

# **Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2017**

**Report No. 42, 55<sup>th</sup> Parliament**

**Health, Communities, Disability Services and Domestic  
and Family Violence Prevention Committee**

**August 2017**

## **Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee**

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### **Acknowledgements**

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## Abbreviations

ADAQ	Australian Dental Association (Queensland Branch)
AEAV	Ambulance Employees Australia (Victoria)
AHPRA	Australian Health Practitioner Regulation Agency
AMAQ	Australian Medical Association Queensland
Bill	Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2017
CAAQ	Chiropractors' Association of Australia (Queensland)
COAG Health Council	Council of Australian Governments Health Council, referred to in the current Act as Australian Health Workforce Ministerial Council
committee	Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee
department	Department of Health
FLPs	fundamental legislative principles
HCQ	Health Consumers Queensland
HO Act	<i>Health Ombudsman Act 2013</i>
HPARA	Health Practitioners Australia Reform Association
Independent Review	<i>Final Report on the Independent Review of the National Registration and Accreditation Scheme for health professions, 2014</i>
Legislative Standards Act	<i>Legislative Standards Act 1992</i>
MIGA	Medical Insurance Group Australia
Minister	Minister for Health and Minister for Ambulance Services
notifications	complaints about registered health practitioners
notifiers	complainants
National Board(s)	National Health Practitioner Board(s)
National Law	<i>Health Practitioner Regulation National Law Act 2009</i>
National Scheme	National Registration and Accreditation Scheme for the Health Professions
NSW	New South Wales

OHO	Office of the Health Ombudsman
Paramedicine Board	Paramedicine Board of Australia
POQA	<i>Parliament of Queensland Act 2001</i>
QNMU	Queensland Nurses and Midwives' Union
RANZCP	The Royal Australian and New Zealand College of Psychiatrists
Standing Orders	Standing Rules and Orders of the Legislative Assembly
United Voice	United Voice, Industrial Union of Employees, Queensland

Note: All Acts are Queensland Acts, unless specified otherwise.

## Chair's foreword

On behalf of the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee of the 55th Parliament, I present this report on the committee's examination of the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2017.

The committee's task was to consider the policy to be given effect by the Bill, and whether the Bill has sufficient regard to the fundamental legislative principles in the *Legislative Standards Act 1992*. The fundamental legislative principles include whether legislation has sufficient regard to the rights and liberties of individuals and to the institution of Parliament.

This report summarises the committee's examination of the Bill, including the views expressed in submissions and by witnesses at the committee's public hearing.

The committee has recommended that the Bill be passed.

On behalf of the committee, I would like to thank those individuals and organisations who lodged written submissions and appeared at the committee's public hearing.

Finally, I would like to thank my fellow committee members for their contributions, and the committee secretariat for their support during the examination of the Bill.

I commend the report to the House.



Leanne Linard MP

**Chair**

## Recommendation

### Recommendation 1

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The committee recommends that the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2017 be passed.



## 1 Introduction

### 1.1 Role of the committee

The Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee (the committee) is a portfolio committee of the Legislative Assembly.<sup>1</sup> The committee's areas of portfolio responsibility are:

- health and ambulance services
- communities, women, youth and child safety
- domestic and family violence prevention, and
- disability services and seniors.<sup>2</sup>

The committee is responsible for examining each Bill in its portfolio areas to consider:

- the policy to be given effect by the legislation, and
- the application of fundamental legislative principles (FLPs).<sup>3</sup>

Further information about the work of the committee can be found on its [webpage](#).<sup>4</sup>

### 1.2 Referral and committee process

On 13 June 2017, the Minister for Health and Minister for Ambulance Services, Hon Cameron Dick MP (the Minister), introduced the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2017 (the Bill) into the Legislative Assembly. The Bill was referred to the committee on 13 June 2017, and the committee was required to report to the Legislative Assembly by 11 August 2017.<sup>5</sup>

During its examination of the Bill, the committee:

- invited submissions from stakeholders and the public. A list of the 37 submissions received and accepted by the committee is at **Appendix A**
- held a public briefing on 27 June 2017 and a public hearing on 17 July 2017. A list of the witnesses who appeared at the public briefing and public hearing is at **Appendix B**, and
- requested, and received, written advice from the Department of Health (the department) on the Bill and issues raised in submissions.

### 1.3 Policy objectives of the Bill

The Bill's objectives are to amend the *Health Practitioner Regulation National Law Act 2009* (the National Law), as agreed by the Council of Australian Governments Health Council (COAG Health Council) on 29 May 2017, and in response to the *Final report on the Independent Review of the National*

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<sup>1</sup> The committee was formerly the Health and Ambulance Services Committee, which was established on 27 March 2015 under the *Parliament of Queensland Act 2001* (POQA), s 88 and the Standing Rules and Orders of the Legislative Assembly (Standing Orders), Standing Order 194. On 16 February 2016, the Legislative Assembly amended the Standing Orders, renaming the committee and expanding its areas of responsibility.

<sup>2</sup> POQA, s 88 and Standing Orders, Standing Order 194 and schedule 6.

<sup>3</sup> POQA, s 93(1).

<sup>4</sup> <http://www.parliament.qld.gov.au/work-of-committees/committees/HCDSDFVPC>

<sup>5</sup> In accordance with Standing Order 136, the Legislative Assembly resolved that the committee report to the House on the Bill by 11 August 2017.

*Registration and Accreditation Scheme for health professions* (the Independent Review) which was commissioned in 2014.<sup>6</sup>

The Bill amends the National Law to provide for:

- the national regulation of paramedics, as part of the National Registration and Accreditation Scheme (the National Scheme), including the establishment of a Paramedicine Board of Australia
- the COAG Health Council to make changes to the structure of National Boards by regulation following consultation
- the recognition of nursing and midwifery as two separate professions, rather than a single profession, with the professions continuing to be regulated by the Nursing and Midwifery Board of Australia
- improvements to the complaints (notifications) management, disciplinary and enforcement powers of National Boards to strengthen public protection and ensure fairness for complainants (notifiers) and practitioners, and
- technical amendments to improve the efficiency and effectiveness of the National Law.<sup>7</sup>

The Bill also amends the *Health Ombudsman Act 2013* (HO Act) and other Queensland legislation. These amendments are mostly consequential amendments, due to the changes proposed to the National Law.

However, some of the amendments to the HO Act were requested by the Health Ombudsman, as part of the committee's *Inquiry into the performance of the Queensland Health Ombudsman's functions pursuant to section 179 of the Health Ombudsman Act 2013*.<sup>8</sup>

#### **1.4 Consultation on the Bill**

During the Bill drafting stage, consultation on the proposed amendments to the National Law was undertaken separately to consultation in relation to the HO Act, as noted below.

The explanatory notes state that the consultation undertaken as part of the Independent Review was extensive, including consultation forums in each capital city and the receipt of over 230 written submissions.<sup>9</sup>

Consultation on the Bill's amendments to the National Law involved a range of stakeholders, and views were canvassed using national and local forums and briefings, with over 200 attendees in total. After the forums and briefings, 24 written submissions were received on the draft Bill, with most submitters supportive of the proposed amendments. Some submitters' concerns led to changes in the draft Bill.

The explanatory notes state that a summary document outlining the proposed amendments to the HO Act was 'widely distributed' to key stakeholders in Queensland, including professional associations and bodies, unions, external health sector organisations and medical indemnity insurers. The Health

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<sup>6</sup> The National Law defines 'Ministerial Council' as the Australian Health Workforce Ministerial Council, comprising of Ministers of the governments of participating jurisdictions and the Commonwealth. However this term no longer exists and its work has been included under the ambit of the COAG Health Council. The Bill amends the definition of 'Ministerial Council' to mean the COAG Health Council or a successor to the COAG Health Council at cl 4(3), explanatory notes, p 2.

<sup>7</sup> Explanatory notes, p 1.

<sup>8</sup> Hon Cameron Dick MP, Minister for Health and Minister for Ambulance Services, Queensland Parliament, Record of Proceedings, 13 June 2017, p 1545.

<sup>9</sup> Explanatory notes, p 37.

Ombudsman and Australian Health Practitioner Regulation Agency (AHPRA) were also ‘closely consulted’ during the development of the amendments.<sup>10</sup>

Ten stakeholders made written submissions, with stakeholders broadly supportive of the proposed amendments to the HO Act. Some issues were raised by submitters, and these led to amendments in the draft Bill.<sup>11</sup>

### **1.5 Government response to submissions in respect to the Bill**

The department provided a written response to the 37 submissions received and accepted by the committee in respect to the Bill. According to the department, a number of issues in submissions had not been raised previously and ‘will be referred to the COAG Health Council for consideration’ and may be considered during the second stage of the reform process.<sup>12</sup> These issues include:

- the use of alternative dispute resolution to resolve notifications<sup>13</sup>
- issues concerning notifications made in relation to medico-legal assessments,<sup>14</sup> and
- reserving the practice of acupuncture to certain registered health professionals.<sup>15</sup>

### **1.6 Should the Bill be passed?**

Standing Order 132(1) requires the committee to determine whether or not to recommend the Bill be passed.

After examination of the Bill, including the policy objectives which it would achieve and consideration of the information provided by the department and from submitters, the committee recommends that the Bill be passed.

#### **Recommendation 1**

The committee recommends that the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2017 be passed.

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<sup>10</sup> Explanatory notes, pp 42 – 43.

<sup>11</sup> Explanatory notes, pp 42 – 44.

<sup>12</sup> Department of Health, *Correspondence – response to issues raised in submissions*, 24 July 2017.

<sup>13</sup> Avant Mutual Group, submission 11.

<sup>14</sup> Avant Mutual Group, submission 11.

<sup>15</sup> Federation of Chinese Medicine & Acupuncture Societies of Australia, submission 13.

## 2 Background to the Bill

### 2.1 National scheme

The Council of Australian Governments agreed, in 2008, to establish the National Scheme for health practitioners in Australia.<sup>16</sup> On 1 July 2010, the National Scheme came into effect, with the enactment of the *Health Practitioner Regulation National Law Act 2009* (the National Law) in all states and territories except Western Australia, which joined the National Scheme on 18 October 2010. Each state and territory has its own variant of the National Law.

The National Law regulates 14 health professions:

- Aboriginal and Torres Strait Islander health practice
- chinese medicine
- chiropractic
- dental
- medical
- medical radiation practice
- nursing and midwifery
- occupational therapy
- optometry
- osteopathy
- pharmacy
- physiotherapy
- podiatry
- psychology

The National Law establishes 14 National Boards to regulate the registration and accreditation of the 14 national health professions, and AHPRA provides regulatory services for the National Boards.<sup>17</sup>

In all states and territories, except New South Wales (NSW) and Queensland (post 1 July 2014), the National Boards are also responsible for the management of complaints and notifications against registered health practitioners and students of the registered profession.<sup>18</sup> This involves the investigation, hearing and review of competence, conduct or impairment matters, except in the most serious cases that could result in suspension or cancellation of registration, which are dealt with by tribunals and external panels.

The National Boards may establish state and territory boards to exercise their functions in a jurisdiction, for example the Queensland Board of the Medical Board of Australia and the Queensland Board of the Nursing and Midwifery Board of Australia.<sup>19</sup>

The National Boards and their state and territory boards and committees consist of practitioner members and community members appointed by the COAG Health Council.<sup>20</sup>

### 2.2 Co-regulatory jurisdictions

Queensland and New South Wales complaints handling and disciplinary functions operate under co-regulatory arrangements, as recognised by the National Law.

NSW joined the National Scheme in relation to the centralised accreditation of training and courses and the health practitioner registration provisions, however, it opted to retain its existing health complaints system.<sup>21</sup>

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<sup>16</sup> Council of Australian Governments, *Intergovernmental Agreement for a National Registration and Accreditation Scheme for Health Professions*, 2008.

<sup>17</sup> Department of Health, *Correspondence – written briefing*, 20 June 2017, p 1.

<sup>18</sup> National Law, s 35.

<sup>19</sup> National Law, s 36.

<sup>20</sup> National Law, s 33.

<sup>21</sup> Claudette S. Satchell et. al., 'Approaches to management of complaints and notifications about health practitioners in Australia', *Australian Health Review*, 2016, 40, p 313.

Queensland initially joined the National Scheme in its entirety; however, it established its own health complaints system in July 2014, with the establishment of the Office of the Health Ombudsman (OHO) under the HO Act. Similar to NSW, health practitioners in Queensland continue to be registered under the National Scheme.

Under the Queensland co-regulatory model, the notifications management and disciplinary and enforcements process for registered health practitioners may be dealt with under either the National Law or the HO Act, depending on the nature and circumstances of the case.

Broadly, the Health Ombudsman deals with more serious matters concerning registered health practitioners such as grounds for suspension or cancellation of registration, or behaviours that constitute professional misconduct. The Health Ombudsman may refer other 'less serious matters' to AHPRA and the National Boards.<sup>22</sup>

The Health Ombudsman also considers complaints relating to health practitioners that are not registered.<sup>23</sup>

### **2.3 Independent review of National Scheme**

In 2014, the COAG Health Council commissioned an independent review of the National Scheme (Independent Review).

The final report of the Independent Review was released in August 2015. The final report made 33 recommendations.

The COAG Health Council announced its response to the report on 7 August 2015, and accepted nine recommendations, accepted 11 recommendations in principle, did not accept six recommendations and deferred decisions on seven recommendations pending further advice.<sup>24</sup>

### **2.4 Proposed amendments to the National Law**

On 29 May 2017, the COAG Health Council agreed to the proposed amendments to the National Law, as contained in the Bill, which implement certain recommendations in the Independent Review. The department advised that the amendments were also approved by the Cabinets of each State and Territory.<sup>25</sup>

The implementation of the COAG Health Council's response to the Independent Review is occurring in two stages, with the changes in the Bill representing stage one of the reforms. Consultation for the second tranche of reforms is expected to commence in 2017.<sup>26</sup>

Queensland is the host jurisdiction of the National Law in all Australian states and territories. If the Bill is passed by the Queensland Parliament, the amendments to the National Law will apply automatically in other jurisdictions except for South Australia, which must make regulations to adopt the changes, and Western Australia, would enact its own separate legislation.<sup>27</sup>

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<sup>22</sup> Explanatory notes, p 4.

<sup>23</sup> Un-registered health practitioners include dietitians, homeopaths, naturopaths, nutritionists, massage therapists, social workers and speech pathologists; explanatory notes, pp 4 - 5.

<sup>24</sup> Explanatory notes, p 3.

<sup>25</sup> Department of Health, *Correspondence - response to issues raised in submissions*, 24 July 2017, covering letter.

<sup>26</sup> Explanatory notes, p 3.

<sup>27</sup> Russell Bowles, Queensland Ambulance Commissioner, Department of Health, *Public Briefing Transcript*, 27 June 2017, p 1.

### 3 Examination of the Bill

#### 3.1 National regulation of paramedics

There are currently around 14,000 paramedics in Australia working in a variety of settings, ‘from ambulance services to construction sites and offshore oil rigs’.<sup>28</sup>

The department stated that paramedics perform higher level clinical roles than they have done in the past, such as the delivery of rapid response clinical assessment and treatment and pre-hospital care. The department advised that paramedicine has become ‘a specialised and increasingly complex field’.<sup>29</sup>

On 6 November 2015, the COAG Health Council announced its intention for paramedics to be regulated as part of the National Scheme.<sup>30</sup>

The Bill amends the definition of *health profession* in the National Law to include paramedicine.<sup>31</sup> The Bill also amends the National Law to require people who use the title *paramedic* to be registered.<sup>32</sup> The Minister stated this will remove any confusion by ensuring that only a paramedic registered by the Paramedicine Board can use the title.<sup>33</sup>

Under the proposed amendments, paramedics would be subject to the same regulatory arrangements as other health professions under the National Law, including registration processes, accreditation of training programs, national standards, and procedures for managing the health, performance and conduct of registered paramedics (with complaints handling and disciplinary functions undertaken in Queensland and NSW under their co-regulatory models).<sup>34</sup>

The department stated that the main outcomes expected to be achieved by the regulation of paramedics are:

- public protection – minimum qualifications for registration as a paramedic and nationally agreed registration standards, appropriate powers to deal with paramedics who have an impairment, who are performing poorly or engaged in unprofessional conduct or misconduct, and restricting the use of the title paramedic to those persons who are qualified, registered and fit to practise
- high quality education and training – accreditation of training programs that lead to eligibility for registration
- increased transparency and accountability, and
- ensuring a suitable regulatory framework.<sup>35</sup>

In addition, the department stated that the amendments would promote workforce mobility for paramedics, whereby they can register in one jurisdiction and work anywhere in Australia.<sup>36</sup>

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<sup>28</sup> Russell Bowles, Department of Health, *Public Briefing Transcript*, 27 June 2017, p 2.

<sup>29</sup> Russell Bowles, Department of Health, *Public Briefing Transcript*, 27 June 2017, p 2.

<sup>30</sup> Department of Health, *Correspondence – written briefing*, 20 June 2017, p 2.

<sup>31</sup> Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2017 (Bill), cl 4(7) amends s 5 of the *Health Practitioner Regulation National Law Act 2009* (the National Law).

<sup>32</sup> Bill, cl 15 amends s 113 of the National Law.

<sup>33</sup> Hon Cameron Dick MP, Minister for Health and Minister for Ambulance Services, Queensland Parliament, Record of Proceedings, 13 June 2017, p 1542.

<sup>34</sup> Explanatory notes, p 6.

<sup>35</sup> Explanatory notes, p 4; Department of Health, *Correspondence – written briefing*, 20 June 2017, p 3.

<sup>36</sup> Russell Bowles, Department of Health, *Public Briefing Transcript*, 27 June 2017, p 2.

The department advised that 'It is expected that registration for paramedics will commence in the second half of 2018, with September 2018 currently anticipated as the 'go-live' date'.<sup>37</sup>

### 3.1.1 Establishment of the Paramedicine Board of Australia

The Bill amends the National Law to establish the Paramedicine Board of Australia (Paramedicine Board), which would be responsible for regulating paramedics, with administrative and other support provided by AHPRA.<sup>38</sup>

Under the National Law, the COAG Health Council would appoint members of the Paramedicine Board (including practitioner and community members) and determine the size of the Board.<sup>39</sup> The department stated that it is expected that the Board will have nine members.<sup>40</sup> Under the National Law, the Board must consist of:

- at least one practitioner member from New South Wales, Queensland, Victoria, South Australia and Western Australia
- at least one practitioner from either of the territories or Tasmania
- at least two community members
- at least one member from a regional or rural area, and
- no more than two thirds of members may be practitioner members.<sup>41</sup>

The Bill includes transitional provisions to give the Paramedicine Board powers to prepare the profession for registration prior to *participation day*.<sup>42</sup> For example, the Bill enables the Board to:

- develop and consult on draft registration standards, codes and guidelines
- recognise qualifications for registration, and
- consider national accreditation arrangements and standards for the profession.<sup>43</sup>

In addition, the Board would be expected to develop mandated registration standards to recommend to the COAG Health Council for approval.<sup>44</sup>

### 3.1.2 Registration fees for paramedics

The National Scheme is self-funded from fees paid by registrants. Registration fees are set by the National Board and AHPRA. The fees vary between professions and depend on factors such as the size of the profession, the risks associated with the practice and the level and complexity of complaints and notifications associated with the profession.

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<sup>37</sup> Department of Health, *Correspondence – written briefing*, 20 June 2017, p 3.

<sup>38</sup> Bill, cl 52 inserts new s 306 to 309 into the National Law.

<sup>39</sup> National Law, section 33.

<sup>40</sup> James Liddy, Manager, Legislative Policy Unit, Strategy Policy and Planning Division, Department of Health, *Public Briefing Transcript*, 27 June 2017, p 5.

<sup>41</sup> Department of Health, *Correspondence – written briefing*, 20 June 2017, p 3; National Law, s 33.

<sup>42</sup> Bill, cl 52 inserts new s 308 into the National Law; Department of Health, *Correspondence – written briefing*, 20 June 2017, p 3. The term *participation day* is defined as 'a day prescribed by regulation after which an individual may be registered in paramedicine under the National Law', Bill, cl 52 inserts new s 306 into the National Law.

<sup>43</sup> Explanatory notes, p 8.

<sup>44</sup> Explanatory notes, p 8.

Across the 14 registered professions, registration fees for the 2016-17 financial year ranged from \$110 to \$724 (eg Physiotherapy \$110, Nursing and Midwifery \$150, Pharmacy \$328, Dentists/Dental Specialists \$628 and Medical \$724).<sup>45</sup>

Subject to the Bill being passed and with the Paramedicine Board established, the Board would enter into a *health profession agreement* with AHPRA that would make provision for fees payable by paramedics. The registration fee would be set by agreement between the Board and AHPRA.

In addition to annual registration fees, paramedics would also be required to pay a one-off application fee for first time registrants to cover costs associated with application processing.<sup>46</sup>

### 3.1.3 Qualifications for registration as a paramedic

Under the National Law and the Bill, there would be three main pathways to be ‘qualified’ for general registration as a paramedic:

- Pathway 1 – Approved qualification: an individual holds an approved qualification or otherwise qualifies for registration (eg holds a qualification which is substantially equivalent to an approved qualification)<sup>47</sup>
- Pathway 2 – grand-parenting arrangements: an individual meets one of the criteria outlined under the grand-parenting clause (eg has practised paramedicine during the 10 years before *participation day* for a consecutive period of five years and satisfies the Paramedicine Board he or she is competent to practise paramedicine).<sup>48</sup> The grand-parenting arrangements would apply for three years from the participation day, and
- Pathway 3 – holds a Diploma of Paramedical Science issued by the Ambulance Service of New South Wales.<sup>49</sup>

The department stated that details of the grand-parenting arrangements would be developed by the Paramedicine Board. The Board would also need to decide the qualifications considered adequate for obtaining registration under these arrangements.

The explanatory notes state that ‘All applicants for registration, regardless of their pathway, will be required to meet the registration standards to be developed and set by the Paramedicine Board’.<sup>50</sup>

In relation to standardisation of qualifications across jurisdictions, the department advised that universities across Australia are already working to a standardised base of paramedical education. There are some necessary jurisdictional differences in skill sets, and these will continue after paramedics join the National Scheme.<sup>51</sup>

The Bill includes a number of transitional provisions for registration in paramedicine. These provisions were recommended by AHPRA and are administrative in nature.<sup>52</sup> Minor amendments are also proposed to the *Ambulance Service Act 1991* (Qld) as a consequence of paramedics becoming registered under the National Law.<sup>53</sup>

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<sup>45</sup> Explanatory notes, p 7.

<sup>46</sup> Explanatory notes, pp 6 – 7.

<sup>47</sup> National Law, section 53.

<sup>48</sup> Bill, cl 52 inserts new s 311 into the National Law.

<sup>49</sup> Explanatory notes, p 10; Bill, cl 52 inserts new s 312 to 317 into the National Law.

<sup>50</sup> Explanatory notes, p 8.

<sup>51</sup> Russell Bowles, Department of Health, *Public Briefing Transcript*, 27 June 2017, p 3.

<sup>52</sup> Explanatory notes, p 8; Bill, cl 52 inserts new s 314 to 317 into the National Law.

<sup>53</sup> Bill, cl 83 to 86 amend the *Ambulance Service Act 1991*.



*Submitters' views and department's response*

A number of submitters supported the regulation of paramedics under the National Law.<sup>54</sup>

Ambulance Employees Australia (Victoria) (AEAV) strongly supported the introduction of legislation to regulate the practice of paramedicine in Australia.<sup>55</sup> United Voice, Industrial Union of Employees, Queensland (United Voice) whose members include ambulance officers and other professionals, was generally supportive of the measures proposed in the Bill to introduce a national registration for paramedics.<sup>56</sup> United Voice stated:

*Paramedics should be subject to the same regulatory arrangements as all other health professions regulated under the national law. This includes, for example, registration processes, accreditation of training programs and national standards for entry to practice.*<sup>57</sup>

Maurice Blackburn Lawyers supported the national regulation of paramedics 'because they will improve the quality of service and increase patient safety. It will also increase public confidence in the profession'.<sup>58</sup> Similarly, Health Consumers Queensland (HCQ) supported the Bill as a way to 'increase consistency of the safety and quality of the services delivered by paramedics across Australia'.<sup>59</sup>

United Voice stressed the importance of having a broadly representative Paramedicine Board, 'which facilitates input from stakeholders such as United Voice on behalf of our members'.<sup>60</sup> The AEAU also called for the Paramedicine Board to be 'representative of the paramedic workforce' and have members who are 'operationally and clinically current'.<sup>61</sup>

United Voice raised concerns about the registration fee, as it was 'something that we [paramedics] were not used to having to pay'.<sup>62</sup> In addition, United Voice submitted to the committee it was 'important to ensure that all existing paramedics are properly considered in the transition to registration'.<sup>63</sup>

The AEAU supported the proposed grand-parenting provisions, but sought clarification as to what would happen to nationally registered non-degree qualified paramedics who may cease to practice for more than 12 months. The organisation questioned whether paramedics in this situation would then be required to re-register upon completion of a recognised training course.<sup>64</sup>

The department indicated that if a practitioner allowed their registration to lapse, he or she would need to re-apply for registration. However, the practitioner's qualifications, training and experience would not need to be reassessed if they were originally registered under grand-parenting provisions. The practitioner would still need to meet the other standard requirements for registration.<sup>65</sup>

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<sup>54</sup> See, for example, submissions 18, 19, 28 and 32.

<sup>55</sup> Ambulance Employees Australia Victoria (AEAV), submission 19.

<sup>56</sup> United Voice, submission 18.

<sup>57</sup> United Voice, submission 18.

<sup>58</sup> Maurice Blackburn Lawyer, submission 32.

<sup>59</sup> Health Consumers Queensland, submission 28.

<sup>60</sup> United Voice, submission 18.

<sup>61</sup> AEAU, submission 19.

<sup>62</sup> United Voice, submission 18.

<sup>63</sup> United Voice, submission 18.

<sup>64</sup> AEAU, Submission 19.

<sup>65</sup> Department of Health, *Correspondence – response to issues raised in submissions*, 24 July 2017, pp 11-12.

### 3.2 Changes to the structure of National Boards by regulation

Currently, the number and structure of National Boards is fixed by the National Law, with each registered profession having its own board.<sup>66</sup>

The Independent Review recommended that the National Law be amended to provide the COAG Health Council with the power to consolidate nine 'low regulatory workload' National Boards into a single National Board.<sup>67</sup>

The COAG Health Council did not accept the recommendation. Instead, the COAG Health Council agreed that to achieve flexibility and ensure the governance of the National Scheme remains fit for purpose, the National Law should be amended to provide for the structure and membership of National Boards to be provided for in regulations.<sup>68</sup>

To achieve this, the Bill provides that regulations must provide for a National Board for each health profession. The regulations may:

- continue existing National Boards
- establish a Board for one health profession, or two or more health professions, or
- dissolve a Board, if another Board is established for that profession.<sup>69</sup>

The Bill provides that if a National Board is established for two or more health professions, at least one member of each health profession must be a member of the Board.<sup>70</sup>

In addition, the Bill provides that before a regulation is made the COAG Health Council must undertake public consultation on the proposed regulation.

During the introduction of the Bill, the Minister confirmed there was no current plan to change the structure of the National Boards.<sup>71</sup> The department stated that:

*To provide certainty about the continuation of the existing structure of the National Boards, draft amendments to the Health Practitioner Regulation National Law Regulation were tabled with the Bill. These amendments will continue the existing Board structure.<sup>72</sup>*

The department also advised that 'It is planned to add the Paramedicine Board to the regulation to coincide with the 'participation day''.<sup>73</sup>

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<sup>66</sup> National Law, s 31.

<sup>67</sup> Explanatory notes, p 10; Department of Health, *Correspondence – written briefing*, 20 June 2017, p 4.

<sup>68</sup> Department of Health, *Correspondence – written briefing*, 20 June 2017, p 4.

<sup>69</sup> Bill, cl 4 amends s 5 of the National Law and cl 5 omits and inserts new s 31 of the National Law.

<sup>70</sup> Bill, cl 6 and 7 amend s 33 and 34 of the National Law.

<sup>71</sup> Hon Cameron Dick MP, Minister for Health and Minister for Ambulance Services, Queensland Parliament, Record of Proceedings, 13 June 2017, p 1543.

<sup>72</sup> Department of Health, *Correspondence – written briefing*, 20 June 2017, p 4; a draft version of the Health Practitioner Regulation National Law Amendment Regulation 2017 was tabled in the Legislative Assembly of Queensland on 13 June 2017 and is available from <http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2017/5517T910.pdf>

<sup>73</sup> Department of Health, *Correspondence – written briefing*, 20 June 2017, p 4.

### *Submitters' views and department's response*

A number of submitters opposed the amendment to allow changes to be made to National Boards by regulation.<sup>74</sup>

The Queensland Nurses and Midwives' Union (QNMU), while expressing a preference for amendments to National Boards to require primary legislation, strongly supported the requirement for consultation on any proposed regulations. The QNMU considered that without consultation, any proposed changes under regulations might be seen as 'just an ability to remove a board or the chairperson without proper consultation'.<sup>75</sup> In contrast, Optometry Australia submitted that public consultation would not provide sufficient 'safe guards', as those required if a legislative change was to pass through a parliament.<sup>76</sup>

The Chiropractors' Association of Australia (Queensland) (CAAQ) considered that a single representative of each health profession on a consolidated National Board (ie a Board established for two or more health professions) would not provide adequate diversity and experience.<sup>77</sup>

The department advised that:

*If the Ministerial Council is considering making changes to the structure of the National Boards in future, stakeholders will have an opportunity to provide input into any proposed changes to the structure prior to such regulation being made.*<sup>78</sup>

In response to CAAQ's concerns about representation on consolidated boards, the department stated that 'the composition of any future consolidated National Board would be a matter for consideration by the COAG Health Council, after consultation with stakeholders'.<sup>79</sup>

### **3.3 Recognition of nursing and midwifery as separate professions**

The majority of midwives in Australia hold dual registration as nurses and midwives (approximately 30,000).

In recent years, however, there has been an increase in direct entry training programs for midwifery at universities, and an increasing use of alternative maternity choices for women, leading to a growth in the number of registered midwives who do not hold concurrent registration as a nurse. There are an estimated 3,000 practitioners in this category.<sup>80</sup>

The Independent Review recommended that the National Law be amended to reflect that nursing and midwifery are two professions regulated by one National Board.<sup>81</sup>

To achieve this, the Bill amends the definition of *health profession* to include separate entries for midwifery and nursing.<sup>82</sup> Nursing and midwifery would, however, continue to be regulated by the Nursing and Midwifery Board of Australia.

The Bill makes consequential amendments to a range of Queensland legislation, including the HO Act, to reflect the recognition of nursing and midwifery as separate professions.<sup>83</sup>

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<sup>74</sup> See for example submissions 2, 14, 22, 24, 35, 37 and 39.

<sup>75</sup> Kalina Pyra, Solicitor, Hall Payne Lawyers (representing the Queensland Nurses and Midwives' Union), *Public Hearing Transcript*, 17 July 2017, p 7.

<sup>76</sup> Optometry Australia, submission 2.

<sup>77</sup> Chiropractors Association of Australia (Queensland) (CAAQ), submission 39.

<sup>78</sup> Department of Health, *Correspondence – response to issues raised in submissions*, 24 July 2017, p 2.

<sup>79</sup> Department of Health, *Correspondence – response to issues raised in submissions*, 24 July 2017, p 2.

<sup>80</sup> Explanatory notes, p 11; Department of Health, *Correspondence – written briefing*, 20 June 2017, p 4.

<sup>81</sup> Explanatory notes, p 11; Department of Health, *Correspondence – written briefing*, 20 June 2017, p 4.

<sup>82</sup> Bill, cl 4 amends s 5 and cl 15 amends s 133 of the National Law.

<sup>83</sup> Explanatory notes, p 28; Bill, cl 87 and Part 2 of schedule 1.

### *Submitters' views and department's response*

The QNMU supported the recognition of nursing and midwifery as two separate professions in the Bill.<sup>84</sup> The proposed amendments to the National Law were also supported by HCQ who acknowledged the two professions' differing qualifications and roles.<sup>85</sup>

AHPRA advised that there will be no practical changes to the current arrangements in relation to registration or in the way the National Law is administered by the Nursing and Midwifery Board of Australia.<sup>86</sup> In addition, the department stated that the changes would not affect scope of practice issues for the professions and the respective roles of nurses and midwives remain unchanged.<sup>87</sup>

### **3.4 Reforms to complaints management, disciplinary and enforcement powers**

Under the National Law, complaints about registered health practitioners are referred to as 'notifications'. The National Law contains provisions dealing with the notifications process and disciplinary and enforcement powers to address practitioner health, performance and conduct issues.<sup>88</sup>

The department advised that amendments in the Bill will:

*... improve notifications management and disciplinary and enforcement powers of National Boards to strengthen public protection and ensure fairness for complainants (also known as 'notifiers') and practitioners.*<sup>89</sup>

Under Queensland's co-regulatory arrangements, registered health practitioners may be dealt with either under the National Law or the HO Act. The Bill makes consequential amendments to the HO Act and other Queensland legislation as a result of the proposed changes to the National Law to maintain consistency for registered and unregistered health practitioners in Queensland.

Given NSW's co-regulatory model, most of the amendments outlined below would not apply in NSW.<sup>90</sup>

#### **3.4.1 Health practitioner practice information**

Currently, the National Law provides that a National Board may ask a registered health practitioner to give a Board information about whether the practitioner is employed by another entity and, if so, their employer's details. A health practitioner must comply with such a request. In addition, the National Law requires a National Board to inform a health practitioner's employer about a health, conduct or performance action taken against the practitioner.<sup>91</sup>

The department advised that the term *employer* has been interpreted narrowly to only mean those in strict 'employer-employee' relationships.<sup>92</sup>

The Bill amends the National Law to provide that a National Board may ask a registered health practitioner to provide information about a broader range of different practice arrangements, including details of the arrangements under which the practitioner is engaged and practicing.<sup>93</sup>

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<sup>84</sup> QNMU, submission 24; Jamie Shepherd, Professional Officer, QNMU, *Public Hearing Transcript*, 17 July 2017, p 7.

<sup>85</sup> HCQ, submission 28.

<sup>86</sup> Chris Robertson, AHPRA, *Public Briefing Transcript*, 27 June 2017, p 7.

<sup>87</sup> Explanatory notes, p 11.

<sup>88</sup> Explanatory notes, p 11.

<sup>89</sup> Explanatory notes, p 11.

<sup>90</sup> Explanatory notes, p 12.

<sup>91</sup> National Law, s 132 and 206.

<sup>92</sup> Explanatory notes, p 12.

<sup>93</sup> Bill, cl 20 omits and inserts new s 132 into the National Law.

The Bill inserts the term *practice information* into the National Law, which includes information about where a practitioner is an employee, contractor, volunteer, partner and a member of a practice arrangement, or where the practitioner is self-employed or working in an honorary capacity.<sup>94</sup>

The Bill also amends the National Law to provide that where a health, conduct or performance action is being taken against a health practitioner, a National Board must inform all places at which the person practices and not just their employer.<sup>95</sup>

The department advised that 'The National Boards and AHPRA will develop guidelines to assist practitioners about 'practice information'.<sup>96</sup>

In addition, the Bill amends the HO Act to ensure that the Health Ombudsman can share information about disciplinary or enforcement action with all places at which a person practises, including in a voluntary or an honorary capacity and to notify practitioners who share the same premises as a practitioner.<sup>97</sup>

#### *Submitters' views and department's response*

Submitters, including the Australian Medical Association Queensland (AMAQ), HCQ, and the Royal Australian and New Zealand College of Psychiatrists (RANZCP), supported the proposed amendments.<sup>98</sup> The HCQ, for example, considered that 'Awareness of all locations where a health professional is practicing will lead to greater safety for the community'.<sup>99</sup>

A number of submitters sought further clarification about the application of the proposed amendments.

Maurice Blackburn Lawyers called for greater clarity about whether the practice information required related to health services of the kind subject to the practitioner's notification, or health services 'of any kind'. Maurice Blackburn Lawyers also sought clarification as to whether a health practitioner must provide information to the National Board about their practice in all jurisdictions.<sup>100</sup>

The AMAQ suggested that the provision of information be 'limited to the specific conditions placed upon the practitioner and not to other aspects of their practice'.<sup>101</sup> The Australian Dental Association of Queensland (ADAQ) noted that the 'shared premises' terminology was vague and difficult to interpret.<sup>102</sup> The CAAQ also sought further clarification about the circumstances in which practice information would be sought from practitioners.<sup>103</sup>

The Health Professional Australia Reform Association (HPARA) considered that the proposed amendments '... will increase the [National] Law's existing unfairness and detriment to health practitioners'. HPARA also considered that the clause enables an authority to gather information about practitioners associated with the practitioner under investigation, even though they themselves are not under investigation. The HPARA considered that this would create a situation where an associated practitioner could be seen as 'guilty by association'.<sup>104</sup>

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<sup>94</sup> Explanatory notes, p 12.

<sup>95</sup> Bill, cl 39 amends s 206 of the National Law.

<sup>96</sup> Explanatory notes, p 13.

<sup>97</sup> Bill, cl 79 to 82 amends s 277, 279, 280 and 282 of the *Health Ombudsman Act 2013* (HO Act).

<sup>98</sup> Submissions 5, 12, 22, 28, 32, 33 37 and 39.

<sup>99</sup> Health Consumers Queensland, submission 28.

<sup>100</sup> Maurice Blackburn Lawyers, submission 32.

<sup>101</sup> AMAQ, submission 22.

<sup>102</sup> ADAQ, submission 33.

<sup>103</sup> CAAQ, submission 39.

<sup>104</sup> HPARA, submission 26.

The department advised that *practice information* would generally only be sought from practitioners where they are subject to concerns relating to the health, conduct or performance of the practitioner. The department stated that:

*'Practice information' requested from a health practitioner could include information about the practice arrangements for any type of health services provided by the health practitioner. It will depend on the nature and circumstances of the case whether a National Board will request information about all places of practice related to particular types of health services or health services generally.*<sup>105</sup>

The department advised that 'It is intended that 'practice information' will apply to a practitioner's practice arrangements in all jurisdictions', however, separate arrangements will need to be made in NSW, due to its co-regulatory approach.<sup>106</sup>

Avant and ADAQ considered that the power to inform employers and other entities of health, conduct and performance action taken against a practitioner should be discretionary, rather than mandatory. Avant stated that health, conduct and performance action should only be notified to employers and other entities, where the public is at risk.<sup>107</sup>

In response, the department considered that it was appropriate to notify a health practitioner's employer or another entity in all cases. The department stated 'The employer or another entity is well placed to monitor the practitioner's compliance with any action taken against them and to manage risks to patients and the public'.<sup>108</sup>

### **3.4.2 Immediate action decisions**

#### ***3.4.2.1 Proposed public interest grounds***

The National Law provides that a National Board may take immediate action (eg suspend or impose conditions) against a registered health practitioner, if it reasonably believes that:

- the practitioner's conduct, performance or health poses a serious risk to persons, and
- it is necessary to take immediate action to protect public health or safety.<sup>109</sup>

The department stated that the current threshold for immediate action may 'constrain a National Board from taking swift action where it is warranted to protect public health, public safety or the public interest'. The department provided the following example:

*... if a practitioner has been charged with a serious crime, and the relationship between the crime and the practitioner's practice is not yet well established, the 'public interest' may require a National Board to constrain the practitioner's practice until the criminal matter is resolved, both for the protection of the public and for public confidence in the health profession.*<sup>110</sup>

The National Boards' powers to take immediate action are mirrored in the HO Act. Under the HO Act, the Health Ombudsman may take immediate registration action (eg suspend or impose conditions) against a registered health practitioner or issue an interim prohibition order to an unregistered health practitioner prohibiting them from providing health services or restricting their practice.<sup>111</sup>

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<sup>105</sup> Department of Health, *Correspondence - response to issues raised in submissions*, 24 July 2017, p 5.

<sup>106</sup> Department of Health, *Correspondence - response to issues raised in submissions*, 24 July 2017, p 5.

<sup>107</sup> Submissions 11 and 33.

<sup>108</sup> Department of Health, *Correspondence - response to issues raised in submissions*, 24 July 2017, p 5.

<sup>109</sup> National Law, s 156.

<sup>110</sup> Explanatory notes, p 13.

<sup>111</sup> HO Act, s 57, 58, 67 and 68.

The Bill broadens the grounds on which a National Board or the Health Ombudsman, in Queensland, may take immediate action to include where a National Board or the Health Ombudsman reasonably believes immediate action is otherwise in the public interest.<sup>112</sup>

The department advised that a decision to take immediate action in the public interest would be subject to a 'show cause' process and is subject to appeal to the appropriate responsible tribunal.<sup>113</sup> The department also advised that a similar 'public interest' test applies in NSW under their co-regulatory model.<sup>114</sup>

The potential fundamental legislative principles issues raised by the proposed amendments are discussed at section 4 of this report.

#### 3.4.2.2 Power to substitute one immediate action for another

The National Law does not explicitly provide for a National Board to revoke one type of immediate action and substitute another form of immediate action.<sup>115</sup> The department advised that this may be required if new information about a case comes to hand that suggests different conditions on a practitioner's registration, or suspension of a registration, are required.<sup>116</sup>

The Bill amends the definition of immediate action to clarify that immediate action also includes:

- revoking a suspension and imposing a condition on registration, if immediate action had been previously taken suspending a health practitioner, and
- suspending registration instead of imposing a condition, if immediate action had previously been taken imposing a condition on a health practitioner's registration.<sup>117</sup>

#### *Submitters' views and department's response*

Submitters had a range of views about the proposed amendments to introduce a public interest ground for taking immediate action. The RANZCP, HCQ and Maurice Blackburn Lawyers supported the proposed introduction of a public interest test for immediate action.<sup>118</sup> While the Medical Insurance Group Australia (MIGA), ADAQ and CAAQ offered qualified support for the proposed amendments.<sup>119</sup>

MIGA raised concerns about the proposed threshold test of 'reasonable belief' and suggested the use of 'satisfied', which it considered was consistent with the power in the NSW co-regulatory scheme and would provide a higher threshold for taking immediate action in the 'public interest'.<sup>120</sup>

The ADAQ, AMAQ, QNMU, Avant and Together Queensland did not support the proposed amendments. These submitters considered that the current grounds for taking immediate action against a health practitioner were sufficient.<sup>121</sup> The AMAQ considered that the proposed 'public interest' test was too broad and subjective. The AMAQ contended that, 'Anything could be in the public interest'.<sup>122</sup>

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<sup>112</sup> Bill, cl 24 amends s 156 of the National Law and cl 65 and 69 amend s 58 and 68 of the HO Act.

<sup>113</sup> Explanatory notes, pp 13-14; National Law s 157 and 199.

<sup>114</sup> Explanatory notes, p 13.

<sup>115</sup> National Law, s 155, 156 and 159.

<sup>116</sup> Explanatory notes, pp 19 – 20.

<sup>117</sup> Bill, cl 23 amends s 155 of the National Law.

<sup>118</sup> Submissions 5 and 32; Melissa Fox, Chief Executive Office, HCQ, *Public Hearing Transcript*, 17 July 2017, p 15.

<sup>119</sup> Submissions 12, 33 and 39.

<sup>120</sup> MIGA, submission 12.

<sup>121</sup> Submissions 11, 22, 24, 33 and 35; Dr Shaun Rudd, Chair, Australian Medical Association Queensland Board and Council (AMAQ), *Public Hearing Transcript*, 17 July 2017, p 18.

<sup>122</sup> Dr Shaun Rudd, AMAQ, *Public Hearing Transcript*, 17 July 2017, p 18.

In response, the department stated that a ‘public interest’ test is used across other legislative schemes, especially those involving licensing or registration of individuals for public protection where individuals are authorised to undertake work involving a position of trust in the community, eg the regulation of legal practitioners.<sup>123</sup>

The department also advised that:

*The term ‘public interest’ has a legal meaning under the common law. Court and tribunal decisions provide guidance and parameters within which decision-makers must apply a ‘public interest’ test. As such, it is not necessary for legislation to define what constitutes the ‘public interest’.*<sup>124</sup>

In addition, the department stated that a decision to take immediate action on the basis of a public interest test would be subject to a number of safeguards, including a show cause and an appeals process. The department advised that any decision to take immediate action on the basis of the public interest will not be taken lightly, and ‘the regulators appreciate that decisions to take ‘immediate action’ have significant consequences for health practitioners’.<sup>125</sup>

The department provided the following examples of where an immediate action decision may be taken in the public interest:

- where a serious criminal charge is brought or serious allegations are made against a health practitioner, but the matter is not directly related to the practitioner’s practice, the matter may not reach the threshold of ‘serious risk to persons’ in the National Law, but it may be necessary to constrain the practitioner’s practice for the protection of the public and confidence in the health profession
- where historical issues about a practitioner are uncovered after the passage of significant time, it can be difficult to link this to a ‘serious risk to persons’, but the public interest may require immediate action to be taken, and
- where there are more generalised concerns about a practitioner, due to a pattern of behaviour or repeated conduct, none of which on its own may meet the threshold for taking immediate action, but where the pattern or repeated behaviour indicates an underlying issue, which may be related to systemic matters.<sup>126</sup>

In addition, the department stated that on the basis of the principles outlined in *Crickitt v Medical Council of New South Wales* [2015] NSWCATOD 155, it is considered that there is no difference in the threshold test of ‘reasonable belief’ and ‘satisfaction’.<sup>127</sup>

### **3.4.3 Prohibition orders**

#### **3.4.3.1 Scope of prohibition orders**

The National Law and HO Act provide that, if a tribunal cancels a person’s registration or a person does not hold registration, the tribunal may decide to issue the person a ‘prohibition order’ to prevent the person from using a specified title when providing a specified health service. The department advised that the issuing of a prohibition order only occurs in the most serious of cases.<sup>128</sup>

Following recommendations of the Independent Review, the Bill amends the National Law, and makes consequential amendments to the HO Act, to allow a responsible tribunal to issue a prohibition order

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<sup>123</sup> Department of Health, *Correspondence – response to issues raised in submissions*, 24 July 2017, p 2.

<sup>124</sup> Department of Health, *Correspondence – response to issues raised in submissions*, 24 July 2017, p 3.

<sup>125</sup> Department of Health, *Correspondence – response to issues raised in submissions*, 24 July 2017, pp 2-3.

<sup>126</sup> Department of Health, *Correspondence – response to issues raised in submissions*, 24 July 2017, pp 3-4.

<sup>127</sup> Department of Health, *Correspondence – response to issues raised in submissions*, 24 July 2017, p 4.

<sup>128</sup> Explanatory notes, p 14; National Law, s 196 and HO Act, s 107 and 133.



to prohibit a person from providing *any* health service or using *any* protected title for a stated period or permanently.<sup>129</sup>

#### 3.4.3.2 Proposed offences

The Independent Review found that since the current National Law has no offences prescribed for non-compliance with prohibition orders, there is 'limited protective effect' to breaching a prohibition order.<sup>130</sup>

The Bill amends the National Law to provide that it is an offence to contravene a prohibition order, attracting a maximum penalty of \$30,000.<sup>131</sup> The Bill provides that the offence would apply to a contravention of a prohibition order made in any State or Territory. The Minister stated that the new offence is expected to 'deter anyone considering continuing to practise' in contravention of a prohibition order.<sup>132</sup>

The Bill also includes the following subsidiary offences related to prohibition orders:

- a person subject to a prohibition order (referred to as a *prohibited person*) who fails to inform patients or employers of the prohibition order in writing prior to providing any health service, commits an offence with a maximum penalty of \$5,000, and
- failure to include details of a prohibition order when advertising health services to be provided by a prohibited person is an offence, with a maximum penalty of \$5,000 for an individual and \$10,000 for a body corporate.<sup>133</sup>

#### 3.4.3.3 Public register of prohibition orders

The National Law does not currently require or empower National Boards to keep a register of prohibition orders. The Bill amends the National Law to require National Boards to maintain a public register of persons subject to prohibition orders.<sup>134</sup>

The department stated 'this will protect the public by ensuring they have access to information about persons who are under prohibition orders', and will 'ensure accountability' of those practitioners.<sup>135</sup>

#### *Submitters' views and department's response*

A number of submitters supported the changes to the application of prohibition orders and the new offence provisions.<sup>136</sup>

However the QNMU and Together Queensland expressed concern about the inclusion of the words 'any health service' in the provision relating to prohibition orders, due to its 'potentially extremely wide, and uncertain, application'.<sup>137</sup> The QNMU stated:

*We consider it is more appropriate that any order made by the responsible tribunal be required to specify the type or types of health service which a person might be prohibited from providing.*

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<sup>129</sup> Bill, cl 36 amends s 196 of the National Law and cl 76 and 77 amend s 107 and 113 of the HO Act.

<sup>130</sup> Explanatory notes, p 14.

<sup>131</sup> Bill, cl 4(5) amends s 5 of the National Law and cl 37 inserts new s 196A into the National Law.

<sup>132</sup> Hon Cameron Dick MP, Minister for Health and Minister for Ambulance Services, Queensland Parliament, Record of Proceedings, 13 June 2017, p 1544.

<sup>133</sup> Bill, cl 37 inserts new s 196A into the National Law.

<sup>134</sup> Bill, cl 44, 45, 46, 47 and 48 amends s 222, 223, 226 and 227 of the National Law.

<sup>135</sup> Explanatory notes, p 15.

<sup>136</sup> See for example submissions 5, 28, 32 and 33.

<sup>137</sup> Submissions 24 and 35.

*This will provide clarity for the public, the person, and any potential employer as to the scope of the order.*<sup>138</sup>

HPARA described the maximum proposed penalty for contravention of a prohibition order as 'extreme', noting that a health practitioner may be compelled to breach the order in an emergency situation.<sup>139</sup> In contrast, Maurice Blackburn Lawyers submitted that the proposed penalties are not sufficient to deter breaches, particularly in professions that are generally lucrative.<sup>140</sup>

The department stated that the intent of the amendment is to 'allow the responsible tribunal to issue an order preventing a person from providing any health service', where it is considered necessary 'to protect the public from serious risk', eg in cases involving sexual boundary violations, serious criminal offences or professional incompetence resulting in serious harm or death.<sup>141</sup>

Maurice Blackburn Lawyers, HCQ and the RANZCP supported the introduction of a public register, which would provide 'better transparency and accountability for the public and the persons in question'.<sup>142</sup> RANZCP suggested the register be made easily accessible to the public.<sup>143</sup>

Conversely, HPARA noted that a person subject to a prohibition order is not a convicted criminal, and that the consequences of being on a public register would likely have 'long-term impacts' on the practitioner.<sup>144</sup>

The QNMU noted that the proposed changes could place health practitioners at risk in situations of domestic and family violence where the person's practice location is made publicly available.<sup>145</sup> The QNMU recommended that the Bill be amended to clearly specify that information can be withheld from the register specifically in cases of domestic and family violence.<sup>146</sup>

The department advised that the public register 'will be kept with the other national registers which are available on the AHPRA website'.<sup>147</sup> In relation to the QNMU's concerns, the department stated that:

*Section 226(2) of the National Law allows a National Board to decide that information relating to a registered health practitioner is not to be recorded on the National Register or Specialist Register if requested by the practitioner and the Board reasonably believes the inclusion of the information would present a serious risk to the health and safety of the practitioner.*

The department considered that this power could be used to withhold information from the register in cases of domestic and family violence.<sup>148</sup>

#### Committee comment

The committee acknowledges the concerns of submitters, particularly in light of its portfolio responsibilities for health and domestic and family violence prevention.

Given the sensitive nature of domestic and family violence issues, the committee suggests that the COAG Health Council consider whether a National Board should be required, on the production of

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<sup>138</sup> QNMU, submission 24.

<sup>139</sup> HPARA, submission 26.

<sup>140</sup> Maurice Blackburn Lawyers, submission 32.

<sup>141</sup> Department of Health, *Correspondence – response to issues raised in submissions*, 24 July 2017, p 11.

<sup>142</sup> Submissions 5, 28 and 32.

<sup>143</sup> RANZCP, submission 5.

<sup>144</sup> HPARA, submission 26.

<sup>145</sup> Jamie Shepherd, QNMU, *Public Hearing Transcript*, 17 July 2017, p 9.

<sup>146</sup> QNMU, submission 24.

<sup>147</sup> Department of Health, *Correspondence – response to issues raised in submissions*, 24 July 2017, p 14.

<sup>148</sup> Department of Health, *Correspondence – response to issues raised in submissions*, 24 July 2017, p 14.

evidence (eg a court order) of domestic and family violence issues to remove the contact and employment details of the practitioner from the public register, as opposed to it being discretionary.

### 3.4.4 Communication with notifiers

The Independent Review identified concerns among key stakeholders about poor communication with both notifiers and practitioners, including outcomes not being well explained to notifiers.<sup>149</sup>

The COAG Health Council accepted a recommendation from the Independent Review's final report for notifiers affected personally by practitioner conduct to be informed, in confidence, by the National Board about a decision regarding their case.

The Bill retains the current requirements in the National Law for communication with notifiers at certain decision points during an investigation.<sup>150</sup> However, the Bill removes the current limitations (which restrict the information that may be given to notifiers to information available on a National Board's register) to provide National Boards with the discretion to inform notifiers of the reasons for decisions,<sup>151</sup> including:

- when immediate action is taken<sup>152</sup>
- when a decision is made by a National Board after considering an investigator's report<sup>153</sup>, and
- when a decision is made by a National Board after considering an assessor's report after a health or performance assessment.<sup>154</sup>

The department advised that these proposed measures are intended to give National Boards more flexibility about when to provide notifiers with information and provide more information than is currently possible under the National Law.<sup>155</sup>

#### *Submitters' views and department's response*

A number of submitters, including RANZCP and HCO, supported the proposed amendments which they considered would improve communication with notifiers, including enabling reasons for decisions to be provided to notifiers.<sup>156</sup>

Maurice Blackburn Lawyers supported the proposed amendments' intention of improving communication with notifiers, but expressed a strong preference for the provision of the reasons for a decision to be mandatory, rather than at the discretion of a National Board.<sup>157</sup>

The QNMU, and other submitters, expressed 'serious concerns' over a health practitioner's privacy, if the reasons for the decision are also included in the information given to the notifier.<sup>158</sup> The QNMU contended that detailed personal information was not necessarily relevant to the notifier's case and that the risk of exposure of such information had the potential to lead to 'a little less frankness' during an investigation.<sup>159</sup>

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<sup>149</sup> Hon Cameron Dick MP, Minister for Health and Minister for Ambulance Services, Queensland Parliament, Record of Proceedings, 13 June 2017, p 1544.

<sup>150</sup> National Law, s 161.

<sup>151</sup> Bill, cl 29 omits and inserts new s 180 in to the National Law and cl 35 amends s 192 of the National Law.

<sup>152</sup> Bill, cl 25 inserts new s 159A into the National Law.

<sup>153</sup> Bill, cl 26 inserts new s 167A into the National Law.

<sup>154</sup> Bill, cl 28 inserts new s 177A into the National Law.

<sup>155</sup> Explanatory notes, p 16.

<sup>156</sup> Submissions 5 and 28.

<sup>157</sup> Maurice Blackburn Lawyers, submission 32.

<sup>158</sup> QNMU, submission 24.

<sup>159</sup> Kalina Pyra, QNMU representative, *Public Hearing Transcript*, 17 July 2017, p 9; submissions 24, 33 and 35.

The Australian Psychological Society (APS) considered that improvements are also needed in relation to communication with practitioners about the notification process.<sup>160</sup>

The department advised that the National Boards and AHPRA will develop a common protocol to ensure that appropriate information is disclosed to notifiers at appropriate times, while also taking into account privacy concerns of practitioners and patients, in particular any privacy issues relating to the health or impairment of a practitioner. Stakeholders will have the opportunity to provide input into development of the protocol.<sup>161</sup>

In relation to APS' comments about communication with practitioners, the department stated that:

*The National Boards and AHPRA have implemented a range of initiatives aimed at improving communication with practitioners. However these initiatives did not require amendments to the National Law.*<sup>162</sup>

### **3.4.5 Review periods when conditions on registration or undertakings are changed**

The National Law provides that a National Board must decide a *review period* following a decision to:

- register a person subject to a condition
- impose a condition on the endorsement of an applicant's registration, or
- renew a health practitioner's registration or endorsement of registration subject to a condition.<sup>163</sup>

A *review period* is the period during which a health practitioner may not make an application to change or remove a condition or undertaking and during which a National Board may not change a condition on its own initiative, unless there are material changes of circumstances.<sup>164</sup>

Currently, there is no ability for a National Board to decide a review period if a condition or undertaking is changed, after the end of the initial review period. The department advised '... this can lead to uncertainty for practitioners and premature applications for review of decisions'.<sup>165</sup>

The Bill amends the National Law to provide National Boards with the discretion to set a review period when a National Board is considering changes to a registration condition or a decision to renew a practitioner's registration. The Bill provides that if the National Board decides to set a review period, it must give written notice to the practitioner at the same time as giving them notice of the Board's decision.<sup>166</sup>

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<sup>160</sup> Australian Psychological Society, submission 37.

<sup>161</sup> Department of Health, *Correspondence – response to issues raised in submissions*, 24 July 2017, p 9; explanatory notes, p 16.

<sup>162</sup> Department of Health, *Correspondence – response to issues raised in submissions*, 24 July 2017, p 9.

<sup>163</sup> National Law, s 103, 112 and 183.

<sup>164</sup> National Law, s 5, 125 and 126.

<sup>165</sup> Explanatory notes, p 17.

<sup>166</sup> Explanatory notes, p 17; Bill, cl 17 and 18 amend s 125 and 126 of the National Law.

### **3.4.6 Conditions imposed on registration by an adjudication body of a co-regulatory jurisdiction**

The National Law provides that when an adjudication body of a co-regulatory jurisdiction (ie Queensland and NSW) decides to impose conditions on a health practitioner's registration, the adjudication body may decide, when imposing the conditions, that a practitioner may or may not make an application to change or remove the conditions under the National Law.<sup>167</sup>

The department stated that:

*The words "when imposing the condition" in these sections are unnecessarily restrictive. At the time of making the decision, it may not be thought necessary for the condition to be reviewed under the provisions of the National Law, as the practitioner may be based in a co-regulatory jurisdiction. However, the practitioner may subsequently move to another State or Territory which is not a co-regulatory jurisdiction and it may be appropriate for the condition to be able to be reviewed by a National Board under the provisions of the National Law.*<sup>168</sup>

The Bill amends the National Law to provide that an adjudication body of a co-regulatory body may decide a practitioner may apply to change or remove conditions, either when imposing the conditions or at a later time.<sup>169</sup>

### **3.4.7 Co-regulatory jurisdiction powers to remove or change conditions imposed in another jurisdiction**

Currently, the National Law and the laws of co-regulatory jurisdictions, do not provide for the situation where a condition is imposed on a health practitioner in a non-co-regulatory jurisdiction (ie other than Queensland and NSW), but there is a need for a review body in a co-regulatory jurisdiction to review the condition.<sup>170</sup>

The Bill amends the National Law to provide that a National Board may refer a matter to a *review body* of a co-regulatory jurisdiction, if the National Board considers that a change or removal of a condition or a change or revocation of an undertaking should be decided by the review body.<sup>171</sup>

The department advised that the proposed provision could apply where a practitioner has moved to a co-regulatory jurisdiction and has commenced practising in that jurisdiction.<sup>172</sup>

### **3.4.8 Grounds for taking no further action about notifications**

The National Law currently provides that a National Board may decide to take no further action in relation to a notification in certain circumstances.<sup>173</sup>

Section 151(1)(e) of the National Law currently provides that a National Board may take no further action, if the subject matter of the notification is being dealt with, or has already been dealt with, adequately by another entity.

The department advised that the use of the word "adequately" places an obligation on the National Board to assess the performance of another entity and determine whether it has dealt with a matter adequately. The department stated that 'It is not the National Board's role to review the performance

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<sup>167</sup> National Law, s 125 and 126.

<sup>168</sup> Explanatory notes, p 17.

<sup>169</sup> Explanatory notes, pp 17-18; Bill, cl 17 and 18 amend s 125 and 126 of the National Law.

<sup>170</sup> Explanatory notes, p 18.

<sup>171</sup> Bill, cl 19 inserts new s 127A into the National Law.

<sup>172</sup> Explanatory notes, p 18.

<sup>173</sup> National Law, s 151.

or conduct of other entities'.<sup>174</sup> Accordingly, the Bill removes the word "adequately" from section 151(1)(e) of the National Law.<sup>175</sup>

The Bill also inserts the following additional grounds for taking no further action in relation to a notification:

- if the National Board has referred the notification to another entity (eg a health complaints entity within a jurisdiction), or
- if the health practitioner has taken appropriate steps to remedy the issue concerning the notification and the Board reasonable believes that no further action is required.<sup>176</sup>

#### *Submitters' views and department's response*

The QNMU and Avant supported the proposed amendments.<sup>177</sup> Avant recommended the further grounds for taking no further action should be included in the National Law, including where a notification has been referred to an alternative dispute resolution process.<sup>178</sup>

The QNMU noted that complaints are occasionally made against their members that are clearly vexatious or misconceived.<sup>179</sup> The QNMU stated that the number of these cases was small, citing 13 matters identified as vexatious or misconceived within the 2016/17 financial year.<sup>180</sup>

The QNMU and Together Queensland considered that there would be value in allowing an AHPRA State Manager to decide that no further action should be taken in such cases, without the matter needing to be considered by a Board.<sup>181</sup>

In response, the department advised that Avant's suggestions for additional grounds to take no further action were outside the scope of the Bill, however, they will be referred to the COAG Health Council for further consideration.<sup>182</sup>

In relation to potentially vexatious or misconceived notifications, the department stated:

*Section 151(1)(a) of the National Law provides that a National Board may take no further action ... if the Board reasonably believes the notification is frivolous, vexatious, misconceived or lacking in substance. National Boards also have the power to delegate functions to AHPRA under section 37 of the National Law, where appropriate.*<sup>183</sup>

The department considered that 'It would be difficult for a State Manager to decide that a complaint is vexatious or lacks substance without undertaking appropriate inquiries or an investigation'. The department also noted evidence that suggested vexatious complaints are not a widespread issue and are relatively infrequent.<sup>184</sup>

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<sup>174</sup> Explanatory notes, p 19.

<sup>175</sup> Bill, cl 22 omits and inserts new s 151(1)(e) into the National Law.

<sup>176</sup> Explanatory notes, p 19; Bill, cl 22 omits and inserts new section 151(1)(e) and (f) into the National Law.

<sup>177</sup> Submissions 11 and 24.

<sup>178</sup> Avant, submission 11.

<sup>179</sup> QNMU, submission 24, p 9; Kalina Pyra, QNMU, *Public Hearing Transcript*, 17 July 2017, p 8.

<sup>180</sup> QNMU, *Response to question taken on notice at a public hearing*, 21 July 2017.

<sup>181</sup> Submission 24 and 35.

<sup>182</sup> Department of Health, *Correspondence – response to issues raised in submissions*, 24 July 2017, p 12.

<sup>183</sup> Department of Health, *Correspondence – response to issues raised in submissions*, 24 July 2017, p 12.

<sup>184</sup> Department of Health, *Correspondence – response to issues raised in submissions*, 24 July 2017, pp 13 - 14.

### 3.4.9 Review of a health panel decision to suspend registration

The National Law provides that a National Board may establish a health panel to assess a registered practitioner or student who may have an *impairment*.<sup>185</sup>

If the health panel is satisfied the practitioner or student has an impairment, the panel may decide to suspend their registration.

The department advised that the National Law does not provide any express mechanism for the health panel's decision to be reviewed or for the suspension to be revoked.<sup>186</sup>

The Bill amends the National Law to provide that if a health panel decides to suspend a practitioner's registration, it must decide a date by which the suspension is to be reconsidered (*reconsideration date*).

The Bill also makes related amendments to facilitate the consideration of a decision to suspend registration. These amendments include providing that a health panel may decide a matter on the basis of documents, without the parties appearing at a hearing, if it considers it appropriate to do so. Before proceeding to reconsider a suspension without the parties attending a hearing, the health panel must give written notice of its intention to the affected practitioner or student.

If the student or practitioner gives written notice to the panel within 14 days requesting a hearing and undertaking to be available for a hearing within 28 days, the panel must hold a hearing. The Bill also provides that a health panel may decide a later reconsideration date for the suspension of registration.<sup>187</sup>

The potential fundamental legislative principles issues raised by the proposed amendments are discussed at section 4 of this report.

#### *Submitters' views and department's response*

MIGA considered that a health panel's decision to reconsider the suspension of a practitioner's registration without a hearing should take into account the views of the affected practitioner.<sup>188</sup>

MIGA, QNMU and Together Queensland suggested that the requirement on a practitioner to give an undertaking to be available for a hearing within 28 days should either be removed or be subject to a reasonable excuse provision.<sup>189</sup>

In addition, the QNMU and Together Queensland suggested the decision for a later reconsideration date for review of the suspension of a practitioner's registration should also be subject to appeal.<sup>190</sup>

In response, the department stated:

*The purpose of requiring the practitioner to give an undertaking to attend a hearing within 28 days is to ensure that the hearing can be held in a timely way. Proposed section 191B(4) provides flexibility for the panel to decide a later reconsideration date for the suspension if necessary in the circumstances. This could accommodate circumstances where a practitioner cannot attend a hearing because of illness or absence overseas.*<sup>191</sup>

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<sup>185</sup> National Law, s 181; the term *impairment* is defined as a physical or mental impairment, disability, condition or disorder (including substance abuse or dependence) that detrimentally affects or is likely to detrimentally affect a person's capacity to practise, National Law, s 5.

<sup>186</sup> Explanatory notes, p 20.

<sup>187</sup> Bill, cl 31 to 34, amend s 182, 184, 191 and inserts new s 191A and 191B of the National Law.

<sup>188</sup> MIGA, submission 12.

<sup>189</sup> Submissions 12, 24 and 35.

<sup>190</sup> Explanatory notes, p 24 and 35.

<sup>191</sup> Department of Health, *Correspondence – response to issues raised in submissions*, 24 July 2017, p 8.

The department considered that an appeal process for the decision to set a later reconsideration date was not necessary because:

*It is likely that a later reconsideration date will only be a matter of weeks or up to three months later than the original reconsideration date.*<sup>192</sup>

### **3.4.10 Disclosure to protect health or safety of patients or other persons**

The National Law provides that a National Board may disclose information to a Commonwealth, State or Territory entity about a registered health practitioner who poses, or may pose, a risk to public health or safety. This provision does not, however, apply to persons who are not registered.<sup>193</sup>

The Bill amends the National Law to extend the current power for National Boards to disclose information to circumstances where a Board reasonably believes that:

- a person who provides a health service, but is not a registered health practitioner, poses, or may pose, a risk to public health, or
- the health or safety of a patient or class of patient is or may be at risk because of the provision of a health service by a person who is not a registered health practitioner.<sup>194</sup>

### **3.5 Technical and miscellaneous amendments to the National Law**

The Bill makes a number of technical and miscellaneous amendments to the National Law including:

- amending the definition of *Ministerial Council* to refer to the COAG Health Council
- allowing National Boards to decide an application for registration and for the registration to commence up to 90 days after the date of the decision
- updating the reference to the Commonwealth CrimTrac agency to reflect the name change to Australian Crime Commission
- consequential amendments, including the power to make regulations, to reflect recent changes to Commonwealth Freedom of Information and privacy legislation, and
- providing that a regulation made by the COAG Health Council under the National Law must be tabled in the parliament of each participating jurisdiction and is subject to each jurisdiction's disallowance provisions.<sup>195</sup>

#### *Submitters' views and department's response*

The QNMU did not support the proposed amendment to allow National Boards to decide an application for registration and for the registration to commence up to 90 days after the date of the decision. The QNMU did not see any benefits to the proposal, and raised concerns about any delays that may affect a person's ability to obtain employment.<sup>196</sup>

The department advised that in the majority of cases, registration will continue to commence on the day of the Board's decision and 'there is no intention to delay the processing of applications through the provisions in the Bill'. The department stated that the discretion of a National Board to set a later commencement date was intended to be used only where it would be beneficial to the applicant.<sup>197</sup>

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<sup>192</sup> Department of Health, *Correspondence – response to issues raised in submissions*, 24 July 2017, pp 8-9.

<sup>193</sup> Explanatory notes, p 22; National Law, s 220.

<sup>194</sup> Explanatory notes, p 22; Bill cl 43 omits and inserts new s 220 into the National Law.

<sup>195</sup> Explanatory notes, p 23; Bill cl 4, 9, 10, 11, 12, 21, 40, 41, 42 and 50.

<sup>196</sup> QNMU, submission 24.

<sup>197</sup> Department of Health, *Correspondence – response to issues raised in submissions*, 24 July 2017, p 10.



### 3.6 Other amendments to *Health Ombudsman Act 2013*

The Bill includes a number of amendments to the HO Act, requested by the Health Ombudsman, during the committee's *Inquiry into the performance of the Queensland Health Ombudsman's functions pursuant to section 179 of the Health Ombudsman Act 2013*.<sup>198</sup> These amendments:

- enable the Health Ombudsman to review, or vary an immediate registration action or an interim prohibition order, in response to new information or a change in circumstances and on the Ombudsman's own initiative or on application by a health practitioner<sup>199</sup>
- clarify that, after taking immediate action, an investigation by the Health Ombudsman may 'continue' if the investigation is already underway rather than 'starting' a new investigation,<sup>200</sup> and
- enable a health service provider, or a complainant, to waive their right to receive three monthly notice of the progress of an investigation, to be made in writing.<sup>201</sup>

The Bill also amends the HO Act to provide that the Health Ombudsman may undertake local resolution of a health service complaint even if the matter has been referred to AHPRA or an entity.<sup>202</sup>

#### *Submitters' views and department's response*

MIGA and HCQ supported the amendment to allow persons to waive their right to regular reports on investigations.<sup>203</sup> The AMAQ, however, expressed concern about the practitioner under investigation, 'who really needs to know what is happening'.<sup>204</sup> The AMAQ stated that:

*We are concerned if you do not need to report, and we all know what happens when you do not need to report: you do not need to do any work, so you can just let it fly for a while. ... Also, if you were someone who would be complained about as a medical practitioner, you would want to know what is happening and you would want to know all along the way as much as possible so that you are not just sitting in the dark wondering what the heck is going on.*<sup>205</sup>

In response, the department stated that the choice to waive the right to receive updates is 'a completely voluntarily one'. The department advised that 'If a practitioner or a complainant wishes to continue to receive progress reports ... they are entitled to continue to do so'. The department also highlighted the following safeguards:

- a person who wishes to waive their right to receive progress reports must do so in writing, and
- a person may opt back in to receiving progress reports at any time.<sup>206</sup>

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<sup>198</sup> Department of Health, *Correspondence – written briefing*, 20 June 2017, p 2.

<sup>199</sup> Bill, cl 66 and 70 insert new s 58A, 58B, 68A and 68B into the HO Act.

<sup>200</sup> Bill, cl 68 and 73 amend s 64 and 75 of the HO Act.

<sup>201</sup> Bill, cl 74 amends s 84 of the HO Act; Department of Health, *Correspondence – written briefing*, 20 June 2017, p 6.

<sup>202</sup> Bill, cl 64 amends s 43A of the HO Act.

<sup>203</sup> Submissions 12 and 28.

<sup>204</sup> Dr Shaun Rudd, AMAQ, *Public Hearing Transcript*, 17 July 2017, p 16.

<sup>205</sup> Dr Shaun Rudd, AMAQ, *Public Hearing Transcript*, 17 July 2017, p 16.

<sup>206</sup> Department of Health, *Correspondence – response to issues raised in submissions*, 24 July 2017, pp 15 - 16.

## 4 Compliance with the *Legislative Standards Act 1992*

### 4.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (Legislative Standards Act) states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to the:

- rights and liberties of individuals, and
- institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following to the attention of the Legislative Assembly.

#### 4.1.1 Rights and liberties of individuals

##### 4.1.1.1 *Clauses 24, 65 and 69 - public interest test for taking immediate action*

Clause 24 amends section 156 of the National Law to provide that a National Board may take immediate action in relation to a registered health practitioner or student, if it reasonably believes the action is ‘in the public interest’.

Section 155 of the National Law defines the term *immediate action* as the suspension, or imposition of a condition on, the health practitioner’s or student’s registration; or accepting an undertaking from the health practitioner or student; or accepting the surrender of the health practitioner’s or student’s registration.

The Bill includes the following example of where immediate action may be taken on the grounds of ‘public interest’ - a registered health practitioner is charged with a serious criminal offence unrelated to the practitioner’s practice, for which immediate action is required to maintain public confidence in the provision of services by health practitioners.

Clauses 65 and 69 amend section 58 (power to take immediate registration action) and section 68 (power to issue interim prohibition orders) of the HO Act to allow the Health Ombudsman to similarly take immediate action ‘in the public interest’.<sup>207</sup>

The proposed approach raises potential fundamental legislative principles issues under section 4(2)(a) of the Legislative Standards Act in relation to the rights and liberties of health practitioners.

The explanatory notes state that during consultation on the development of the Bill, stakeholders expressed concern about the amendment’s potential for a subjective interpretation and application of the term ‘public interest’.<sup>208</sup> In addition, a number of submissions to this inquiry opposed the proposed amendment.<sup>209</sup> However, there was support from a number of submitters.<sup>210</sup>

The explanatory notes provide the following justification for the proposed amendments:

*The current threshold [for immediate action] is problematic given a number of recent cases, notably associated with the failures at Djerriwarrh Health Services In Victoria, where the National Board was unable to take immediate action because the evidence presented to the Board did not meet the required threshold. The concerns of stakeholders about the breadth of the powers were carefully considered. However, on balance, the need for National Boards to*

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<sup>207</sup> Explanatory notes, p 30.

<sup>208</sup> Explanatory notes, p 31.

<sup>209</sup> See for example submissions 11, 12, 22 and 35.

<sup>210</sup> See for example submissions 5, 28, 32 and 33.

*have sufficient powers to deal swiftly and effectively with public health risks as they present is considered paramount.*<sup>211</sup>

In addition, the explanatory notes state:

*The amendment is considered to balance fairness and the impact of immediate action in practitioners with the ability of the National Boards and the Queensland Health Ombudsman to have sufficient powers to deal quickly and effectively with practitioners who may pose a risk to the public. The 'public interest' test will ensure public confidence in health practitioners does not risk being eroded by knowledge that a practitioner has been allowed to continue practising while allegations are resolved. The test provides National Boards and the Queensland Health Ombudsman with the ability to consider risk in a wider context and take into account public expectations of the standards expected of practitioners. This is particularly relevant where allegations of sexual boundary violations are made or charges for serious criminal offences are laid against a practitioner. In these cases, allowing practitioners to remain in practice may risk patient safety and public confidence in the relevant profession.*<sup>212</sup>

#### Committee comment

The committee noted the concerns raised by stakeholders (detailed in section 3.4.2 of this report), as to how the proposed 'public interest' test for immediate action will be applied and the potential effect that this will have on health practitioners. The committee also noted the justification provided by the department in the explanatory notes.

The committee brings the potential fundamental legislative principles issues raised by clauses 24, 65 and 69 to the attention of the Legislative Assembly.

#### 4.1.1.2 Clauses 32 and 33 – review of health panel's decision to suspend a practitioner's registration

The National Law provides that a health panel may suspend a health practitioner's or student's registration, if it determines that they have an impairment.<sup>213</sup>

An 'impairment' is defined as a physical or mental impairment, disability, condition or disorder (including substance abuse or dependence) that detrimentally affects or is likely to detrimentally affect the capacity of a registered health practitioner or an applicant for registration in a health profession, to practise the profession. In relation to a student, an impairment affects their capacity to undertake clinical training.<sup>214</sup>

Clause 33 amends section 191 of the National Law to provide that if a health panel decides to suspend a practitioner's or student's registration, it must decide a date by which the suspension is to be reconsidered (the *reconsideration date*).

Clause 32 amends section 184 of the National Law to allow a health panel to review a decision to suspend a practitioner or student's registration on the basis of documents before the panel, without the party, their representatives or witnesses present at the hearing. Section 184(3)(b) provides that should a panel intend to review a decision entirely on the basis of documents, written notice of the intention must be given to the practitioner or student who is the subject of the decision.

Pursuant to section 184(4), the health practitioner or student may, within 14 days after receiving the written notice, provide written notice to the panel:

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<sup>211</sup> Explanatory notes, p 32.

<sup>212</sup> Explanatory notes, pp 32 - 33.

<sup>213</sup> National Law, s 191.

<sup>214</sup> National Law, s 5.

- requesting a hearing; and
- undertaking to be available to attend a hearing within 28 days after providing notice.

The proposed approach raises potential fundamental legislative principles issues under section 4(3)(b) of the Legislative Standards Act, which provides that whether legislation has sufficient regard to rights and liberties of individuals depend on whether the legislation is consistent with natural justice.

The principles of natural justice have been developed by the common law and incorporate the following three principles: something should not be done to a person that will deprive them of some right, interest or legitimate expectation of a benefit without the person being given an adequate opportunity to present their case to the decision-maker; the decision-maker must be unbiased; and procedural fairness should be afforded to the person.<sup>215</sup>

The explanatory notes acknowledge the potential issue with regards natural justice, and provide the following justification:

*The purpose of this provision is to provide flexibility for a health panel. For example, after an initial suspension is decided on the basis of a hearing, it may only be necessary to receive an updated report from the treating practitioner to decide that a practitioner or student's suspension should continue (for example, if the practitioner's or student's illness has not improved or has deteriorated). If a practitioner or student has a long-term illness, it also may not be practical or possible for them to attend a hearing in person and proceeding on the basis of documents may be entirely appropriate.*<sup>216</sup>

#### Committee comment

The committee considers that, on balance, clauses 32 and 33 have sufficient regard to the rights and liberties of practitioners and students.

In reaching this view, the committee noted that the health panel is required to provide written notice of its intention to reconsider a suspension, on the basis of documents, to the affected practitioner or student, and that if the practitioner or student requests a hearing, the panel must hold a hearing.

### **4.1.2 Institution of Parliament**

#### 4.1.2.1 Clauses 40 and 52 – regulation-making powers

The Bill includes a number of regulation-making powers, including the power to make regulations:

- to modify the federal *Australian Information Commissioner Act 2010*<sup>217</sup>, and
- to prescribe another entity in place of the Ambulance Service of New South Wales to issue a Diploma of Paramedical Science.<sup>218</sup>

These proposed amendments allow for amendments to an Act by regulation. This approach raises potential fundamental legislative principles issues under section 4(4)(c) of the Legislative Standards Act, which provides that a Bill should only authorise the amendment of an Act by another Act.

A clause in an Act, which enables the Act to be expressly or impliedly amended by subordinate legislation is known as a Henry VIII clause. In general, Henry VIII clauses that are not justified in the circumstances raise potential fundamental legislation principles issues. However, the use of Henry VIII

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<sup>215</sup> Office of the Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 25.

<sup>216</sup> Explanatory notes, p 35.

<sup>217</sup> Bill, cl 40 inserts new s 212A(2)(c) into the National Law.

<sup>218</sup> Bill, cl 52 inserts new s 306 into the National Law.

clauses have been considered potentially justified when used for the application of national scheme legislation.<sup>219</sup>

#### Committee comment

The committee considers that, on balance, clauses 40 and 52 have sufficient regard to the institution of Parliament.

In reaching this decision, the committee noted that the making of regulations pursuant to clause 40 will allow consistency with commonwealth information and privacy legislation and that regulations made pursuant to clause 52 are limited in application to another organisation issuing a Diploma of Paramedical Science.

The committee also noted the disallowance provisions at new section 246 of the National Law. New section 246 provides that a regulation must be tabled in, or notice of its making given to, the Parliament of each jurisdiction participating in the National Scheme, and that a regulation may be disallowed in a participating jurisdiction.

#### **4.2 Explanatory notes**

Part 4 of the Legislative Standards Act relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 of the Legislative Standards Act and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

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<sup>219</sup> Office of the Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 159.

## Appendix A – List of submissions

<b>Sub #</b>	<b>Submitter</b>
001	ACNP
002	Optometry Australia
003	West Moreton Hospital and Health Services
004	Bryon Clissold
005	The Royal Australian and New Zealand College of Psychiatrists
006	Massage & Myotherapy
007	Karinalee Honeyman
008	CONFIDENTIAL
009	Australian Society of Medical Imaging and Radiation Therapy (ASMIRT)
010	Dr Rachel Mascord
011	Avant Mutual Group
012	MIGA Always
013	Federation of Chinese Medicine & Acupuncture Societies of Australia LTD – FCMA
014	Australian Doctors Fund
015	Amber Goodwin
016	Leong Ng
017	Francesca Leaton
018	United Voice, Industrial Union of Employees, Queensland
019	Ambulance Employees Australia Victoria
020	Elizabeth Dolan
021	Marianna Masiorski
022	Australian Medical Association Queensland
023	Dr Amelia Stephens

<b>Sub #</b>	<b>Submitter</b>
024	Queensland Nurses and Midwives' Union
025	Total Health from Inside Out Pty Ltd
026	Health Practitioners Australia Reform Association
027	Not Allocated
028	Health Consumers Queensland
029	Not Allocated
030	Dr Kevin Doyle
031	Caroline Raphael
032	Maurice Blackburn Lawyers
033	Australian Dental Association (QLD Branch)
034	CONFIDENTIAL
035	Together Queensland
036	CONFIDENTIAL
037	Australian Psychological Society
038	Fiona Lotherington
039	Chiropractors' Association of Australia (QLD)

## **Appendix B – List of witnesses at public briefing and public hearing**

### **Public briefing – 27 June 2017**

#### **Department of Health**

- Russell Bowles, Commissioner, Queensland Ambulance Service
- David Harmer, Director, Legislative Policy Unit, Strategy, Policy and Planning Division
- James Liddy, Manager, Legislative Policy Unity, Strategy, Policy and Planning Division

#### **Australian Health Practitioner Regulation Agency**

- Matthew Hardy, National Director, Notifications
- Chris Robertson, Executive Director, Strategy and Policy

### **Public hearing – 17 July 2017**

#### **United Voice**

- Dermot Peverill, Industrial Officer
- Inspector Nick Lentakis, Senior Clinical Educator, Queensland Ambulance Service

#### **Royal Australian and New Zealand College of Psychiatrists**

- Dr Yara Khedr, Consultant Psychiatrist, Toowoomba Hospital and Senior Lecturer, University of Queensland

#### **Queensland Nurses and Midwives' Union**

- Jamie Shepherd, Professional Officer
- Kalina Pyra, Solicitor, Hall Payne Lawyers

#### **Medical Insurance Group Australia**

- Timothy Bowen, Senior Solicitor, Advocacy, Claims and Education

#### **Avant Mutual Group**

- Georgie Haysom, Head of Advocacy

#### **Health Consumers Queensland**

- Melissa Fox, Chief Executive Officer

#### **Australian Medical Association Queensland**

- Dr Shaun Rudd, Chair, Board and Council



