

# Health Practitioner Regulation (Administrative Arrangements) National Law Bill 2008

## Explanatory Notes

### Title of the Bill

Health Practitioner Regulation (Administrative Arrangements) National Law Bill 2008

### Policy objectives of the Bill

The objective of the *Health Practitioner Regulation (Administrative Arrangements) National Law Bill 2008* (the Bill) is to provide for the adoption of a national law, hosted by Queensland, that will facilitate the development and implementation of the new national registration and accreditation scheme for health practitioners (the national scheme).

The Bill establishes the structural elements of the national scheme and will enable the National Agency and National Boards to be operational on 1 February 2009 and 1 July 2009 respectively, with limited functions and powers necessary for the first stage implementation of the national scheme.

The national scheme is to be fully implemented by 1 July 2010, as set out in the 2008 *Intergovernmental Agreement for a National Registration and Accreditation Scheme for Health Professions*, signed by the Council of Australian Governments (COAG) on 26 March 2008 (the COAG agreement).

The national scheme is to initially apply to ten health professions, that is:

- the nine health professions registered in each State and Territory –medical, nursing and midwifery, pharmacy, physiotherapy, dental (dentists, dental prosthetists, dental therapists, dental hygienists), psychology, optometry, osteopathy and chiropractic; and
- podiatry (registered in every jurisdiction except the Northern Territory, where there are insufficient numbers to make registration viable).

To implement the scheme, legislation will be introduced into the Queensland Parliament in two stages.

The first stage (this Bill) encompasses the COAG agreement.

The second stage legislation, proposed for introduction to Queensland Parliament in August 2009, will cover matters where further work and discussion is required beyond the terms of the COAG agreement. These matters include:

- registration arrangements
- accreditation arrangements
- complaints, conduct, health and performance arrangements
- privacy and information-sharing arrangements
- other matters.

Subject to introduction, debate and passage by the Queensland Parliament, the second stage legislation is to be hosted by Queensland, with participating States and Territories introducing adopting or corresponding legislation to fully implement the national scheme. This approach is consistent with the COAG agreement.

## **Reasons for the Bill**

Registration of health practitioners is currently the responsibility of each individual State and Territory Government. Requirements for registration vary across jurisdictions, and the professions required to be registered to practise also differ (for example, all jurisdictions register medical practitioners, but only Queensland registers speech pathologists). As a result, there are more than 80 health practitioner registration boards in operation across Australia.

In 2005, the Commonwealth Government asked the Productivity Commission to undertake a research study to examine issues impacting on the health workforce including the supply of, and demand for, health workforce professionals and propose solutions to ensure the continued delivery of quality healthcare over the next 10 years.

The report, entitled *Australia's Health Workforce* was delivered in January 2006. The report recommended, among other things, the establishment of a single national registration board for health professionals, as well as a single national accreditation board for health professional education and

training, to deal with workforce shortages and pressures faced by the Australian health workforce and increase their flexibility, responsiveness, sustainability, mobility and reduce red tape.

At its meeting of 14 July 2006, COAG agreed to establish a national registration scheme for health professionals, beginning with the nine professional groups registered in all jurisdictions. COAG further agreed to establish a separate, national accreditation scheme for health education and training, in order to simplify and improve the consistency of current arrangements.

Following extensive consultation on these proposals, COAG agreed at its meeting of 13 April 2007 to establish a single national registration and accreditation scheme. This model includes a number of major changes to the original 2006 proposal, including the combining of the registration and accreditation functions into the one national scheme, and the creation of an independent advisory council for the scheme. The intergovernmental agreement for the scheme was signed by COAG on 26 March 2008.

Once fully implemented on 1 July 2010, the national scheme is expected to deliver the following benefits:

- provide improved safeguards for the public through the development and implementation of consistent and high-quality registration standards for each of the health professions included in the scheme
- promote a more flexible, responsive and sustainable health workforce
- enable health practitioners registered under the national scheme to work across jurisdictions more readily
- reduce administrative ‘red tape’ for health practitioners through the establishment of a single national scheme that replaces the current system whereby registration is performed by multiple State and Territory health practitioner registration authorities.

### **How the policy objectives will be achieved**

The implementation of the national scheme is reliant on a national law that is given effect to by an Act of a host jurisdiction – in this case, Queensland.

The Bill has been designed to facilitate the first stage implementation of the national scheme, consistent with the COAG agreement. The more substantive provisions of the national scheme will be the subject of

proposed second stage legislation that will be developed following extensive consultation with stakeholders over the coming months.

The policy objectives of the Bill will primarily be achieved through establishing the:

- *Australian Health Workforce Ministerial Council* (the Ministerial Council) which will appoint members to the Agency Management Committee and the National Boards, and issue policy directions as needed, to facilitate the first stage implementation of the national scheme. The Ministerial Council comprises Ministers of the governments of participating jurisdictions, and the Commonwealth Minister, with portfolio responsibility for health.
- *Australian Health Practitioner Regulation Agency* (the National Agency) which will be responsible for the administration of the national scheme in accordance with the legislation and policy directions issued by the Ministerial Council. A national office for the Agency will be established in 2009, with local offices to follow.
- *National profession-specific boards* for the ten health professions that are within the current scope of the national scheme. The National Boards are the:
  - Chiropractic Board of Australia
  - Dental Board of Australia (professions of a dentist, dental therapist, dental hygienist, dental prosthetist)
  - Medical Board of Australia
  - Nursing and Midwifery Board of Australia
  - Optometry Board of Australia
  - Osteopathy Board of Australia
  - Pharmacy Board of Australia
  - Physiotherapy Board of Australia
  - Podiatry Board of Australia
  - Psychology Board of Australia
- *Australian Health Workforce Advisory Council* (the Advisory Council), to provide independent advice to the Ministerial Council on matters related to the national scheme.

## **Estimated cost for Government Implementation**

COAG has agreed to a contribution by governments of \$19.8 million to transition to the national scheme by 1 July 2010. It is intended the scheme will be self-funding in the longer term.

## **Consistency with Fundamental Legislative Principles**

Aspects of the Bill that may raise potential fundamental legislative principles issues are outlined below.

### ***Sufficient regard to the institution of Parliament***

#### **National scheme legislation**

While the Bill has been drafted to have regard to fundamental legislative principles, it is noted that elements of national scheme legislation have previously been identified as undermining the institution of Parliament.

The introduction of national scheme legislation in a state or territory Parliament for adoption by other participating states and territories, is a standard approach to implementing national schemes in areas, like health, where Constitutional powers rest with the states and territories, and not the Commonwealth.

Although national scheme legislation may take a number of forms, concerns about abrogating the rights of Parliaments tend to be greatest when, as in this case, the proposed Bill includes pre-determined legislative provisions based on an agreement by governments. The Bill provides a national law that has been designed to encompass the COAG agreement made between all State and Territory jurisdictions, and the Commonwealth.

The COAG agreement represents an important step towards improving Australia's health system – through the national registration and accreditation of health practitioners.

Introducing national scheme legislation for registration and accreditation of health practitioners is expected to provide improved safeguards for the public, deliver improved administrative efficiency and consistency by moving from the current fragmented jurisdictional system to one national scheme, and promote a more flexible, responsive, and sustainable health workforce.

There are no other viable alternatives that would facilitate the development of the national scheme and achieve these objectives.

The COAG agreement identifies Queensland as lead legislator, and host of the proposed national law, and identifies that the other Australian States and Territories will bring adoption or corresponding legislation for passage through their respective Parliaments in time for the national scheme to start on 1 July 2010. However, Parliaments of each participating jurisdiction will decide whether to pass adopting or corresponding legislation to enable the national scheme to become fully operational. Until then, current state and territory based regulation will continue to apply.

As identified earlier in these Explanatory Notes, to achieve the 1 July 2010 implementation deadline, the legislation is to be introduced to the Queensland Parliament in two stages; with this first Bill establishing the structural elements and limited functions and powers of the entities to the scheme that are necessary for the first stage implementation.

The institution of Parliament is supreme, and the Queensland Legislative Assembly will ultimately, through its debate of the Bill, decide whether the Bill will be passed to enable this important first step towards national registration and accreditation of health practitioners to occur.

#### Interpretation generally (clause 5)

The *Acts Interpretation Act 1954* (Queensland) does not apply to the Bill. Given the nature of the scheme, consistency of interpretation across jurisdictions is paramount. Consequently, it was considered that uniform interpretation provisions of a kind usually contained in the Interpretation Act of a State or Territory should apply. Schedule 2 of the *Consumer Credit Code*, set out in the *Consumer Credit (Queensland) Act 1994*, contains such provisions and will apply to the national law.

#### Approval of health profession standards (clause 8)

The Bill enables the Ministerial Council to approve health profession standards if so recommended by a National Board. This approval may be perceived as an exercise of legislative power that results in the standards not being subject to the scrutiny of Parliament.

However, the standards will be of a profession-specific and technical nature. A health profession standard is a standard or requirement relating to the registration, practice, competency, accreditation, or continuing professional development, with respect to a health profession within the national scheme.

Standards will be developed by persons or bodies with appropriate expertise. That is why the legislation provides that the Ministerial Council

may only approve a health profession standard if so recommended by a National Board established for the health profession to which the standard relates.

To ensure transparency, approved health profession standards are to be made publicly available.

### ***Sufficient regard to the rights and liberties of individuals***

#### **Protection from personal liability (clause 54)**

The Bill specifies that a protected person (that is, a member of the Agency Management Committee, a member of staff of the National Agency, or a member of a National Board or a committee of the National Board), is not personally liable for an act or omission done in good faith in the exercise of a function under the national law or in the reasonable belief that the act or omission was the exercise of such a function.

It is not considered appropriate for an individual to be made personally liable as a consequence of carrying out his or her functions under the national law, in good faith. As such, clause 54 prevents personal liability from being attached to a protected person. Instead, such liability attaches to the National Agency, as the statutory body for the national scheme.

## **Consultation**

### **Proposals for the national scheme**

Prior to the signing of the COAG agreement on 26 March 2008, consultation was undertaken on policy proposals for the national scheme.

Commonwealth and State and Territory officials convened three meetings with representatives of professional and consumer organisations as follows:

- 28 September 2006, with 54 representatives of peak professional bodies, training bodies and consumer organisations
- 25 October 2006, with 6 representatives of consumer organisations
- 4 December 2006, with 74 representatives of peak professional bodies, training bodies and consumer organisations.

More than 80 written submissions were received on the policy proposals raised at the meetings.

An additional meeting was convened by the Commonwealth on 13 March 2007, with 62 representatives of peak professional bodies (including

representatives of each of the nine health professions proposed for inclusion in the national scheme), training bodies, and consumer organisations. Twenty-five written submissions were received.

Stakeholder input has informed the scope, structure and functions of the national scheme that is enshrined in the COAG agreement and in this Bill.

### National Law Bill

Further consultation has been undertaken to ensure the proposed legislation encompasses the elements of the COAG agreement that are necessary for the first stage implementation of the scheme. Consultation has included:

#### *Release of a consultation paper (August 2008)*

- A consultation paper identifying issues supplementary to the COAG agreement under consideration for inclusion in the first Bill was sent to invitees ahead of the National Forum held on 4 September 2008.
- The consultation paper was also publicly available on the National Registration and Accreditation Scheme website – <http://www.nhwt.gov.au/natreg.asp>.
- More than 40 submissions were received in response to the consultation paper, primarily from national and state-based health professional associations, state and territory health practitioner registration boards, and health professional education and training bodies.

#### *State and National Forums (from August to early October 2008)*

- Eight State Forums and one National Forum were held to provide an overview of implementation arrangements for the national scheme, including the scope of the first stage legislation.
- Around 800 representatives attended the forums, from national, state and territory stakeholder groups, including from health professional associations, universities and training organisations, registration authorities, community organisations, and unions.

#### *Ad hoc meetings with peak representative organisations, including:*

- The Professions Reference Group on National Registration and Accreditation, which is convened by the professions, and comprises peak professional bodies representing health practitioners in the ten professional groups to be included initially in the new national scheme, and consumers.



- The Registration Reference Group comprising board and registrar representatives from each of the ten health professions.

*Oversight of the project by the following Intergovernmental committees:*

- NRAIP Governance Committee comprising Australian Health Ministers' Advisory Council (AHMAC) members or their deputies.
- AHMAC Health Workforce Principal Committee Practitioner Regulation sub-committee, comprising senior officials from each jurisdiction's health department.

While the Bill has been drafted to encompass the COAG agreement, stakeholder feedback has helped to clarify the practical application of some terms of the agreement.

There will be ongoing consultation during development of the second stage legislation that will contain the more substantive elements of the national scheme. The consultation process will include the release of consultation papers, national forums on significant policy issues, and the release of an exposure draft Bill, to ensure that health professionals, registration boards, education providers, consumers, and other interested parties continue to have an opportunity to contribute to the implementation of the scheme.

## **Notes on Preliminary Provisions – Enactment of National Law Bill and Application in Queensland**

### **Short title**

Clause 1 provides that the short title of the Act is the *Health Practitioner Regulation (Administrative Arrangements) National Law Act 2008* (the Act).

### **Commencement**

Clause 2 provides for a staggered commencement of the Act to allow for the efficient roll-out of the first stage implementation of the scheme.

In effect, the provisions that provide for the establishment and functioning of the:

- Ministerial Council will commence on assent
- National Agency will commence on 1 February 2009
- National Boards will commence on 1 July 2009
- Advisory Council will commence on a day to be fixed by proclamation.

## **Definitions**

Clause 3 defines the local application provisions of the Act; that is, the Queensland-specific provisions (first six clauses). The terms used in the local application provisions have the same meaning as those of the national law.

## **Health Practitioner Regulation (Administrative Arrangements) National Law**

Clause 4 signals that the Act has two parts – the local application provisions and the national law to be hosted by Queensland.

This clause provides that the national law applies as a law of Queensland. In so applying, the national law may be referred to as the *Health Practitioner Regulation (Administrative Arrangements) National Law (Queensland)* and is a part of this Act.

## **Meaning of generic terms in Health Practitioner Regulation (Administrative Arrangements) National Law for this jurisdiction**

Clause 5 clarifies that the term “this jurisdiction” means Queensland.

## **Exclusion of legislation of this jurisdiction**

Clause 6 expressly excludes Queensland’s *Acts Interpretation Act 1954*, *Financial Administration and Audit Act 1977*, and *Statutory Bodies Financial Arrangements Act 1982*, from applying to the national law. Further, Queensland’s *Public Service Act 2008* does not apply to entities established under the national law or to staff or members appointed to the entities.

Instead, tailor-made statutory interpretation, public and financial accountability, and employment provisions are included in the national law

to ensure uniformity and consistency for the national scheme legislation during this first stage implementation.

## Notes on Provisions – National Law

### Part 1 Preliminary

#### Short title

Clause 1 provides for the law to be cited as the *Health Practitioner Regulation (Administrative Arrangements) National Law* (the national law).

#### Commencement

Clause 2 states that the national law is to commence in accordance with the day or days appointed under section 2 of the *Health Practitioner Regulation (Administrative Arrangements) National Law Act 2008*.

#### Object of law

Clause 3 identifies that the purpose of the national law is to facilitate the development and implementation of the national registration and accreditation scheme for health practitioners (the national scheme).

The clause also places an obligation on a person or body with functions under the national law to have regard to the objectives of the COAG agreement during this first stage implementation. The objectives are to:

- (a) provide for the protection of the public by ensuring that only practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered
- (b) facilitate workforce mobility across Australia and reduce ‘red tape’ for practitioners
- (c) facilitate the provision of high quality education and training, and rigorous and responsive assessment of overseas-trained practitioners

- (d) have regard to the public interest in promoting access to health services; and
- (e) have regard to the need to enable the continuous development of a flexible, responsive and sustainable Australian health workforce and enable innovation in education and service delivery.

The national scheme is to also operate under the following principles set out in the COAG agreement:

- (a) it should operate in a transparent, accountable, efficient, effective and fair manner
- (b) it should ensure that fees and charges are reasonable; and
- (c) it should recognise that restrictions on the practice of a profession should only occur where the benefits of the restriction to the community as a whole outweigh the costs.

The COAG agreement provides fulsome details of the national scheme, and may be accessed from either the:

Council of Australian Governments website:  
[http://www.coag.gov.au/coag\\_meeting\\_outcomes/2008-03-26/docs/iga\\_health\\_workforce.rtf](http://www.coag.gov.au/coag_meeting_outcomes/2008-03-26/docs/iga_health_workforce.rtf).

or the National Registration and Accreditation Scheme website:  
<http://www.nhwt.gov.au/natreg.asp>.

## **Definitions**

Clause 4 defines expressions used in the national law. The definition for Ministerial Council establishes the Council for the national scheme and its functions are set out in Part 2.

## **Interpretation generally**

Clause 5 provides that Schedule 2 to the *Consumer Credit Code* appended to the *Consumer Credit (Queensland) Act 1994*, applies in relation to the national law. The schedule contains uniform interpretation provisions of a kind that are usually contained in the Interpretation Act of a State or Territory and will provide consistency in interpretation across jurisdictions.

## **Extraterritorial operation of Law**

Clause 6 provides for the extraterritorial operation of the national law.

## **Part 2 Ministerial Council**

### **Policy directions**

Clause 7 provides that the Ministerial Council may give directions to the National Agency and National Boards about policies to be applied in the exercise of their statutory functions under the national law.

### **Approval of health profession standards**

Clause 8 states the Ministerial Council may, in anticipation of the scheme commencing, approve health profession standards for any health profession (within the national scheme).

A health profession standard is defined as a standard or requirement for a health profession relating to registration, practice, competency, accreditation, or continuing professional development.

The Ministerial Council may only approve a health profession standard if it is recommended by the relevant National Board.

To assist the reader, it should be noted that the development of a health profession standard will be at arms-length from government. It is a function of the National Boards to oversee the development of health profession standards, and to recommend standards to the Ministerial Council for approval (refer clause 42, functions of National Boards). For example, a National Board may establish a committee comprising members with the necessary professional expertise to develop a health profession standard, or a person or body (such as an accreditation council) may develop an accreditation standard for a particular health profession if assigned accreditation functions by the Ministerial Council (refer to clause 9, special arrangements for accreditation). Once developed, the standard is submitted to the relevant National Board.

Clause 8 also makes provision for the Ministerial Council to request that a National Board review an approved health profession standard, and the

Ministerial Council may revoke its approval of an approved standard on the recommendation of a National Board.

An approved health profession standard has no effect until the national scheme is fully operational (ie, on 1 July 2010). An approved standard will be made publicly available.

### **Special arrangements relating to accreditation**

Clause 9 provides that the Ministerial Council may, in anticipation of the national scheme commencing, appoint a person or body with existing functions with respect to accreditation, to exercise functions with respect to accreditation for a health profession under the national scheme.

To assist the reader, the term ‘person’ is defined as including an individual or a body politic or corporate under the interpretation provisions of Schedule 2 of the *Consumer Credit Code* that will apply to this law.

An appointed person or body may develop health profession standards relating to accreditation (called accreditation standards) for the health profession in respect of which the person or body is appointed.

Once developed, an accreditation standard is to be submitted to the National Board established for the relevant health profession for its consideration.

As set out in clause 8 (approval of health profession standards), the relevant board recommends the accreditation standard to the Ministerial Council for approval. The Ministerial Council may only approve a standard if it is recommended by a National Board. An approved accreditation standard will not take effect until the national scheme is fully implemented on 1 July 2010.

Clause 9 also provides that an appointed person or body is to ensure there is wide-ranging consultation with respect to the content of an accreditation standard, during its development. While consultation is expected to help inform the content of an accreditation standard, the appointed person or body will determine the final content of the standard prior to its submission to a National Board.

To assist the reader, the note at the end of the clause refers to the COAG agreement making provision for the Ministerial Council to assign accreditation functions to existing accreditation bodies as a transitional arrangement. This clause should be read as consistent with this intent.

## **How Ministerial Council exercises functions**

Clause 10 provides that a direction, approval, recommendation, request, or appointment by the Ministerial Council is given by resolution of the Council in accordance with its own procedures.

## **Acts done by Ministerial Council**

Clause 11 states that a certificate that purports to be signed by a member of the Ministerial Council stating that the Council has done any act or thing or formed any opinion is, on production, prima facie evidence that the act, thing, or opinion was done or formed. Further, an act or thing done by the Ministerial Council does not cease to have effect just because of a change in membership of the Council.

## **Notification and publication of directions**

Clause 12 requires that a copy of a direction issued by the Ministerial Council to the National Agency is to be given to the Chairperson of the Agency Management Committee, or in relation to a direction to a National Board, is given to the Chairperson of a National Board.

For transparency, such directions must be published on the National Agency's website (to be developed) and be included in the annual report to be tabled before the Parliaments of the Commonwealth and participating jurisdictions.

Participating jurisdiction is defined in clause 4(1) as meaning a jurisdiction that is a party to the COAG agreement, other than the Commonwealth.

# **Part 3                      Australian Health Workforce    Advisory Council**

## **Establishment of Advisory Council**

Clause 13 establishes the Australian Health Workforce Advisory Council (the Advisory Council).

In accordance with commencement clause 2, the provisions for the Advisory Council (Part 3 and Schedule 1) will commence on a day to be fixed by proclamation.

### **Function of Advisory Council**

Clause 14 sets out the functions of the Advisory Council.

### **Publication of advice**

Clause 15 requires the Ministerial Council to make arrangements to publish advice provided by the Advisory Council as soon as practicable after it has had the opportunity to consider the advice, in accordance with the COAG agreement.

The Ministerial Council may decline to publish advice (or part thereof) in the interests of protecting a person's privacy, if so recommended by the Advisory Council.

### **Powers of Advisory Council**

Clause 16 states that the Advisory Council has the powers necessary to perform its functions.

### **Membership of Advisory Council**

Clause 17 provides for the appointment of members to the Advisory Council.

In the first instance, members will be appointed by the Council of Australian Governments. Subsequent appointments will be made by the Ministerial Council, consistent with the COAG agreement.

The constitution and procedure of the Advisory Council, including grounds for vacancy in office and requirements for disclosure of conflicts of interest, is set out in Schedule 1.



## **Part 4                      Australian Health Practitioner Regulation Agency**

### **Division 1                National Agency**

#### **National Agency**

Clause 18 establishes the Australian Health Practitioner Regulation Agency (the National Agency) as a body corporate with perpetual succession. The National Agency has a common seal, may sue and be sued in its corporate name, and has the status, privileges, and immunities of the State.

In accordance with commencement clause 2, the provisions relating to the National Agency (Parts 4, 6 and 7 and Schedule 2) will take effect on 1 February 2009.

#### **General powers of National Agency**

Clause 19 sets out the general powers of the National Agency.

#### **Principal functions of National Agency**

Clause 20 sets out the functions of the National Agency during the first stage implementation of the national scheme.

The National Agency has a number of operational functions, including establishing general requirements (or a framework) for the development of health profession standards. The purpose of this function is to ensure that the national scheme operates in accordance with good regulatory practice. This function should not be read as meaning that the National Agency will undertake the development of the standards.

To assist the reader, the note at the end of the clause identifies functions to be conferred on the National Agency consistent with the COAG agreement, once the scheme is fully implemented on 1 July 2010.

#### **Health profession agreements**

A function of the National Agency (clause 20(1)(d)) and the National Boards (clause 42(1)(b)) during the first stage implementation, is to

negotiate in good faith and attempt to come to an agreement on the terms of a health profession agreement for the health profession for which the National Board is established.

Clause 21 provides that the National Agency may enter into a health profession agreement with a National Board that provides for:

- (a) the profession-specific fees to be payable under the scheme by health practitioners (from 1 July 2010)
- (b) the annual budget of a National Board, including funding arrangements for board committees and ancillary bodies (ie, a person or body appointed by the Ministerial Council to exercise accreditation functions under the national scheme)
- (c) services (including human resources) to be provided to the boards by the agency to enable a board to carry out its functions under the national scheme.

Should the National Agency and National Boards fail to reach agreement on any matter relating to a health profession agreement, the Ministerial Council may give directions as to how the dispute is to be resolved.

### **Co-operation with participating jurisdictions and the Commonwealth**

Clause 22 enables the National Agency to perform its functions in co-operation with, or with the assistance of, a person or body of the Commonwealth, or a participating jurisdiction.

If the National Agency requests information for the purpose of exercising its functions under the national law, a person or body is authorised to provide such information to the National Agency for its use under the national law.

The operation of this provision is subject to any laws of a participating jurisdiction or the Commonwealth that apply to the release of the requested information. For example, a state or territory registration board may not release information on individual registrants to the National Agency until legislation is passed by that state or territory's Parliament.

## **Office of National Agency**

Clause 23 requires the National Agency to establish a national office – the location of which is yet to be determined. The National Agency is also to establish at least one local office in each participating jurisdiction.

## **Division 2            Agency Management Committee**

### **Agency Management Committee**

Clause 24 establishes the Australian Health Practitioner Regulation Agency Management Committee (the Agency Management Committee) and provides for the Ministerial Council to appoint members to the committee.

The constitution and procedure of the Agency Management Committee, including grounds for vacancy in office and requirements for disclosure of conflicts of interest, is set out in Schedule 2.

### **Vacancies to be advertised**

Clause 25 requires that a vacancy or vacancies in the membership of the Agency Management Committee must be publicly advertised before a member is appointed to the committee by the Ministerial Council.

This requirement is to ensure a transparent process is used for all appointments to the committee. However, it is not necessary to publicly advertise a vacancy before appointing a person to act in the office of a committee member.

To assist the reader, the note at the end of the clause identifies that the general interpretation provisions applicable to the national law confer power to appoint acting members (see Schedule 2 to the *Consumer Credit Code* appended to the *Consumer Credit (Queensland) Act 1994*).

### **Functions of Agency Management Committee**

Clause 26 sets out the functions of the Agency Management Committee.

## **Members to act in public interest**

Clause 27 requires members of the Agency Management Committee to act impartially and place the public interest ahead of any interests of health practitioners or a representative body or organisation for health practitioners.

## **Division 3            Chief executive officer**

### **Chief executive officer**

Clause 28 provides for the Agency Management Committee to appoint a chief executive officer of the National Agency for a period of up to 5 years, in accordance with the written instrument of appointment. The person appointed to the position is eligible for reappointment, and is taken to be a member of staff of the National Agency while holding the office of chief executive officer.

### **Functions of chief executive officer**

Clause 29 states that the chief executive officer has functions conferred by the written instrument of appointment of the Agency Management Committee.

The clause enables the Agency Management Committee to delegate functions of the agency to the chief executive officer, who in turn, may sub-delegate functions to any member of staff if so authorised by the Agency Management Committee.

### **Vacancy in office**

Clause 30 sets out the grounds for vacancy in the office of the chief executive officer.

## **Division 4            Staff and consultants**

### **Staff of National Agency**

Clause 31 provides that the National Agency may employ the staff it needs to perform its functions on such terms and conditions as determined by the agency from time to time, and subject to any relevant industrial award or agreement.

### **Staff seconded to National Agency**

Clause 32 provides that the National Agency may make arrangements to second staff of a government agency of a participating jurisdiction or the Commonwealth, as needed to perform its functions.

### **Consultants**

Clause 33 provides that the National Agency may engage persons with suitable qualifications and expertise as consultants on such terms and conditions as determined by the agency from time to time.

## **Division 5            Reporting obligations**

### **Progress reports**

Clause 34 requires the National Agency to prepare reports on progress made in implementing the national scheme. The first report will be for the period 1 February 2009 (when the agency is established) to 30 June 2009, with subsequent reports being made every six months.

The Ministerial Council may give directions on matters required to be addressed in the report, and on the manner in which a progress report is to be prepared.

Progress reports are to be submitted to the Ministerial Council within three months of the end of the period to which the report relates and the Ministerial Council may extend the period for submission of a report. Subclause (7) provides flexibility to combine a progress report for a period ending 30 June with the annual report for that period.

It is expected that progress reports will cease once the national scheme is fully implemented on 1 July 2010.

### **Annual report**

Clause 35 requires the National Agency to prepare an annual report within three months after the end of each financial year, and submit the annual report to the Ministerial Council.

For clarity, the inaugural annual report is required to cover the period from 1 February 2009 (when the agency is established) to 30 June 2010.

The Ministerial Council may give directions on matters required to be addressed in the annual report, and on the manner in which a report is to be prepared.

The annual report must include a financial statement for the National Agency and each National Board (note clause 21 requires the agency and boards to agree an annual budget for each board as part of a health profession agreement). The financial statements must be audited, and a report provided by the auditor, in accordance with arrangements approved by the Ministerial Council.

The Ministerial Council is to make arrangements for the tabling of the annual report (and the auditor's report) in the Parliaments of each participating jurisdiction, and the Commonwealth.

The Ministerial Council may extend or further extend the period for submission of an annual report by a total period of up to three months.

### **Reporting by National Boards**

Clause 36 requires the National Board, on the request of the National Agency, to provide information the agency requires to compile its annual report. This information is to include a report on the board's performance of its functions and a statement of income and expenditure for the period to which the annual report relates, presented by reference to the budget of the board for the reporting period.

The National Agency is to incorporate the information provided by the National Boards in the relevant annual report.

## **Part 5                      National Boards**

### **Division 1                National Boards**

#### **Establishment of National Boards**

Clause 37 establishes the ten National Boards for the health professions within the national scheme.

In accordance with commencement clause 2, the provisions relating to the National Boards (Part 5 and Schedule 3) will take effect on 1 July 2009.

#### **Membership of National Boards**

Clause 38 requires a national board to consist of members and a Chairperson appointed in writing by the Ministerial Council.

Although the size and composition of each National Board may be determined by the Ministerial Council, a board must consist of at least half, but not more than two-thirds, of persons appointed as practitioner members (ie, registered health practitioners from the relevant health profession), and at least two persons appointed as community members.

Feedback provided by health professional stakeholders on the recommended size and composition of each National Board will assist the Ministerial Council make its determination.

The constitution and procedure of the National Boards, including grounds for vacancy in office and requirements for disclosure of conflicts of interest, is set out in Schedule 3.

#### **Eligibility for appointment**

Clause 39 sets out eligibility requirements that the Ministerial Council is to have regard to in deciding whether to appoint a person as a member of a National Board.

#### **Vacancies to be advertised**

Clause 40 requires that any vacancy or vacancies in the membership of a National Board must be publicly advertised before a member is appointed by the Ministerial Council.

This requirement is to ensure a transparent process is used for all board appointments. However, it is not necessary to publicly advertise a vacancy before appointing a person to act in the office of a board member.

Although the clause states that the National Agency may assist the Ministerial Council in the process of appointing members (for example, by making arrangements for the placing of advertisements in the national press) this should not be read as meaning that the National Agency determines appointments to the National Boards.

To assist the reader, the note at the end of the clause identifies that the general interpretation provisions applicable to the national law confer power to appoint acting members (see Schedule 2 to the *Consumer Credit Code* appended to the *Consumer Credit (Queensland) Act 1994*).

### **Members to act in public interest**

Clause 41 requires members of a National Board to act impartially and place the public interest ahead of any interests of health practitioners or a representative body or organisation for health practitioners.

## **Division 2                      Functions and powers of National Boards**

### **Functions of National Boards**

Clause 42 sets out the functions of a National Board, during the first stage implementation of the national scheme.

To assist the reader, the note at the end of subclause (1) identifies functions to be conferred on a National Board consistent with the COAG agreement once the scheme is fully implemented on 1 July 2010.

The note at the end of subclause (3) clarifies that the Ministerial Council may give to a National Board policy directions or directions to resolve any dispute about health profession agreements (refer also to clause 21). However, consistent with the COAG agreement, the Ministerial Council will not have power to intervene in any registration or disciplinary decisions relating to individual health practitioners, or decisions relating to the accreditation of particular courses under the national scheme.



## **Powers of National Boards**

Clause 43 states that a National Board has the powers necessary to enable it to perform its functions.

## **Boards may obtain assistance**

Clause 44 provides that a National Board may obtain assistance or advice from a local registration authority or a person or body with knowledge of matters relating to the health profession for which the board is established, for the purposes of exercising a board's functions.

## **Committees**

Clause 45 provides that a National Board may establish committees.

If a committee is established to develop a health profession standard, the standard must be submitted to the National Board for its consideration. Members of a committee are to be selected and appointed in accordance with a procedure that is approved by the Ministerial Council.

To assist the reader, the note at the end of subclause (2) clarifies that the Ministerial Council may only approve a health profession standard if it is recommended by the National Board (refer also to clause 8, approval of health profession standards).

## **Delegation of functions**

Clause 46 provides that a National Board may delegate its functions to any of its committees, or to the National Agency. The Agency Management Committee may then subdelegate a delegated function to any member of staff of the Agency.

To clarify, the National Agency cannot perform a function of a National Board unless so delegated by the board.

## **Part 6                      Finance**

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

Clause 47 establishes the Australian Health Practitioner Regulation Agency Fund (the Agency Fund), to be administered by the National Agency.

#### **Payments into Agency Fund**

Clause 48 provides for payments into the Agency Fund, during the first stage implementation of the scheme.

Revenue from registration and other profession-specific fees is not specified as a payment into the Agency Fund in the first stage implementation, as fees will not be levied until the scheme is fully implemented on 1 July 2010.

#### **Payments out of Agency Fund**

Clause 49 provides for payments out of the Agency Fund, during the first stage implementation of the scheme, subject to any direction of the Ministerial Council.

#### **Investment of money in Agency Fund**

Clause 50 provides that the National Agency may invest money in the Agency Fund, in any manner approved by the Ministerial Council, during the first stage implementation of the scheme.

#### **Duties of National Agency and Boards with respect to financial management**

Clause 51 imposes duties on the National Agency to ensure its financial management and operations are efficient, transparent and accountable, and its financial management practices are subject to appropriate internal safeguards.

The National Boards, as part of negotiating a health profession agreement with the National Agency, will have an annual budget (refer clause 21). This clause therefore requires a National Board to ensure its operations are efficient, effective, and economical, and takes any necessary action to

ensure the National Agency is able to comply with its financial management duties in relation to the funding of a National Board and its committees.

## **Part 7                      Miscellaneous**

### **General duties of persons engaged in the administration of this Law**

Clause 52 imposes a duty on persons engaged in the administration of the national law to be accountable for his/her actions and to act honestly and with integrity when exercising his/her functions.

A person engaged in the administration of the national law is defined under clause 4(3) to mean a member of the Advisory Council or Agency Management Committee, a member of staff of the National Agency, or a member of a National Board or any of its committees.

### **Duty of confidentiality**

Clause 53 imposes a duty of confidentiality on a person engaged in the administration of the national law, and provides for limited disclosure of information gained in the course of, or because of, the person's engagement in the administration of the national law. A maximum penalty of \$3,000 may apply to a breach of this clause.

### **Protection from personal liability**

Clause 54 provides that a protected person is not personally liable for any act or omission done in good faith in exercising a function under the national law, or in the reasonable belief that the act or omission was the exercise of a function of the national law. Instead, liability attaches to the National Agency.

A protected person means a member of the Agency Management Committee, a member of a National Board or a committee of a National Board, or a staff member of the National Agency.

**Schedule 1      Constitution and procedure of  
Advisory Council**

Schedule 1 provides for the constitution and procedure of the Australian Health Workforce Advisory Council – see clause 17.

**Schedule 2      Constitution and procedure of  
Agency Management Committee**

Schedule 2 provides for the constitution and procedure of the Australian Health Practitioner Regulation Agency Management Committee – see clause 24.

**Schedule 3      Constitution and procedure of  
National Boards**

Schedule 3 provides for the constitution and procedure of the National Boards for the health professions regulated under the national scheme – see clause 38.