record the name in a public register and on the practitioner's certificate of registration if it is obscene or offensive; could not practicably be established by repute or usage because, for example, it is too long, uses symbols without phonetic significance, or includes a statement or phrase; or if it includes or resembles an official rank or title or a protected or specialist title in the National Law. A Board may also refuse to register the name if it is contrary to the public interest for another reason. Only one alternative name will be permitted.

This amendment is intended to provide flexibility for practitioners who practise under an alternative name for legitimate reasons, such as adopting an anglicised name.

New section 131B prohibits a registered health practitioner from using a name in connection with their practice, including in advertising the provision of a health service, other than their legal name, an alternative name that has been notified to the relevant National Board under new section 131A, or a business name. Together with the amendments at clause 115, this will support transparency for the public. A violation of this section will not be considered an offence, but may constitute behaviour for which health, conduct or performance action may be taken.

Amendment of s 225 (Information to be recorded in National Register)

Clause 115 amends section 225 of the National Law to require a National Register or Specialists Register to include any alternative name for a practitioner that has been notified to the National Board under new section 131A, as inserted by clause 114. However, neither register needs to include an alternative name that is a prohibited name that the National Board has decided to refuse to include on the register under new section 131A(2)(a), inserted by clause 114. This amendment will support transparency for the public by allowing them to search for practitioners under any alternative name they may practise under.

Part 30 Exclusion of information from registers

Amendment of s 226 (National Board may decide not to include or to remove certain information in register)

Clause 116 amends section 226 to broaden the range of reasons a National Board may decide to not include, or to remove, information in a National Register or Specialists Register.

As required by sections 222 and 223 of the National Law, National Boards in conjunction with the National Agency maintain a register that allows the public to search for registered health practitioners, verify a practitioner's registration status, see details about any approved specialties for a practitioner, and see other details about registered practitioners. Section 225 of the National Law sets out the information that must be included in the public register,

including the practitioner's name, the address of their principal place of practice, and details of any conditions or suspensions.

Under existing section 226(2), a National Board can exclude information relating to a registered health practitioner from the public register at the request of a practitioner if the Board reasonably believes that the inclusion of the information would present a serious risk to the health or safety of the practitioner.

The amendment to section 226 will allow a National Board to exclude information at the request of a practitioner if the Board reasonably believes its inclusion in the public register would present a serious risk to the health or safety of a member of the practitioner's family or an associate of the practitioner. This includes risks such as those stemming from family, domestic or other violence. The information required to support a Board's reasonable belief will be decided administratively. A National Board's reasonable belief may be based on documents such as a police report, court order or statutory declaration, or on the basis that a practitioner will shortly provide such documentation.

New section 226(4) defines *associate* and *family*. The definitions are intentionally broad and include friends, neighbours and colleagues of the practitioner; persons related by blood, marriage, adoption; persons in a de facto relationship with the practitioner; and persons connected to the practitioner through Aboriginal and Torres Strait Islander kinship ties.

New section 226(2A) provides discretion to a National Board to record information that it previously excluded under subsection (2) if the Board reasonably believes the circumstances on which the previous exclusion was based have changed. This will allow a Board to include information in the public register if it no longer believes there is a serious risk to the health or safety of the practitioner, members of the practitioner's family, or an associate of the practitioner. National Boards will periodically review their decisions to exclude or remove information. This process will be managed administratively.

The intent of these amendments is to ensure that practitioners will not face unnecessary barriers to having information removed in cases where another person's safety may be at risk.

Part 31 Minor amendments

Amendment of s 5 (Definitions)

Clause 117 amends a notation under the definition of *COAG Agreement* in section 5 of the National Law. The amendment provides that the intergovernmental agreement for a national registration and accreditation scheme for health professions can be found on the National Agency's website, rather than the COAG website. This change reflects recent changes to intergovernmental governance arrangements, which has resulted in the cessation of COAG. As it is possible the COAG website may be decommissioned, an alternative website has been identified on which people can access the agreement.

The clause also inserts the term *suspension period* into section 5 of the National Law. The definition refers to the meaning of the term being found in section 112A of the National Law, inserted by clause 80.

Amendment of s 35 (Functions of National Boards)

Clause 118 corrects a typographical error in section 35(1)(j) of the National Law, replacing 'undertaking' with 'undertakings.'

Amendment of s 109 (Annual statement)

Clause 119 replaces section 109(1)(d) of the National Law to reflect amendments to the *Medicare Australia Act 1973* (Cth), which has been re-titled the *Human Services (Medicare) Act 1973* (Cth).

The amendments will require applicants for renewal of registration to disclose, if applicable, as part of their annual statement, that during the applicant's previous period of registration, and because of the applicant's conduct, professional performance, or health:

- the applicant was disqualified under an agreement under section 92 of the *Health Insurance Act 1973* (Cth); or
- the applicant was subject to a final determination under section 106TA of the Health Insurance Act that contained a direction under section 106U(1)(g) or (h) of that Act that the practitioner be disqualified.

Applicants for the renewal of non-practising registration will not be required to provide this information per section 109(2) of the National Law.

The references to disqualification under the Health Insurance Act replace references to having billing privileges withdrawn or restricted under the Medicare Australia Act. These changes are made with the intent of replicating the existing reporting requirements as closely as possible under current Commonwealth legislation. The words 'conduct, professional performance or health' are a term of art under the National Law and refer to circumstances in which action may be taken under part 8.

These amendments complement the amendments to section 130 made by clause 81.

This clause also inserts a new section 109(1A) to the National Law. This inserted subsection clarifies that an applicant for renewal need not include information about a disqualification under the Health Insurance Act if the applicant is prohibited to do so by the Health Insurance Act.

Amendment of s 127A (When matters under this subdivision may be decided by review body of a co-regulatory jurisdiction)

Clause 120 corrects a typographical error in section 127(3) of the National Law, replacing 'is to decide' with 'agrees to decide.' The amendment clarifies that a review body of a co-regulatory jurisdiction can agree, or not, to decide a matter related to the change or removal of a condition or change or revocation of an undertaking instead of the National Board.

In some cases, a National Board may be the most appropriate body to review a condition or an undertaking rather than a review body in a co-regulatory jurisdiction. This might be the case, for example, when a National Board has accepted an undertaking at registration and the practitioner has not otherwise had a notification made against them and the undertaking is not connected to any ongoing disciplinary action.

This amendment is not a policy change; it clarifies the existing relationship between National Boards and review bodies to ensure reviews of undertakings are conducted in an efficient manner by the most appropriate entity.

Amendment of s 155 (Definition)

Clause 121 amends section 155 of the National Law to correct a punctuation error.

Amendment of s 156 (Power to take immediate action)

Clause 122 amends section 156(1)(a)(i) of the National Law to replace 'conduct, performance or health' with 'health, conduct or performance.' This change is made to improve the section's consistency with other provisions throughout the National Law.

Amendment of s 161 (Registered health practitioner or student to be given notice of investigation)

Clause 123 corrects a typographical error in section 161(1) of the National Law by removing the extraneous word 'within.'

Amendment of s 174 (Inspection of documents)

Clause 124 amends section 174(2) of the National Law to reflect contemporary means of inspecting documents.

The existing section enables a health or performance assessor to determine a reasonable time and place for a person to inspect, copy or take an extract from certain documents kept by the assessor. As inspection and copying of documents is often done electronically, rather than in person, the amendment replaces reference to a reasonable 'place' with a reference to 'in the reasonable way.' Similar amendments are also made to other sections in the National Law, including by clauses 127 and 128.

Amendment of s 219 (Disclosure of information to other Commonwealth, State and Territory entities)

Clause 125 amends section 219(1)(a) of the National Law to replace a reference to the chief executive officer under the *Medicare Australia Act 1973* (Cth) with a reference to the Chief Executive Medicare under the *Human Services (Medicare) Act 1973* (Cth). This is consequential to amendments to the Medicare Australia Act, including the renaming of the Act.

Omission of pt 12, div 16 (Savings and transitional regulations)

Clause 126 omits part 12, division 16 of the National Law. The omitted division comprises section 305, which expired on 30 June 2015.

Amendment of sch 5 (Investigators)

Clause 127 amends schedule 5, clause 3(2) of the National Law to reflect contemporary means of inspecting documents.

The existing section enables an investigator to determine a reasonable time and place for a person to inspect, copy or take an extract from certain documents kept by the investigator. As

inspection and copying of documents is often done electronically, rather than in person, the amendment replaces reference to a reasonable 'place' with a reference to 'in the reasonable way' decided by the investigator. Similar amendments are also made to other sections of the National Law, including by clauses 124 and 128.

Amendment of sch 6 (Inspectors)

Clause 128 amends schedule 6, clause 3(2) of the National Law to reflect contemporary means of inspecting documents.

The existing section enables an inspector to determine a reasonable time and place for a person to inspect, copy or take an extract from certain documents kept by the inspector. As inspection and copying of documents is often done electronically, rather than in person, the amendment replaces reference to a reasonable 'place' with a reference to 'in the reasonable way' decided by the investigator. Similar amendments are also made to other sections of the National Law, including by clauses 124 and 127.

Amendment of sch 7 (Miscellaneous provisions relating to interpretation)

Clause 129 corrects a typographical error in Schedule 7, clause 38 of the National Law by inserting a missing word.

Chapter 4 Amendment of Health Practitioner Regulation National Law Act 2009

Part 1 Preliminary

Act amended

Clause 130 states that this chapter amends the *Health Practitioner Regulation National Law Act 2009* (the Queensland National Law Act). It makes amendments modifying provisions of the National Law for application in Queensland's co-regulatory system.

Part 2 Paramount principle

Omission of ss 13 and 14

Clause 131 omits sections 13 and 14 from the Queensland National Law Act. As a result, the main guiding principle introduced in the National Law at clause 34 will also apply in Queensland.

Part 3 Disestablishment of Australian Health Workforce Advisory Council

Omission of s 17 (Amendment of s 19 (Function of Advisory Council))

Clause 132 omits section 17 from the Queensland National Law Act. This amendment is consequential to the removal of provisions relating to the Australian Health Workforce Advisory Council from the National Law by the amendments at chapter 3, part 4 of the Bill.

Part 4 Undertakings

Insertion of new ss 20A and 20B

Clause 133 inserts new sections 20A and 20B to the Queensland National Law Act to modify sections 112 and 125 of the National Law, as applied in Queensland.

Inserted section 20A modifies subsection 112(2) of the National Law to provide that the National Board may refuse to renew an applicant's registration or any endorsement on registration if the applicant contravened an undertaking given to the Health Ombudsman during the previous period of registration. It also modifies subsection 112(3) of the National Law to provide that a renewed registration or endorsement is subject to any undertaking given by the applicant to the Health Ombudsman that was in place immediately before the renewal.

These amendments reflect the amendments at clause 7, which allow the Health Ombudsman to accept an undertaking given by a practitioner as immediate registration action. They also reflect the amendments at clause 66, which allow the National Board to consider contraventions of an undertaking given to the National Board on decisions about applications for renewal of registration, and to subject renewed registrations or endorsements to any undertakings given to the National Board that were in place immediately before the renewal. With this amendment, undertakings from both national and Queensland regulators are treated similarly with regard to renewal applications.

Inserted section 20B clarifies that a registered health practitioner may only apply to a National Board to change or remove an undertaking given by the practitioner to the Board. To change or remove an undertaking given by the practitioner to the Health Ombudsman, the practitioner must apply to the Health Ombudsman as provided for in new subdivision 2 of part 7, division 1 of the Health Ombudsman Act, inserted by clause 16.

Part 5 Withdrawal of registration

Amendment of s 47 (Replacement of s 190 (Referral to responsible tribunal))

Clause 134 amends section 47 of the Queensland National Law Act, which replaces section 190 of the National Law in Queensland.

The amendments are consequential to amendments to the National Law at clause 70, which allow a National Board to withdraw a practitioner's registration if the Board reasonably believes it was improperly obtained because of the provision of false or misleading information or documents.

Section 190 of the National Law sets out the circumstances in which a health panel established by a National Board must stop hearing a matter and require the National Board to refer the matter to a responsible tribunal. The Queensland National Law Act replaces this section to instead set out when a panel must notify the National Board for further notification to the Health Ombudsman. The amendments add that the panel must notify the National Board of a reasonable belief that there is a ground for withdrawing the practitioner's registration. The amendments do not require the National Board to refer the matter to a tribunal in these circumstances.

Amendment of s 50 (Replacement of pt 8, div 12, hdg and ss 193-195)

Clause 135 amends section 50 of the Queensland National Law Act, which replaces sections 193 through 195 of the National Law in Queensland.

The amendments are to replacement section 193, which sets out the circumstances in which the National Board must notify the Health Ombudsman about a registered health practitioner. The amendment at subclause (1) adds that the National Board must notify the Health Ombudsman if it forms a reasonable belief that there is a ground for withdrawing a registered health practitioner's registration under section 85A of the National Law.

The amendment at subclause (2) is a simplification of the subsection, not intended to affect the substance of the provision.

The amendment at subclause (3) provides that the National Board may withdraw the practitioner's registration under section 85A of the National Law, accept a surrender of the practitioner's registration, or take immediate action in relation to the practitioner before making a notification to the Health Ombudsman under the amendments made at subclause (1).

These amendments ensure the Health Ombudsman is informed about circumstances in which a health practitioner's registration is believed to have been improperly obtained. However, it does not remove the power of a National Board to withdraw the practitioner's registration in those circumstances.

Part 6 Disciplinary action in relation to health practitioners while unregistered

Amendment of s 15 (Amendment of s 5 (Definitions))

Clause 136 amends section 15 of the Queensland National Law Act, which modifies the definitions of the National Law.

The amendments update cross-referencing in the definitions for 'complainant' and 'complaint' due to the amendments to section numbering at clause 138. The meanings of these terms are now found in section 139C, not 139A.

Replacement of s 21 and 22

Clause 137 replaces sections 21 and 22 of the Queensland National Law Act, which currently set out modifications to sections 138 and 139 of the National Law. It also inserts section 22A to the Queensland National Law Act.

New inserted section 21 modifies section 138 of the National Law, which is amended by clause 90 of this Bill. Under the amendments at clause 90, section 138 provides that a notification can be made about, and proceedings under part 8 of the National Law may be taken against, a registered health practitioner for behaviour that occurs while the practitioner is registered, before the practitioner was registered, or during any other period in which the practitioner was not registered, including due to a suspension, withdrawal or cancellation of the practitioner's registration. However, behaviour that occurred while the practitioner was previously registered or while the practitioner was unregistered may not constitute unsatisfactory professional performance or unprofessional conduct, except as provided in

new section 139. The amendment to the National Law at clause 90 is intended to remove doubt that proceedings may be taken against a registered health practitioner for professional misconduct with regard to behaviour that occurred before they were registered or during a gap or suspension in registration, which has been the longstanding interpretation and practise of regulators and tribunals.

The amendments made in this clause modify section 138 to provide that a matter referred by the Health Ombudsman to the National Agency may be similarly dealt with under part 8 if it relates to behaviour that occurred while the person was registered, before the person was registered, or during any other period that the person was not registered. As with the National Law, a referred matter related to behaviour that occurred before a practitioner was registered or during a period in which a practitioner was not registered cannot constitute unsatisfactory professional performance or, except as provided by section 139 of the National Law, unprofessional conduct.

New section 22 amends section 139A of the National Law. Section 139A is inserted in the National Law by clause 90 and provides that a notification can be made and proceedings can be taken against a person who was, but is no longer, registered under the National Law as if the person were still registered in relation to behaviour that occurred while the person was registered. The modifications in inserted section 22 are intended to apply section 139A to matters referred by the Health Ombudsman to the national regulators. This means that a referred matter about a person who was, but is no longer, registered under the National Law, may be dealt with as if the person were still registered, if it involved behaviour that occurred when the person was registered.

Inserted section 22A amends section 139B of the National Law, which is inserted by clause 90 of this Bill. Inserted section 139B of the National Law sets out when a notification may be made, and proceedings may be taken, against a person who was registered under a corresponding prior Act but has not been registered under the National Law. The modifications at inserted section 22A are intended to apply section 139B to matters referred by the Health Ombudsman to the national regulators.

Amendment of s 23 (Insertion of new s 139A)

Clause 138 amends section 23 of the Queensland National Law Act, which inserts the meanings of *complainant* and *complaint* into the Act. The amendments re-number the section, consequential to the insertion of new sections 139A and 139B in the National Law by clause 90.

Amendment of s 24 (Insertion of new s 139B)

Clause 139 amends section 24 of the Queensland National Law Act, which sets out the application of part 3, division 2 of the National Law to Queensland. The amendments re-number the section, consequential to the insertion of new sections 139A and 139B in the National Law by clause 90.

Part 7 Requirement to provide records for preliminary assessment

Clause 140 amends section 34 of the Queensland National Law Act, which modifies the National Law to set out provisions relating to matters referred to the National Agency by the

Health Ombudsman. The amendments insert new sections 150A and 150B to the National Law as applying in Queensland.

Inserted section 150A allows the National Board to require a person to give specified information or documents to the Board for the purpose of conducting a preliminary assessment of a matter. The intent of this provision is to apply the amendments to the National Law set out at chapter 3, part 20 of the Bill to matters referred by the Health Ombudsman.

A person must comply with a notice to give specified information or documents unless the person has a reasonable excuse. It is a reasonable excuse not to give information or documents if doing so might tend to incriminate the individual.

An offence against this provision has a maximum penalty of $5,000 for an individual or $10,000 for a body corporate, which is the same as the maximum penalty for contravening section 149A of the National Law, inserted by clause 92 of the Bill.

Inserted section 150B provides that if a document is given to a National Board, the Board may inspect the document, make a copy of, or take an extract from the document, and keep the document while it is necessary for the preliminary assessment of a referred matter. If the National Board keeps the document, it must permit a person otherwise entitled to the document to inspect, make a copy, or take an extract from the document.

Part 8 Interim prohibition orders

Insertion of new ss 35B and 35C

Clause 141 inserts new sections 35B and 35C into the Queensland National Law Act.

New section 35B inserts new section 159EA as a Queensland modification to the National Law. The section requires a regulatory body to notify the Health Ombudsman within seven days of issuing an interim prohibition order to an unregistered person for conduct occurring in Queensland or where the person's principal place of residence is in Queensland. The notice must include—

- the name of the person issued the order;
- details of the health service or health services to which the order relates, if any;
- the day on which the order starts; and
- details of the grounds on which the order was issued.

The amendments are intended to improve coordination between the national regulatory bodies and the Health Ombudsman, and to ensure the Health Ombudsman is aware of potential risks in Queensland.

New section 35C inserts a new subsection 159F(3) as a Queensland modification of the National Law. Section 159F of the National Law sets out the duration of an interim prohibition order issued by a National Agency or National Board. The amendment extends the duration of an interim prohibition order in circumstances in which the underlying matter is referred by the regulatory body to the Health Ombudsman. It provides that, despite section 159F(2), an interim prohibition order cannot end less than 14 days after the day the matter was referred to the Health Ombudsman. The fourteen-day period will allow time for the

Office of the Health Ombudsman to consider the matter and take appropriate action, including, for example, issuing an interim prohibition order under the Health Ombudsman Act, provided the grounds for issuing such an order are met.

Amendment of s 50 (Replacement of pt 8, div 12, hdg and ss 193-195)

Clause 142 amends section 50 of the Queensland National Law Act, which replaces part 8, division 12 of the National Law. The amendment in this clause applies to inserted section 193A. It provides that the National Agency or a National Board that has issued an interim prohibition order to a person in Queensland, or to a person for conduct occurring in Queensland, may refer the matter in relation to which the order was issued to the Health Ombudsman. Such a referral can only be made with the Health Ombudsman's agreement. A referral can be made at any time while the order is in effect, including prior to extending or revoking the order.

This amendment will allow a regulatory body to issue an interim prohibition order while investigating a matter and then, during or after the investigation, to refer the matter to the Health Ombudsman to deal with under the Health Ombudsman Act. Such referral might be appropriate, for example, if the regulatory body decides it will not pursue further proceedings against a person for contraventions of the National Law, but still considers the person poses a risk to others that could be appropriately managed by the Health Ombudsman.

Amendment of s 56A (Replacement of s 241A)

Clause 143 amends section 56A of the Queensland National Law Act, which inserts section 241A to the National Law as applying in Queensland. The amendment adds the offence of contravening an interim prohibition order issued under the National Law to the list of offences that are designated as indictable offences that are misdemeanours. This change reflects the amendments to the National Law at clause 98.

Part 9 Referral to other entities

Clause 144 amends section 34 of the Queensland National Law Act, which modifies the National Law to set out provisions relating to matters referred to the National Agency by the Health Ombudsman. The amendments insert new section 150C to the National Law as applying in Queensland, and also amends inserted section 151.

New section 150C provides that after a National Board conducts a preliminary assessment of a matter referred to it from the Health Ombudsman (via the National Agency), it may further refer the matter, or part of the matter, to another entity. This may be done if the National Board decides the subject matter may be more appropriately dealt with by another entity. When referring the matter to another entity, the Board must give the other entity information and documents relevant to the referred matter, including details of the complaint if the matter pertains to a health service complaint referred by the Health Ombudsman. Under section 150C(2), a decision to refer a matter to another entity does not prevent the Board from continuing to deal with the referred matter. This modification is intended to adopt the amendments to the National Law at clause 103 for matters referred by the Health Ombudsman to the national regulators.

Inserted section 151 is amended to provide that a National Board may decide to take no further action in relation to a matter referred from the Health Ombudsman if the Board has referred the matter to another entity under section 150 or 150C.

Part 10 Discretion not to refer matters to responsible tribunal

Amendment of s 41 (Amendment of s 178 (National Board may take action))

Clause 145 amends section 41 of the Queensland National Law Act, which modifies section 178 of the National Law for application in Queensland.

The amendments adopt the changes to section 178 of the National Law made by clause 107 of the Bill to reflect that National Boards have discretion not to refer a matter to a responsible tribunal if the Board decides there is no public interest in the matter being heard by the tribunal.

Amendment of s 50 (Replacement of pt 8, div 12, hdg and ss 193-195)

Clause 146 amends section 50 of the Queensland National Law Act, which replaces sections 193-195 of the National Law.

Section 193B, as applying in Queensland, sets out when a National Board must refer a matter about a registered health practitioner or student to a responsibly tribunal. The amendments provide that the requirement for a National Board to refer a matter to a tribunal is subject to section 193C.

Section 193C is added to the National Law, as applying in Queensland, by this clause. New section 193C provides that a National Board may decide not to refer certain matters to a tribunal if the Board decides there is no public interest in the matter being heard by the tribunal. In deciding whether there is no public interest in referring a matter to the tribunal, National Boards will need to consider—

- whether failure to refer the matter to a tribunal will put the health and safety of the public at risk;
- the nature and seriousness of the conduct, including whether the practitioner engaged in wilful misconduct or has multiple complaints against them;
- whether the practitioner is still registered and, if not, the likelihood that the practitioner may seek registration in the future;
- whether failure to refer the matter to a tribunal would deprive the public of a benefit, including the benefit of a public decision on the matter; and
- any other matter the Board considers relevant.

This change is intended to incorporate the amendments to the National Law at clause 109 into the Queensland modifications of the National Law.

The amendments will ensure that the most serious professional misconduct matters continue to be heard by a tribunal, but resources will not be used pursuing matters where there is no risk to the public and no public interest in having the matter heard by the tribunal. Under the existing legislation, National Boards must refer all professional misconduct cases to a responsible tribunal. They do not have any discretion to take another action or to decide not to take any further steps with respect to the matter. In most cases, it will be appropriate to refer the matter to a tribunal. Referral to a tribunal acknowledges the seriousness of professional misconduct and allows for the imposition of the most severe penalties under the

National Law. However, tribunal proceedings are time consuming and expensive for all parties.

In certain cases, a National Board may form a reasonable belief that there is no public interest in referring a matter to a tribunal and that there is no risk to the health and safety of the public in not referring the matter. This may occur, for example, where a National Board is investigating a health practitioner for charging excessive fees and the health practitioner agrees to tender their registration and cease practicing. Despite there being no ongoing risks to the public in cases such as these, Boards currently do not have discretion not to refer the matter to a tribunal. The ensuing proceedings are time-consuming and resource-intensive, both for National Boards and responsible tribunals, including QCAT.

The Bill addresses this inefficiency by giving National Boards limited discretion to decide not to refer professional misconduct cases to the responsible tribunal. To protect the integrity of the National Scheme and the health and safety of the public, National Boards will only be able to exercise such discretion if they conclude that there is no public interest in referring the matter to a tribunal.

To ensure the discretion not to refer matters to a responsible tribunal is exercised in a manner that is appropriate, accountable, and transparent, inserted section 193C(3) will require the National Agency to publish information about these decisions in its annual report. The National Board is also required to give written notice of the decision, including the reasons for the decision, to the Health Ombudsman.

Part 11 Other amendment

Insertion of new s 9A

Clause 147 inserts a new section 9A to the Queensland National Law Act. This section provides a power for the Governor in Council to make regulators under the *Health Practitioner Regulation National Law Act 2009*. This power is separate to the power provided in section 245 of the National Law for the Ministerial Council to make regulations for purposes of the National Law.