

Health Practitioner Regulation National Law Amendment Regulation 2022

made under the

Health Practitioner Regulation National Law as applied by the laws of States and Territories

General Outline

Short title

Health Practitioner Regulation National Law Amendment Regulation 2022

Authorising law

Section 245 of the *Health Practitioner Regulation National Law* as applied by the laws of the States and Territories.

Policy objectives and the reasons for them

The Health Practitioner Regulation National Law (National Law) establishes a National Registration and Accreditation Scheme for the health professions (National Scheme). The National Scheme ensures that health practitioners across 16 health professions are registered against consistent, high-quality professional standards.

The *Health Practitioner Regulation National Law Amendment Regulation 2022* (Amendment Regulation) amends the *Health Practitioner Regulation National Law Regulation 2018* (National Law Regulation) to extend oversight of the National Health Practitioner Ombudsman and Privacy Commissioner (NHPO) to external accreditation authorities and other entities performing accreditation functions under the National Law. The Amendment Regulation also makes minor consequential amendments to reflect recent changes to the National Law.

Oversight of accreditation functions

Accreditation functions under the National Law provide a framework for assuring that individuals seeking registration are suitably trained, qualified and competent to practise as healthcare practitioners. Accreditation functions include developing accreditation standards for approval by the relevant National Board, accrediting and monitoring education providers and programs of study, assessing overseas qualified practitioners, and assessing overseas accrediting authorities. These functions help assure the quality of education and qualifications.

Part 6 of the National Law provides that accreditation functions under the National Scheme are to be exercised by *accreditation authorities* determined by the National Boards. There are two

types of accreditation authorities: external accreditation entities and committees established by the National Boards. External accreditation authorities work with a relevant National Board to deliver specified accreditation functions under a formal agreement with the Australian Health Practitioner Regulation Agency (Ahpra) on the Board's behalf. Committees established by the National Boards work with the Board based on the committee's terms of reference.

Some accreditation authorities also have arrangements with other entities, such as specialist medical colleges, to perform certain accreditation functions. This can include accrediting training sites and assessing the qualifications of overseas qualified practitioners.

The National Law gives the NHPO powers under the *Ombudsman Act 1976* (Cth), *Privacy Act 1988* (Cth), and *Freedom of Information Act 1982* (Cth). The application of these Commonwealth Acts is modified by the National Law and National Regulation to make them suitable for the National Scheme. The conferred powers allow the NHPO to provide oversight of entities in the National Scheme, including Ahpra and the National Boards. The NHPO provides complaint resolution services for the public and health practitioners, works collaboratively with Ahpra and the National Boards to make systemic improvements, and engages with the community on relevant issues.

As noted in the Accreditation Systems Review Final Report,¹ accreditation authorities make decisions that can significantly impact institutions and registrants. While the decisions of external accreditation authorities are often subject to internal appeal procedures, these procedures vary and are not subject to independent oversight to ensure they provide procedural fairness and are applied in a consistent and transparent manner. Currently, the NHPO provides oversight, and accepts complaints, related to the accreditation processes of Ahpra and National Boards. However, it does not have oversight, or accept complaints, related to the actions and decisions of external accreditation authorities or other entities performing accreditation functions.

Consequential amendments to reflect changes to the National Law

The National Law was recently amended by the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022*. The amendments changed the name of Ahpra's governing body from the *Agency Management Committee* to the *Agency Board* and dissolved the Australian Health Workforce Advisory Council. The National Law Regulation references the now-outdated name of Ahpra's governing body as well as the now-obsolete Advisory Council.

Achievement of policy objectives

Oversight of accreditation functions

The Amendment Regulation achieves the policy objective of increasing oversight of accreditation functions by extending the NHPO's jurisdiction to include oversight of external accreditation authorities and other entities performing accreditation functions. It does this by modifying the application of the *Ombudsman Act* and *Privacy Act* to add external accreditation

¹ *Australia's Health Workforce: strengthening the education foundation, Final Report, November 2017* (released by the then-COAG Health Council on 12 October 2018), accessible at <http://web.archive.org/web/20211202084644/https://www.coaghealthcouncil.gov.au/Portals/0/ASReview%20FINAL%20Report.pdf> (last accessed 20 April 2023).

authorities and other persons as *prescribed authorities* under the Ombudsman Act and as *agencies* under the Privacy Act.

This will empower the NHPO to manage complaints to the Ombudsman about external accreditation authorities' processes and to the Privacy Commissioner about the use of personal information and alleged breaches of privacy by external accreditation authorities.

Extending NHPO's oversight to external accreditation authorities and other entities that perform accreditation functions under the National Law will provide greater accountability and transparency over the processes followed by these entities. It will also promote a more consistent approach to oversight of administrative decisions under the National Scheme by treating external accreditation entities in the same way as other National Scheme entities, including Ahpra and National Boards.

Consequential amendments to reflect changes to the National Law

The Amendment Regulation makes consequential changes to reflect the recent amendments to the National Law. It replaces references to Ahpra's governing body to reflect its recent change in name and removes references to the now-dissolved Australian Health Workforce Advisory Council.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the policy objectives of the National Law, which include facilitating the provision of high-quality education and training of health practitioners and the rigorous and responsive assessment of overseas-trained health practitioners.²

Inconsistency with policy objectives of other legislation

No inconsistencies with the policy objectives of other legislation have been identified.

Alternative ways of achieving policy objectives

The Amendment Regulation is the only effective means of achieving the policy objectives.

Benefits and costs of implementation

The NHPO is funded through registrant fees paid by health practitioners under the National Scheme. National Health Chief Executives decide on the appropriate budget for the NHPO each year after receiving a budget request from the Ombudsman and Privacy Commissioner.

Extending the NHPO's oversight to external accreditation authorities and other persons performing accreditation functions is not expected to have a significant impact on registration fees for practitioners.

² Section 3(2)(c) and 3(2)(d) of the National Law.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with the fundamental legislative principles in section 4 of the *Legislative Standards Act 1992*.

Section 4(2) of the Legislative Standards Act states the principles include requiring that legislation has sufficient regard to rights and liberties of individuals and the institution of Parliament. Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review (section 4(3)(a)). Extending the NHPO's oversight of accreditation functions increases the ability of people to seek review of how external accreditation authorities and other persons have handled accreditation matters.

Consultation

Consultation on the proposed amendments to the National Law Regulation was undertaken as part of the consultation process for the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022*.

Targeted consultation on drafts of the Bill and Regulation was undertaken between 26 February 2021 and 27 April 2021. Consulted stakeholders included national and state regulators, professional associations, professional indemnity insurers, the NHPO, medical colleges, patient safety bodies and health consumer bodies. In addition to consultation drafts of the draft legislation, stakeholders were also provided a supporting document summarising the reforms and their rationales.

Two national webinar sessions were held on 7 and 8 April 2021 to explain the proposed amendments and respond to stakeholder questions. Some jurisdictions also provided briefings to local stakeholders.

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

Nearly 60 per cent of the respondents commented on the proposed extension of the NHPO's oversight responsibilities, with all respondents indicating support or qualified support. Some stakeholders in support noted the reform will increase the transparency and accountability of accreditation authorities and lead to process improvements in accreditation functions. Stakeholders indicating partial support raised concerns about the potential impacts on the responsibilities of State and Territory Ombudsmen and the potential for increased complexity of processes.

A few stakeholders raised concerns that the draft regulation could be interpreted as applying to all higher education providers who secure clinical placements in accordance with applicable accreditation standards, noting such practises are already subject to other oversight arrangements. To address these concerns the scope of the amendments was narrowed so they no longer apply to all education providers. The regulation also clarifies that NHPO's oversight of specialist medical colleges applies only in relation to an approved program of study provided by the college.

As the amendments to the National Law Regulation are progressed under the authority of Australian Health Ministers, consultation with the Commonwealth Office of Best Practice Regulation (the Commonwealth OBPR) was undertaken as part of consultation on the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022*. The Commonwealth OBPR advised that a regulatory impact statement is not required as the impacts are unlikely to result in more than a minor economic impact.

On 24 September 2020, the Queensland Office of Best Practice Regulation (the Queensland OBPR) advised that the amendments are excluded from further regulatory impact analysis under the *Queensland Government Guide to Better Regulation*. The Queensland OBPR noted the proposals have undergone extensive impact assessment and consultation on behalf of Health Ministers, including multiple national consultation processes approved by the former COAG Health Council, and noted the advice from the Commonwealth OBPR.

Notes on provisions

Short Title

Clause 1 states the short title is the *Health Practitioner Regulation National Law Amendment Regulation 2022*.

Commencement

Clause 2 provides for the commencement of the regulation.

For all participating jurisdictions other than Western Australia, the regulation commences on the day it is published by the Victorian Government Printer. Section 245 of the Health Practitioner Regulation National Law, as applied by participating jurisdictions other than Western Australia, provides that regulations made by the Ministerial Council are to be published by the Victorian Government Printer in accordance with the arrangements for publishing the making of regulations in Victoria.

For Western Australia, the regulation commences on the day after it is published in the Gazette, within the meaning of section 5 of the *Interpretation Act 1984* of Western Australia.

Regulation amended

Clause 3 provides that the regulation amends the *Health Practitioner Regulation National Law Regulation 2018*.

Schedule 1 Amendment of Health Practitioner Regulation National Law Regulation 2018

Amendment of s 3 – Definitions

Clause 1 amends the definition of *relevant tribunal* in section 3(c) of the National Law Regulation. The relevant jurisdiction of the Administrative and Disciplinary Division of the District Court of South Australia has been transferred to the South Australian Civil and Administrative Tribunal. This amendment recognises this change and brings the references in line with other states.

Amendment of s 15 – Modifications relating to National Agency and National Boards

Clause 2 amends section 15 of the National Law Regulation.

Clause 2(1) amends sections 15(b)(i) and (c)(i) to remove references to the *Advisory Council*. This reflects amendments made by the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022* to dissolve the Advisory Council.

Clause 2(2) amends section 15 to replace all references to the *Agency Management Committee* with references to the *Agency Board*. This reflects amendments made by the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022* to change the name of the National Agency's governing body.

Amendment of s 26 – Modifications relating to National Agency and National Boards

Clause 3 amends section 26 of the National Law Regulation. Section 26 modifies the application of the *Ombudsman Act 1976* (Cth) for purposes of the National Registration and Accreditation Scheme.³

Clause 3(1) amends section 26(b)(i) and (d)(i) to remove references to the *Advisory Council*. This reflects amendments made by the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022* to dissolve the Advisory Council.

Clause 3(2) amends section 26(b)(iii) and (d)(iii) to replace references to the *Agency Management Committee* with references to the *Agency Board*. This reflects amendments made by the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022* to change the name of the National Agency's governing body.

Clause 3(3) adds the following as *prescribed authorities* to which the Ombudsman Act applies—

- accreditation authorities;
- persons appointed by a National Board to conduct an examination or assessment of an individual to assess their eligibility for general or specialist registration;
- persons appointed to conduct an examination or assessment of an applicant for registration's ability to practise the health profession; and
- a specialist medical college in relation to an approved program of study provided by the college.

The amendments in this subclause extend the NHPO's oversight of accreditation functions to external accreditation authorities and other persons performing accreditation functions. This will empower the NHPO to manage complaints to the Ombudsman about external accreditation authorities' processes.

Clause 3(4) adds the following as *principal officers* of a prescribed authority to whom the Ombudsman Act applies—

- the Chairperson of an accreditation committee;
- the chief executive officer of an external accreditation entity;
- the chief executive officer of a prescribed authority appointed to conduct an examination or assessment of an individual to assess their eligibility for general or specialist registration or to conduct an examination or assessment of an applicant for registration's ability to practise the health profession; and
- the chief executive officer or president of a specialist medical college.

Clause 3(5) amends the note under section 26 to update references to the entities to which the Ombudsman Act applies. The amendments reflect the changes made in clause 3(3).

³ Section 235 of the National Law applies the *Ombudsman Act 1976* (Cth) as a law of a participating jurisdiction for the purposes of the National Registration and Accreditation Scheme. Both the National Law and National Law Regulation modify the Ombudsman Act for purposes of its application to the scheme.

Amendment of s 35 – Modifications relating to National Agency and National Boards

Clause 4 amends section 35 of the National Law Regulation. Section 35 modifies the application of the *Privacy Act 1988* (Cth) for purposes of the National Registration and Accreditation Scheme.⁴

Clause 4(1) amends section 35(b)(iii) and (c)(iii) to replace references to the *Agency Management Committee* with references to the *Agency Board*. This reflects amendments made by the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022* to change the name of the National Agency's governing body.

Clause 4(2) adds the following as *agencies* to which the Privacy Act applies—

- accreditation authorities;
- persons appointed by a National Board to conduct an examination or assessment of an individual to assess their eligibility for general or specialist registration;
- persons appointed to conduct an examination or assessment of an applicant for registration's ability to practise the health profession; and
- a specialist medical college in relation to an approved program of study provided by the college.

This has the effect of extending the NHPO's oversight of accreditation functions to external accreditation authorities and other persons performing accreditation functions. This will empower the NHPO to manage complaints to the Privacy Commissioner about the use of personal information and alleged breaches of privacy by external accreditation authorities.

Clause 4(3) adds the following as *principal executives* of an agency to whom the Privacy Act applies—

- the Chairperson of an accreditation committee;
- the chief executive officer of an external accreditation entity;
- the chief executive officer of a prescribed authority appointed to conduct an examination or assessment of an individual to assess their eligibility for general or specialist registration or to conduct an examination or assessment of an applicant for registration's ability to practise the health profession; and
- the chief executive officer or president of a specialist medical college.

Clause 4(4) amends the note under section 35 to update references to the agencies to which the Privacy Act applies. The amendments reflect the changes made in clause 4(2).

⁴ Section 213 of the National Law applies the *Privacy Act 1988* (Cth) as a law of a participating jurisdiction for the purposes of the National Registration and Accreditation Scheme. Both the National Law and National Law Regulation modify the Privacy Act for purposes of its application to the scheme.