Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2017

Explanatory Notes

Short title

The short title of the Bill is the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2017.

Policy objectives and the reasons for them

Summary of Bill

The Bill amends the Health Practitioner Regulation National Law (National Law) as agreed by the Council of Australian Governments Health Council, sitting as the Australian Health Workforce Ministerial Council (COAG Health Council), on 29 May 2017.

The Bill includes the following key reforms to the National Law:

- national regulation of paramedics, including the establishment of a Paramedicine Board of Australia
- enabling the COAG Health Council to make changes to the structure of National Boards by regulation following consultation
- 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.

The Bill also includes amendments to the *Health Ombudsman Act 2013* (Qld) (Health Ombudsman Act) and other Queensland legislation. These amendments are principally consequential amendments, as a result of changes in the National Law. However, a number of the amendments to the Health Ombudsman Act were requested by the Health Ombudsman as part of the *Inquiry into the performance of the Queensland Health Ombudsman's functions pursuant to section 179 of the Health Ombudsman Act 2013* by the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee.

Background to the Health Practitioner Regulation National Law

The *Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions* (Intergovernmental Agreement) was agreed by the Council of Australian Governments (COAG) in March 2008. The Intergovernmental Agreement provides the basis for the establishment of the National Registration and Accreditation Scheme for the Health Professions (National Scheme).

The National Scheme was implemented through the adoption of the National Law by all states and territories in 2009 and 2010. It commenced on 1 July 2010, initially regulating ten health professions (with commencement in Western Australia on 18 October 2010). Four more health professions joined the scheme from 1 July 2012.

Queensland is the host jurisdiction for the National Law under the *Health Practitioner Regulation National Law Act 2009* (Qld) and the National Law is set out in the schedule to that Act.. Under the Intergovernmental Agreement, proposed amendments to the National Law must be approved by the COAG Health Council.

The National Law currently 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; and psychology.

The National Law established 14 National Boards to regulate the 14 nationally registered health professions. It also established the Australian Health Practitioner Regulation Agency (AHPRA) to provide regulatory services for the National Boards and advice and assistance to the COAG Health Council.

The National Scheme and National Law ensure that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered. It allows health practitioners to have a single registration recognised anywhere in Australia and provides mechanisms for detecting and addressing practitioner health, conduct or performance issues. The scheme is a 'protection of title' model, with powers to prosecute persons who falsely hold out to be registered or use a restricted professional title. It also enables the continuous development of a flexible, responsive and sustainable health workforce and innovation in the education of health practitioners and service delivery by health practitioners.

Some local modifications apply in certain States and Territories. In particular, New South Wales' and Queensland's complaints handling and disciplinary functions operate under "co-regulatory" arrangements which are recognised by the National Law.

Terminology referring to the Ministerial Council

The National Law defines 'Ministerial Council' as the Australian Health Workforce Ministerial Council comprising Ministers of the governments of the participating jurisdictions and the Commonwealth with portfolio responsibility for health. The structure and names of Ministerial Councils are revised by COAG from time to time. The 'Australian Health Workforce Ministerial Council' no longer exists as a separate Ministerial Council and its work has been included in the ambit of the COAG Health Council.

The Bill amends the definition of 'Ministerial Council' to mean the COAG Health Council or a successor of the COAG Health Council (regardless of the name of the successor body) constituted by Ministers of the governments of the participating jurisdictions and the Commonwealth with portfolio responsibility for health (see clause 4(3), amendment of section 5). For simplicity in the explanatory notes, the Ministerial Council is referred to as the 'COAG Health Council'. However, it should be noted that when making decisions under the National Law, the COAG Health Council sits as the Australian Health Workforce Ministerial

Council. If the amendments in the Bill are passed, it will no longer be necessary to refer to the Australian Health Workforce Ministerial Council.

Independent review of the National Scheme

In 2014, the COAG Health Council appointed Mr Kim Snowball, the former Director-General of the Department of Health in Western Australia, to conduct an independent review of the National Scheme. The independent review involved an extensive consultation process which included consultation forums in each capital city and more than 230 written submissions were received.

The independent review acknowledged the significant achievements made by the National Scheme and National Law, including:

- ensuring that the community can have confidence that health practitioners providing treatment and care in Australia meet a national standard based on safe practice
- consolidating 74 Acts of Parliament and 97 separate health profession boards across eight States and Territories into a single National Scheme
- increasing the mobility of health practitioners working in Australia by removing the necessity for them to be separately registered in each jurisdiction
- improving protection to the health system by ensuring that any health practitioner who has been found to have committed misconduct can no longer practise undetected in another jurisdiction, and
- enabling significant improvements to health workforce information and planning due to the availability of accurate data on each of the 14 professions operating within it.

COAG Health Council's response to the independent review

The final report of the independent review 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. The COAG Health Council's full response is available at:

http://www.coaghealthcouncil.gov.au/Portals/0/The%20Independent%20Review%20of%20the%20National%20Registration%20and%20Accreditation%20Scheme%20for%20Health%20Professions.pdf

The implementation of the COAG Health Council's response to the independent review is occurring in two stages. The first stage consists of the amendments to the National Law being progressed in this Bill.

The amendments in the Bill arising from the COAG Health Council's response to the independent review include:

- enabling the COAG Health Council to make changes to the structure of National Boards by regulation following consultation
- 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.

The second stage of reforms resulting from the independent review requires extensive stakeholder consultation to be undertaken, with consultation expected to commence in 2017.

National regulation of paramedics

On 6 November 2015, the COAG Health Council announced its intention for paramedics to be regulated as part of the National Scheme. On 7 October 2016, the COAG Health Council agreed to proceed with inclusion of paramedics in the National Scheme and noted that paramedics would be registered in all jurisdictions.

The regulation of paramedics as part of the National Scheme is expected to:
- protect the public by:
  - establishing minimum qualifications and other requirements for the registration of a person as a paramedic
  - providing powers to deal effectively with paramedics who have an impairment that affects their practice, are poorly performing or who engage in unprofessional conduct or professional misconduct, and
  - preventing persons who are not qualified, registered and fit to practise from using the title 'paramedic' or holding themselves out to be registered if they are not
- facilitate the provision of high quality education and training in paramedicine through the accreditation of training programs for registration purposes
- improve transparency and accountability in the delivery of public and private sector paramedicine services, and
- provide a suitable regulatory framework for the public and private sector paramedic workforce.

Background to the Health Ombudsman Act 2013 (Qld) and relationship with National Law

The Health Ombudsman Act commenced on 1 July 2014 and is the single point of entry for all health service complaints in Queensland. The Health Ombudsman deals with complaints relating to health practitioners registered under the National Law, as well as health practitioners that are not registered.

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

Under the Health Ombudsman Act, the Health Ombudsman deals with more serious matters about registered health practitioners. This includes where a ground exists for the suspension or cancellation of the practitioner's registration or where a practitioner has behaved in a way that constitutes professional misconduct (see section 91). Professional misconduct is defined in section 5 of the National Law and includes unprofessional conduct substantially below the standard expected of a registered health practitioner or conduct inconsistent with the

practitioner being a fit and proper person to hold registration in the profession. For other matters involving registered health practitioners, the Health Ombudsman may refer those matters to AHPRA and the National Boards (see section 91).

The Health Ombudsman is the primary body that deals with health service complaints for unregistered health practitioners. Unregistered health practitioners include dieticians, homeopaths, naturopaths, nutritionists, massage therapists, social workers and speech pathologists.

Amendments to Health Ombudsman Act and other Queensland legislation

The Bill makes consequential amendments to the Health Ombudsman Act and other Queensland legislation as a result of changes to the National Law.

As outlined above, under Queensland's co-regulatory model, the notifications management and disciplinary and enforcement process for registered health practitioners may be dealt with under either the National Law or the Health Ombudsman Act. To ensure as much consistency as possible for registered health practitioners, where equivalent or similar provisions exist in the Health Ombudsman Act and the National Law, the Bill includes equivalent or similar amendments to the Health Ombudsman Act.

To maintain consistency between the approach for registered health practitioners and unregistered health practitioners, the Bill also includes similar amendments to the Health Ombudsman Act for unregistered health practitioners. This will ensure that registered health practitioners and unregistered health practitioners can be dealt with in an equivalent way on the same grounds. For example, action will be able to be taken on public interest grounds against both registered health practitioners and unregistered health practitioners.

In addition to the consequential amendments, the Health Ombudsman requested amendments to the Health Ombudsman Act as part of the *Inquiry into the performance of the Queensland Health Ombudsman's functions pursuant to section 179 of the Health Ombudsman Act 2013* by the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee.

As part of the Committee's inquiry, the Health Ombudsman submitted a list of suggested amendments to the Health Ombudsman Act. The Committee Report recommended that the Queensland Government consider introducing the amendments suggested by the Health Ombudsman (see recommendation 4). A number of the Health Ombudsman's suggested amendments relate to, or complement, the consequential amendments to the Health Ombudsman Act being progressed in the Bill.

The Queensland Government tabled its response to the Committee's report on 16 March 2017, which included adoption of recommendation 4. The majority of the amendments requested by the Health Ombudsman under recommendation 4 require further consideration in the context of recommendations 1 and 2 or require detailed consideration or significant consultation with stakeholders. However, a small number of those amendments were identified as being suitable to progress immediately and are included in this Bill.

Achievement of policy objectives

National regulation of paramedics

The Bill establishes the Paramedicine Board of Australia (Paramedicine Board), which will be responsible for regulating paramedics with administrative and other support provided by AHPRA (see clause 52, new section 307). The Bill also amends the National Law to require people who use the title 'paramedic' to be registered (see clause 15, amendment to section 113).

Paramedics will be subject to the same regulatory arrangements as the other health professions regulated 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 New South Wales under their co-regulatory models). To achieve this, the definition of 'health profession' in the National Law is amended to add 'paramedicine' as a profession regulated by the National Law (see clause 4(7), amendment to section 5).

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 and vary between professions based on the cost of regulating each profession under the National Law. The fees vary depending on factors such as the size of the profession, the risks associated with practice, the level and complexity of complaints and notifications and the capital reserves needed to ensure sustainability of the operations of the National Board. The National Law requires that registration fees are reasonable having regard to the efficient and effective operation of the National Scheme (see section 3(3)(b) of the National Law).

Under section 26 of the National Law, AHPRA and the National Boards must enter into a 'health profession agreement' that makes provision for:

- the National Board's annual budget
- fees payable by health practitioners, and
- the services to be provided to the National Board by AHPRA to enable the National Board to carry out its functions.

Copies of the 'health profession agreements' between AHPRA and the current National Boards are available at:
http://www.ahpra.gov.au/Publications/Health-profession-agreements.aspx

As occurs with other professions, AHPRA and the Paramedicine Board will enter into a 'health profession agreement' after the establishment and appointment of the Board (subject to passage of the Bill). As outlined above, registration fees for paramedics will be decided as part of the health profession agreement.

Registration fees for each profession are published on each of the National Board's websites. In 2016/17, National Boards and AHPRA agreed the following general registration fees for their respective professions:

Health profession	Registration Fee
Aboriginal and Torres Strait Island Health Practice	$120
Chinese Medicine	$579
Chiropractic	$566
Dental: - Dentists/Specialists - Dental prosthetists - Hygienists/Therapists	 $628 $558 $310
Medical	$724
Medical Radiation	$180
Nursing and Midwifery	$150
Occupational Therapy	$110
Optometry	$300
Osteopathy	$376
Pharmacy	$328
Physiotherapy	$110
Podiatry	$378
Psychology	$449

It is important to note that registration fees for paramedics will be set independently of the fees for other professions, by agreement between the Paramedicine Board and AHPRA.

In addition to annual registration fees, paramedics will also be required to pay a one-off application fee for first time registrants. This fee covers the costs associated with processing an application and assessing a person's eligibility and suitability for registration. This includes verification of the practitioner's identity and assessment and verification of qualifications, training and/or expertise as a paramedic, and covers the cost of a criminal history check in Australia, and confirmation of registration with international regulatory bodies as needed.

Registration fees are generally paid by the registrant and as such can usually be claimed as an employment expense for taxation purposes.

Role of Paramedicine Board until 'participation day'

On 8 April 2016, the COAG Health Council approved a project plan for implementation of national registration for paramedics, with registration expected to commence in the second half of 2018.

The Bill defines the 'participation day' as a day prescribed by regulation after which an individual may be registered in paramedicine under the National Law (see clause 52, new section 306). In practice, the 'participation day' is planned to be the date on which registration for paramedics will commence or 'go live'. The Bill sets out the functions of the Paramedicine Board until the 'participation day' (see clause 52, new section 308).

Subject to passage of the Bill, the members of the Paramedicine Board will be appointed as soon as possible to enable the Board to work with AHPRA to prepare the profession for national regulation. During this period, the Board must develop mandated registration standards to recommend to the COAG Health Council for approval (see sections 12 and 38 of the National Law and clause 52, new section 308(3)(a)). The registration standards set requirements for professional indemnity insurance arrangements, criminal history of applicants, continuing professional development, English language skills and recency of practice. It is expected that other registration standards and codes may also need to be developed, for example, to support the transition of the existing paramedic workforce into the scheme and set requirements for professional conduct.

In order to ensure a smooth transition, the Bill gives the Board the necessary functions and powers during the period leading up to the 'participation day', including developing and consulting on draft registration standards, codes and guidelines, recognising qualifications for registration, and considering national accreditation arrangements for the profession (see clause 52, new sections 308 to 311).

Qualifications for registration as a paramedic

Under the National Law and Bill, there will be three main pathways to be 'qualified' for general registration as a paramedic, as follows:

- Pathway 1 – 'Approved qualification' under section 53 of the National Law – an individual holds an 'approved qualification' or otherwise qualifies for registration under section 53(b), (c) or (d), such as holding a qualification that is substantially equivalent to or based on similar competencies to an approved qualification (more details are provided below about the procedures for the Board approving programs of study leading to an 'approved qualification' under the heading *Accreditation arrangements for paramedicine and 'approved programs of study'*).

- Pathway 2 – grand-parenting arrangements under clause 52, new section 311 – an individual meets one of the criteria outlined under this 'grand-parenting' clause, which will apply for three years from the 'participation day'.

- Pathway 3 – holds a Diploma of Paramedical Science issued by the Ambulance Service of New South Wales under clause 52, new section 312 – as agreed by the COAG Health Council on 7 October 2016, the Bill recognises that a person who holds a Diploma of Paramedical Science, Diploma of Paramedical Science (Ambulance), Advanced Diploma of Paramedical Science (Ambulance), Diploma in Paramedical Science (Pre-Hospital Care) or Advanced Diploma Paramedical Sciences (Pre-Hospital Care) issued by the Ambulance Service of NSW will be qualified for general registration in paramedicine under the National Law.

All applicants for registration in paramedicine will be required to meet the registration standards to be developed by the Paramedicine Board, regardless of which pathway they use to seek registration.

Accreditation arrangements for paramedicine and 'approved programs of study'

The Paramedicine Board may do anything under part 6 of the National Law in relation to accreditation for paramedicine (see clause 52, new section 308(3)(d)). Under section 43 of part 6 of the National Law, a National Board must decide whether an accreditation function is to be exercised by an external accreditation entity or a committee established by the Board (which is defined in section 5 of the National Law as the 'accreditation authority'). The remainder of part 6 sets out the processes associated with accreditation, including:

- development of accreditation standards (section 46)
- approval of accreditation standards by a National Board (section 47)
- accreditation of programs of study by an accreditation authority in accordance with approved accreditation standards (section 48), and
- approval of accredited programs of study by a National Board based on a report provided by an accreditation authority (section 49).

A 'program of study' approved by a National Board under section 49(1) is defined as an 'approved program of study' under section 5 of the National Law. An 'approved qualification' is defined in section 5 as a qualification obtained by completing an 'approved program of study'. As outlined above, an individual who holds an 'approved qualification' is qualified for general registration in a health profession under section 53(a).

It is expected that one of the first matters to be decided by the Paramedicine Board, once it is established, will be the appointment of an accreditation authority under section 43. The accreditation authority will be tasked with developing accreditation standards and following the accreditation process in part 6, as set out above. However, based on experience with the entry of four additional health professions to the National Scheme in 2012 (Aboriginal and Torres Strait Islander health practice, Chinese medicine, medical radiation practice and occupational therapy), it is expected that the accreditation process provided for in part 6 will take approximately two to three years to be completed. This means it will not be possible to complete the accreditation process before the 'participation day'.

In order to ensure that the Paramedicine Board can approve programs of study before the full accreditation process has been completed, a transitional provision has been included in the Bill (see clause 52, new section 310). This transitional provision allows the Paramedicine Board to approve, or refuse to approve, programs of study as providing a qualification for registration in paramedicine, based on the programs of study accredited by the Council of Ambulance Authorities Inc (CAA) prior to the commencement of the Bill, or between commencement and the 'participation day'. The CAA is the current accrediting body for programs of study for paramedicine and its membership includes the ambulance authorities of each State and Territory.

A 'program of study' approved by the Paramedicine Board under new section 310 is taken to be an 'approved program of study' for the National Law (see section 310(4)). Under the definition of 'approved qualification', such a qualification is obtained by completing an 'approved program of study'. This means that a person who completes or has completed a program of study approved by the Paramedicine Board under section 310 will be qualified for general registration under section 53(a), because they hold an 'approved qualification'.

Transitional provisions for national regulation of paramedics

The Bill includes other transitional provisions for registration in paramedicine, to ensure the smooth transition of the profession to registration. These provisions were recommended by AHPRA, based on their experience in registering the four additional health professions under the National Scheme in 2012, and were endorsed by all States and Territories (see clause 52, new sections 314 to 317).

Power for COAG Health Council to make changes to the structure of National Boards by regulation following consultation

The structure of National Boards for the health professions regulated under the National Law is currently fixed, with each registered profession having its own National Board specified in section 31 of the National Law. The independent review found that five health professions accounted for 87.5 per cent of registrants and 95.5 per cent of complaints and notifications in 2012-13 (these professions were dental, medical, nursing/midwifery, pharmacy and psychology). The remaining nine professions accounted for 12.5 per cent of registrants and less than 5 per cent of complaints and notifications (referred to in the report as the "low regulatory workload professions").

The independent review recommended consolidating the nine low regulatory workload National Boards into a single National Board. On 8 April 2016, the COAG Health Council decided not to accept this recommendation. It decided that efficiencies can and should be achieved by streamlining existing committee and operational arrangements under all the National Boards. However, the COAG Health Council did not rule out the possibility that changes may be required in the future to ensure the governance arrangements for the National Scheme continue to be fit for purpose. Therefore, the COAG Health Council agreed to amend the National Law so that changes to the governance and membership of National Boards could be made by regulation.

To achieve this flexibility, the Bill requires that National Boards for each health profession be provided for in regulations, rather than specified in the National Law (see clause 5, replacement of section 31). Under section 245 of the National Law, regulations are made or amended by the COAG Health Council. The new section 31 in the Bill also states that the regulations may:

- continue existing National Boards
- establish a Board for a health profession or two or more health professions, or
- dissolve a Board if another Board is established for that profession.

These powers provide flexibility for the COAG Health Council to consolidate or separate National Boards as needed, to effectively manage changes in the governance, membership, cost effectiveness and efficiency of the Boards.

There are no current proposals to change the structure of National Boards. New section 31(4) provides that before a regulation is made to consolidate or separate National Boards, the Ministers comprising the COAG Health Council must undertake public consultation on the proposed regulation.

The National Law specifies the professions regulated under the National Scheme in the definition of 'health profession' in section 5. This means any change to add a profession to,

or remove a profession from, the National Scheme would require the agreement of the COAG Health Council and amendment to the National Law. Appropriate consultation would also need to be undertaken prior to this type of change occurring.

Recognition of nursing and midwifery as two separate professions

The significant majority of midwives in Australia hold dual registration as nurses and midwives (approximately 30,000). However, there are approximately 3,000 registered midwives who are qualified to practice as midwives only. In recent years, direct entry training programs for midwifery, and the introduction of alternative maternity choices for women, mainly in metropolitan areas, have seen a growth in the proportion of registered midwives who do not hold concurrent registration as a nurse.

The independent review recommended that the National Law be amended to reflect that nursing and midwifery are two professions regulated by one National Board. The Bill amends the National Law to recognise that nursing and midwifery are separate professions (see clause 4(6), which amends the definition of 'health profession' in section 5, and clause 15, which amends section 113). However, these professions will continue to be regulated by the Nursing and Midwifery Board of Australia. Separate registers already exist for nurses and midwives and these registers will continue to be maintained.

The recognition of nursing and midwifery as separate professions in the National Law does not affect scope of practice issues for the professions and the respective roles of nurses and midwives remain unchanged.

Improvements in complaints (notifications) management, disciplinary and enforcement powers of National Boards

Under the National Law, complaints about registered health practitioners are referred to as 'notifications' (see sections 140 to 147 of the National Law).

The National Law contains provisions dealing with the notifications process and disciplinary and enforcement powers to address practitioner health, performance and conduct issues. The 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. Details of the improvements are outlined under each of the headings below.

A number of these amendments arose out of the independent review of the National Scheme. A consultation paper released by the independent review in August 2014 sought feedback on a series of legislative amendments to the National Law endorsed by the Australian Health Workforce Ministerial Council (whose work is now within the responsibility of the COAG Health Council) in 2011, and other amendments proposed by the National Boards and AHPRA. These amendments were outlined in appendix 11 of the final report of the independent review, which is available here:
http://www.coaghealthcouncil.gov.au/Projects/Independent-Review-of-NRAS-finalised/ArtMID/524/ArticleID/68/The-Independent-Review-of-the-National-Registration-and-Accreditation-Scheme-for-health-professionals

Recommendation 32 of the independent review recommended that the National Law be amended to reflect provisions endorsed by the Australian Health Workforce Ministerial Council in 2011. Recommendation 33 of the independent review recommended that the amendments proposed by the National Boards and AHPRA be further considered by the formation of a small working group with representatives from AHPRA and jurisdictions with suitable legal and policy expertise to review the proposed amendments to the National Law and make recommendations to the Ministerial Council. Both of these recommendations were accepted by the COAG Health Council in its response to the final report of the independent review.

Where relevant, references to appendix 11 of the final report of the independent review are included below.

It should be noted that most of the changes outlined below will not apply to New South Wales practitioners as New South Wales is a co-regulatory jurisdiction which does not participate in the health, performance and conduct process of part 8 of the National Law. In New South Wales, the health professional councils work with the Health Care Complaints Commission to assess and manage concerns about practitioners in New South Wales.

In Queensland, concerns about practitioners are referred to the Office of the Health Ombudsman, as the single point of entry for complaints and notifications. Depending on the nature of the complaint or notification, it may be dealt with either under the Health Ombudsman Act or part 8 of the National Law.

National Board may ask registered health practitioner for 'practice information'

Section 132 of the National Law currently allows a National Board to ask a registered health practitioner to inform the Board if the practitioner is employed by another entity and the employer's details. Section 206 requires a National Board to inform a practitioner's employer about health, conduct or performance action being taken against the practitioner. The term 'employer' has been interpreted narrowly to only mean those in strict 'employer-employee' relationships.

This issue was identified by AHPRA and the National Boards and referred to in appendix 11 of the report of the independent review, as follows: "s.206 requires that notice of a decision to take action against a registered health practitioner is communicated to the practitioner's employer. This definition might be expanded to require notice to all places of practice – making it clear that s.206 applies equally to contractual arrangements."

The Bill replaces section 132 of the National Law so that it applies to a broad range of different practice arrangements under which a health practitioner may be engaged, including where the practitioner is an employee, contractor, volunteer, partner in a partnership, where a practitioner is a member of a practice involving a 'service company' arrangement, the practitioner is self-employed or working in an honorary capacity (see clause 20, replacement section 132). The changes will mean that no matter what type of arrangements are in place for the engagement of a practitioner, the practitioner must provide details of the arrangements under which they are engaged and practising, if asked to do so by a National Board. The Bill refers to this as a requirement to provide 'practice information'. 'Practice information' is defined in replacement section 132(4).

The Bill also amends section 206 of the National Law to ensure that where health, conduct or performance action is being taken against a health practitioner, a National Board is able to inform all places at which the person practices (see clause 39).

The National Boards and AHPRA will develop guidelines to assist practitioners about 'practice information' to be provided to the Boards. The National Boards are empowered to make guidelines under section 39 of the National Law and the Bill includes a new example stating that a National Board may develop guidelines about 'practice information' to be provided under section 132 (see clause 8, amendments to section 39).

The guidelines will contain practical information about how the concept of 'practice information' in the National Law applies to common employment, contracting and volunteering arrangements. As with all guidelines developed by National Boards under the National Law, the Board must ensure there is wide-ranging consultation about their content (see section 40 of the National Law) and stakeholders will be consulted during their development.

Grounds for taking 'immediate action' under the National Law

The grounds on which a National Board may take 'immediate action' against a registered health practitioner under section 156(1)(a) of the National Law require that a National Board must reasonably believe 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.

'Immediate action' is defined in section 155 of the National Law and generally consists of the suspension of a health practitioner's registration or the imposition of a condition on the practitioner's registration.

The threshold for immediate action in its current form in section 156 may constrain a National Board from taking swift action where it is warranted to protect public health, public safety or the public interest. For example, if a practitioner has been charged with a serious crime, and the relationship between the alleged 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.

The Bill broadens the grounds on which a National Board may take immediate action to enable immediate action to be taken by a National Board if it reasonably believes the immediate action is in the public interest (see clause 24, amendment to section 156). The National Law as it applies in New South Wales contains a similar 'public interest' test for immediate action (see section 150 of the *Health Practitioner Regulation National Law (NSW)*).

The Board will always seek to respond in a way that is proportionate to the risk posed.

A decision by a National Board to impose a condition on a person's registration or to suspend registration is subject to a 'show cause' process (see section 157 of the National Law). As part of the show cause process, the National Board must have regard to any submissions made by a registered health practitioner in deciding whether to take immediate action (see

section 157(3)). The National Board's decision is also subject to appeal to the appropriate responsible tribunal (see section 199(1)(e) and (h) of the National Law).

Scope of application of prohibition orders and offences for breach of a prohibition order

Under section 196(4)(b) of the National Law, if a responsible tribunal decides to cancel a person's registration under the National Law or a person does not hold registration under the National Law, the tribunal may also decide to prohibit the person from "using a specified title" or "providing a specified health service". This is commonly referred to as a 'prohibition order'. The cancellation of registration and making of a prohibition order only occur in the most serious cases, usually where practitioners have engaged in serious misconduct, which may include but is not limited to, sexual boundary violations, criminal offences or professional incompetence resulting in serious harm or death of a patient.

The specific nature of the wording of section 196(4)(b) has caused difficulties in some cases, particularly where a person is not a fit and proper person to continue providing *any* kind of health service.

The National Law does not contain any offences for a person who does not comply with a prohibition order made under section 196(4)(b). The making of a prohibition order has limited protective effect if there are no offences for breach of an order.

Recommendation 29 of the independent review stated: "That the *Health Practitioner Regulation National Law 2009* prohibition order powers be amended to provide the means for Tribunals to prohibit the person from providing any type of health service, to establish an offence for breaching a prohibition order and to provide for mutual recognition of prohibition orders issued by jurisdictions." The COAG Health Council accepted this recommendation in principle, on the basis that advice be sought about a process to enable the recognition of prohibition orders across jurisdictions.

To implement the first part of the review's recommendation, the Bill amends section 196(4)(b) to allow a responsible tribunal to issue a prohibition order to prohibit a person from providing *any* health service or a specified health service or using *any* protected title or a specified title (see clause 36). The amendments to section 196(4)(b) also clarify that a prohibition order may be for a stated period or may be permanent. The approach in the Bill aligns with section 149C(5) of the *Health Practitioner Regulation National Law (NSW)*. The revised wording provides greater flexibility for responsible tribunals, particularly to make appropriate orders where a person is not a fit and proper person to continue providing any kind of health service.

To address the second part of the review's recommendation, the Bill inserts a new section 196A(1) in the National Law to make it an offence to contravene a prohibition order with a maximum penalty of $30,000 (see clause 37). To ensure that it is an offence to contravene a prohibition order made in any State or Territory, the Bill inserts a new definition of 'prohibition order' in section 5 (see clause 4(5)).

The Bill also includes the following offences related to prohibition orders (see clause 37, new sections 196A(2) and (3)):

- 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. If a patient is under 16 or under guardianship, the prohibited person must tell the patient's parent or guardian before providing the health service. Similar to the changes made to section 132 and explained above, a prohibited person must disclose the prohibition order to an entity that engages them, regardless of the manner in which they are engaged (for example, a prohibited person must notify an entity that engages the prohibited person under a contract for services or a charity or sporting club if they are providing health services as a volunteer, of the fact they are subject to the prohibition order), 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.

These offences are similar to offences that apply in New South Wales under sections 102(2) and 103(2) of the *Public Health Act 2010* (NSW).

Public register of prohibition orders

The National Law does not require or empower National Boards to keep a register of prohibition orders made under section 196(4)(b). The Bill requires National Boards to keep a register of persons subject to prohibition orders, including a copy of the prohibition order for each person subject to such an order (see clauses 44, 46 and 48 and replacement section 222(4)(b), amendment of section 223(b) and replacement section 227(b)).

This will protect the public by ensuring they have access to information about persons who are subject to prohibition orders and ensure accountability of those persons who have had a prohibition order made against them.

Improving communication with notifiers

The final report of the independent review identified key concerns raised by stakeholders in all jurisdictions about notifications by notifiers, including:

- poor communication with both notifiers and practitioners
- outcomes not being well explained to notifiers, and
- consumer notifiers commonly feel they are denied the opportunity to prevent others from experiencing the harm they experienced because the system does not explain its actions.

Recommendation 9(g) of the final report stated: "the *Health Practitioner Regulation National Law 2009* (the National Law) to be amended so that notifiers personally impacted by practitioner conduct can be informed in confidence by the National Board about the process, decision and rationale for the decision regarding their case. This complements the amendments to the National Law approved by Ministerial Council in 2011 as detailed in Appendix 11." The COAG Health Council accepted this recommendation.

The National Law currently requires communication with notifiers at certain decision points and these minimum requirements are being retained in the Bill. Currently, if a National Board is investigating a registered health practitioner or student as a result of a notification, section 161(3)(b) of the National Law requires a National Board to provide a written update about the progress of the investigation to the notifier at least every 3 months. The Bill retains this requirement and no amendment is being made to section 161.

Also, sections 180(1)(b) and 192(2)(b) of the National Law currently require notifiers to be informed of the ultimate outcome of a notification. However, sections 180(2) and 192(4) limit the information to be provided to notifiers to "the extent the information is available on the National Board's register". The Bill removes sections 180(2) and 192(4) so that these limitations no longer apply and replace them with new provisions (see clauses 29 and 35). The requirements in sections 180 and 192 to inform notifiers of decisions made by National Boards and panels will remain in place, but the Bill amends these sections to provide a discretion for National Boards to also inform notifiers of the reasons for these decisions (see clause 29, replacement section 180(2) and clause 35, amendment of section 192(4)).

The Bill also provides National Boards with a discretion to inform notifiers of decisions involving a health practitioner or student at any of the following key points and to provide reasons for the decision:

- when immediate action is taken under section 158 (see clause 25, insertion of new section 159A)
- when a decision is made by a National Board after considering an investigator's report under section 167 (see clause 26, insertion of new section 167A), and
- when a decision is made by a National Board after considering an assessor's report after a health or performance assessment under section 177 (see clause 28, insertion of new section 177A).

These amendments will give National Boards more flexibility about when to provide information to notifiers and enable more complete information to be provided than is currently the case. As part of implementing these changes, AHPRA and the National Boards will develop a common protocol to ensure appropriate information is disclosed to notifiers at appropriate times, while also taking into account privacy concerns of practitioners and patients. At times, this will need to be considered on a case by case basis, depending on the individual circumstances of the case.

Review periods when conditions on registration or undertakings are changed

When a National Board makes the following decisions under the National Law, it must decide a "review period" for the decision:

- section 83(2) – a decision to register a person subject to a condition the Board considers necessary or desirable
- section 103(2) – a decision to impose a condition on the endorsement of an applicant's registration, and
- section 112(4) – a decision to renew a health practitioner's registration or endorsement of registration subject to a condition.

A "review period" is the period during which a health practitioner or student may not make an application to change or remove a condition or undertaking and during which the Board may not change a condition on its own initiative, unless there has been a material change of circumstances (see sections 125(2)(a) and 126(3)(a) of the National Law). The term "review period" is defined in section 5 of the National Law.

Under section 125(1), a practitioner or student may apply for a condition or undertaking to be changed. A National Board must decide to grant or refuse the application under section

125(5). Under section 126, a National Board may change a condition imposed on a practitioner's or student's registration on its own initiative.

Currently, there is no ability for a National Board to decide a "review period" if a condition or undertaking is changed under sections 125 or 126 and this can lead to uncertainty for practitioners and premature applications for review of decisions.

This issue was identified by AHPRA and the National Boards and referred to in appendix 11 of the report of the independent review, as follows: "When conditions are amended under sections 125 and 126, there is no requirement for a review period to be set and we think that this would be of benefit to practitioners."

The Bill amends sections 125 and 126 of the National Law to give National Boards a discretion to decide a "review period" when a National Board decides to change a registration condition or an undertaking (see clauses 17(2) and 18(2), sections 125(6) and 126(6)). The discretion to decide a "review period" will apply regardless of whether the change occurs on application from the practitioner or student (under section 125) or on the Board's own initiative (under section 126).

As the practitioner or student has already been subject to a "review period" when the original condition was imposed on their registration or undertaking given, it may not be necessary to impose a further "review period" in every case when the condition or undertaking is changed. However, there may be cases where it would be beneficial for the National Board to impose a "review period" to give certainty to the practitioner about the minimum period before a review can be sought to enable sufficient time for resolution of the issues related to the condition or undertaking or to prevent the practitioner from immediately seeking a review once the condition or undertaking is changed. For this reason, the Bill provides that the "review period" should be at the discretion of the National Board, rather than a requirement, as applies in sections 83, 103 and 112.

The Bill also amends sections 125(6) and 126(6) to provide that if the National Board decides a review period, the Board must give written notice of the details of the review period to the practitioner or student at the same time as giving them notice of the Board's decision (see clauses 17(2) and 18(2), sections 125(6A) and 126(6A)).

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

Under part 7, division 11, subdivision 2 of the National Law, sections 125(2)(b) and 126(3)(b) provide that when an adjudication body of a co-regulatory jurisdiction imposes a condition on registration, the adjudication body may decide, when imposing the condition, that the procedures in that subdivision apply for making changes to the condition.

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.

The decision by an adjudication body as to whether or not the subdivision applies could be made at any time (such as when the practitioner moves to another State or Territory), and does not necessarily have to be made at the time the conditions are imposed. The Bill amends sections 125(2)(b) and 126(3)(b) to provide that an adjudication body may decide whether or not the subdivision applies "when imposing the condition *or at a later time*" (see clauses 17(1) and 18(1)).

Co-regulatory jurisdiction powers to change conditions imposed in another jurisdiction

Sections 125(2)(b) and 126(3)(b) of the National Law recognise that a condition may be imposed on a health practitioner's registration by an adjudication body in a co-regulatory jurisdiction. These provisions of the National Law also recognise that the adjudication body for a co-regulatory jurisdiction may decide whether the review process in part 7, division 11, subdivision 2 of the National Law should apply or not – that is, whether a practitioner or student should be able to apply to the relevant National Board to change or remove a condition.

However, no provision is made in the National Law or the laws of co-regulatory jurisdictions for the reverse situation, that is, where a condition is imposed on a health practitioner's registration in a jurisdiction that is not a co-regulatory jurisdiction, but there is a need for a review body in a co-regulatory jurisdiction to review the condition. For example, this situation may arise if the practitioner moved their principal place of practice from a jurisdiction that is not a co-regulatory jurisdiction to a co-regulatory jurisdiction (for example, a practitioner had a condition imposed on their registration in South Australia, but moves their practice from South Australia to New South Wales).

This issue was identified by AHPRA and the National Boards and referred to in appendix 11 of the report of the independent review, as follows: "Co-regulatory issues – under sections 125(2)(b), 126(3)(b) and 127(3)(b), there is no equivalent section in the National Law (NSW) to allow a co-regulatory jurisdiction to change a condition imposed by an adjudication body in a National Board jurisdiction (Part 8) if the adjudication body decided, when imposing the condition, that the subdivision applied."

To overcome this issue, the Bill inserts a new section which provides a power for a National Board to 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 (see clause 19 and insertion of new section 127A). This will usually occur where a practitioner has moved to a co-regulatory jurisdiction and has commenced practising in that jurisdiction.

The new section 127A provides that if a review body of a co-regulatory jurisdiction is to decide a matter instead of the Board, the review body must decide the matter under the laws of the review body's jurisdiction.

"Review body" is defined as an entity declared by an Act or regulation of a co-regulatory jurisdiction to be a review body for the purposes of the new provision. In New South Wales, it is expected that the review body will be a Health Professional Council or the Civil and Administrative Tribunal of New South Wales. This will need to be declared in an Act or regulation in New South Wales.

It is unnecessary for Queensland to prescribe any 'review bodies' for this new provision, as the Queensland co-regulatory arrangements currently allow for transfer of matters between National Boards and the Health Ombudsman and appeal of National Board decisions to the Queensland Civil and Administrative Appeals Tribunal.

New South Wales may also make further changes to its own State-based laws to provide for this situation from a co-regulatory perspective. For example, it is expected that NSW will seek to amend its laws to provide that an "undertaking" given in another jurisdiction will be converted to a "condition" when the matter is referred to a NSW review body under this provision, as the National Law as it applies in New South Wales does not provide for undertakings to be given.

Grounds for taking no further action about notifications

Section 151 of the National Law sets out the grounds upon which a National Board may decide to take no further action in relation to a notification.

Section 151(1)(e) currently sets out one of the grounds as: "the subject matter of the notification is being dealt with, or has already been dealt with, adequately by another entity". The use of the word "adequately" places an obligation on the National Board to enter into an assessment about the performance of another entity and whether it has dealt with a matter "adequately". It is not the National Board's role to review the performance or conduct of other entities in handling complaints or notifications. As such, the Bill removes the word "adequately" from section 151(1)(e) (see clause 22 and new section 151(1)(e)(i)).

The Bill also adds the following grounds upon which a National Board may decide to take no further action in relation to a notification (see clause 22 and new sections 151(1)(e)(ii) and (f)):

- if a National Board has referred the subject matter of a notification to another entity to be dealt with by that entity (for example, where the Board refers a matter to a health complaints entity within a State or Territory), or
- if the health practitioner to whom the notification relates has taken appropriate steps to remedy the issue the subject of the notification and the Board reasonably believes no further action is required in relation to the notification.

Power to substitute one immediate action for another

Sections 155, 156 and 159 of the National Law do not explicitly provide for a National Board to revoke one type of "immediate action" they have taken and substitute another form of "immediate action". For example, a National Board may wish to revoke the suspension of a practitioner's registration and substitute a condition of registration (or vice versa). This may occur, for example, if new information suggests that a condition imposed on registration would be sufficient to protect public safety. Similarly, new information may suggest that a condition is no longer sufficient to protect public safety and the practitioner's registration needs to be suspended.

This issue was identified by AHPRA and the National Boards and referred to in appendix 11 of the report of the independent review, as follows: "There is no avenue for ending a suspension imposed under section 156 (immediate action). This is problematic as a National

Board may want to end a suspension or revoke an undertaking not to practice; and impose conditions."

To address this issue, the Bill amends the definition of "immediate action" in section 155 (see clause 23 and new sections 155(d) and (e)) to clarify that immediate action also includes:

- revoking a suspension and imposing a condition on registration, if immediate action had previously been taken suspending a health practitioner's or student's registration, and
- suspending registration instead of a condition, if immediate action had previously been taken imposing a condition on a health practitioner's or student's registration.

Review of a suspension arising from a health panel decision

Under section 181 of the National Law, a National Board may establish a health panel if the Board reasonably believes a registered health practitioner or student has or may have an impairment. "Impairment" is defined in section 5 of the National Law 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 … or a student's capacity to undertake clinical training…".

If a health panel established under section 181 is satisfied a health practitioner or student has an impairment, the panel can decide to suspend the practitioner's or student's registration under section 191(3)(b) of the National Law. For conduct and performance matters, only a responsible tribunal can decide to suspend a practitioner's or student's registration (see section 196(2)(d) of the National Law). Currently, a health practitioner or student may seek a review of a suspension by a health panel through an appeal to the relevant tribunal under section 199(1)(j).

However, 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 (other than the general power to amend or revoke a decision in clause 23 of schedule 7). This leaves uncertainty for practitioners and students about the length of time a suspension will remain in place.

This issue was identified by AHPRA and the National Boards and referred to in appendix 11 of the report of the independent review, as follows: "… if a health panel suspends a practitioner under section 191(3)(b), there is no requirement under the National Law for the panel to set a review period. We think this would be of benefit."

To address this issue, the Bill amends section 191 of the National Law to provide that if a health panel suspends a practitioner's or student's registration, it must also decide a date by which the suspension be reconsidered, to be known as the 'reconsideration date' (see clause 33, insertion of new section 191(4A)). This will provide practitioners or students affected by a suspension with a degree of certainty that their suspension will be reviewed at an appropriate time.

The Bill also makes the related amendments outlined below to facilitate the suspension being reconsidered.

The Bill inserts a new provision to provide that a health panel reconsidering a suspension may do any of the following (see clause 34, insertion of new section 191A):

- revoke the suspension

- revoke the suspension, impose conditions on the person's registration under section 191(3)(a) in place of the suspension and decide a review period for the conditions under section 191(4), or
- not revoke the suspension and decide a new reconsideration date.

The Bill amends section 181 to provide that a National Board must establish a health panel if the suspension of a practitioner's or student's registration is to be reconsidered by a panel under section 191(4A) or 191A(2)(c) (see clause 30(1), insertion of new section 181(1A)). The Board may appoint the same panel or a different panel to the one that originally imposed the suspension, depending on the availability of panel members.

The Bill amends section 184 to provide that if a health panel is established to reconsider a suspension, the panel may decide the matter on the basis of documents, without a hearing if it considers it appropriate to do so – this is often referred to as making a decision "on the papers" (see clause 32). The panel is required to give a written notice to the practitioner or student that it intends to proceed this way. If the health practitioner or student gives a written notice to the panel within 14 days requesting a hearing (rather than having the panel decide the matter "on the papers") and the health practitioner or student gives an undertaking to be available for the hearing within 28 days, the panel must conduct a hearing. If the health practitioner or student does not request a hearing within 14 days, the panel may proceed to decide the matter "on the papers". The power to decide a matter "on the papers" is proposed to be used by a panel particularly for circumstances where a practitioner has elected not to continue active involvement in the suspension process, or where a practitioner has a long term illness that does not allow them to be able to participate in a hearing.

The Bill inserts a new section to provide for changes to the reconsideration date if a suspension is to be reconsidered (see clause 34 and insertion of new section 191B). Under section 191B(2), a health panel may decide an earlier reconsideration date if:

- the health practitioner or student advises the panel of a material change in the practitioner's or student's circumstances and requests an earlier reconsideration date because of the change, and
- the panel is reasonably satisfied that an earlier reconsideration date is necessary because of the change of circumstances.

Under section 191B(4), a health panel may decide a later reconsideration date if the panel is satisfied it is necessary to reconsider the suspension. Examples of when a panel may be reasonably satisfied a later reconsideration date may be needed would include:

- if the practitioner's or student's attendance at the hearing is required and they are unwell, the panel may decide it is preferable to wait until they are well enough to participate in the hearing
- if the practitioner's or student's evidence to the panel requires further review by the panel and this cannot be completed prior to the due date, or
- if a panel member becomes unwell and time is needed to find a suitable replacement.

If a panel changes the reconsideration date under section 191B, the panel must give notice of its decision and reasons for the decision (see sections 191B(3) and (5)). The suspension of registration would remain in place until the panel makes a decision to revoke the suspension (see section 191B(6)).

The Bill amends section 192(1) to provide that notice of a decision about reconsideration of a suspension under new section 191A must be given under section 192, in the same way as for other decisions of panels (see clause 35(1)).

The Bill amends section 199 to provide that if a health panel reconsiders a suspension of registration, a decision by the health panel not to revoke the suspension is subject to appeal to the appropriate relevant tribunal (see clause 38, new section 199(1)(ja)).

If a further health assessment is needed before reconsidering a suspension, the National Board would be able to rely on its existing power under section 169 to require a health practitioner or student to undergo a health assessment.

Disclosure to protect health or safety of patients or other persons

Section 220 of the National Law provides a power for a National Board to 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 the health or safety of the public or certain members of the public. However, section 220 does not apply to persons who are not registered health practitioners.

Section 216(2)(c) permits protected information to be disclosed if it is required or permitted by law. However, in the early stages of an investigation, it may not always be clear if other legislation permits or requires disclosure of information about a practitioner who is not registered.

There are instances where National Boards and AHPRA receive information about persons who are not registered health practitioners or who were previously registered, and where it considers there is a strong public interest in permitting the disclosure of that information to an entity of the Commonwealth, State or Territory for action. For example, information may be received about a person who is pretending to be a registered health practitioner and under the current wording of section 220, information about that person may not be able to be disclosed.

The Bill replaces section 220 with a new provision (see clause 43) so that a National Board may give information to an entity of the Commonwealth, State or Territory if a National 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 patients is or may be at risk because of the provision of a health service by a person who is not a registered health practitioner.

Section 220 will also continue to apply to registered health practitioners in the same way as it does now.

Technical and miscellaneous amendments to the National Law

The Bill makes a number of technical and miscellaneous changes to the National Law to improve its efficiency and effectiveness, including the following:

- amend the definition of ‘Ministerial Council’ in the National Law to refer to the COAG Health Council or its successor body (see clauses 4(1) and (3), amendments to section 5)

- allow National Boards to decide an application for registration and for the registration to commence up to 90 days after the date of the National Board's decision (see clause 9, amendment to section 56(2)(a)). This will particularly assist registrants moving from student to general registration and internationally qualified practitioners trying to meet the multiple requirements of National Boards, employers and immigration authorities
- enable a practitioner who holds general or limited registration in one division of the national register for a profession to obtain limited registration in another division of the register for the same profession, to facilitate upskilling and workforce flexibility (see clauses 10 and 11, amendments to section 65 and replacement section 71)
- update references to the Commonwealth CrimTrac agency to refer to the Australian Crime Commission (see clauses 4(1) and (3), 12 and 21, amendments to sections 5, 79 and 135)
- consequential amendments as a result of changes to Commonwealth Freedom of Information and privacy arrangements under the *Australian Information Commissioner Act 2010* (Cwlth) and *Freedom of Information Amendment (Reform) Act 2010* (Cwlth) (see clauses 40, 41 and 42, new section 212A and amendments to sections 213 and 215), and
- requiring a regulation made by the COAG Health Council under the National Law to be tabled in, or notice of its making given to, the Parliament of each participating jurisdiction in the same way a regulation made in that jurisdiction must be tabled or notified (see clause 50, amendments to section 246).

Amendments to Health Ombudsman Act 2013 (Qld)

The following paragraphs outline consequential amendments made to the Health Ombudsman Act as a result of changes to the National Law in the Bill.

Broadening the grounds for immediate action

The Bill amends section 156 of the National Law to provide that a National Board may take immediate action against a health practitioner if a National Board reasonably believes the immediate action is 'in the public interest' (see clause 24). Under the National Law, immediate action consists of placing conditions on a practitioner's registration or suspending their registration.

The Health Ombudsman has similar powers to take 'immediate action' under part 7 of the Health Ombudsman Act. For registered health practitioners, 'immediate action' is known as 'immediate registration action' and consists of placing conditions on a practitioner's registration or suspending their registration (see sections 57 and 58 of the Health Ombudsman Act). For unregistered health practitioners, or registered practitioners who deliver a health service unrelated to their registration, the Health Ombudsman can take immediate action by issuing an 'interim prohibition order' to the practitioner. An 'interim prohibition order' can prohibit a practitioner from providing health services or place restrictions on the practitioner's practice (see sections 67 and 68 of the Health Ombudsman Act).

To align with the changes made to section 156 of the National Law, the Bill amends sections 58 and 68 of the Health Ombudsman Act to also allow the Health Ombudsman to take

'immediate registration action' or issue an 'interim prohibition order' if the Health Ombudsman reasonably believes the action is 'in the public interest' (see clauses 65 and 69).

Scope of 'prohibition orders'

Under section 196(4)(b) of the National Law, if a responsible tribunal decides to cancel a practitioner's registration under the National Law or a person does not hold registration under the National Law, the tribunal may also decide to prohibit the person from "using a specified title" or "providing a specified health service". This is commonly referred to as a 'prohibition order'. In Queensland, the 'responsible tribunal' for the National Law is the Queensland Civil and Administrative Tribunal (QCAT).

The Bill amends section 196(4)(b) of the National Law to allow a responsible tribunal to issue a prohibition order to prohibit a person from providing *any* health service or a specified health service or using *any* protected title or a specified title (see clause 36). The amendment also clarifies that a prohibition order may be for a stated period or may be permanent. The revised wording provides greater flexibility for responsible tribunals, particularly to make appropriate orders where a person is not a fit and proper person to continue providing any kind of health service.

Sections 107(4)(b) and 113(4)(a) of the Health Ombudsman Act authorise QCAT to issue prohibition orders for registered and unregistered health practitioners, respectively and those sections use the same or similar language to section 196(4)(b) of the National Law. The Bill amends sections 107(4)(b) and 113(4)(a) of the Health Ombudsman Act in the same way as it amends section 196(4)(b) of the National Law (see clauses 76 and 77).

Sharing information about disciplinary or enforcement action with all places of practice

The Bill amends section 206 of the National Law to ensure that where health, conduct or performance action is being taken against a health practitioner, a National Board is able to inform all places at which the person practices (see clause 39).

Under part 19 of the Health Ombudsman Act, the Health Ombudsman is required to notify a health practitioner's 'employer' of certain disciplinary or enforcement actions the Health Ombudsman takes, including if:

- the Health Ombudsman takes 'immediate action' (see section 279(1)(a))
- the Health Ombudsman investigates a health service complaint that meets certain thresholds of seriousness (see section 279(1)(b)), or
- QCAT decides a matter about a health practitioner (see section 280).

The Health Ombudsman also has a discretion to inform a health practitioner's employer of a matter if the Health Ombudsman considers it would be appropriate to do so, having regard to all the circumstances and to the guiding principle of the Act that the health and safety of the public are paramount (see sections 4 and 282).

Section 277 of the Health Ombudsman Act defines 'employer' to mean an entity that employs the practitioner, engages the practitioner under a contract for services, or operates a facility at which the health practitioner provides health services. This definition is much broader than the concept of 'employ' and 'employer' used in sections 132 and 206 of the National Law. As such, the Bill makes the following amendments to the Health Ombudsman

Act to ensure the Health Ombudsman can share information about disciplinary or enforcement action with all places at which a person practises:

- section 277 – amends the definition of 'employer' so that it applies to practitioners who are engaged by an entity in an honorary or voluntary capacity (see clause 79 – this aligns with amendments made to sections 132(4)(d) and 206(2)(b) of the National Law), and
- sections 279, 280 and 282 – amends these provisions to give a discretion to the Health Ombudsman to notify other health practitioners who share the same premises and share the cost of the premises with a self-employed health practitioner about the self-employed practitioner's disciplinary or enforcement action (see clauses 80, 81 and 82 – these changes align with amendments made to sections 132(4)(a) and 206(2)(a) of the National Law and are intended to capture practice arrangements involving the use of service companies or partnership arrangements). As with the corresponding amendments to the National Law, this power is discretionary. Depending on the risks to the public, the circumstances of the case and the particular arrangements of the practice, it may or may not be appropriate to notify other health practitioners working at the same premises.

Panels of assessors for Health Ombudsman Act

The Bill amends the National Law to recognise that nursing and midwifery are two professions, although they will continue to be regulated by one National Board. The Bill also establishes a Paramedicine Board of Australia and regulates the profession of 'paramedicine'.

Under part 10 of the Health Ombudsman Act, professional panels of assessors are established for each health profession under the National Law (see section 117). Assessors from the relevant profession are appointed from the panel to sit with QCAT in disciplinary hearings and advise QCAT on questions of fact (see sections 126 and 127). One of the professional panels of assessors established under section 117 is a 'nursing and midwifery panel of assessors'.

For consistency with the amendments made to the National Law, the Bill amends section 117 of the Health Ombudsman Act to replace the 'nursing and midwifery professional panel' with a separate 'nursing panel of assessors' and 'midwifery panel of assessors' (see clause 78). The Bill also establishes a new 'paramedics panel of assessors' for the profession of 'paramedicine' which will be regulated by the National Law (also see clause 78).

Amendments to Health Ombudsman Act requested by Health Ombudsman

The following paragraphs outline the amendments in the Bill to the Health Ombudsman Act that were requested by the Health Ombudsman during the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee's *Inquiry into the performance of the Health Ombudsman's functions pursuant to section 179 of the Health Ombudsman Act 2013*.

Enabling the Health Ombudsman to vary their decisions to take immediate action

The Health Ombudsman requested new provisions to allow the Health Ombudsman to:

- review his or her decision to take immediate registration action or issue an interim prohibition order, on application by the affected practitioner or on the Health Ombudsman's own initiative, and

- vary an immediate registration action decision or interim prohibition order on his or her own initiative.

The rationale given by the Health Ombudsman for this change is:

- the Health Ombudsman can only end an immediate registration action or revoke an interim prohibition order if the Health Ombudsman is satisfied the action is no longer necessary, on the basis that the grounds for the original action no longer exist (see sections 65 and 76 of the Health Ombudsman Act, respectively)
- the affected practitioner may apply to QCAT for a review of the Health Ombudsman's decision to take the immediate registration action or issue an interim prohibition order (see sections 63 and 74 of the Health Ombudsman Act, respectively), and
- the Health Ombudsman Act does not otherwise enable the Health Ombudsman to review or vary his or her own decision to take immediate registration action or issue an interim prohibition order.

This means that the Health Ombudsman is prevented from amending the immediate registration action decision or interim prohibition order while any of the grounds for making the original decision or order still exist, even when new information has come to light or circumstances have changed and it would be appropriate for the Health Ombudsman to amend their action.

Under the National Law, National Boards have powers to revoke immediate action or to change or remove conditions on a practitioner's registration on application by the practitioner or on the Board's own initiative. The Bill amends section 155 of the National Law to clarify that National Boards can substitute one form of immediate action for another (see clause 23). For example, if immediate action had previously been taken suspending a practitioner's registration, the Bill clarifies that the Board can revoke the suspension and impose conditions on the practitioner's registration in its place. Similarly, if immediate action had previously been taken imposing conditions on a practitioner's registration, the Bill clarifies that the Board can suspend the practitioner's registration in place of the conditions.

The Bill includes new sections 58A, 58B, 68A and 68B of the Health Ombudsman Act to enable the Health Ombudsman to vary their decision to take immediate registration action or issue an interim prohibition order, on application by the practitioner or on the Health Ombudsman's own initiative (see clauses 66 and 70). The new provisions also allow the Health Ombudsman to substitute one type of immediate registration action or interim prohibition order for another, for example, revoking the suspension of a registered health practitioner's registration and substituting it with a condition of registration. This aligns with the amendment made to section 155 of the National Law.

These new provisions will provide a more efficient and flexible way for the Health Ombudsman to adjust immediate registration actions and interim prohibition orders to reflect changing circumstances, while appropriately protecting public health and safety. It will also benefit health practitioners by providing a more efficient and cost-effective review mechanism, rather than requiring the practitioner to apply to QCAT for a review of a decision.

Clarifying that an investigation may be 'continued' after immediate action

Sections 64(a) and 75(a) of the Health Ombudsman Act provide that immediately after deciding to take 'immediate registration action' or issuing an 'interim prohibition order', the Health Ombudsman must "start an investigation under part 8" or take one of two other actions. Before deciding to take immediate action, the Health Ombudsman may have already 'started' an investigation under part 8 in order to gather information, however the current wording of these provisions could be interpreted as requiring a 'new' investigation. The Bill amends sections 64(a) and 75(a) to clarify that after taking immediate action, the Health Ombudsman may 'continue' an investigation that is already underway (see clauses 68 and 73).

Waiver of right to receive three-monthly notices about progress of investigation

Section 84 of the Health Ombudsman Act requires the Health Ombudsman to give notice of the progress of an investigation, at least every three months, to the health service provider being investigated and the complainant who instigated the matter (if any).

In his submission to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee's inquiry, the Health Ombudsman noted that a substantial number of matters subject to investigation are effectively 'on hold' pending the outcome of matters outside the control of the Health Ombudsman. For example, an investigation may be on hold while criminal allegations are investigated by the Queensland Police Service or while the matter is the subject of court proceedings. Also, a complainant may not wish to receive quarterly updates about an investigation if they do not have a personal interest (for example, if the complaint resulted from a mandatory reporting requirement). The Health Ombudsman suggested that a health service provider or a complainant should be able to waive their right to the quarterly update.

The Bill amends section 84 to allow a person to waive their right to receive a three monthly progress report, provided the waiver is given by written notice (see clause 74). The wavier will be given on a voluntary basis and only if the health service provider or complainant does not wish to receive quarterly reports. The waiver will be able to be revoked at any time and in such a case, the person will recommence receiving progress reports.

Amendments to Ambulance Service Act 1991 (Qld)

Some minor amendments are made to the *Ambulance Service Act 1991* (Ambulance Service Act) as a consequence of paramedics becoming registered under the National Law.

The Bill inserts a new section 50S into the Ambulance Service Act to authorise officers from the Queensland Ambulance Service to disclose information to a National Board established under the National Law or to AHPRA for the purposes of making or giving information about a complaint or notification, answering questions or otherwise giving information about an investigation or proceeding about a person who is or was registered under the National Law (see clause 86). The new provision is equivalent to section 155 of the *Hospital and Health Boards Act 2011*.

The Bill also amends section 50M of the Ambulance Service Act to authorise officers from the Queensland Ambulance Service to disclose information to the Health Ombudsman for the

purpose of making or giving information about a complaint or notification under the Health Practitioner Regulation National Law (Queensland) (see clause 85). The new provision is equivalent to section 156 of the *Hospital and Health Boards Act 2011*.

These amendments will ensure officers from the Queensland Ambulance Service are able to share information with the Paramedicine Board of Australia, AHPRA and the Health Ombudsman for complaints, notifications and other matters arising under the National Law or the Health Ombudsman Act.

Consequential amendments to reflect the recognition of 'nursing' and 'midwifery' as separate professions

Part 2 of schedule 1 of the Bill makes consequential amendments to a range of Queensland legislation to reflect the recognition of 'nursing' and 'midwifery' as separate professions (see clause 87(2)). The amendments are purely consequential in nature and there is no underlying change in policy about the roles of 'nurses' or 'midwives'.

Alternative ways of achieving policy objectives

In 2010, the Australian Health Workforce Ministerial Council agreed to assess the profession of paramedicine for inclusion in the National Scheme. A draft Consultation Regulatory Impact Statement (RIS) was released in July 2012. A copy of the Consultation RIS is available here:
http://ris.pmc.gov.au/2012/07/16/options-regulation-paramedics-%E2%80%93-coag-consultation-regulation-impact-statement-%E2%80%93

Consultation forums took place in each jurisdiction and fifty written submissions were received. Almost all responses indicated a preference for registration of paramedics through the National Scheme.

In May 2015, a Decision RIS titled 'Options for Regulation of Paramedics' was submitted to the Commonwealth Office of Best Practice Regulation (OBPR), who administer the COAG best practice regulation guidelines. The Decision RIS identified a range of risks associated with the unregulated practice of paramedicine and assessed the costs and benefits of the following five options:

- option 1: maintain the status quo – rely on existing regulatory and non-regulatory mechanisms
- option 2: strengthen self-regulation of paramedics
- option 3: license private providers of paramedic services
- option 4: extend registration to the paramedic profession under the National Registration and Accreditation Scheme
- option 5: establish statutory registration of the paramedic profession under separate state and territory regulatory schemes.

The Decision RIS concluded that option 4 offered the greatest net public benefit, compared with other options, including the status quo. In June 2015, the Decision RIS was assessed by the Commonwealth OBPR as not compliant with COAG's best practice regulation requirements.

On 6 November 2015, the COAG Health Council discussed options for registration of the paramedic profession. On a majority vote, the meeting agreed to paramedics being included in the National Scheme. The COAG Health Council was persuaded by factors including broad stakeholder support for registration, the increasing risk profile of the profession, international experience, and improved potential for Ministers to drive health workforce reforms and improvements in quality and safety.

On 22 July 2016, the Chair of the COAG Health Council, the Honourable Jill Hennessy, Minister for Health and Minister for Ambulance Services in Victoria wrote to the Commonwealth OBPR noting that the COAG Health Council made its decision on 6 November 2015 with the knowledge of the Commonwealth OBPR's assessment that the Decision RIS was not compliant with best practice regulation requirements. The letter states the basis upon which Ministers decided to proceed with national registration of paramedics, namely:

- the increasing risk profile of the profession due to its expanding scope of practice and a rapidly growing but largely unregulated private sector
- evidence of risk from international jurisdictions, particularly the United Kingdom where a registration regime for paramedics has been in place for some years
- the important role of statutory registration in providing more efficient mechanisms of quality assurance than other regulatory and non-regulatory mechanisms can provide
- that statutory registration of paramedics provides important levers for governments to drive health system reform, by underpinning the development of more flexible models of out of hospital primary care, and enabling better quality control of the emerging private sector, thereby reducing pressure on the public hospital system, and
- the health system benefits of regulation are difficult to quantify and there are well documented limitations with RIS methodologies, particularly when complex public policy choices are to be made.

The final Decision RIS was published on the COAG Health Council website in August 2016: http://www.coaghealthcouncil.gov.au/Portals/0/Paramedics%20Decision%20RIS.pdf

Regulation of paramedics under the National Scheme requires amendments to the National Law.

As the remainder of the Bill deals with the operation of existing legislation, legislation is the only feasible option for achieving the proposed policy objectives. On 9 November 2016, the Commonwealth OBPR confirmed that the remaining amendments in the Bill did not require further analysis from a regulatory impact perspective, as they were minor or machinery in nature.

Estimated cost for government implementation

The COAG Health Council approved a project plan for the registration of paramedics at its meeting on 8 April 2016. As part of the project plan, the Australian Health Ministers' Advisory Council approved an allocation of $1.6m from its cost share budget for additional staff for AHPRA to manage the implementation process.

As outlined above, the National Scheme is self-funded from fees paid by registrants. As such, once the initial implementation phase is completed for registration of paramedics, there are not expected to be any ongoing cost implications for governments.

The other amendments to the National Law in the Bill are administrative in nature and will be implemented by AHPRA within existing resources.

The amendments to the Health Ombudsman Act are administrative in nature and will be implemented within existing resources. The other amendments to Queensland legislation are minor, consequential and administrative in nature and will be implemented within existing resources.

Consistency with fundamental legislative principles

Grounds for taking immediate action – 'public interest test'

The amendment to section 156 of the National Law to provide that 'immediate action' may be taken in the 'public interest' potentially infringes the fundamental legislative principle that legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined (section 4(3)(a), *Legislative Standards Act 1992* (Qld)). 'Immediate action' is defined in section 155 of the National Law and involves the suspension of a registered health practitioner's or student's registration or the imposition of a condition on registration. It can also involve accepting an undertaking from a practitioner or student or accepting the surrender of registration.

Similar amendments are made to sections 58 and 68 of the *Health Ombudsman Act 2013* (Qld) to introduce a public interest test. Section 58 allows the Queensland Health Ombudsman to take 'immediate registration action' (defined in section 57) in relation to a registered health practitioner and section 68 allows the Ombudsman to issue an 'interim prohibition order' (defined in section 67) for an unregistered health practitioner. 'Immediate registration action' under the *Health Ombudsman Act 2013* is equivalent to taking 'immediate action' under the National Law and involves the suspension of a registered health practitioner's registration or the imposition of a condition on registration. An interim prohibition order under section 67 has the equivalent effect for unregistered health practitioners, by enabling the Queensland Health Ombudsman to prohibit the practitioner from providing health services or particular health services or imposing restrictions on the provision of health services by the practitioner.

The threshold for taking immediate action in its current form in section 156 of the National Law and sections 58 and 68 of the *Health Ombudsman Act 2013* may constrain a National Board or the Health Ombudsman from taking swift action where it is warranted to protect public health, public safety or the public interest. For example, if a practitioner has been charged with a serious crime, and the relationship between the alleged crime and the practitioner's practice is not yet well established, the 'public interest' may require the relevant regulatory body 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.

The National Law as it applies in New South Wales contains a similar 'public interest' test for immediate action (see section 150 of the *Health Practitioner Regulation National Law (NSW)*).

The relevant National Board or Health Ombudsman will always seek to respond in a way that is proportionate to the risk posed. For example, the National Boards and AHPRA have agreed 'regulatory principles' that underpin their work and are designed to encourage a responsive, risk-based approach to regulation across all professions. The 'regulatory principles' include the following:

In all areas of our work we:

- ***identify the risks*** *that we are obliged to respond to*
- ***assess the likelihood and possible consequences*** *of the risks, and*
- ***respond in ways that are proportionate and manage risks*** *so we can adequately protect the public.*

When we take action about practitioners, ***we use the minimum regulatory force appropriate to manage the risk*** *posed by their practice, to protect the public. Our* ***actions are designed to protect the public and not to punish practitioners***.

A complete copy of the 'regulatory principles' is available on the AHPRA website at: http://www.ahpra.gov.au/About-AHPRA/Regulatory-principles.aspx.

A decision by a National Board to impose a condition on a practitioner's or student's registration or to suspend registration is subject to a 'show cause' process (see section 157 of the National Law). As part of the show cause process, the National Board must have regard to any submissions made by a registered health practitioner or student in deciding whether to take immediate action (see section 157(3)). The National Board's decision is also subject to appeal to the appropriate responsible tribunal (see section 199(1)(e) and (h) of the National Law).

A decision of the Queensland Health Ombudsman to take immediate registration action by imposing a condition on a practitioner's registration or suspending registration is also subject to a 'show cause' process (see section 59 of the *Health Ombudsman Act 2013*). Similarly, a decision of the Queensland Health Ombudsman to issue an interim prohibition order is subject to a 'show cause' process (see section 69 of the *Health Ombudsman Act 2013*). As part of the show cause process, the Queensland Health Ombudsman must have regard to any submissions made by the health practitioner (see sections 59(3) and 69(3)). There are special provisions for the Queensland Health Ombudsman to take immediate registration action or issue an interim prohibition order without a show cause process if it is necessary to ensure the health and safety of an individual or the public (see sections 59(4) and 69(4)). However, even in these cases, a 'show cause' process must be followed after the action is taken (see sections 61 and 72 of the *Health Ombudsman Act 2013*). A health practitioner may seek a review of the Queensland Health Ombudsman's decisions by the Queensland Civil and Administrative Tribunal, also known as QCAT (see sections 63 and 74 of the *Health Ombudsman Act 2013*).

During consultation, some stakeholders expressed concern in relation to these amendments, in particular, the potential for a subjective interpretation of the 'public interest' and that the current test, as provided for in the National Law and *Health Ombudsman Act 2013*, is sufficient grounds for the taking of immediate action.

The current threshold 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 have sufficient powers to deal swiftly and effectively with public health risks as they present is considered paramount.

Given that Queensland health practitioners can be dealt with under either the National Law or the *Health Ombudsman Act 2013*, it is necessary to ensure there is alignment between the provisions and that the same test applies for taking action. If this change were not made to the *Health Ombudsman Act 2013*, it would put Queensland out of step with the rest of the country in relation to the threshold for taking 'immediate action' against registered health practitioners. It would also mean practitioners dealt with under the National Law (for less serious matters) would be subject to the broader 'public interest' test for immediate action, but practitioners dealt with under the *Health Ombudsman Act 2013* (for more serious matters) would not be subject to the same test.

A report titled *Independent review of the use of chaperones to protect patients in Australia* was publicly released on 11 April 2017. A copy of the report is available at: http://www.ahpra.gov.au/News/2017-04-11-chaperone-report.aspx

The report by Professor Ron Paterson, was commissioned by the Medical Board of Australia and AHPRA. The report considers the 'public interest' test in some detail and concludes:

I support the proposed change to the section 156 test for immediate action, by adding the words from section 150 of the NSW statute, that immediate action must be taken if the National Board is satisfied that it is 'otherwise in the public interest' to do so. This wording recognises the need for immediate action in cases where public confidence in a health profession or its regulatory body may be damaged if the allegations turn out to be true, and the practitioner has been permitted to continue in unrestricted practice in the meantime. Equivalent wording has proved pivotal in the move to a stricter, precautionary approach by the GMC [General Medical Council] and Interim Orders Tribunal in the UK.

I consider it important for the public interest limb of the test for immediate action not to be qualified by the need to show necessity or appropriateness of the proposed action. No such qualification applies to the interim action public interest test in the UK or NSW. In practice, IACs [Immediate Action Committees], tribunals and courts will in any event take into account the necessity and appropriateness of proposed restrictions or suspension.

The amendment is considered to balance fairness and the impact of immediate action on practitioners with the ability for 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.

Power for COAG Health Council to make changes to the structure of National Boards by regulation following consultation

The amendments to section 31 of the National Law to allow the COAG Health Council to change the structure of National Boards by regulation potentially infringes the fundamental legislative principle that legislation should have sufficient regard to the institution of Parliament and allow the delegation of legislative power only in appropriate cases and to appropriate persons (*Legislative Standards Act 1992*, section 4(4)(a)).

These amendments provide flexibility for the COAG Health Council to consolidate or separate National Boards as needed, to effectively manage changes in the governance, membership, cost effectiveness and efficiency of the Boards. The structure of the National Boards is a matter of an administrative nature which is appropriate to be specified in regulations. There are no current plans to change the structure of National Boards. However, the COAG Health Council has requested this power in order to provide flexibility in the administration of the National Scheme if needed in future. Section 31(4) provides that public consultation must be undertaken before exercising the power.

The National Law specifies the professions regulated under the National Scheme in the definition of 'health profession' in section 5. This means any change to add a profession to, or remove a profession from, the National Scheme would require the agreement of the COAG Health Council and amendment to the National Law.

Review periods when conditions on registration or undertakings are changed

The amendments to sections 125 and 126 of the National Law to give National Boards a discretion to decide a "review period" when a National Board decides to change a registration condition or an undertaking potentially infringe the fundamental legislative principle that legislation should make rights, liberties and obligations subject to appropriate review (*Legislative Standards Act 1992*, section 4(3)(a)).

Under the National Law, a "review period" is the period during which a health practitioner or student may not make an application to change or remove a condition or undertaking and during which the Board may not change a condition on its own initiative, unless there has been a material change of circumstances (see sections 125(2)(a) and 126(3)(a) of the National Law). The term "review period" is defined in section 5 of the National Law.

The use of "review periods" to provide certainty for practitioners is already well established within the National Law. Under the following existing provisions of the National Law, a National Board must decide a "review period" when it makes the following decisions:

- section 83(2) – a decision to register a person subject to a condition the Board considers necessary or desirable
- section 103(2) – a decision to impose a condition on the endorsement of an applicant's registration, and
- section 112(4) – a decision to renew a health practitioner's registration or endorsement of registration subject to a condition.

The amendments to sections 125 and 126 merely bring these provisions into line with existing provisions by ensuring that National Boards have a discretion to decide a "review period" when a National Board decides to change a registration condition or an undertaking. The current lack of "review periods" when conditions or undertakings are changed under sections 125 or 126 can lead to uncertainty for practitioners and premature applications for review of decisions by tribunals.

In all cases where a "review period" is decided, the practitioner or student can bring an application to change or remove a condition on their registration or to change or revoke an undertaking they give if there has been a material change in circumstances (see section 125(2)(a)). Similarly, a National Board may change a condition during a review period if the Board reasonably believes there has been a material change in circumstances (see section 126(3)(a)). These provisions provide flexibility for matters to be reviewed when circumstances have changed and the conditions or undertakings are no longer appropriate, despite a review period not having been completed.

The use of "review periods" appropriately balances the need for conditions of registration and undertakings to be subject to appropriate review, while also providing certainty to practitioners about the minimum period before a review can be sought to enable sufficient time for resolution of the issues related to the condition or undertaking or to prevent the practitioner from immediately seeking a review once a condition or undertaking is changed.

Deciding a review of a suspension arising from a health panel decision on the basis of documents

The amendments to section 184 of the National Law to allow a health panel to decide the reconsideration of a suspension of registration on the basis of documents potentially infringe the fundamental legislative principle that legislation should have regard to the rights and liberties of individuals and consistency with the principles of natural justice (*Legislative Standards Act 1992*, section 4(3)(b)).

The suspension of a practitioner's or student's registration by a health panel is one of the options available to a health panel if the panel finds that a practitioner has an 'impairment' (see section 191(3)(b)). 'Impairment' is defined in section 5 of the National Law 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 … or a student's capacity to undertake clinical training…". The suspension of registration by a health panel is only used in the most serious cases, usually where a health practitioner or student has a long-term health condition that prevents them from practising or studying.

The Bill amends section 191 of the National Law to provide that if a health panel suspends a practitioner's or student's registration, it must also decide a date by which the suspension be reconsidered (see clause 33, new section 191(4A)). This new provision is an enhancement to the rights of practitioners and students affected by a suspension, as it will give them a degree of certainty that their suspension will be reviewed at an appropriate time.

Clause 32 of the Bill (insertion of new section 184(3)) allows a health panel reconsidering a practitioner's or student's suspension to decide a hearing entirely on the basis of documents, without parties, their representatives or witnesses appearing at the hearing. This is commonly

referred to as a hearing "on the papers". 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.

However, the amendment is consistent with natural justice because it also gives an affected practitioner or student the right to request a hearing if they wish (see clause 32, new section 184(4)).

Scope of application of prohibition orders

The amendments to section 196 of the National Law and sections 107 and 113 of the *Health Ombudsman Act 2013* (Qld) dealing with the scope of application of prohibition orders potentially infringe the fundamental legislative principle requiring justification for the abrogation of established statute law rights and liberties.

The Bill amends section 196(4)(b) of the National Law to allow a responsible tribunal to issue a prohibition order to prohibit a person from providing *any* health service or a specified health service or using *any* protected title or a specified title (see clause 36). The provision also clarifies that a prohibition order may be for a stated period or may be permanent. Equivalent amendments are made to sections 107 and 113 of the *Health Ombudsman Act 2013* (Qld) (see clauses 76 and 77).

These amendments potentially infringe a person's right to practice a health profession or earn a living through their profession or training. The amendments have a greater reach than current provisions by giving greater flexibility to make appropriate orders where a person is not a fit and proper person to continue providing *any* kind of health service.

The cancellation of registration and making of a prohibition order under section 196(4)(b) of the National Law or sections 107 and 113 of the of the *Health Ombudsman Act 2013* (Qld) only occur in the most serious cases, usually where practitioners have engaged in serious conduct, which may include sexual boundary violations, criminal offences or professional incompetence resulting in serious harm or death of a patient. The orders are made by the "responsible tribunal" in each jurisdiction (for example, QCAT in Queensland) after hearing all of the evidence in relation to a particular person. The responsible tribunal is in the best position to make appropriate orders based on the facts and circumstances of each case.

This issue was identified as part of the independent review of the National Scheme and recommended in the final report of the independent review. The amendments ensure the public is protected where a person is not a fit and proper person to continue providing *any* kind of health service.

Offence for breach of a prohibition order

The Bill includes a new offence for breaching a prohibition order, with a maximum penalty of $30,000 (see clause 37, new section 196A(1)). The National Law does not currently contain any offences for a person who does not comply with a prohibition order made under

section 196(4)(b). The making of a prohibition order has limited protective effect if there are no offences for breach of an order.

As outlined above, prohibition orders are made under section 196(4)(b) only in the most serious cases, usually where practitioners have engaged in serious conduct, which may include sexual boundary violations, criminal offences or professional incompetence resulting in serious harm or death of a patient. A prohibition order is made by the responsible tribunal in each jurisdiction and it is expected that a person will comply with the order.

Contravening a prohibition order is considered a very serious offence. The penalty was set at $30,000 to be equivalent to the highest maximum penalties for the most serious offences in the National Law, such as using a restricted title (section 113), holding out to be a registered health practitioner (section 116) or undertaking restricted practices (sections 121, 122 and 123).

Application of Australian Information Commissioner Act 2010 (Cwlth)

The insertion of new section 212A applying the *Australian Information Commissioner Act 2010* (Cwlth) for the purposes of the National Law potentially infringes the fundamental legislative principle that legislation should have sufficient regard to the institution of Parliament by ensuring it authorises the amendment of an Act only by another Act (*Legislative Standards Act 1992*, section 4(4)(c)).

New section 212A(2)(c) permits the national regulations to modify the application of the *Australian Information Commissioner Act 2010* (Cwlth). This would ordinarily be regarded as an unacceptable Henry VIII provision. However, section 212A(2)(c) aligns with the approach already taken in sections 213(2)(c) and 215(2) of the National Law in relation to the *Privacy Act 1988* (Cwlth) and *Freedom of Information Act 1982* (Cwlth).

These provisions were discussed and justified in the explanatory notes for the *Health Practitioner Regulation National Law Bill 2009* in the following terms:

The Bill includes regulation-making powers that would normally be regarded in Queensland as Henry VIII provisions. For example, clause 213 provides for the Commonwealth Privacy Act to apply to the National Law, for the purposes of the National Scheme. Importantly, the National Law tailors this application by providing that a reference to the Commonwealth Office of the Privacy Commissioner in the Commonwealth Act is as if it were a reference to the Office of the National Health Practitioners Privacy Commissioner. Further, the proposed legislation provides that the Commonwealth law applies with any other modifications made by the National Law regulations. … The same approach is used in relation to Freedom of Information (clause 215) and the Ombudsman (clause 235).

This approach addresses concerns about having State law purport to unilaterally give functions to Commonwealth entities where there is no corresponding Commonwealth law providing for that entity to perform those functions for the purpose of the State law.

The SLC [Scrutiny of Legislation Committee] has previously recognised that this kind of approach may be a practical necessity of taking part in national scheme legislation to achieve uniformity.

These provisions are necessary to align with the approach already taken in the National Law in relation to the *Privacy Act 1988* (Cwlth) and *Freedom of Information Act 1982* (Cwlth) and to ensure the privacy and freedom of information functions operate in a nationally consistent way across all States and Territories.

Prescribing an entity in regulations to issue a Diploma of Paramedical Science

Clause 52 of the Bill inserts a new definition of 'Ambulance Service of New South Wales' in proposed new section 306 which potentially infringes the fundamental legislative principle that legislation should have sufficient regard to the institution of Parliament by ensuring it authorises the amendment of an Act only by another Act (*Legislative Standards Act 1992*, section 4(4)(c)).

The new section 312 inserted by clause 52 of the Bill recognises that an individual who holds a Diploma of Paramedical Science issued by the Ambulance Service of New South Wales is qualified for general registration in paramedicine for section 52(1)(a) of the National Law. Only a person with a diploma issued by the Ambulance Service of New South Wales is qualified in this way.

The definition of 'Ambulance Service of New South Wales' in new section 306 provides that the national regulations may prescribe another entity in place of the Ambulance Service of New South Wales, for the purpose of issuing a Diploma of Paramedical Science.

At present, the Diploma of Paramedical Science is issued by the Ambulance Service of New South Wales, which is the registered training organisation authorised to issue the diploma. However, in future it is possible that due to a reorganisation of government services or another reason, the diploma may be delivered by another training entity in place of the Ambulance Service of New South Wales. The definition merely allows for such a change in operational arrangements to be recognised. Such a change would require the agreement of all participating jurisdictions as the matter would need to be specified in the national regulations.

Consultation

Amendments to the National Law

The independent review conducted by Mr Kim Snowball in 2014 involved an extensive consultation process, including consultation forums in each capital city and more than 230 written submissions were received.

Consultation on the amendments in the Bill was held from 2 February 2017 to 22 February 2017. A summary document and a Frequently Asked Questions document outlining the proposed changes to the National Law were widely distributed to national stakeholders by the Victorian National Registration and Accreditation Scheme (NRAS) Secretariat, that is responsible for coordination of policy matters related to the National Law. Each State and Territory also distributed the documents widely to State, Territory and local stakeholder groups. The stakeholders consulted included the following groups:

- **Forum of NRAS Chairs:** Australian Health Practitioner Regulation Agency (AHPRA) Agency Management Committee, Aboriginal and Torres Strait Islander Health Practice Board of Australia, Chinese Medicine Board of Australia, Chiropractic Board of

Australia, Dental Board of Australia, Medical Board of Australia, Medical Radiation Practice Board of Australia, Nursing and Midwifery Board of Australia, Occupational Therapy Board of Australia, Optometry Board of Australia, Osteopathy Board of Australia, Pharmacy Board of Australia, Physiotherapy Board of Australia, Podiatry Board of Australia and Psychology Board of Australia

- **Professions Reference Group:** Australasian Podiatry Council, Australian Dental Association, Australian Institute of Radiography, Australian Medical Association, Australian Nursing and Midwifery Federation, Australian Physiotherapy Association, Australian Psychological Society, Federation of Chinese Medicine & Acupuncture Societies of Australia, Chiropractors Association of Australia, Committee of Presidents of Medical Colleges, Health Professions Accreditation Councils' Forum, National Aboriginal and Torres Strait Islander Health Worker Association, Occupational Therapy Australia, Optometry Australia, Osteopathy Australia and Pharmacy Guild of Australia
- **AHPRA Community Reference Group:** consists of members from the community who are not registered health practitioners
- **Health Professions Accreditation Councils Forum:** Australian Dental Council, Australian Medical Council, Australian Nursing and Midwifery Accreditation Council, Australian Pharmacy Council, Australian Physiotherapy Council, Australian Psychology Accreditation Council, Australian and New Zealand Osteopathic Council, Australian and New Zealand Podiatry Accreditation Council, Council on Chiropractic Education Australasia Inc, Optometry Council of Australia and New Zealand and Occupational Therapy Council (Australia and New Zealand) Ltd
- **National Paramedics Reference Group:** AHPRA, Australia & New Zealand College of Paramedics, Ambulance Employees Australia, Student Paramedics Australasia, Consumer Health Forum of Australia, Council of Ambulance Authorities Inc, Joint Health Command Department of Defence Health Workforce Development and Training, National Association Paramedic Academics, National Council of Ambulance Unions, Paramedics Australasia, Private Paramedics Australasia, NSW Health Professional Councils Authority and St John Ambulance
- National Health Practitioner Ombudsman and Privacy Commissioner
- Health Complaints Commissioners in each State and Territory
- other stakeholders, including consumer representative groups, professional associations, unions, public and private health service providers, private health insurers, primary health networks, higher education providers and other jurisdictional specific stakeholders.

The following national forums and briefings were held with stakeholders:

- 6 February 2017 – National Scheme stakeholder consultation forum, which 56 people attended in Melbourne
- 6 February 2017 –National Paramedic Stakeholder Reference Group consultation forum, which 21 people attended in Melbourne
- 15 February 2017 – briefing with the National Health Practitioner Ombudsman and Privacy Commissioner in Melbourne
- 22 February 2017 – briefing with the Health Complaints Commissioners by teleconference.

In additional to the national consultation forums, the following local forums and briefings were held:

- **Australian Capital Territory** – held briefings with ACT Ambulance representatives
- **New South Wales** – held briefings with Australian Paramedics Association NSW, Health Services Union NSW, Australian Medical Association NSW, Australian Salaried Medical Officers' Federation NSW, Health Professional Councils Authority NSW, Health Care Complaints Commission NSW and Medical Services Committee NSW
- **Northern Territory** – held briefings with NT Health representatives and Aboriginal Health practitioners
- **Queensland:**
  - the consultation documents were widely distributed to over 120 key Queensland stakeholders including Queensland-based professional associations, unions, public and private health service providers, primary health networks and higher education providers
  - a combined National Scheme and paramedic stakeholder briefing was held in Brisbane on 21 February 2017 and approximately 30 people attended, either in person or by videoconference, and
  - a separate briefing was provided to the Queensland Health Ombudsman on 15 February 2017
- **South Australia** – offered to meet with: SA Ambulance Service, Ambulance Employees' Association, SiteMed, Paramedics Australasia (SA Branch), FirstCare Medical Services Australia, IMS Ambulance Services and EMT Ambulance South Australia
- **Western Australia** – held a National Scheme stakeholder consultation forum, which 56 people attended in Perth on 17 February 2017 and a separate paramedic stakeholder forum, which approximately 35 people attended in Perth also on 17 February 2017.

In total, over 200 stakeholders attended consultation forums and briefings in person or by teleconference or videoconference during the consultation period and were given the opportunity to make written submissions. Confidential copies of the draft Bill were provided at the national and Western Australian face to face consultation forums.

Twenty-four written submissions were received on the draft Bill after the forums from the following stakeholders:

1. Individual practitioner (name withheld)
2. Individual consumer (name withheld)
3. Health Professional Councils Authority NSW
4. Medical Services Committee NSW
5. Paramedics Australasia
6. Australian Physiotherapy Association
7. Australian Nursing and Midwifery Federation
8. Edith Cowan University
9. North West Hospital and Health Service, Queensland
10. Queensland University of Technology
11. Queensland Ambulance Service
12. Royal Australasian College of Surgeons
13. Queensland Nurses Union

14. Australian Health Care Reform Alliance
15. Avant Mutual Group
16. Gold Coast Hospital and Health Service, Queensland
17. Department of Defence
18. Australian and New Zealand College of Paramedicine
19. Australian Psychological Society
20. University of the Sunshine Coast
21. Australian Medical Association
22. Metro North Hospital and Health Service, Queensland
23. Australian Paramedics Association (NSW)
24. MIGA Medical Insurance Group Australia

Results of consultation

Stakeholders were generally supportive of the amendments to the National Law, in particular those amendments which will give effect to registration for paramedics, and those which will enable improvements in notifications management and disciplinary and enforcement powers of National Boards to strengthen public protection and ensure fairness for complainants and practitioners. Key issues raised by stakeholders are outlined below.

Registration of paramedics with a Diploma of Paramedicine issued by the Ambulance Service of New South Wales

All paramedic stakeholders expressed strong support for national registration of paramedics and welcomed the decision of New South Wales to participate in the registration of paramedics under the National Scheme. However, concerns were raised, both at consultation forums and in submissions, about the provisions contained in the Bill for recognition of the Diploma of Paramedicine qualifications issued by the Ambulance Service of New South Wales (see clause 52, new section 312). Stakeholders put forward two proposals to address their concerns:

- that a sunset clause be included in the Bill to set a time limit on acceptance of the New South Wales diploma qualification, or
- that the New South Wales diploma qualification be subject to the accreditation standards and processes to be established and administered by the Paramedicine Board under the National Law, like all other qualifications that are approved for the purpose of general registration.

No changes were made to the Bill as a result of feedback from stakeholders. The Bill reflects the policy position agreed by the COAG Health Council and ensures that paramedic registration will proceed in all jurisdictions, including New South Wales. While some stakeholders raised concerns about the inclusion of the New South Wales diploma qualification as an ‘accepted’ qualification for general registration, there is widespread support for progressing national arrangements for registration of paramedics.

The Bill makes it clear that only a Diploma of Paramedicine issued by the Ambulance Service of New South Wales is an ‘accepted’ qualification and not diploma level qualifications issued by other providers. The Ambulance Service of New South Wales recruits and trains paramedics ‘on-the-job’ as part of their diploma qualification and the New

South Wales Government sought to retain this pathway as part of their participation in the National Scheme for paramedics.

All applicants for registration, including applicants who hold the 'accepted' New South Wales qualification, will be required to meet all other registration standards to be developed by the Paramedicine Board, such as requirements for continuing professional development, recency of practice and criminal history.

In relation to submissions about subjecting the New South Wales diploma qualification to the accreditation processes of the National Law, this was not agreed by the COAG Health Council. New South Wales provides oversight of the diploma qualification as fit-for-purpose for registered paramedics. However, the National Law does not prevent the Paramedicine Board from approving the NSW diploma qualification for the purpose of general registration.

New powers to enable the COAG Health Council to make changes to the structure of National Boards by regulation

A number of stakeholders, including members of the Forum of NRAS Chairs and the Professions Reference Group, expressed concern at the face to face forums and in written submissions, about whether there would be sufficient consultation with stakeholders prior to the COAG Health Council exercising powers to change the structure of National Boards by regulation. They sought inclusion of a statutory obligation on the COAG Health Council to consult with stakeholders in the Bill prior to exercising these powers.

In response to these concerns, clause 5 of the Bill includes new section 31(4) to enshrine the requirement to consult on changes to the structure of National Boards in the National Law.

Chairpersons to be appointed on merit from any of the members of a National Board

A number of stakeholders, including members of the Professions Reference Group, expressed concern about a proposed amendment that would have enabled the COAG Health Council to make appointments of community members to the position of Chairperson of National Boards. In Queensland, the Australian Medical Association Queensland and Queensland Nurses and Midwives' Union reiterated the concerns of their national bodies about this amendment and the Australian Dental Association Queensland also opposed the amendment. These stakeholders expressed the view that the Chairperson of a National Board should have specialist knowledge, skills and expertise in the relevant profession.

As a result of consultation, it was decided to defer this amendment to the second stage of reforms to the National Law for further consideration.

National Board may ask registered health practitioner for 'practice information'

A number of stakeholders, including the Australian Medical Association, raised concerns about the breadth of the new definition of 'practice information', and whether it might unintentionally impose an obligation to provide details of all staff in a hospital, when the medical practitioner simply rents rooms there.

Section 39 of the National Law empowers the National Boards to issue guidelines to provide guidance to health practitioners. The Bill inserts a new example in section 39 which states

that a National Board may make guidelines about 'practice information' to be provided under section 132 of the Bill (see clause 8). The guidelines will enable National Boards and AHPRA to provide practical information and guidance to practitioners about expectations of information to be provided. Stakeholders will be consulted in the development of these guidelines.

In addition, in response to stakeholder feedback on specific issues, minor changes were made to the draft clause to clarify its application.

Grounds for taking 'immediate action' under the National Law

Some stakeholders expressed concern in relation to the amendment to broaden the grounds on which a National Board may take immediate action against a registered health practitioner or student to enable immediate action 'in the public interest' (clause 24, amendment of section 156). The potential for a subjective interpretation of 'public interest' was raised as a concern, and that the current test, as provided for in section 156(1)(a) of the National Law, is sufficient grounds for the taking of immediate action.

This issue is discussed in detail under the heading 'Consistency with fundamental legislative principles – Grounds for taking immediate action – 'public interest test'', which provides details about why this provision is required in the Bill.

Improving communication with notifiers

Some stakeholders expressed support for amendments to improve communication with notifiers, while also expressing concern that the privacy and confidentiality of practitioners should be protected in the exercise of these powers. AHPRA and the National Boards have agreed to develop a common protocol about what information is appropriate to be shared with notifiers at key points, taking into account the circumstances of each case. The protocol will address issues associated with privacy and confidentiality of information about practitioners.

Review of a suspension arising from a health panel decision

Stakeholders supported amendments in the Bill to set a date for reconsidering a suspension of registration arising from a health panel decision (see clause 33, insertion of new section 191(4A)). However, some stakeholders requested that a practitioner should be able to apply for a review of the suspension before the set date for reconsideration, if there has been a material change in the circumstances which led to the suspension. A new provision was included in the Bill to enable a panel to decide an earlier date for reconsidering a suspension if the panel is reasonably satisfied this is necessary because of a material change of circumstances. The panel is also required to give reasons for a decision not to agree to an earlier reconsideration date (see clause 34 and new sections 191B(2) and (3)).

Amendments to Health Ombudsman Act 2013 (Qld)

A summary document outlining proposed amendments to the Health Ombudsman Act was widely distributed on 23 March 2017 to key stakeholders in Queensland, including professional associations and bodies, unions, external health sector organisations and medical indemnity insurers. Stakeholders were asked to respond by 6 April 2017.

Ten (10) written submissions were received from the following stakeholders:

1. Australian Health Practitioner Regulation Agency (AHPRA)
2. Queensland Nurses and Midwives' Union (QNMU)
3. Royal Australasian College of Surgeons (RACS)
4. Australian Medical Association Queensland (AMAQ)
5. Australian Dental Association Queensland (ADAQ)
6. Australian Society of Medical Imaging and Radiation Therapy (ASMIRT)
7. Massage & Myotherapy Australia (MMA)
8. Australian Lawyers Alliance
9. Avant Mutual Group Limited
10. Medical Insurance Group Australia Pty Ltd (MIGA)

The Health Ombudsman and AHPRA were also both closely consulted during the development of the amendments.

Results of consultation

Stakeholders were generally supportive of the proposed amendments to the Health Ombudsman Act, however a number of stakeholders raised issues with particular amendments.

The QNMU, ADAQ, Avant Mutual Group and MIGA raised concerns about the amendments to allow the Health Ombudsman to take 'immediate registration action' or issue an 'interim prohibition order' if the Health Ombudsman reasonably believes the action is 'in the public interest' (clauses 65 and 69, amendments to sections 58 and 68). The amendments will align the Health Ombudsman Act with the changes made to section 156 of the National Law, ensuring consistency between the powers of the National Boards and the Health Ombudsman. This is particularly important for registered health practitioners who may be dealt with under either the National Law or the Health Ombudsman Act. If this change were not made to the Health Ombudsman Act, it would mean a different test would apply in Queensland than the rest of the country in relation to the threshold for taking 'immediate action'. It would also mean practitioners dealt with under the National Law (for less serious matters) would be subject to the 'public interest' test for immediate action, but practitioners dealt with under the Health Ombudsman Act (for more serious matters) would not be subject to the same test.

MIGA was also concerned that the amendments use the terminology 'reasonably believes' rather than 'satisfied', which is used in section 150 of the *Health Practitioner Regulation National Law (NSW).* The use of 'reasonably believes' is not intended to introduce a different threshold test for action than applies under the New South Wales provision. Rather, 'reasonably believes' is used to align with the existing language used in section 58 of the Health Ombudsman Act and section 156 of the National Law.

Further justification and details about this amendment are considered under the heading 'Consistency with fundamental legislative principles – Grounds for taking immediate action – 'public interest test''.

The QNMU also raised concerns with the amendments to sections 107(4)(b) and 113(4)(a) of the Health Ombudsman Act which allow QCAT to issue a prohibition order to prohibit a person from providing any health service or a specified health service or using any protected

title or a specified title. The QNMU argued that the amendment could be uncertain and that QCAT should be required to specify the types of health services which a person is prohibited from providing.

In the majority of cases, QCAT will specify the health service or services which a person is prohibited from providing. However, in extreme cases, the intent of the amendment is to allow QCAT to issue an order preventing a person from providing any health service. This type of order would be reserved for the most serious of cases, such as sexual boundary violations, serious criminal offences or professional incompetence resulting in serious harm or death of a patient. The amendments are being retained in the Bill, which will also ensure consistency with the powers of QCAT under the National Law. In addition, some stakeholders are supportive of the amendments. Massage and Myotherapy Australia supports the amendments, which address the issue of registered health practitioners (such as chiropractors, osteopaths or physiotherapists) who let their registration lapse or who are de-registered, who may choose start practising massage or myotherapy as an alternative career.

As part of the Committee inquiry into the Health Ombudsman, the Ombudsman requested an amendment to section 44 of the Health Ombudsman Act to permit the Ombudsman to take no further action on a complaint if the matter was already being dealt with by the Ombudsman. The rationale for the amendment was to allow the Health Ombudsman to take no further action on a complaint where the same complaint had already been received from another person and was being dealt with. The Australian Lawyers Alliance did not support the amendment on the basis that it does not promote transparency for dealing with health complaints or provide complainants with a fair system for considering and acting on complaints. The amendment would also prevent a subsequent complainant from being informed about the outcome of the complaint. As a result of this feedback, this amendment was removed from the Bill. It will be considered further in the context of the other recommendations from the Committee Report and will be discussed further with the Health Ombudsman.

In response to a range of specific issues raised by stakeholders, other minor amendments were made to the Bill as a result of the consultation process.

Consistency with legislation of other jurisdictions

It is expected that all states and territories will give effect to the amendments to the National Law in the Bill.

If the Bill is passed in Queensland, the changes to the National Law apply automatically in all other States and Territories, except for Western Australia which must pass its own separate legislation, and South Australia where regulations must be made to adopt the changes.

The changes to the health, performance and conduct process of part 8 of the National Law will not apply to New South Wales practitioners as New South Wales is a co-regulatory jurisdiction which does not participate in the health, performance and conduct process of part 8 of the National Law. In New South Wales, the health professional councils work with the Health Care Complaints Commission to assess and manage concerns about practitioners.

Notes on provisions

Part 1 Preliminary

Short title

Clause 1 states this Act may be cited as the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2017*.

Commencement

Clause 2 sets out the commencement of provisions of the Bill. Section 15A of the *Acts Interpretation Act 1954* (Qld) provides that "an Act commences on the date of assent except so far as the Act otherwise expressly provides". Therefore, those provisions of the Bill that are not mentioned in clause 2 commence on assent of the Bill.

Part 2 Amendment of Health Practitioner Regulation National Law Act 2009

Division 1 Amendment of the Health Practitioner Regulation National Law

Law amended

Clause 3 states that division 1, part 2 amends the Health Practitioner Regulation National Law (the National Law). The Health Practitioner Regulation National Law is the schedule to the *Health Practitioner Regulation National Law Act 2009* (Qld).

Amendment of s 5 (Definitions)

Clause 4 amends definitions in section 5.

Clause 4(1) omits the definition of "CrimTrac" and clause 4(3) inserts a new definition of "ACC" in its place. The CrimTrac Agency was merged into the Australian Crime Commission from 1 July 2016 under the *Australian Crime Commission Amendment (National Policing Information) Act 2016* (Cwlth). The new definition of "ACC" refers to the Australian Crime Commission established under section 7 of the *Australian Crime Commission Act 2002* (Cwlth).

Clause 4(1) also omits the definition of "Ministerial Council" and clause 4(3) inserts a new definition in its place. The National Law defines "Ministerial Council" as the Australian Health Workforce Ministerial Council comprising Ministers of the governments of the participating jurisdictions and the Commonwealth with portfolio responsibility for health. The structure and names of Ministerial Councils are revised by COAG from time to time. The Australian Health Workforce Ministerial Council no longer exists as a separate Ministerial Council and its work has been included in the ambit of the COAG Health Council. Appendix 11 of the final report of the independent review states:

Legislative amendments are to be made to the National Law… to recognise the COAG Standing Council on Health to be the Ministerial Council for the purposes of the legislation.

The new definition of "Ministerial Council" is the COAG Health Council, or a successor of the COAG Health Council (regardless of the name of the successor body) constituted by Ministers of the governments of the participating jurisdictions and the Commonwealth with portfolio responsibility for health. The new definition takes into account that the name of the Ministerial Council may change in future.

Clause 4(2) omits the definition of "National Board" and clause 4(4) inserts a new definition. The new definition refers to National Health Practitioner Boards continued or established by regulations. The new definition is related to the amendments to section 31 (see below).

Clause 4(5) inserts a new definition of "prohibition order". The new definition responds to recommendation 29 of the independent review which stated: "That the *Health Practitioner Regulation National Law 2009* prohibition order powers be amended to provide the means for Tribunals to prohibit the person from providing any type of health service, to establish an offence for breaching a prohibition order *and to provide for mutual recognition of prohibition orders issued by jurisdictions*." [emphasis added] The purpose of the new definition is to ensure mutual recognition of prohibition orders issued in any participating jurisdiction. The new definition makes it clear that in addition to including a decision by a responsible tribunal of "this jurisdiction" under section 196(4)(b), it also extends to a decision by a responsible tribunal of "another participating jurisdiction" under section 196(4)(b) as it applies in the other jurisdiction. This will ensure, for example, that a "prohibition order" made under the National Law as it applies in South Australia is captured by the definition of "prohibition order" for the purpose of applying new section 196A of the National Law in Queensland. New section 196A makes it an offence to contravene a prohibition order. Therefore, it would be an offence to engage in conduct in Queensland which contravenes a prohibition order made in South Australia. The definition also refers to prohibition orders made in the co-regulatory jurisdictions of New South Wales and Queensland, under section 149C(5) of the *Health Practitioner Regulation National Law (NSW)* and a decision under section 107(4)(b) of the *Health Ombudsman Act 2013* (Qld), respectively.

Clause 4(6) amends the definition of "health profession" to list "nursing" and "midwifery" as separate professions. This amendment implements recommendation 27 of the report of the independent review which states: "*That the Health Practitioner Regulation National Law 2009 be amended to reflect and recognise that nursing and midwifery are two professions regulated by one National Board*."

Clause 4(7) amends the definition of "health profession" to add "paramedicine". This has the effect of making paramedicine one of the health professions regulated by the National Law.

Replacement of s 31 (Establishment of National Boards)

Clause 5 replaces section 31 and provides that the regulations must provide for a National Health Practitioner Board for each health profession.

New section 31(2) provides that the regulations may:

- continue an existing National Board for a health profession

- establish a National Board for a health profession or for two or more health professions, or
- dissolve a National Board for a health profession if it is replaced by another Board established for that profession.

These provisions provide flexibility to change the structure of National Boards by regulations made by the Ministerial Council.

New section 31(3) provides that regulations may make transitional arrangements for a new National Board structure in regulations. This includes that the regulations may provide for anything necessary or convenient to make provision to allow, facilitate or provide for:

- the continuation, establishment or dissolution of a National Board
- the completion of a matter started by the existing National Board before the commencement
- the effect of anything done by an existing National Board before the commencement, and
- the transfer of matters from a dissolved Board to a replacement Board.

New section 31(4) contains a requirement to undertake public consultation before making a regulation which puts in place a new structure for National Boards. New section 31(5) provides that a failure to consult does not affect the validity of a regulation.

The definition of "existing Board" in new section 31(6) is "a National Health Practitioner Board in existence immediately before the commencement". "Commencement" is defined in section 12 of schedule 7 of the National Law as "… the time at which this … provision comes into operation". As well as referring to the National Boards mentioned in current section 31 of the National Law, the definition of "existing Board" is intended to capture the "Paramedicine Board of Australia" established in clause 52 of the Bill (new section 307). Clause 52 will commence on assent of the Bill, while clause 5 commences on proclamation. As such, by the time clause 5 commences, the "Paramedicine Board of Australia" will be in existence and therefore captured by the definition of "existing Board".

Clause 5 also inserts new section 31A (Status of National Board). Section 31A replicates what is currently contained in section 31(2) and (3) of the National Law.

Amendment of s 33 (Membership of National Boards)

Clause 6 makes amendments to section 33 of the National Law about membership of National Boards.

Clause 6(1) amends section 33(5) to provide that if a National Board is established for two or more health professions, the practitioner members of the National Board must consist of at least one member of each health profession for which the Board is established.

Clause 6(2) inserts a new section 33(9A) to provide that the regulations may prescribe matters relating to the composition of practitioner members for a National Board established for two or more health professions. This power allows Ministers to make regulations about the representation of practitioners on a multi-profession Board. As with all changes to the National Law and regulations, any such regulation would require the approval of Health Ministers.

Amendment of s 34 (Eligibility for appointment)

Clause 7 makes consequential amendments to section 34 to reflect the amendments to section 31 which enable the COAG Health Council to make changes to the structure of National Boards by regulation. In future, a National Board may be established for two or more health professions.

Section 34(2) is amended to provide that a person is eligible to be appointed as a practitioner member of a National Board if the person is a registered health practitioner in a health profession for which the Board is established. Section 13(4) of schedule 7 of the National Law provides that in the National Law, "words in the singular include the plural". As a result, the effect of new section 34(2) is that a person is eligible to be appointed as a practitioner member of a National Board if the person is a registered health practitioner in *any* health profession for which the Board is established.

Section 34(3) is amended in a similar way to make it clear that a person is eligible to be appointed as a community member only if the person is not, and has not at any time been, a health practitioner in a health profession for which the Board is established.

Section 34(4)(a) is amended in a similar way. The new section 34(4)(a) makes it clear that a person is not eligible to be appointed as a practitioner member of a National Board if the person has, whether before or after the commencement of this Law, as a result of misconduct, impairment or incompetence, ceased to be registered as a health practitioner in a health profession for which the Board is established. For example, if a Board member is registered in two health professions regulated by a National Board and loses registration in only one of those professions due to misconduct, impairment or incompetence, this would be sufficient to make them ineligible to be appointed or to continue as a Board member.

Amendment of s 39 (Codes and guidelines)

Clause 8 amends the examples in section 39. The current example in section 39 is retained as the first example. The Bill includes a second example in section 39 which provides that a National Board may, to assist health practitioners in providing practice information to a National Board under new section 132, develop guidelines about the information that must be provided to the Board. The guidelines will contain practical information about how the concept of 'practice information' in the National Law applies to common employment, contracting and volunteering arrangements.

Amendment of s 56 (Period of general registration)

Clause 9 amends section 56 to enable a National Board to decide an application for registration, with registration to commence up to 90 days after the day the National Board makes the decision.

Under current section 56(2) of the National Law, a health practitioner's registration takes effect when the Board makes the decision to grant registration. This requirement creates administrative challenges, particularly for processing applications for registrants moving from student to general registration, interns moving to general registration and internationally qualified practitioners trying to meet the multiple requirements of National Boards, employers and immigration authorities.

Appendix 11 of the report of the independent review states: "*There are a number of instances when it would be of value for the Board to commence registration on a date to be determined.*" The Bill implements this suggested change.

Amendment of s 65 (Eligibility for limited registration)

Clause 10 amends section 65 to enable a health practitioner who holds general or limited registration in one division of the register for a profession to obtain limited registration in another division of the register for the same profession, if they are not qualified for general registration under the other division and they otherwise meet the qualification and other requirements for limited registration.

A number of health professions under the National Law have "divisions" within the National Register to designate practitioners of different types. For example, the Register of Dental Practitioners has divisions for dentists, dental therapists, dental hygienists, dental prosthetists and oral health therapists. The Register of Medical Radiation Practitioners has divisions for diagnostic radiographers, nuclear medicine technologists and radiation therapists. Details of the divisions for the professions of Chinese medicine practitioners and nurses are set out in section 222 of the National Law.

Section 65(1)(a) currently provides that a person is only eligible for limited registration if the person is not qualified for general or specialist registration.

For professions with several divisions of registration, this means it is not possible for a practitioner who holds general or limited registration in one division of the register to be granted limited registration in another division of the same profession. This is problematic for those upskilling and limits workforce flexibility. For example, a person may hold general or limited registration as a dental therapist or hygienist and require limited registration as a dentist to undertake post-graduate training or supervised practice to qualify for general registration as a dentist.

Appendix 11 of the report of the independent review referred to the issue in a similar way: "*At this stage, it is not possible to obtain limited registration in a different sub-type within the same profession (s.65(1)). This has a negative effect on individuals who are registered, for example, as a dental hygienist but who then want to undertake limited registration, for example, for the purpose of undertaking examinations to progress to become eligible for registration as a dentist.*" The Bill implements this suggested change.

Replacement of s 71 (Limited registration not be held for more than one purpose)

Clause 11 replaces section 71 of the National Law as a result of the amendments to section 65 referred to above.

Section 71 of the National Law currently states that an individual may not hold limited registration in the same health profession for more than one purpose under division 4 of part 7 at the same time.

Under new sections 71(1) and (2), the National Law continues to apply as is for health professions that do not have divisions of the register. However, for professions that have divisions, new sections 71(3) and (4) provide that health practitioners may not hold limited registration in the same division of the register for their profession for more than one purpose under division 4 of part 7 at the same time.

Amendment of s 79 (Power to check applicant's criminal history)

Clause 12 amends the reference to "CrimTrac" in section 79 of the National Law and replaces it with "ACC" to reflect the merger of the CrimTrac agency into the Australian Crime Commission. There are no changes to the procedures for criminal history checking under the National Law as a result of this change of name.

Amendment of s 95 (Endorsement as nurse practitioner)

Clause 13 makes a consequential amendment to section 95 to reflect that National Boards will be prescribed in regulations made under section 31. The clause replaces the reference to "Nursing and Midwifery Board of Australia" with a reference to "National Board for the nursing profession". The definition of "National Board" in the Bill refers to National Boards continued or established by regulations made under section 31. As there are no current plans to change the structure of National Boards, the reference to the "National Board for the nursing profession" will be a reference to the Nursing and Midwifery Board of Australia.

Amendment of s 96 (Endorsement as midwife practitioner)

Clause 14 makes a consequential amendment to section 96 to reflect that National Boards will be prescribed in regulations made under section 31. The clause replaces the reference to "Nursing and Midwifery Board of Australia" with a reference to "National Board for the midwifery profession". The definition of "National Board" in the Bill refers to National Boards continued or established by regulations made under section 31. As there are no current plans to change the structure of National Boards, the reference to the "National Board for the midwifery profession" will be a reference to the Nursing and Midwifery Board of Australia.

Amendment of s 113 (Restriction on use of protected titles)

Clause 15 amends the table of protected titles to refer to "nursing" and "midwifery" as separate professions. The following protected titles will continue to apply to the following professions:

- Midwifery – midwife, midwife practitioner
- Nursing – nurse, registered nurse, nurse practitioner, enrolled nurse

The issue of whether the title "midwife practitioner" needs to be kept in the National Law is being considered as part of the second stage of amendments to the National Law.

Clause 15 also amends the table of protected titles to include the profession "paramedicine" and the corresponding protected title "paramedic".

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

Clause 16 amends section 118 to make a technical amendment to correct a drafting error.

Section 118(1) makes it an offence for a person who is not a specialist health practitioner to claim they are a specialist health practitioner. Section 118(2) makes it an offence for a person to claim an association with a specialist health practitioner when the other person is not a specialist health practitioner. Section 118(2)(a) uses the correct formulation "in relation to another person who is not a specialist health practitioner". Section 118(2)(b) currently only refers to "in relation to another person". This clause amends section 118(2)(b) to use the correct formulation "in relation to another person who is not a specialist health practitioner".

Amendment of s 125 (Changing or removing conditions or undertaking on application by registered health practitioner or student)

Clause 17 amends section 125 of the National Law.

Clause 17(1) amends section 125(2)(b) to provide that an adjudication body may decide whether or not the procedures in part 7, division 11, subdivision 2 of the National Law apply "when imposing the condition *or at a later time*". Further details about this amendment can be found under the heading 'Achievement of policy objectives – Conditions imposed on registration by an adjudication body of a co-regulatory jurisdiction'.

Clause 17(2) amends section 125 of the National Law to give National Boards a discretion to decide a "review period" when a National Board decides to change a registration condition or an undertaking under section 125. The clause also amends section 125 to provide that if the National Board decides a review period, the Board must give written notice of the details of the review period to the practitioner or student at the same time as giving them notice of the Board's decision under section 125(5). Further details about this amendment can be found under the heading 'Achievement of policy objectives – Review periods when conditions on registration or undertakings are changed'.

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

Clause 18 amends section 126 of the National Law.

Clause 18(1) amends section 126(3)(b) to provide that an adjudication body may decide whether or not the procedures in part 7, division 11, subdivision 2 of the National Law apply "when imposing the condition *or at a later time*". Further details about this amendment can be found under the heading 'Achievement of policy objectives – Conditions imposed on registration by an adjudication body of a co-regulatory jurisdiction'.

Clause 18(2) amends section 126 of the National Law to give National Boards a discretion to decide a "review period" when a National Board decides to change a registration condition under section 126. The clause also amends section 126 to provide that if the National Board decides a review period, the Board must give written notice of the details of the review period to the practitioner or student at the same time as giving them notice of the Board's decision under section 126(5). Further details about this amendment can be found under the heading 'Achievement of policy objectives – Review periods when conditions on registration or undertakings are changed'.

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

Clause 19 inserts a new section 127A which provides a power for a National Board to 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. This provision will usually apply where a practitioner has moved to a co-regulatory jurisdiction and has commenced practising in that jurisdiction.

The new section 127A provides that if a review body of a co-regulatory jurisdiction is to decide a matter instead of the Board, the review body must decide the matter under the laws of the review body's jurisdiction.

"Review body" is defined as an entity declared by an Act or regulation of a co-regulatory jurisdiction to be a review body for the purposes of section 127A. In New South Wales, it is expected that the review body will be a Health Professional Council or the Civil and Administrative Tribunal of New South Wales. This will need to be declared in an Act or regulation in New South Wales.

It is unnecessary for Queensland to prescribe any 'review bodies' for this new provision, as the Queensland co-regulatory arrangements currently allow for transfer of matters between National Boards and the Health Ombudsman and appeal of National Board decisions to the Queensland Civil and Administrative Appeals Tribunal.

New South Wales may also make further changes to its own State-based laws to provide for this situation from a co-regulatory perspective. For example, it is expected that New South Wales will seek to amend its laws to provide that an "undertaking" given in another jurisdiction will be converted to a "condition" when the matter is referred to a New South Wales review body under this provision, as the National Law as it applies in New South Wales does not provide for undertakings to be given.

Further details about the background to this amendment can be found under the heading 'Achievement of policy objectives – Co-regulatory jurisdiction powers to change conditions imposed in another jurisdiction'.

Replacement of s 132 (National Board may ask registered health practitioner for employer's details)

Clause 20 replaces section 132. Section 132 of the National Law currently allows a National Board to ask a registered health practitioner to inform the Board if the practitioner is employed by another entity and the employer's details. The term 'employer' has been interpreted narrowly to only mean those in strict 'employer-employee' relationships.

This issue was identified by AHPRA and the National Boards and referred to in appendix 11 of the report of the independent review, as follows: "s.206 requires that notice of a decision to take action against a registered health practitioner is communicated to the practitioner's employer. This definition might be expanded to require notice to all places of practice – making it clear that s.206 applies equally to contractual arrangements."

The Bill replaces section 132 of the National Law so that it applies to a broad range of different practice arrangements under which a health practitioner may be engaged, including where the practitioner is an employee, contractor, volunteer, partner in a partnership, where a practitioner is a member of a practice involving a 'service company' arrangement, the practitioner is self-employed or working in an honorary capacity. The changes will mean that no matter what type of arrangements are in place for the engagement of a practitioner, the practitioner must provide details of the arrangements under which they are engaged and practising, which is referred to as a requirement to provide 'practice information' in the Bill. 'Practice information' is defined in new section 132(4).

It is expected that most practitioners will fall within paragraph (c) of the definition of 'practice information' in section 132(4). Paragraph (c) covers employment arrangements, contracts for services and other arrangements or agreements (this covers, for example, practitioners who are 'credentialed' to practice in a hospital, franchising arrangements and other contractual arrangements).

Paragraph (d) of the definition of 'practice information' covers voluntary and honorary appointments and arrangements, such as where a practitioner is volunteering for a charity or sporting club or holds an honorary appointment.

Paragraph (b) of the definition covers self-employed practitioners who practice alone.

Paragraph (a) covers other arrangements that may not fall within paragraphs (b), (c) or (d), such as arrangements involving the use of "service companies" to operate a business or partnership arrangements.

Clause 20 includes a definition of "premises at which the practitioner practices" in new section 132(4) to make it clear that practitioners are not required to provide information about the residential addresses of clients or patients where a practitioner provides a 'house call' service or otherwise visits residential premises.

The National Boards and AHPRA will develop guidelines to assist practitioners about 'practice information' to be provided to the Boards. The National Boards are empowered to make guidelines under section 39 of the National Law and the Bill includes a new example stating that a National Board may develop guidelines about 'practice information' to be provided under section 132 (see clause 8, amendments to section 39).

The guidelines will contain practical information about how the concept of 'practice information' in the National Law applies to common employment, contracting and volunteering arrangements. As with all guidelines developed by National Boards under the National Law, the Board must ensure there is wide-ranging consultation about their content (see section 40 of the National Law) and stakeholders will be consulted during their development.

Amendment of s 135 (Criminal history check)

Clause 21 amends the reference to "CrimTrac" in section 135 of the National Law and replaces it with "ACC" to reflect the merger of the CrimTrac agency into the Australian Crime Commission. There are no changes to the procedures for criminal history checking under the National Law as a result of this change of name.

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

Clause 22 amends section 151. Section 151 of the National Law sets out the grounds upon which a National Board may decide to take no further action in relation to a notification.

Section 151(1)(e) currently sets out one of the grounds as: "the subject matter of the notification is being dealt with, or has already been dealt with, adequately by another entity". The use of the word "adequately" places an obligation on the National Board to enter into an assessment about the performance of another entity and whether it has dealt with a matter "adequately". It is not the National Board's role to review the performance or conduct of other entities in handling complaints or notifications. As such, this clause removes the word "adequately" from new section 151(1)(e)(i).

This clause also adds the following grounds upon which a National Board may decide to take no further action in relation to a notification:

- if a National Board has referred the subject matter of a notification to another entity to be dealt with by that entity (for example, where the Board refers a matter to a health complaints entity within a State or Territory), or
- if the health practitioner to whom the notification relates has taken appropriate steps to remedy the issue the subject of the notification and the Board reasonably believes no further action is required in relation to the notification.

Amendment of s 155 (Definition)

Clause 23 amends the definition of "immediate action" in section 155. Sections 155, 156 and 159 of the National Law do not explicitly provide for a National Board to revoke one type of "immediate action" they have taken and substitute another form of "immediate action". For example, a National Board may wish to revoke the suspension of a practitioner's registration and substitute a condition of registration (or vice versa). This may occur, for example, if new information suggests that a condition imposed on registration would be sufficient to protect public safety. Similarly, new information may suggest that a condition is no longer sufficient to protect public safety and the practitioner's registration needs to be suspended.

This issue was identified by AHPRA and the National Boards and referred to in appendix 11 of the report of the independent review, as follows: "There is no avenue for ending a suspension imposed under section 156 (immediate action). This is problematic as a National Board may want to end a suspension or revoke an undertaking not to practice; and impose conditions."

To address this issue, this clause amends the definition of "immediate action" in section 155 to clarify that immediate action also includes:

- revoking a suspension and imposing a condition on registration, if immediate action had previously been taken suspending a health practitioner's or student's registration, and
- suspending registration instead of a condition, if immediate action had previously been taken imposing a condition on a health practitioner's or student's registration.

Amendment of s 156 (Power to take immediate action)

Clause 24 amends section 156 to broaden the grounds on which a National Board may take immediate action against a health practitioner or student to enable immediate action to be taken by a National Board if it reasonably believes the immediate action is in the public interest.

Further details about this amendment can be found under the heading 'Achievement of policy objectives – Grounds for taking 'immediate action' under the National Law' and 'Consistency with fundamental legislative principles – Grounds for taking immediate action – 'public interest test''.

Insertion of new s 159A (Board may give information to notifier about immediate action)

Clause 25 inserts a new section 159A to provide that, after deciding to take immediate action against a registered health practitioner or student, a National Board has a discretion to inform a notifier of the Board's decision to take immediate action and the reasons for the decision. Further details about the background to this amendment can be found under the heading 'Achievement of policy objectives – Improving communication with notifiers'.

Insertion of new s 167A (Board may give information to notifier about result of investigation)

Clause 26 inserts a new section 167A to provide that, after considering an investigator's report and making a decision under section 167 of the National Law, a National Board has a discretion to inform a notifier of the Board's decision and the reasons for the decision. Further details about the background to this amendment can be found under the heading 'Achievement of policy objectives – Improving communication with notifiers'.

Amendment of s 171 (Appointment of assessor to carry out assessment)

Clause 27 makes consequential amendments to section 171 as a result of the amendments to section 31 of the National Law. Section 171 provides that if the National Board requires a registered health practitioner or student to undergo an assessment, AHPRA must appoint an assessor chosen by the Board to carry out the assessment. There are certain criteria for determining how an assessor may be appointed and section 171(2)(b) currently provides that for a performance assessment, the assessor must be a registered health practitioner who is a member of the health profession for which the National Board is established. As a result of the amendments to section 31, which contemplate that a National Board may be established for two or more health professions, section 171(2)(b) is amended to provide that for a performance assessment, the assessor must be a member of the same health profession as the registered health practitioner or student undergoing assessment. This is a drafting change only and retains the underlying policy of the section.

Insertion of new s 177A (Board may give information to notifier about decision following assessor's report)

Clause 28 inserts a new section 177A to provide that, after considering an assessor's report and making a decision under section 177 of the National Law, a National Board has a

discretion to inform a notifier of the Board's decision and the reasons for the decision. Further details about the background to this amendment can be found under the heading 'Achievement of policy objectives – Improving communication with notifiers'.

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

Clause 29 replaces section 180. Currently, section 180(1) only requires notice to be given of decisions under section 179(2). However, a National Board may also make a decision under s.178(2) (for example, if section 179 does not apply, as provided for in section 179(3)). This issue was referred to in appendix 11 of the report of the independent review. This clause makes a minor amendment to section 180(1) to clarify that notice must be given of decisions made under both sections 178(2) and 179(2).

Section 180(1)(b) of the National Law currently requires notifiers to be informed of the ultimate outcome of a notification. However, section 180(2) limits the information to be provided to notifiers "to the extent the information is available on the National Board's register". This clause replaces section 180(2) with a new provision which gives a National Board a discretion to inform a notifier of the reasons for the Board's decision and removes the limitation that previously applied.

Amendment of s 181 (Establishment of health panel)

Clause 30 amends section 181 to provide that a National Board must establish a health panel if the suspension of a practitioner's or student's registration is to be reconsidered under section 191(4A) or 191A(2)(c). The Board may appoint the same panel or a different panel to the one that originally imposed the suspension, depending on the availability of panel members.

Further details about the background to this amendment can be found under the heading 'Achievement of policy objectives – Review of a suspension arising from a health panel decision.'

This clause also makes consequential amendments to section 181(2), (4) and (5) as a result of the amendments to section 31 of the National Law, which contemplate that a National Board may be established for two or more health professions. The amendments to these sections replace references to "a registered health practitioner in the health profession for which the Board is established" with references to "a registered health practitioner in the same health profession as the registered health practitioner or student the subject of the hearing". These are drafting changes only and they retain the underlying policy of the section.

Amendment of s 182 (Establishment of performance and professional standards panel)

Clause 31 makes consequential amendments to section 182 as a result of the amendments to section 31 of the National Law, which contemplate that a National Board may be established for two or more health professions. The new section 182(4) inserted by this clause replaces the reference to "persons who are registered health practitioners in the health profession for which the Board is established" with a reference to "persons who are registered health

practitioners in the same health profession as the registered health practitioner the subject of the hearing". This is a drafting change only and retains the underlying policy of the section.

Amendment of s 184 (Notice to be given to registered practitioner or student)

Clause 32 amends section 184 to provide that if a panel is established to review a suspension under section 181(1A), the panel may decide the matter on the basis of documents, without parties, their representatives or witnesses appearing at a hearing if it considers appropriate to do so (this is often referred to as making a decision "on the papers"). The panel is required to give a written notice to the practitioner or student that it intends to proceed this way.

If the health practitioner or student gives a written notice to the panel within 14 days requesting a hearing (rather than having the panel decide the matter "on the papers") and the health practitioner or student gives an undertaking to be available for the hearing within 28 days, the panel must conduct a hearing.

If the health practitioner or student does not request a hearing within 14 days, the panel may proceed to decide the matter "on the papers". The power to decide a matter "on the papers" is proposed to be used by a panel particularly for circumstances where a practitioner has elected not to continue active involvement in the suspension process, or where a practitioner has a long term illness that does not allow them to be able to participate in a hearing.

Amendment of s 191 (Decision of panel)

Clause 33 amends section 191 of the National Law to insert a new subsection (4A). New section 191(4A) provides that if a health panel suspends a health practitioner's or student's registration, it must also decide a date by which the suspension be reconsidered, to be known as the 'reconsideration date'. This will provide practitioners or students affected by a suspension with a degree of certainty that their suspension will be reviewed at an appropriate time.

Further details about the background to this amendment can be found under the heading 'Achievement of policy objectives – Review of a suspension arising from a health panel decision.'

Insertion of new s 191A (Decision of panel after reconsideration of suspension) and 191B (Change of reconsideration date for suspension of registration)

Clause 34 inserts new sections 191A and 191B.

Section 191A applies if the suspension of a health practitioner's or student's registration is reconsidered by a health panel established under section 181(1A). On reconsidering the suspension, section 191A allows the panel to:

- revoke the suspension, or
- revoke the suspension, impose conditions on the person's registration under section 191(3)(a) in place of the suspension, and decide a review period for the conditions under section 191(4), or
- not revoke the suspension and decide a new reconsideration date.

This clause also inserts a new section 191B to provide for changes to the reconsideration date if a suspension is to be reconsidered. Under section 191B(2), a health panel may decide an earlier reconsideration date if:

- the health practitioner or student advises the panel of a material change in the practitioner's or student's circumstances and requests an earlier reconsideration date because of the change, and
- the panel is reasonably satisfied that an earlier reconsideration date is necessary because of the change of circumstances.

Under section 191B(4), a health panel may decide a later reconsideration date if the panel is satisfied it is necessary to reconsider the suspension. Examples of when a panel may be reasonably satisfied a later reconsideration date may be needed would include:

- if the practitioner's or student's attendance at the hearing is required and they are unwell, the panel may decide it is preferable to wait until they are well enough to participate in the hearing
- if the practitioner's or student's evidence to the panel requires further review by the panel and this cannot be completed prior to the due date, or
- if a panel member becomes unwell and time is needed to find a suitable replacement.

If a panel changes the reconsideration date under section 191B, the panel must give notice of its decision and reasons for the decision under sections 191B(3)(a) and (5). The panel must also notify a refusal of an earlier reconsideration date and the reasons for the panel's decision under section 191B(3)(b).

Under section 191B(6), the suspension of a health practitioner's or student's registration remains in force until the panel makes a decision to revoke the suspension.

Further details about the background to this amendment can be found under the heading 'Achievement of policy objectives – Review of a suspension arising from a health panel decision.'

Amendment of s 192 (Notice to be given about panel's decision)

Clause 35 amends section 192 to provide that as soon as practicable after making a decision under section 191 or 191A, a panel must give notice of its decision to the National Board that established it.

Section 192(2)(b) of the National Law currently requires notifiers to be informed of the ultimate outcome of a notification. However, section 192(4) limits the information to be provided to notifiers "to the extent the information is available on the National Board's register". This clause replaces section 192(4) with a new provision which gives a National Board a discretion to inform a notifier of the reasons for a panel's decision and removes the limitation that previously applied.

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

Clause 36 amends section 196(4)(b) to allow a responsible tribunal to issue a prohibition order to prohibit a person from providing any health service or a specified health service or

using any protected title or a specified title. The provision also clarifies that the prohibition order may be for a stated period or may be permanent. The approach in the Bill aligns with section 149C(5) of the *Health Practitioner Regulation National Law (NSW).*

Further details about this amendment can be found under the heading 'Achievement of policy objectives – Scope of application of prohibition orders and offences for breach of a prohibition order'.

Insertion of new s 196A (Offences relating to prohibition orders)

Clause 37 inserts new section 196A. Section 196A(1) makes it an offence to contravene a prohibition order with a maximum penalty of $30,000. The clause also includes subsidiary offences related to prohibition orders, which are similar to offences that apply in New South Wales under sections 102(2) and 103(2) of the *Public Health Act 2010* (NSW).

Further details about this amendment can be found under the heading 'Achievement of policy objectives – Scope of application of prohibition orders and offences for breach of a prohibition order'.

Amendment of s 199 (Appellable decisions)

Clause 38 amends section 199 to provide that if a health panel reconsiders a suspension of registration, a decision by the health panel not to revoke the suspension is subject to appeal to the appropriate responsible tribunal.

Further details about the background to this amendment can be found under the heading 'Achievement of policy objectives – Review of a suspension arising from a health panel decision.'

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

Clause 39 amends section 206 and is related to the amendments to section 132 of the National Law in the Bill (see clause 20). The amendments in this clause ensure that where health, conduct or performance action is being taken against a health practitioner, a National Board is able to inform all places at which the person practices. The amendment to section 206(1)(b) makes it clear that a National Board is able to inform a place of practice regardless of whether it was notified of the place of practice by the practitioner or the Board became aware of a person's place of practice through other means.

Under new section 206(2)(b), if practice information given to a Board under section 132, or information of which the Board becomes aware, is information referred to in section 132(4)(c) or (d) (that is, it relates to a contract of employment, contract for services, an arrangement or agreement with an entity or a voluntary or honorary appointment), then the National Board must inform the employer or other entity of health, conduct or performance action being taken against a health practitioner.

Under new section 206(2)(a), if practice information given to a Board under section 132, or information of which the Board becomes aware, is information referred to in section 132(4)(a) (that is, it relates to a self-employed practitioner who shares premises with other

registered health practitioners and shares the costs of the premises), then the National Board has a discretion whether to inform the other practitioners of health, conduct or performance action being taken against a health practitioner. Depending on the risks to the public, the circumstances of the case and the particular arrangements of the practice, it may or may not be appropriate to notify other health practitioners working at the same premises.

Insertion of new pt 10, div 1A (Australian Information Commissioner)

Clause 40 inserts new pt 10, div 1A. This amendment is a consequential amendment as a result of the *Australian Information Commissioner Act 2010* (Cwlth) (AIC Act) and *Freedom of Information Amendment (Reform) Act 2010* (Cwlth) (FOI Reform Act).

Appendix 11 of the report of the independent review states:

Subsequent to the commencement of the National Scheme, the Commonwealth enacted legislation to reform the Commonwealth freedom of information arrangements. The legislative amendments commenced on 1 November 2010. The legislation includes the enactment of the Australian Information Commissioner Act 2010 which, among other things, establishes the positions of Information Commissioner and Freedom of Information Commissioner.

The National Law is to be amended to adopt the reformed Commonwealth legislation under the National Scheme. This would require an amendment to the existing provisions in relation to the Privacy Act by removing reference to the Office of the Privacy Commissioner and the Privacy Commissioner, which are no longer established under that Act. An equivalent provision to those currently in place in relation to the Privacy Act, FOI Act and Ombudsman Act will need to be included in the National Law for the Australian Information Commissioner Act.

This clause applies the AIC Act to the National Scheme and makes related technical amendments. The clause provides that for the purposes of applying the AIC Act:

- a reference to the "Office of the Australian Information Commissioner" should be taken to be a reference to the "Office of the National Health Practitioner Privacy Commissioner", and
- a reference to the "Information Commissioner" (as defined in section 3A of the AIC Act) should be taken to be a reference to the "National Health Practitioner Privacy Commissioner".

The clause also includes sections 212A(2)(c) and (3) which are similar to sections 213(2)(c) and (3) and 215(2) and (3). These sections provide that modifications may be made to the AIC Act by a regulation made under the National Law.

Amendment of s 213 (Application of Commonwealth Privacy Act)

Clause 41 makes consequential amendments to section 213 as a result of the AIC Act. The *Privacy Act 1988* (Cwlth) and AIC Act no longer refer to the "Privacy Commissioner" but now refer only to the "Commissioner" as defined in section 3A of the AIC Act.

Currently, section 213(2) refers to the 'National Health Practitioners Privacy Commissioner'. For alignment with the name of the National Law and the Australian Health Practitioner

Regulation Agency (AHPRA), as well as to recognise that it is not the Privacy Commissioner for health practitioners, but rather for the National Scheme, this clause makes a minor amendment to change the references to 'National Health Practitioners Privacy Commissioner' to 'National Health Practitioner Privacy Commissioner'.

Amendment of s 215 (Application of Commonwealth FOI Act)

Clause 42 makes consequential amendments to section 215 as a result of the AIC Act and FOI Reform Act.

The FOI Reform Act amended the *Freedom of Information Act 1982* and *Privacy Act 1988* (Cwlth). The amendments made by the FOI Reform Act currently do not apply to the National Law because sections 12 and 18 of the *Health Practitioner Regulation National Law Regulation* provide that they do not apply. After the Bill amends the National Law to take account of the AIC Act and FOI Reform Act, it is planned that sections 12 and 18 of the *Health Practitioner Regulation National Law Regulation* will be removed. This will mean that the FOI Reform Act will apply to the National Scheme.

The most significant consequence of the FOI Reform Act applying to the National Scheme will be that the National Health Practitioner Ombudsman and Privacy Commissioner will take on a new role of undertaking external, merits review of FOI decisions made by AHPRA.

Consequential amendments will also be required to the *Health Practitioner Regulation National Law Regulation* to ensure that the AIC Act and FOI Reform Act apply appropriately to the National Scheme. Subject to passage of the Bill, these consequential changes will be made after the Bill is passed.

Replacement of s 220 (Disclosure to protect health or safety of patients or other persons)

Clause 43 replaces section 220. Section 220 currently provides power for a National Board to 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 the health or safety of the public or certain members of the public. However, section 220 does not apply to persons who are not registered health practitioners.

Section 216(2)(c) permits protected information to be disclosed if it is required or permitted by law. However, in the early stages of an investigation, it may not always be clear if other legislation permits or requires disclosure of information about a practitioner who is not registered.

There are instances where National Boards and AHPRA receive information about persons who are not registered health practitioners or who were previously registered, and where it considers there is a strong public interest in permitting the disclosure of that information to an entity of the Commonwealth, State or Territory for action. For example, information may be received about a person who is pretending to be a registered health practitioner and under the current wording of section 220, information about that person may not be able to be disclosed.

This clause replaces section 220 so that a National Board may give information to an entity of the Commonwealth, State or Territory if a National 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 patients is or may be at risk because of the provision of a health service by a person who is not a registered health practitioner.

Section 220 will also continue to apply to registered health practitioners in the same way as it does now.

Replacement of s 222 (National registers)

Clause 44 replaces section 222. Section 222 currently sets out which National Board keeps each public national register of practitioners registered by the Board. As a consequence of the amendments being made to section 31, which provide for National Boards to be provided for in regulations, the Bill amends section 222 to provide that the Board which keeps each register must be prescribed in regulations.

However, the remainder of section 222, including the names of each of the public national registers and their divisions are retained in section 222.

There are no current proposals to change the structure of National Boards. Similarly, there are no current proposals to change the arrangements for the keeping of national registers by each National Board.

This clause also makes minor amendments to sections 222 to provide that the registers should include details of persons subject to prohibition orders. Further details about this are provided below in the entry for amendments to section 227 (see clause 48).

Amendment of s 222 (Public national registers)

Clause 45 amends section 222 to include the Register of Paramedics in the table of public national registers under section 222. This amendment is made separately, as it will need to commence on the 'participation day' for the inclusion of paramedics in the National Scheme. 'Participation day' is defined in section 306 of the Bill (see clause 52).

Amendment of s 223 (Specialists Registers)

Clause 46 amends section 223 to provide that the specialists registers should include details of persons subject to prohibition orders. Further details about this are provided below in the entry for amendments to section 227 (see clause 48).

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

Clause 47 makes minor consequential amendments to section 226 to reflect the changes made to section 31.

Replacement of s 227 (Register about former registered health practitioners)

Clause 48 amends section 227 to require the public registers kept by National Boards under section 222 and 223 to include a copy of a prohibition order for each person subject to such an order. Currently, the National Law does not require or empower National Boards to keep a register of prohibition orders issued under section 196(4)(b). This amendment and related amendments to sections 222 and 223 ensure that National Boards can keep registers of prohibition orders.

Amendment of s 235 (Application of Commonwealth Ombudsman Act)

Clause 49 makes a minor amendment to section 235. Currently, section 235(2)(a) refers to the 'National Health Practitioners Ombudsman'. For alignment with the name of the National Law and the Australian Health Practitioner Regulation Agency (AHPRA), as well as to recognise that it is not the Ombudsman for health practitioners, but rather for the National Scheme, this clause makes a minor amendment to change the reference to 'National Health Practitioners Ombudsman' to 'National Health Practitioner Ombudsman'.

Amendment of s 246 (Parliamentary scrutiny of national regulations)

Clause 50 amends section 246. The current section 246(1) provides that a regulation made under the National Law may be disallowed in a participating jurisdiction by a House of Parliament of that jurisdiction in the same way that a regulation made under an Act of that jurisdiction may be disallowed and as if the regulation had been tabled in the House on the first sitting day after the regulation is published by the Victorian Government Printer.

This deeming provision has resulted in some Parliaments lacking visibility of the national regulations and difficulty in ensuring proper process is followed to ensure those regulations are open to disallowance procedures.

Appendix 11 of the final report of the independent review states:

The following amendments to the National Law are to be made… section 246(1) of the National Law be replaced with a provision which states that… a regulation must be tabled in a House of Parliament in the same way that other regulations in the relevant jurisdiction are tabled…

This clause amends section 246 to require regulations made under the National Law to be tabled in the Parliament of each participating jurisdiction in the same way a regulation made in that jurisdiction must be tabled. In New South Wales, regulations are not tabled, but notice of their making is given to Parliament. This clause provides that if giving notice of a regulation applies, then notice must be given for a regulation made under the National Law in the same way notice must be given for a regulation made in that jurisdiction. The Bill also provides that failure to comply with the tabling or notice requirement does not affect the validity of the regulation. The provisions about majority disallowance in sections 246(2) and (3) remain unchanged.

Amendment of s 284 (Exemption from requirement for professional indemnity insurance arrangements for midwives practising private midwifery)

Clause 51 makes a consequential amendment to the definition of "National Board" in section 284(5) to replace the reference to "the Nursing and Midwifery Board of Australia" with "the National Board for midwifery". This change is needed as a result of the amendments to section 31 which require that National Boards for each health profession are dealt with in the regulations.

This clause also makes a minor consequential amendment to the definition of *private midwifery* to remove the words "nursing and" so that it reads: "private midwifery means practising the midwifery profession…". This change reflects the recognition of nursing and midwifery as separate professions.

Insertion of new pt 13 (Transitional and other provisions for Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2017)

Clause 52 inserts a new part 13. Division 1 of part 13 is titled "Paramedicine Board and registration of paramedics" which:

- establishes the Paramedicine Board of Australia (Paramedicine Board)
- provides powers and functions of the Paramedicine Board until the participation day, and
- provides for a number of transitional and other matters for the health profession of paramedicine.

Insertion of new s 306 (Definitions)

Clause 52 inserts definitions for part 13.

In its communique of 8 April 2016, the COAG Health Council announced its intention that national registration for paramedics would commence in the second half of 2018. The "participation day", which is defined in section 306, will be prescribed in a regulation made under the National Law once there is sufficient certainty about the proposed date on which paramedics are to be registered. This date will be decided by the Ministerial Council in conjunction with the Paramedicine Board and AHPRA.

At the same time as the participation day is prescribed, it is proposed that an amendment will be made to the regulations to continue the "Paramedicine Board of Australia" under the regulations as a National Board, like all other National Boards, which are being prescribed in the regulations under section 31.

Once the Paramedicine Board is prescribed in the regulations after the participation day, it will have all the powers of a National Board under the National Law. Similarly, all provisions of the National Law applying to National Boards will apply to the Paramedicine Board. Until the participation day, the functions and powers of the Paramedicine Board will be governed by the provisions in part 13, division 1 of the Bill.

Insertion of new s 307 (Establishment of Paramedicine Board)

Clause 52 inserts new section 307 to establish the Paramedicine Board of Australia for the health profession of paramedicine. Like all other National Boards under the National Law,

this new section provides that the Board is a body corporate with perpetual succession, has a common seal, may sue and be sued in its corporate name and the Board represents the State. These matters are currently provided for in section 31(2) and (3) of the National Law for other National Boards.

The new section provides that it applies until the Paramedicine Board is continued in force by a regulation made under section 31. As outlined above, this regulation is expected to be made at the same time as the regulation to prescribe the participation day that registration of paramedics commences.

Insertion of new s 308 (Powers and functions of Paramedicine Board)

Clause 52 inserts new section 308 to provide that sections 32, 33, 34, 37, 40, 234 and schedule 4 of the National Law apply to the Paramedicine Board until the participation day. These provisions deal with:

- section 32 – powers of National Boards
- section 33 – membership of National Boards
- section 34 – eligibility for appointment to National Boards
- section 37 – delegation of functions by National Boards
- section 40 – consultation about registration standards, codes and guidelines
- section 234 – general duties of persons exercising functions under this Law
- schedule 4 – constitution, functions and powers, and procedures of National Boards.

Section 308 provides that, despite section 34, the COAG Health Council may appoint practitioner members to the Board who the Council is satisfied have skills and experience in paramedicine relevant to the Board's functions. This clause is required because paramedics will not be registered until after the participation day, which means that upon establishment of the Board, there will be no registered paramedics to appoint as practitioner members.

Section 308 also sets out other functions of the Paramedicine Board until the participation day. As outlined above, after the participation day, the Paramedicine Board will have all the functions and powers of a National Board, once it is prescribed in regulations.

Insertion of new s 309 (Paramedicine Board taken to be a National Board for stated matters)

Clause 52 inserts new section 309. The Paramedicine Board is established under section 307. As such, it does not fall within the definition of "National Board" in section 5. For this reason, section 309 provides that the Paramedicine Board is taken to be a National Board for certain provisions of the National Law. This will ensure, for example, that the Ministerial Council and AHPRA may treat the Paramedicine Board as a National Board for the purposes of their powers.

Insertion of new s 310 (CAA accredited programs of study)

Clause 52 inserts new section 310 to provide for the Paramedicine Board to approve, or refuse to approve, a CAA accredited program of study as providing a qualification for the purposes of registration in paramedicine until the relevant day.

An approval of a program of study under section 310(1):
- may be granted subject to the conditions the Paramedicine Board considers necessary or desirable in the circumstances, and
- does not take effect until the program is included in the list published under section 310(3).

A "CAA accredited program of study" means a program of study accredited by the Council of Ambulance Authorities Inc. and published on the Council's website:
- immediately before the commencement, or
- between the commencement and the participation day.

Further details about this amendment can be found under the heading 'Achievement of policy objectives – Accreditation arrangements for paramedicine and 'approved programs of study''.

Insertion of new s 311 (Qualifications for general registration in paramedicine for a limited period)

Clause 52 inserts new section 311 to provide for grandparenting of qualifications for the existing paramedic workforce to enable them to obtain registration under the National Scheme, for a period of three years from the participation day. Section 312, outlined below, deals with practitioners who hold a Diploma of Paramedical Science issued by the Ambulance Service of New South Wales.

Section 311 provides that an individual who applies for registration in paramedicine before the "relevant day" (a defined term meaning the period of three years from the participation day) is qualified for general registration in paramedicine if the individual:
- holds a qualification or has completed training in paramedicine, whether in a participating jurisdiction or elsewhere, that the Paramedicine Board considers is adequate for the purposes of practising the profession
- holds a qualification or has completed training in paramedicine, whether in a participating jurisdiction or elsewhere, and has completed any further study, training or supervised practice in the profession required by the Paramedicine Board for the purposes of this section, or
- has practised paramedicine during the 10 years before the participation day for a consecutive period of five years or for any periods which together amount to five years and satisfies the Paramedicine Board that he or she is competent to practise paramedicine.

Once established, the Paramedicine Board will need to decide the qualifications which are adequate for obtaining registration under this grandparenting provision.

This provision will apply despite section 53 of the National Law.

It is important to note that all of the other eligibility requirements for registration, set out in section 52 of the National Law, will apply to people seeking registration under the grandparenting provisions.

Insertion of new s 312 (Accepted qualification for general registration in paramedicine)

Clause 52 inserts new section 312. On 7 October 2016, the COAG Health Council agreed to "*include a provision in the National Law which specifies that despite section 53 (which sets out the qualifications required for general registration), a person is qualified for general registration if they hold the Ambulance Service of New South Wales paramedic qualification*".

Section 312 of the Bill implements this decision and provides that an individual is qualified for general registration in paramedicine for the purposes of section 52(1)(a) if they hold a Diploma of Paramedical Science, Diploma of Paramedical Science (Ambulance), Advanced Diploma of Paramedical Science (Ambulance), Diploma in Paramedical Science (Pre-Hospital Care) or Advanced Diploma Paramedical Sciences (Pre-Hospital Care) issued by the Ambulance Service of New South Wales. This provision does not have an expiry date.

The new section will also apply if the name of the Diploma of Paramedical Science is changed in future or if the qualification is delivered by another training entity in place of the Ambulance Service of New South Wales. The Bill achieves this by stating the Diploma of Paramedical Science includes a qualification that replaces the existing diploma and is prescribed by regulation and is issued by the Ambulance Service of New South Wales. The Ambulance Service of New South Wales is defined in new section 306.

Section 312 applies despite section 53 of the National Law.

Section 53(b) of the National Law provides that an individual is qualified for general registration in a health profession if the individual holds a qualification a National Board considers to be substantially equivalent to, or based on similar competencies as, an "approved qualification". The Bill declares that section 312 does not make a Diploma of Paramedical Science issued by the Ambulance Service of New South Wales an "approved qualification" for section 53(b).

The Paramedicine Board will decide what qualifications are "approved qualifications" for section 53(a) and (b) after it is established. A person will only be qualified for general registration in paramedicine under section 53(b) if they hold a qualification which is substantially equivalent to, or based on similar competencies as, an "approved qualification" decided by the Board.

Section 312 does not provide grounds for an individual to be qualified for general registration in paramedicine if they hold a qualification which is substantially equivalent to, or based on similar competencies as, the Diploma of Paramedical Science issued by the Ambulance Service of New South Wales.

Insertion of new s 313 (Provisions that apply to student registration for Diploma of Paramedical Science)

Clause 52 inserts new section 313 to provide that a Diploma of Paramedical Science issued by the Ambulance Service of New South Wales is taken to be an approved program of study for part 7, division 7, subdivisions 1 and 3. This will ensure, for example, that details of students enrolled in the Diploma of Paramedical Science issued by the Ambulance of New

South Wales can be obtained under section 88 of the National Law and those students can be registered under section 89.

Insertion of new s 314 (Applications for registration in paramedicine and period of registration)

Clause 52 inserts new section 314 to provide that an individual may apply to the Paramedicine Board for registration in paramedicine before the participation day and after the day decided by the Board under section 308(3)(c).

If the Paramedicine Board grants an application for registration under part 7 before the participation day, the registration period does not start until the participation day and may be for a period of up to two years. Section 314 applies despite section 56.

The power to allow the first registration to be for a period more than 12 months is to ensure that registrants can be placed on the correct registration 'cycle' to ensure that their registration is aligned to a common registration date with other registrants.

Insertion of new s 315 (Applications for registration in paramedicine made but not decided before participation day)

Clause 52 inserts new section 315. It is expected that the vast majority of applications for registration of paramedics will be decided by the participation day. However, experience in registering other professions has demonstrated that there can be a last minute rush of applications, all of which may not be able to be decided by the participation day.

To deal with this situation, the Bill includes section 315 which provides that if a person has applied to the Paramedicine Board for registration before the participation day, but the Board has not decided the application by the participation day, the applicant does not commit an offence against section 113 or 116 while the application is being decided. That is, the person can take and use the title 'paramedic' and hold themselves out as a paramedic while the application is being decided.

Under section 85, if a National Board does not make a decision about an application for registration within 90 days after the application is received, the Board is taken to refuse the application. This means that section 315 can only apply for a maximum period of 90 days.

Insertion of new s 316 (Period after participation day during which an individual does not commit an offence under ss 113 and 116)

Clause 52 inserts new section 316 to provide a 90 day "transitional period" from the participation day during which an individual who is eligible for registration in paramedicine does not commit an offence against section 113 or 116 by taking or using the title 'paramedic' or holding themselves out as a paramedic.

The effect of this provision is that if an eligible paramedic submits a late application, the applicant can be assured that no enforcement action can be taken against them provided they submitted their application within 90 days after the participation day.

AHPRA's practical experience of registering other professions is that no matter how effective the communication strategy is for members of the profession, there will always be a small number of applicants who submit late applications. This provision is intended to provide certainty for both AHPRA and the practitioner about possible enforcement action during the transitional period.

Insertion of new s 317 (Application of ss 113 and 116 to individual temporarily practising paramedicine in another jurisdiction)

Clause 52 inserts new section 317. If the Bill is passed by the Queensland Parliament, the changes will apply automatically in all other States and Territories, except for Western Australia which must pass its own separate legislation, and South Australia where regulations must be made to adopt the changes.

It is possible that Western Australia may not have passed its own separate legislation and South Australia may not have had the regulations adopted by the participation day. If this occurs, a Western Australian or South Australian paramedic who operates across State borders or who is assisting with an emergency in another State or Territory would commit an offence against the holding out and protection of title provisions of the National Law if they took or used the title "paramedic" or held themselves out as a paramedic in another State or Territory.

To address this possibility, the Bill includes section 317 which applies to an individual who:

- usually practices paramedicine in a participating jurisdiction that has not enacted provisions about paramedicine similar to the Bill
- temporarily takes or uses a title or does anything else relating to paramedicine in another jurisdiction, that would contravene section 113 or 116
- complies with any regulation made under the National Law about temporarily taking or using a title or doing anything else relating to paramedicine in another jurisdiction.

If the person complies with the requirements of any regulation made under the National Law, the person would not commit an offence against section 113 or 116. A regulation would be made if this situation arises, which would specify operational matters, such as ensuring that paramedics who are practising in another jurisdiction are identified and approved to practice in the other jurisdiction under appropriate operational arrangements.

Insertion of new pt 13, div 2 (Other transitional provisions)

Clause 52 also inserts new part 13, division 2. The term "commencement" is used in various provisions of part 13, division 2. "Commencement" is defined in section 12 of schedule 7 of the National Law.

Insertion of new s 318 (Deciding review period for decision on application made under section 125 before commencement)

Clause 52 inserts new section 318, which applies if before the commencement, a registered health practitioner or student applied to a National Board under section 125 of the National Law to change or remove a condition or change or revoke an undertaking.

If the application had not been decided by the Board immediately before commencement and after the commencement, the Board's decision results in a registration or endorsement being subject to a condition, or an undertaking is still in place, then the National Board may decide a review period for the condition or undertaking under section 125(5A) and give the registered health practitioner or student notice under section 125(6).

Insertion of new s 319 (Deciding review period for decision after notice given under section 126 before commencement)

Clause 52 inserts new section 319, which applies if before the commencement, a National Board had given notice to a registered health practitioner or student under section 126 of the National Law about changing a condition on the practitioner's or student's registration.

If immediately before commencement, the Board had not made a decision in relation to the matter and after commencement, the Board's decision results in the practitioner's or student's registration being subject to a condition, then the National Board may decide a review period for the condition under section 126(5A) and give the registered health practitioner or student notice under section 126(6).

Insertion of new s 320 (Membership of continued National Boards)

Clause 52 inserts new section 320, which applies if a person holds office as a member of a National Board immediately before the commencement and the Board is continued in force after the commencement by a regulation made under section 31.

Section 320 confirms the person continues to hold office as a member of the continued Board after commencement of the Bill on the terms and conditions that applied to the person's appointment before commencement and until the office of the member becomes vacant under the National Law. Section 320 also confirms that a person who is Chairperson of a National Board immediately before the commencement continues to hold office as Chairperson of the continued Board after the commencement.

If the process for appointing a person as a member of a National Board is started but not completed before the commencement, section 320 confirms that the process may continue after commencement and the person may be appointed as a member of the continued Board.

Insertion of new s 321 (Offences relating to prohibition orders made before commencement)

Clause 52 inserts new section 321, which confirms that section 196A applies to a prohibition order made before the commencement. Prohibition orders are made by responsible tribunals and are expected to be complied with. Although section 196A will apply to prohibition orders made before the commencement, the offence in section 196A will only apply to conduct that contravenes a prohibition order after the commencement.

Insertion of new s 322 (Register to include prohibition orders made before commencement)

Clause 52 inserts new section 322, which confirms that a National Board may record the names of persons subject to a prohibition order made before the commencement in the register. Similarly, a National Board may also include copies of prohibition orders made before the commencement in the register.

Insertion of new s 323 (Public national registers)

Clause 52 inserts new section 323, which confirms that a register kept under section 222 or 223 immediately before the commencement continues in force immediately after the commencement.

Amendment of sch 2 (Agency Management Committee)

Clause 53 makes a minor consequential amendment to schedule 2 as a result of the amendments to section 31 in the Bill. The amendment clarifies that a member of the Agency Management Committee can be removed from office if they are registered in more than one health profession and cease to be registered in either or any of the health professions as a result of their misconduct, impairment or incompetence.

Amendment of sch 4 (National Boards)

Clause 54 makes minor consequential amendments to schedule 4 as a result of the amendments to section 31 in the Bill.

Clause 2 of schedule 4 deals with the term of office of members of National Boards. It currently provides that a member holds office for the period not exceeding three years stated in their instrument of appointment. The amendments to section 31 give the COAG Health Council the power to dissolve a Board for a health profession if another Board is established for that health profession (for example, the newly established Board may be for more than one health profession). In such a case, the membership of the Board would need to be reconsidered. To allow for this, the Bill amends clause 2 of schedule 4 to provide that a Board member's term of office ends if the National Board is dissolved by regulations made under section 31.

Clause 4(2)(b) of schedule 4 provides that the Chairperson of the COAG Health Council may remove a Board member from office if the member ceases to be a registered health practitioner as a result of the member's misconduct, impairment or incompetence. The Bill amends this clause to provide that if a Board member ceases to be a registered health practitioner in any health profession in which they are registered due to misconduct, impairment or incompetence, they may be removed from office by the Chairperson of the Ministerial Council.

Division 2 Other amendments of Health Practitioner Regulation National Law Act 2009

Act Amended

Clause 55 provides that division 2, part 2 amends the *Health Practitioner Regulation National Law Act 2009* (Qld) (other than the Health Practitioner Regulation National Law set out in the schedule to the Act).

Part 4 of the *Health Practitioner Regulation National Law Act 2009* (Qld) modifies the operation of the National Law in Queensland to take account of Queensland's co-regulatory arrangements, including the Health Ombudsman and the Health Ombudsman Act. Some of the modifications also modify the terminology used in the National Law for Queensland. For example, under the National Law as it applies in Queensland, "notifications" are referred to as "complaints" and "notifiers" are referred to as "complainants".

The amendments in this division of the Bill ensure that where changes have been made to the National Law, corresponding changes are made to the modification provisions where necessary.

Amendment of s 8 (Police Commissioner may give criminal history information)

Clause 56 amends section 8(1)(b) to replace the reference to "'CrimTrac" with "ACC". The CrimTrac Agency was merged into the Australian Crime Commission from 1 July 2016 under the A*ustralian Crime Commission Amendment (National Policing Information) Act 2016* (Cwlth). The new definition of "ACC" refers to the Australian Crime Commission established under section 7 of the *Australian Crime Commission Act 2002* (Cwlth).

The amendment made by this clause is consistent with the change to section 5 of the National Law.

Amendment of s 34 (Replacement of pt 8, div 5 (Preliminary assessment))

Clause 57 amends section 34 which modifies the operation of part 8, division 5 of the National Law in Queensland. Part 8, division 5 applies if the Health Ombudsman refers a matter about a health practitioner or student to AHPRA. The amendments in this clause are consequential to changes to the National Law in the Bill.

Clause 57 replaces section 149, as inserted by section 34 of the *Health Practitioner Regulation National Law Act 2009* (Qld). The new section 149 in the Bill replaces the phrase "National Board that registered the health practitioner or student" with the phrase "National Board established for the health practitioner's or student's profession". The amendments to section 150(1)(a) and 150(3), as inserted by section 34 of the *Health Practitioner Regulation National Law Act 2009* (Qld), replace the phrase "by the Board" with "in a health profession for which the Board was established". These are consequential amendments as a result of the amendment of section 31 of the National Law in the Bill.

Clause 57 also amends section 151, as inserted by section 34 of the *Health Practitioner Regulation National Law Act 2009* (Qld), to omit section 151(1)(e) and replace it with two

new subsections (e) and (f) to reflect the changes made to section 151 of the National Law by the Bill. The clause also amends the terminology used to ensure that is consistent with the terminology used in Queensland. For example, the clause uses the term "referred matter" instead of "notification".

Insertion of new s 35A (Amendment of s 159A (Board may give information to notifier about immediate action))

Clause 58 inserts new section 35A, which amends new section 159A of the National Law, to replace the terms "notifier" and "notification" with the terms "complainant" and "complaint" respectively. This ensures the new provisions of the National Law, as applied in Queensland, use terminology consistent with the terminology used in Queensland's modification provisions.

Insertion of new s 37A (Amendment of s 167A (Board may give information to notifier about result of investigation))

Clause 59 inserts new section 37A, which amends new section 167A of the National Law, to replace the terms "notifier" and "notification" with the terms "complainant" and "complaint" respectively. This ensures the new provisions of the National Law, as applied in Queensland, use terminology consistent with the terminology used in Queensland's modification provisions.

Insertion of new s 40A (Amendment of s 177A (Board may give information to notifier about decision following assessor's report))

Clause 60 inserts new section 40A, which amends new section 177A of the National Law, to replace the terms "notifier" and "notification" with the terms "complainant" and "complaint" respectively. This ensures the new provisions of the National Law, as applied in Queensland, use terminology consistent with the terminology used in Queensland's modification provisions.

Amendment of s 54 (Amendment of s 206 (National Board to give notice to registered health practitioner's employer)

Clause 61 amends section 54 to make the heading to section 206 in the modification provision consistent with the heading to section 206 in the National Law, as amended by the Bill.

Amendment of s 57 (Insertion of new pt 13)

Clause 62 amends section 57 to renumber provisions in the *Health Practitioner Regulation National Law Act 2009* (Qld). The renumbering is necessary because the Bill inserts a new part 13 in the National Law, so part 13 in the *Health Practitioner Regulation National Law Act 2009* (Qld) is renumbered as part 12A. The section numbers in part 12A are also renumbered by this clause.

Part 3 Amendment of Health Ombudsman Act 2013

Act amended

Clause 63 provides that part 3 amends the *Health Ombudsman Act 2013* (Qld).

Insertion of new s 43A (Relevant action may be taken despite referral)

Clause 64 inserts new section 43A to clarify that the Health Ombudsman can facilitate the local resolution of a health service complaint even if the matter has been referred to the National Agency, an entity of the State, another State or the Commonwealth under sections 91 or 92 of the Health Ombudsman Act.

It is intended that the decision to facilitate local resolution of a health service complaint under section 43A could be taken at any time, and does not have to be made at the time of the referral to the National Agency or another entity. Local resolution of a health service complaint would generally occur after the matter had been finally dealt with by the National Agency or other entity.

Amendment of s 58 (Power to take immediate registration action)

Clause 65 amends section 58(1) to broaden the grounds on which the Health Ombudsman may take immediate registration action in relation to a registered health practitioner, under part 7, division 1 of the Health Ombudsman Act. The amendment of section 58(1) provides that if the Health Ombudsman reasonably believes the immediate registration action is in the public interest, the Health Ombudsman can take immediate registration action.

The amendment of section 58(1) of the Health Ombudsman Act is consistent with the amendments made by the Bill to section 68 of the Health Ombudsman Act (see clause 69) and section 156 of the National Law (see clause 24).

Further details about this amendment can be found under the headings ‘Achievement of policy objectives – Grounds for taking ‘immediate action’ under the National Law’, ‘Achievement of policy objectives – Broadening the grounds for immediate action’ and ‘Consistency with fundamental legislative principles – Grounds for taking immediate action – ‘public interest test’’.

Insertion of new ss 58A (Varying immediate registration action on health ombudsman’s own initiative) and 58B (Varying immediate registration action on application by registered health practitioner)

Clause 66 inserts a new section 58A which allows the Health Ombudsman to vary an immediate registration action in relation to a registered health professional if there has been a material change relating to the matter giving rise to the immediate registration action. The Health Ombudsman can only vary the immediate registration action on the grounds mentioned in section 58.

Under new section 58A, the Health Ombudsman can substitute one type of immediate registration action for another, for example, revoking the suspension of a registered health

practitioner's registration and substituting it with a condition of registration. This aligns with the amendment made to section 155 of the National Law in the Bill (see clause 23).

If the Health Ombudsman decides to vary an immediate registration action, section 58A(3) provides that the decision to vary is taken to be a decision to take immediate registration action, to the extent of the variation, in relation to a number of sections of the Health Ombudsman Act. Therefore, if the Health Ombudsman proposes to vary an immediate registration action under section 58A, the Health Ombudsman must comply with the show cause process under section 59 and 61. Also, if the Health Ombudsman decides to vary the immediate registration action, the Health Ombudsman must give a notice of the decision in accordance with section 60.

New section 58A(3) also ensures that QCAT has jurisdiction, under section 94 of the Health Ombudsman Act to review a decision by the Health Ombudsman to vary the immediate registration action. The Health Ombudsman must also give notice of the immediate registration action, to the extent of the variation, to each person the Health Ombudsman believes is an employer of the health practitioner under section 279 of the Health Ombudsman Act.

New section 58A(3) also ensures that, if the variation of the immediate registration action was in response to a complaint, the Health Ombudsman must give the complainant a notice stating the details of the variation to the complainant under section 60(4).

Clause 66 also inserts new section 58B which allows a health practitioner to apply to the Health Ombudsman to vary an immediate registration action if there is a material change relating to the matter giving rise to the immediate registration action.

In deciding the application, the Health Ombudsman must consider if there has been a material change relating to the matter giving rise to the immediate registration action, which justifies varying the immediate registration action. The Health Ombudsman can only decide to vary the immediate registration action on the grounds mentioned in section 58.

New section 58B(4) allows the Health Ombudsman to vary the immediate registration action in the way that the health practitioner requested, vary the immediate registration action in a way that is different to the way requested, or not vary the immediate registration action.

New section 58B(5) provides that if the Health Ombudsman decides to vary the immediate registration action in the way requested in the application, the Health Ombudsman must give the health practitioner a notice of the decision. The Health Ombudsman must also give notice of the immediate registration action, to the extent of the variation, to each person the Health Ombudsman believes is an employer of the health practitioner under section 279 of the Health Ombudsman Act.

New section 58B(6) provides that if the Health Ombudsman proposes to vary the immediate registration action in a way that is different to the way requested, the Health Ombudsman must comply with the show cause requirements under section 59(1) to (3). If the Health Ombudsman subsequently decides to vary the immediate registration action in a way that is different to the way requested, the Health Ombudsman must give notice of the decision in accordance with section 60. The practitioner has a right to apply to QCAT for review under section 63. The Health Ombudsman must also give notice of the immediate registration

action, to the extent of the variation, to each person the Health Ombudsman believes is an employer of the health practitioner under section 279 of the Health Ombudsman Act.

New sections 58B(7) to (10) set out the procedures that apply if the Health Ombudsman proposes not to vary the immediate registration action. For example, the Health Ombudsman must give the health practitioner a notice stating the proposed decision and invite the practitioner to make a submission within a period of at least 7 days about the proposed decision. In making the decision, the Health Ombudsman must consider any submissions made by the health practitioner. If, after considering any submissions made by the health practitioner, the Health Ombudsman decides not to vary the immediate registration action, the Health Ombudsman must give the health practitioner a notice stating the decision, the reasons for the decision, that the practitioner may apply to QCAT for a review of the decision, and how and when the practitioner may apply for a review of the decision.

Amendment of s 60 (Notice about immediate registration action)

Clause 67 amends the note in section 60(4) to reflect the amendment to section 279 of the Health Ombudsman Act in the Bill (see clause 80). The amendment to section 60(4) clarifies that if immediate registration action is taken a notice may also be given to particular health professionals with whom the health practitioner shares premises under section 279.

Amendment of s 64 (Health ombudsman must immediately take further relevant action)

Clause 68 amends section 64(a) to clarify that after taking immediate action in relation to a practitioner under part 7 of the Health Ombudsman Act, the Health Ombudsman may continue an investigation already underway into the matter that gave rise to the immediate action, rather than starting a new investigation.

A similar amendment is made to section 75(a) of the Health Ombudsman Act (see clause 73).

Amendment of s 68 (Power to issue interim prohibition orders)

Clause 69 amends section 68(1) to broaden the grounds under which the Health Ombudsman may issue an interim prohibition order to a health practitioner, other than in the person's capacity as a registered health practitioner. The amendment of section 68(1) provides that if the Health Ombudsman reasonably believes that issuing an interim prohibition order is in the public interest, the Health Ombudsman can issue an interim prohibition order.

The amendment of section 68(1) of the Health Ombudsman Act is consistent with the amendments made by the Bill to section 58 of the Health Ombudsman Act (see clause 65) and section 156 of the National Law (see clause 24).

Clause 69 also makes the language used in section 68(1) consistent with the language used in section 58 of the Health Ombudsman Act. Currently, section 68 states that the Health Ombudsman may issue an interim prohibition order if the Health Ombudsman "is satisfied on reasonable grounds" of certain matters. To ensure consistency with section 58, the Bill amends section 68 to state that the Health Ombudsman may issue an interim prohibition order if the Health Ombudsman "reasonably believes" certain matters.

Further details about this amendment can be found under the headings 'Achievement of policy objectives – Grounds for taking 'immediate action' under the National Law', 'Achievement of policy objectives – Broadening the grounds for immediate action' and 'Consistency with fundamental legislative principles – Grounds for taking immediate action – 'public interest test''.

Insertion of new ss 68A (Varying interim prohibition order on health ombudsman's own initiative) and 68B (Varying interim prohibition order on application by health practitioner)

Clause 70 inserts a new section 68A which allows the Health Ombudsman to vary an interim prohibition order in relation to a health professional if there has been a material change relating to the matter giving rise to the interim prohibition order, which justifies varying the interim prohibition order. The Health Ombudsman can only vary the interim prohibition order on the grounds mentioned in section 68.

If the Health Ombudsman decides to vary an interim prohibition order, subsection 68A(3) provides that the decision to vary is taken to be a decision to issue an interim prohibition order, to the extent of the variation, in relation to a number of sections of the Health Ombudsman Act. Therefore, if the Health Ombudsman proposes to vary an interim prohibition order under section 68A, the Health Ombudsman must comply with the show cause process under sections 69 and 72. Also, if the Health Ombudsman decides to vary the interim prohibition order, the Health Ombudsman must give a notice of the decision in accordance with section 70.

New section 68A(3) also ensures that QCAT has jurisdiction, under section 94 of the Health Ombudsman Act, to review a decision by the Health Ombudsman to vary the interim prohibition order. The Health Ombudsman must also give notice of the variation of the interim prohibition order, to each person the Health Ombudsman believes is an employer of the health practitioner under section 279 of the Health Ombudsman Act.

New section 68A(3) also ensures that, if the variation of the interim prohibition order was in response to a complaint, the Health Ombudsman must give the complainant a notice stating the details of the variation to the complainant under section 71.

Clause 70 also inserts new section 68B which allows a health practitioner to apply to the Health Ombudsman to vary an interim prohibition order if there is a material change relating to the matter giving rise to the interim prohibition order.

In deciding the application, the Health Ombudsman must consider if there has been a material change relating to the matter giving rise to the interim prohibition order, which justifies varying the interim prohibition order. The Health Ombudsman can only decide to vary the interim prohibition order on the grounds mentioned in section 68.

New section 68B(4) allows the Health Ombudsman to vary the interim prohibition order in the way that the health practitioner requested, vary the interim prohibition order in a way that is different to the way requested, or not vary the interim prohibition order.

New section 68B(5) provides that if the Health Ombudsman decides to vary the interim prohibition order in the way requested in the application, the Health Ombudsman must give

the health practitioner a notice of the decision. The Health Ombudsman must also give notice of the variation of the interim prohibition order, to each person the Health Ombudsman believes is an employer of the health practitioner under section 279 of the Health Ombudsman Act.

New section 68B(6) provides that if the Health Ombudsman proposes to vary the interim prohibition order in a way that is different to the way requested, the Health Ombudsman must comply with the show cause requirements under section 69(1) to (3). If the Health Ombudsman subsequently decides to vary the interim prohibition order in a way that is different to the way requested, the Health Ombudsman must give notice of the decision in accordance with section 70. The practitioner has a right to apply to QCAT for review under section 74. The Health Ombudsman must also give notice of the variation of the interim prohibition order, to each person the Health Ombudsman believes is an employer of the health practitioner under section 279 of the Health Ombudsman Act.

New sections 68B(7) to (10) set out the procedures that apply if the Health Ombudsman proposes not to vary the interim prohibition order. For example, the Health Ombudsman must give the health practitioner a notice stating the proposed decision and invite the practitioner to make a submission within a period of at least 7 days about the proposed decision. In making the decision, the Health Ombudsman must consider any submissions made by the health practitioner. If, after considering any submission made by the practitioner, the Health Ombudsman still decides not to vary the interim prohibition order, the Health Ombudsman must give the health practitioner a notice stating the decision, the reasons for the decision, that the practitioner may apply to QCAT for a review of the decision, and how and when the practitioner may apply for a review of the decision.

Replacement of s 70 (Content of interim prohibition order)

Clause 71 amends section 70(a) to clarify that the interim prohibition order must state details of the order that apply to the practitioner, including if the Health Ombudsman makes a decision to vary an interim prohibition order.

Replacement of s 71 (Notice to complainant)

Clause 72 replaces section 71. The new section 71 clarifies that if an interim prohibition order was issued in response to a complaint, the Health Ombudsman must give the complainant a notice stating details of the order, including if the Health Ombudsman makes a decision to vary an interim prohibition order, to the extent of the variation.

Clause 72 also replaces the note in section 71 to reflect the amendment to section 279 of the Health Ombudsman Act in the Bill. The amendment clarifies that if an interim prohibition order is issued to a health practitioner a notice may also be given to particular health professionals with whom the health practitioner shares premises under section 279.

Amendment of s 75 (Health ombudsman must immediately take further relevant action)

Clause 73 amends section 75(a) to clarify that after issuing an interim prohibition order in relation to a practitioner under part 7 of the Health Ombudsman Act, the Health Ombudsman

may continue an investigation already underway into the matter which gave rise to the order, rather than starting a new investigation.

A similar amendment is made to section 64(a) of the Health Ombudsman Act (see clause 68).

Amendment of s 84 (Progress Reports)

Clause 74 amends section 84, which requires the Health Ombudsman to give notice of the progress of an investigation, at least every three months, to the health service provider being investigated and the complainant who instigated the matter (if any).

Clause 74 amends section 84 to give a person who has the right to be given a three monthly progress report, the power to waive that right by advising the Health Ombudsman in writing. In addition, the amendment to section 84 allows a person who waived their right to receive a three monthly progress report, the ability to revoke that waiver at any time before the investigation is completed and recommence receiving three monthly progress reports.

Amendment of s 94 (QCAT's jurisdiction)

Clause 75 amends section 94. Section 94 outlines QCAT's jurisdiction with respect to the Health Ombudsman Act and the National Law. Currently, section 94(1)(a) provides that QCAT has jurisdiction to review a decision by the Health Ombudsman to take immediate registration action in relation to a registered health practitioner, or issue an interim prohibition order to a health practitioner.

The amendment to section 94(1)(a) will also allow QCAT to review a decision by the Health Ombudsman not to vary an immediate registration action or an interim prohibition order.

Amendment of s 107 (Decision about registered health practitioner other than student)

Clause 76 amends section 107. Section 107(4) provides additional actions that QCAT may take if it decides to cancel a practitioner's registration, or if a practitioner does not hold registration. Section 107(4)(b) currently provides that QCAT may prohibit the practitioner from using a specified title or providing a specified health service.

Clause 76 replaces section 107(4)(b) with a new subsection to provide that QCAT may prohibit the practitioner, either permanently or for a stated period, from providing *any* health service or a specified health service, or using *any* title or specified title.

The amendment to section 107(4)(b) is consistent with the amendments to section 113(4) of the Health Ombudsman Act (see clause 77) and section 196(4)(b) of the National Law (see clause 36).

Further details about this amendment can be found under the headings 'Achievement of policy objectives – Scope of application of prohibition orders and offences for breach of a prohibition order', 'Achievement of policy objectives – Scope of 'prohibition orders'' and 'Consistency with fundamental legislative principles – Scope of application of prohibition orders'.

Amendment of s 113 (Prohibition order)

Clause 77 amends section 113. Section 113(4)(a) enables QCAT to make a prohibition order, prohibiting a practitioner from providing any health service or a stated health service. Clause 77 replaces section 113(4)(a) with a new subsection to clarify that the prohibition order may prohibit the practitioner, either permanently or for a stated period, from providing any health service or a stated health service.

The amendment to section 113(4)(a) is consistent with the amendments to section 107(4) of the Health Ombudsman Act (see clause 76) and section 196(4)(b) of the National Law (see clause 36).

Further details about this amendment can be found under the headings 'Achievement of policy objectives – Scope of application of prohibition orders and offences for breach of a prohibition order', 'Achievement of policy objectives – Scope of 'prohibition orders'' and 'Consistency with fundamental legislative principles – Scope of application of prohibition orders'.

Amendment of s 117 (Panels of assessors)

Clause 78 amends section 117(b) dealing with panels of assessors. Under part 10 of the Health Ombudsman Act, professional panels of assessors are established for each health profession under the National Law (see section 117). Assessors from the relevant profession are appointed from the panel to sit with QCAT in disciplinary hearings and advise QCAT on questions of fact (see sections 126 and 127). One of the professional panels of assessors established under section 117 is a 'nursing and midwifery panel of assessors'.

The Bill amends the National Law to recognise that nursing and midwifery are two professions, although they will continue to be regulated by one National Board. The Bill also establishes a Paramedicine Board of Australia and regulates the profession of 'paramedicine'.

For consistency with the amendments made to the National Law, this clause amends section 117 of the Health Ombudsman Act to replace the 'nursing and midwifery professional panel' with a separate 'nursing panel of assessors' and 'midwifery panel of assessors'. The Bill also establishes a new 'paramedics panel of assessors' for the profession of 'paramedicine' which will be regulated by the National Law.

Amendment of s 277 (Meaning of *employer* for pt 19)

Clause 79 amends the definition of *employer* in section 277. This clause inserts a new paragraph (d) in section 277 which provides that an employer of a health practitioner is also an entity that the practitioner is providing services to, or on behalf of, whether in an honorary capacity, as a volunteer or otherwise, and whether or not the practitioner receives payment from the entity for the services.

This expands the entities that the Health Ombudsman can give notice to about particular serious matters under section 279, QCAT decisions under section 280, and other matters under section 282 of the Health Ombudsman Act.

This amendment aligns with changes made to sections 132(4)(d) and 206(2)(b) of the National Law in the Bill (see clauses 20 and 39).

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

Clause 80 amends section 279 by inserting a new section 279(2A). New section 279(2A) provides that the Health Ombudsman may give notice of an immediate action or investigation undertaken in relation to a health practitioner to other health practitioners with whom the health practitioner shares premises if the health practitioner is self-employed and shares the cost of the premises with the other practitioners.

This power is discretionary. Depending on the risks to the public, the circumstances of the case and the particular arrangements of the practice, it may or may not be appropriate to notify other health practitioners working at the same premises.

This amendment aligns with changes made to sections 132(4)(a) and 206(2)(a) of the National Law in the Bill (see clauses 20 and 39).

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

Clause 81 amends section 280 by inserting a new section 280(3). New section 280(3) provides that the Health Ombudsman may, if QCAT decides a matter concerning a health practitioner, give notice of the decision to other health practitioners with whom the health practitioner shares premises if the health practitioner is self-employed and shares the cost of the premises with the other practitioners.

As with the amendment to section 279 above, this power is discretionary. Depending on the risks to the public, the circumstances of the case and the particular arrangements of the practice, it may or may not be appropriate to notify other health practitioners working at the same premises.

This amendment aligns with changes made to sections 132(4)(a) and 206(2)(a) of the National Law in the Bill (see clauses 20 and 39).

Amendment of s 282 (Notice to employers about other matters)

Clause 82 amends section 282 by replacing section 282(2). New section 282(2) provides that the Health Ombudsman may give notice of a matter concerning a health practitioner if the Health Ombudsman considers it appropriate to do so having regard to all the circumstances and to the paramount guiding principle in section 4. This clause extends the provision so that it also applies to other health practitioners with whom the health practitioner shares premises if the health practitioner is self-employed and shares the cost of the premises with the other practitioners. This is in addition to currently being able to give notice of a matter concerning a health practitioner to an employer of the practitioner.

As with the amendments to sections 279 and 280 above, this power is discretionary. Depending on the risks to the public, the circumstances of the case and the particular arrangements of the practice, it may or may not be appropriate to notify other health practitioners working at the same premises.

This amendment aligns with changes made to sections 132(4)(a) and 206(2)(a) of the National Law in the Bill (see clauses 20 and 39).

Part 4 Amendment of Ambulance Service Act 1991

Act Amended

Clause 83 provides that part 4 amends the *Ambulance Service Act 1991*.

Amendment of s 50D (Definitions for div 1)

Clause 84 amends the definition of *health professional* in section 50D to prescribe the nursing profession and midwifery profession separately and to include the paramedicine profession in the definition.

The amendment of section 50D is a consequential amendment as a result of the changes in the Bill to the definition of *health profession* in section 5 of the National Law which lists "nursing" and "midwifery" as separate professions and adds "paramedicine" as a profession regulated by the National Law (see clause 4).

Amendment of s 50M (Disclosure to health ombudsman)

Clause 85 amends section 50M to provide that a designated officer is authorised to disclose confidential information to the Health Ombudsman in order to make, or give information about a complaint or notification under the *Health Practitioner Regulation National Law (Queensland).*

The new provision is equivalent to section 156 of the *Hospital and Health Boards Act 2011* (Qld).

Insertion of new s 50S (Disclosure to health practitioner registration board)

Clause 86 inserts a new section 50S to authorise designated officers to disclose confidential information to a National Board established under the National Law or to AHPRA for the purposes of making or giving information about a complaint or notification, answering questions or otherwise giving information about an investigation or proceeding about a person who is or was registered under the National Law.

The new provision is equivalent to section 155 of the *Hospital and Health Boards Act 2011* (Qld).

This clause reflects the fact that the Bill amends the National Law to require people who use the title 'paramedic' to be registered under the National Law. Therefore, paramedics registered under the National Law will potentially be subject to actions by a National Board or AHPRA.

The amendment to sections 50M and new section 50S will ensure officers from the Queensland Ambulance Service are able to share information with the Paramedicine Board of Australia, AHPRA and the Health Ombudsman for complaints, notifications and other matters arising under the National Law or the Health Ombudsman Act.

Part 5 Other amendments

Clause 87 provides that schedule 1, part 1 makes minor or consequential amendments to the National Law set out in the schedule to the *Health Practitioner Regulation National Law Act 2009* (Qld). The amendments in schedule 1, part 1 are a result of the amendments to section 31 in the Bill (see clause 5).

Clause 87 also provides that schedule 1, part 2 makes minor and consequential amendments to a number of Queensland Acts. These are consequential amendments as a result of the change to the definition of *health profession* in section 5 of the National Law which lists "nursing" and "midwifery" as separate health professions (see clause 4). The amendments are purely consequential in nature and there is no underlying change in policy about the roles of 'nurses' or 'midwives' under these pieces of legislation.