

Health Practitioner Regulation National Law Bill 2009

Explanatory Notes

Title of the Bill

Health Practitioner Regulation National Law Bill 2009

Policy objectives of the Bill

The principal objective of the Health Practitioner Regulation National Law Bill 2009 (the Bill), is to protect the public by establishing a national scheme for the regulation of health practitioners and students.

The object of the National Law is to establish a national registration and accreditation scheme for the:

- (a) regulation of health practitioners; and
- (b) registration of students undertaking:
 - (i) programs of study that provide a qualification for registration in a health profession; or
 - (ii) clinical training in a health profession.

The objectives of the National Registration and Accreditation Scheme (the National Scheme) are:

- (a) to provide for the protection of the public by ensuring that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered;
- (b) to facilitate workforce mobility across Australia by reducing the administrative burden for health practitioners wishing to move between participating jurisdictions or to practise in more than one participating jurisdiction;
- (c) to facilitate the provision of high quality education and training of health practitioners;

- (d) to facilitate the rigorous and responsive assessment of overseas-trained health practitioners;
- (e) to facilitate access to services provided by health practitioners in accordance with the public interest; and
- (f) to enable the continuous development of a flexible, responsive and sustainable Australian health workforce and to enable innovation in the education of, and service delivery by, health practitioners.

The guiding principles of the National Scheme are as follows:

- (a) the scheme is to operate in a transparent, accountable, efficient, effective and fair way;
- (b) fees required to be paid under the scheme are to be reasonable having regard to the efficient and effective operation of the scheme; and
- (c) restrictions on the practice of a health profession are to be imposed under the scheme only if it is necessary to ensure health services are provided safely and are of an appropriate quality.

It is a requirement that anyone that has functions under the National Law is to exercise their functions having regard to the objectives and guiding principles.

Reasons for the Bill

The Bill proposes to continue the administrative arrangements established under the first stage legislation, namely the *Health Practitioner Regulation (Administrative Arrangements) National Law Act 2008* ('Act A'), and covers the more substantial elements of the National Scheme, including registration and accreditation arrangements, complaints, conduct, health and performance arrangements, privacy and information sharing arrangements, and transitional arrangements.

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 COAG agreement may be accessed from the COAG website: http://www.coag.gov.au/coag_meeting_outcomes/2008-03-26/docs/iga_health_workforce.rtf

The National Scheme will 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).

In addition, Health Ministers, through the Australian Health Workforce Ministerial Council (the Ministerial Council), have included four more health professions within the National Scheme.

The four partially regulated professions to be included from 1 July 2012, are as follows:

- Aboriginal and Torres Strait Islander health practice
- Chinese medicine
- medical radiation practice
- occupational therapy.

The national legislation for the National Scheme is being implemented in three stages, with the first stage being achieved through Act A which established the structural elements and entities, and enabled development of the National Scheme. Act A commenced from 25 November 2008.

This Bill – also known as ‘Bill B’ – represents the second stage, and the National Law set out in the Schedule to this Bill includes the full functions of the National Scheme.

Subject to introduction, debate and passage of Bill B by the Queensland Parliament, participating States and Territories intend to introduce, for debate in their Parliaments, adopting or corresponding legislation, known as ‘Bills C’. Bills C are to apply the National Law as a law of that jurisdiction, or, in the case of Western Australia, introduce corresponding laws to achieve the same effect. This represents the third stage legislation and is consistent with the COAG agreement to enable the National Scheme to be fully implemented on 1 July 2010.

Subject to the passage of Bill B, Queensland also intends to progress the consequential amendments needed to fully implement the National Scheme in its jurisdiction, and to repeal existing, and relevant, health practitioner

registration legislation through its own Bill C. The Australian Government may also progress amendments to Commonwealth legislation in a Bill C to support implementation of the National Scheme. However, the Commonwealth will not need to adopt or apply the National Law.

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, and which is then adopted and applied as a law of and by participating jurisdictions. The Bill has been designed to facilitate the full implementation of the National Scheme, consistent with the COAG agreement and Ministerial Council decisions made following the significant consultation on implementation of the National Scheme.

The policy objectives of the Bill will primarily be achieved through the continuance of the following structural entities established under Act A, and by providing these entities with their full functions and powers:

- *Australian Health Workforce Ministerial Council* to approve registration standards, approve professions for specialist recognition, specialties and specialist titles, approve endorsements and issue policy directions as needed. The Ministerial Council has met regularly since the enactment of Act A in 2008 and 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 is responsible for the administration of the National Scheme in accordance with the legislation and policy directions issued by the Ministerial Council. The Agency Management Committee has met regularly since its appointment on 5 March 2009. 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 initial scope of the National Scheme. Members were recently appointed by Ministerial Council under Act A, to the ten National Boards.
- *National profession-specific boards* for the partially regulated health professions that have been added to the scope of the National Scheme since Act A and whose members will be appointed under the proposed National Law prior to commencement of the professions in the National Scheme on 1 July 2012:

- Aboriginal and Torres Strait Islander Health Practice Board of Australia
- Chinese Medicine Board of Australia
- Medical Radiation Practice Board of Australia
- Occupational Therapy 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. It is anticipated that COAG will make appointments to the Advisory Council under Act A towards the beginning of 2010, and these appointments will be continued under the transitional provisions of the National Law in the schedule to Bill B.
- The National Law also establishes the following functions and processes to protect the public and enhance the Australian health workforce:
 - national registration standards and processes, including identity and criminal history checking, English language competence and recency of practice requirements to ensure a consistently high quality of registration occurs nationally;
 - national requirements for registered health practitioners to only practice with appropriate professional indemnity insurance arrangements in place and to complete the continuing professional development requirements for their profession;
 - national accreditation standards and functions that are largely independent of governments and will ensure a consistently high standard of accreditation occurs nationally;
 - nationally consistent arrangements for receipt of complaints and notifications and dealing with the management of health, performance and conduct matters to ensure protection of the public;
 - national mandatory reporting requirements obligating all registered health practitioners and their employers to report notifiable conduct on the part of a registered health practitioner to protect the public from harm;
 - national requirements for the registration of students undertaking programs of study that lead to registration in a health profession;

- national mandatory reporting requirements obligating registered health practitioners and education providers to report a student who may place the public at substantial risk of harm in the course of undertaking clinical training in order to protect the public from harm;
- recognition of co-regulatory jurisdictions that will have jurisdiction specific arrangements for health, performance and conduct matters that are substantially equivalent to those of the National Scheme and ensure that decisions of co-regulatory authorities in those jurisdictions regarding registered health practitioners and students are implemented by the National Scheme to ensure protection of the public;
- privacy protections to ensure a nationally high standard of protection is provided to information related to functions under the scheme; and
- transitional arrangements for existing registrants to transition to the National Scheme while maintaining the protection of the public and continuity of health services.

Contribution by Governments to implementation costs

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.

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

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 law includes pre-determined legislative provisions based on an agreement between governments. The Scrutiny of Legislation Committee (the SLC) has previously noted that national scheme legislation may raise concerns about the authority of a State government to respond to, or distance itself from, the actions of a joint Commonwealth and State regulatory authority and the effect of executive pressure upon Parliaments to merely ratify the legislation.

The COAG agreement identifies Queensland as host of the proposed National Law. Bill B incorporates and builds on the legislative provisions of Act A, which was designed to encompass the COAG agreement made between the Premiers and Chief Ministers of all States and Territories, and the Prime Minister of Australia. The regulatory model is one of federal co-operation by agreement between States and Territories. Bill B is not Commonwealth law, and participating States and Territories are not referring powers to the Commonwealth.

The institution of Parliament is supreme, and the Queensland Legislative Assembly will ultimately, through its debate of Bill B, decide whether the proposed legislation will be passed to enable full implementation of the national registration and accreditation scheme for health practitioners.

Other participating Australian States and Territories are expected to bring adopting or corresponding legislation (Bills C) for passage through their respective Parliaments in time for commencement of the scheme on 1 July 2010. Again, Parliaments of each participating jurisdiction are sovereign and will decide whether to pass Bills C to adopt and apply the National Law as a law of that jurisdiction.

Bill B, and the adoption and application of the proposed National Law through Bills C, represents an important step towards improving Australia's health system – through fully implementing the national registration and accreditation scheme for health practitioners. However, until the National Scheme's proposed implementation date of 1 July 2010, current State and Territory based regulation will continue to apply to registered health practitioners.

Introducing national scheme legislation for registration and accreditation for health practitioners is expected to provide improved safeguards for the public, reduce 'red tape', 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 achievement of these objectives.

Interpretation (clause 6); National Law Regulations (clauses 245-7 and 305)

The *Acts Interpretation Act 1954* does not apply to the proposed National Law. Given the nature of the National Scheme, consistency of interpretation across jurisdictions is paramount. Consequently, uniform interpretation provisions of a kind usually contained in the Interpretation Act of a State or Territory will apply as per Schedule 7 to the National Law.

Similarly, the *Statutory Instruments Act 1992* does not apply to the proposed National Law, which includes uniform provisions for making, publishing, and disallowance of, a regulation made under the National Law (a National Law regulation). This may call into question whether the proposed legislation sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.

A National Law regulation may be disallowed in a participating jurisdiction by a House of the Parliament. However, if a regulation is disallowed under this process, it will not cease to have effect in any participating jurisdiction, unless the regulation is disallowed in a majority of the participating jurisdictions. This approach is consistent with the protocol for the development of national scheme legislation and is to ensure that national scheme legislation is applied consistently in each participating jurisdiction.

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 regulations will be made prior to 1 July 2010 – subject to passage of Bill B. 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 has previously recognised that this kind of approach may be a practical necessity of taking part in national scheme legislation to achieve uniformity.

Approval of Registration Standards (clause 12), Accreditation Standards (clause 47), and Codes or Guidelines (clause 39)

The following provisions of the proposed legislation may be perceived as an exercise of legislative power that results in standards, codes and guidelines being approved without being subject to the scrutiny of Parliament:

- *Registration Standards.* The proposed legislation enables the Ministerial Council to approve a Registration Standard developed by a National Board about the registration or renewal of registration of health practitioners, or the endorsement or renewal of the endorsement of registered health practitioners. The Ministerial Council may only approve a Registration Standard if it is recommended by the National Board, and if it is not about a matter provided for by an Accreditation Standard. The proposed legislation identifies matters that a Registration Standard must cover (for example, including requirements for professional indemnity insurance arrangements and continuing professional development (CPD) requirements), and matters that a Registration Standard may cover, as decided by a National Board.
- *Accreditation Standards.* The proposed legislation enables a National Board to approve an Accreditation Standard developed and submitted to the board by an accreditation authority. An accreditation authority is an external accreditation entity (such as, the Australian Medical Council or the Australian Pharmacy Council), or an accreditation committee established by a National Board. An Accreditation Standard for a health profession is a standard used to assess whether a program of study, and the education provider that provides the program, provides persons who complete the program with the knowledge, skills and professional attributes to practise the profession in Australia.
- *Codes or Guidelines.* A National Board may develop and approve a code or guideline that provides guidance to the health practitioners it registers, and about other matters relevant to the exercise of its functions.

The standards, codes and guidelines will be developed by bodies with appropriate expertise in registration matters, accreditation matters, and other

matters of relevance to the health professions within the National Scheme. The standards, codes and guidelines will be of a professional and technical nature and will use terminology that is unlikely to lend itself to reproduction in a rigid statutory instrument like a regulation.

The proposed approach is intended to strike the right balance between ensuring good regulatory practice, and ensuring there is sufficient flexibility to review, update, and change standards, codes and guidelines as required, and to facilitate consistency with changing conventions and expectations over time.

To ensure transparency and accountability Registration Standards and – where required, Accreditation Standards – will be developed and consulted on prior to the start of the scheme on 1 July 2010. The National Law requires that there be wide-ranging consultation with stakeholders, including members of the professions and the public, about their content. The same applies to the content of any codes or guidelines being developed.

To maximise consistency, the National Agency is required to establish procedures for the development of registration standards, accreditation standards, and codes and guidelines, to ensure they are developed in accordance with good regulatory practice. The *COAG Best Practice Regulation Guide* will be a feature of these procedures.

It should also be noted that the proposed legislation stipulates that an approved Registration Standard, Accreditation Standard, or a code or guideline has no effect until the day it is published on the National Board's website, or the later day stated in the registration standard, code or guideline that is published. It is expected that the National Boards, with the support of the National Agency, will ensure the development, approval, and publishing requirements of the proposed legislation are met.

Ministerial policy directions (clause 11)

Under the proposed legislation, the Ministerial Council may issue policy directions to the National Agency or National Boards, and these directions must be complied with. As these policy directions are not required to be gazetted, this may suggest that the proposed legislation allows for an inappropriate delegation of legislative power only in appropriate cases and to appropriate persons.

It is not uncommon in legislation for Ministers to be able to issue directions on matters of policy. If the Ministerial Council issues a policy direction to

the agency or the boards, it is a requirement of the proposed legislation that the direction be published on the website as soon as practicable after receiving it. Further, directions must be published in the Annual Report of the National Agency, which is tabled in each participating jurisdiction's parliament. In addition, the proposed legislation stipulates that a policy direction cannot be about a particular person, or a particular qualification, or a particular application, notification, or proceeding.

Further, if the Ministerial Council proposes to give a policy direction to a National Board in relation to a new or amended accreditation standard where the Council considers that the standard will have a substantive and negative impact on the recruitment or supply of health practitioners, Ministers must first consider the potential impact of the direction on quality and safety of health care.

This provides a high level of transparency and accountability to the public, the professions, and Parliaments.

An extra layer of transparency and accountability is provided through the requirement that the reasons for the Ministerial Council issuing a direction about an accreditation standard, must also be included when the direction is published on the relevant national website.

Sufficient regard to the rights and liberties of individuals

Criminal history screening (clauses 79 and 135)

The power to access a person's criminal history for the purposes of registration may be regarded as adversely affecting an individual's privacy, particularly as the scope of these provisions includes spent convictions and charges.

A National Board is required to check an applicant's criminal history before deciding an application for registration, and is empowered to obtain a written report about a registered health practitioner's criminal history at any other time. It is intended that CrimTrac (an agency established under the Commonwealth's Public Service Act), will be used to obtain criminal history reports for the scheme, but the proposed legislation also enables a written report to be obtained from an Australian police commissioner or an equivalent overseas entity.

The scope of the criminal history provisions in the proposed legislation are broadly equivalent to provisions currently applying under Queensland health practitioner legislation and will enable the National Boards to have a more complete picture of the criminal history of a health practitioner

applicant or registrant, including information about convictions which may indicate a pattern of behaviour that can compromise the ability and suitability of a practitioner to practise the profession in a safe and appropriate manner.

However, it should be noted that while the proposed legislation requires a health practitioner's criminal history to be taken into account by a National Board, the possession of a criminal history does not necessarily make the practitioner unsuitable and therefore ineligible for registration or renewal of registration. A Board must reach the conclusion that, having regard to the individual's criminal history to the extent that is relevant to the individual's practice of the profession, the individual is not, in the Board's opinion, an appropriate person to practise the profession or it is not in the public interest for the individual to practise the profession.

This approach to criminal history screening is considered necessary, given a primary objective of the national registration and accreditation scheme is to protect the safety of the public. Provisions of this nature are not uncommon in occupational regulation legislation where, for the purpose of protecting public health and safety, the integrity of applicants and registrants must be rigorously assessed.

Nevertheless, the proposed legislation makes provision to ensure there is an adequate level of probity in relation to the National Board's decision to register, or continue to register, a health practitioner. It does this by requiring each National Board to develop a Registration Standard in relation to criminal history screening of health practitioner applicants and registrants, including the matters to be considered by a board in deciding whether an individual's criminal history is relevant to the practice of the profession. Registration standards approved by the Ministerial Council must be published on the Boards' websites.

The proposed legislation also ensures natural justice is observed by providing an applicant with the opportunity to make a submission to a National Board if the board decides not to register the health practitioner on the basis of assessment of the applicant's suitability, eg having had regard to criminal history. A National Board's decision to refuse to register a person is also a decision that can be appealed to, and heard by, a responsible Tribunal. In Queensland, the responsible Tribunal will be the Queensland Civil and Administrative Tribunal (QCAT).

There are further safeguards that apply to the handling of criminal history reports by the National Boards and staff of the Agency. This information is

‘protected information’ and as such will be protected by the confidentiality obligations under the proposed legislation (Part 10, Division 2).

Power to require information or documents (National Law Schedule 5, Part 1, and Schedule 6, Part 1)

The proposed legislation establishes powers for Investigators and Inspectors to require information (including documents) from a person or to require a person to attend before the investigator or inspector at a stated time and a stated place to answer questions or produce documents. Failure to comply with the request without a reasonable excuse is an offence. These powers are in a form similar to that already employed in Queensland legislation.

The powers can be exercised in relation to third parties, and for this reason may be considered to have insufficient regard to the rights and liberties of individuals. However, there are safeguards placed around the exercise of these powers, including:

- Investigators and Inspectors must be appointed in accordance with the proposed National Law, and it is expected that they will have sufficient skills and experience in exercising these types of powers. Investigators and Inspectors must produce their identity card at the first reasonable opportunity when exercising their powers. As staff or contractors of the National Agency, they are also obligated to act honestly and with integrity and exercise their functions in good faith.
- Investigators can only exercise their powers if a National Board has appointed the investigator after the board has decided it is necessary or appropriate to investigate a registered health practitioner, for example, because a practitioner or student is behaving in a way that may constitute professional misconduct, or to investigate compliance with conditions imposed on the practitioner’s or student’s registration.
- Inspectors have the function of conducting investigations to enforce compliance with the National Law, and can only exercise their powers if he/she reasonably believes an offence against the National Law has been committed (such as, by a non-registrant).

The proposed legislation also provides that a person who has a reasonable excuse for not complying with a requirement to provide information or documents does not commit an offence. A reasonable excuse for failing to comply with a requirement includes if giving the information, producing a document, or answering questions might tend to incriminate the person.

Further, a person is not held liable under the proposed legislation – either civilly, criminally or under an administrative process – if a person gives, in good faith, information in the course of an investigation or for another purpose under the proposed legislation to a person exercising functions under the National Law.

The ability to undertake investigations with the support of corroborating evidence from third parties will assist the National Boards to make informed decisions about whether sufficient grounds exist to justify taking compliance action in relation to non-registrants, or health, conduct or performance action in relation to registrants. Without a power to obtain corroborating evidence from third parties, the boards' capacity to undertake appropriate remedial action with regard to registrants or students, or to monitor and enforce compliance with the legislation, would be severely impeded. This could place the safety of the public at risk.

Protection from personal liability (clauses 236)

The proposed legislation specifies that a protected person 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.

A protected person means a member of the Advisory Council, the Agency Management Committee, a National Board member or a member of a committee of the National Board, a member of an external accreditation entity, a member of staff of, or a consultant or contractor engaged by, the National Agency, a person appointed by the National Agency to conduct an examination or assessment for a National Board, or a person employed or engaged by an external accreditation entity to assist it with its accreditation 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, if done in good faith. As such, clause 236 prevents personal liability from being attached to a protected person. Instead, such liability attaches to the National Agency, as the principal statutory body for the National Scheme.

Consultation

There was extensive consultation during development of the National Law on the substantive elements of the National Scheme. This consultation built

on the past consultation that occurred in the development of the first stage national legislation.

The consultation process included the release of seven public consultation papers, State, Territory and national forums on significant policy issues, and the release of an exposure draft National Law, to ensure that health professionals, consumers, registration boards, education providers, and other interested parties continued to have an opportunity to contribute to the development and implementation of the National Scheme.

Release of a series of detailed policy consultation papers on Bill B (28 July 2008 – 22 January 2009)

- A public consultation paper on partially regulated professions was issued on 28 July 2008 with a call for submissions – 52 submissions were received in response.
- A public consultation paper on proposed registration arrangements was issued on 18 September 2008 with a call for submissions – 108 submissions were received in response.
- A public consultation paper on proposed complaints arrangements was issued on 7 October 2008 with a call for submissions – 114 submissions were received in response.
- A public consultation paper on proposed arrangements for information sharing and privacy was issued on 5 November 2008 with a call for submissions – 69 submissions were received in response.
- A public consultation paper on proposed arrangements for accreditation was issued on 6 November 2008 with a call for submissions – 73 submissions were received in response.
- A public consultation paper on other matters for inclusion in Bill B was issued on 13 November 2008 with a call for submissions – 50 submissions were received.
- A public consultation paper on proposed arrangements for specialists was issued on 22 January 2009 with a call for submissions – 52 submissions were received.
- Over 500 written submissions were received in total to the seven consultation papers, primarily from national and State and Territory based health professional associations, State and Territory health practitioner registration boards, and health professional education and training bodies. Consultation papers were made publicly available on

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

National Forums (21 October & 18 November 2008)

- A national forum was held on the issue of complaints and enforcement arrangements on 21 October 2008 in Melbourne. Over 100 representatives attended the forum.
- A national forum was held on the issue of privacy and information sharing arrangements on 18 November 2008 in Sydney. Almost 80 representatives attended the forum.

Release of Exposure Draft National Law

- The exposure draft of the *Health Practitioner Regulation National Law 2009* was released by the Ministerial Council on 12 June 2009. Call for submissions closed on 17 July 2009. Over 550 written submissions were received.

State, Territory and National Forums on the Exposure Draft National Law (19 June to 10 July 2009)

- Eight State and Territory Forums and one National Forum were held to provide an overview of the substantive elements of the second stage legislation and discuss key issues arising from the exposure draft.
- More than 950 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.

Meetings with peak representative organisations on the Exposure Draft National Law, including:

- The Professional 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 included in the first stage of the National Scheme.

- The Forum of Australian Health Professions Council, comprising representatives from the accreditation authorities of the regulated health professions.
- Heads of health profession tribunals from most jurisdictions.
- Health Regulatory Authorities of New Zealand and representatives from the New Zealand Ministry of Health.
- The Joint Medical Boards Advisory Council.
- Australian Government agencies and departments, including, Medicare Australia, the National E-Health Transition Authority, and the Department of Immigration and Citizenship.
- The Transition Coordination Group in each State and Territory, comprising all boards and the local health department.

Oversight of the project by the following Intergovernmental committees:

- The National Registration and Accreditation Implementation Project (NRAIP) Governance Committee comprising Australian Health Ministers' Advisory Council (AHMAC) members or their deputies.
- The Legislative Drafting Group, appointed by Health CEOs, comprising senior policy and legislation officials from each jurisdiction's health department.

Stakeholder feedback has helped to clarify matters where further work and discussion was required beyond the terms of the COAG Agreement and has been instrumental in shaping the development of the Scheme.

While the consultation process was underway, the Community Affairs Legislation Committee of the Commonwealth Senate was convened to conduct an inquiry into the national registration and accreditation scheme for doctors and other health workers. The inquiry gave consideration to the design of the scheme, including: the impact of the scheme on health services, patient care and safety, standards of training and qualification, and complaints management; as well as the appropriate role, if any, for State and Territory registration boards; and alternative implementation models. The Senate Committee issued its report, *The National registration and accreditation scheme for doctors and other health workers*, on 6 August 2009. Overall the Committee found that the proposed scheme was now widely supported with concerns remaining only in relation to some aspects of the scheme.

Notes on Preliminary Provisions

Enactment of National Law Bill and Application in Queensland

Part 1 Preliminary

Name of Act

Clause 1 provides that the short title of the Act is the *Health Practitioner Regulation National Law Act 2009* (the Act).

Commencement

Clause 2 provides for the commencement of the Act.

Part 4 (Amendment of the *Health Practitioner Regulation (Administrative Arrangements) National Law Act 2008*) commences on the day on which the Act receives Royal Assent.

The remaining provisions of the Act, including the provision that applies the Health Practitioner Regulation National Law (the National Law) as a law of Queensland, commence on 1 July 2010.

Definitions

Clause 3 provides for definitions of terms used in the Act.

Subclause (1) provides that the provisions of the Act, other than the National Law set out in the schedule, are the local application provisions of the Act.

Subclause (2) provides that in the local application provisions of the Act a reference to the Health Practitioner Regulation National Law (Queensland) means the National Law as applied by section 4 of the Act.

Subclause (3) provides that if a term is used in the local application provisions of the Act and in the National Law, the terms have the same meanings in the local applications provisions as they have in the National Law.

Part 2 Adoption of Health Practitioner Regulation National Law

Adoption of Health Practitioner Regulation National Law

Clause 4 provides that the National Law set out in the schedule to the Act applies as a law of Queensland (clause 4(a)).

Each jurisdiction that adopts the National Law will have an equivalent provision in its adopting Act so that the National Law will be the law of each jurisdiction and is not only the law of Queensland. The effect is that a person registered as a health practitioner under the Act is registered nationally, rather than requiring registration in each jurisdiction, and each of the entities created by the National Law is created not only by Queensland law but the law of each jurisdiction. For example, each National Board will be not only a Queensland body but also a body of each of the jurisdictions in which the National Law is applied. Section 7 of the National Law clarifies that the effect is the creation of a single national entity rather than separate bodies in each jurisdiction.

Clause 4(b) provides that the National Law, as applying in Queensland, may be referred to by the name Health Practitioner Regulation National Law (Queensland).

Clause 4(c) provides that the National Law, as applied in Queensland, is part of the Act. This is to ensure that the text of the National Law has effect for all purposes in Queensland as an ordinary Act of Parliament. The effect of the provision is that a reference in legislation to “an Act” or “any other Act” will include the National Law as applied in Queensland.

Meaning of generic terms in Health Practitioner Regulation National Law for purposes of this jurisdiction

Clause 5 defines some generic terms used in the National Law for the purposes of the application of that Law in Queensland. Specifically, clause 5 provides definitions of the terms *magistrate*, *Magistrates Court* and *this jurisdiction* for the Health Practitioner Regulation National Law (Queensland).

Responsible tribunal for Health Practitioner Regulation National Law

Clause 6 provides that the Queensland Civil and Administrative Tribunal (QCAT) is declared to be the responsible tribunal for Queensland for the purposes of the Health Practitioner Regulation National Law (Queensland). This declaration gives effect to the definition of *responsible tribunal* in clause 5 of the National Law. That definition provides that a responsible tribunal means a tribunal or court that has been declared by the Act applying the National Law in a participating jurisdiction to be the responsible tribunal for that jurisdiction. The responsible tribunal has jurisdiction to hear appeals against decisions made by National Boards, health panels and performance and professional standards panels in relation to registered health practitioners and students.

Exclusion of legislation of this jurisdiction

Clause 7 provides that a number of Acts that generally apply to Queensland legislation do not apply to the Health Practitioner Regulation National Law (Queensland) or instruments, including regulations, made under that Law. In particular, Acts dealing with the interpretation of legislation, financial matters, privacy, freedom of information, the role of the ombudsman and matters relating to the employment of public servants will not apply to the Health Practitioner Regulation National Law (Queensland). Instead, provisions have been included in the National Law to deal with each of these matters ensuring that the same law applies in relation in each jurisdiction that adopts the National Law.

Part 3 Provisions specific to Queensland

Clause 8 provides some clarity around the criminal history provisions in the National Law, to remove any doubt that the Queensland Police Commissioner is able to disclose criminal history information, including spent convictions and charges, to a National Board or a police agency for the purpose of the police agency giving the criminal history report to a National Board.

Clause 9 provides clarification in relation to declaring QCAT as the *responsible tribunal* in clause 6. The National Law uses the terminology *appeal* and *appellable decision*, in relation to matters that a responsible tribunal has jurisdiction for. Under the QCAT legislation, these terms have different meanings, and the matters to which the National Law is referring are instead called a *review* or *reviewable decision* under QCAT law. Therefore, the provision clarifies that a reference to an *appeal* against a decision to QCAT in the National Law, is a reference to a *review* of the decision as provided under the QCAT Act.

Clause 10 repeals the *Health Practitioner Regulation (Administrative Arrangements) National Law Act 2008* ('Act A'). In accordance with clause 2, the repeal takes effect on 1 July 2010.

Part 4 Repeal of Health Practitioner Regulation (Administrative Arrangements) National Law Act 2008

Clause 11 specifies that Part 4 amends Act A. In accordance with clause 2, this part commences on assent.

Clause 12 provides for a series of amendments to Act A which are a consequence of decisions made by the Ministerial Council following the Exposure Draft Bill B consultation process, particularly in relation to accreditation arrangements for the scheme.

The amendments will remedy inconsistencies that would otherwise exist between Act A and the National Law (if passed) during the period between enactment and commencement.

Minor changes are also proposed to ensure the National Agency can explicitly engage and delegate to contractors, consistent with provisions in the National Law.

Notes on Provisions

Schedule **Health Practitioner Regulation National Law**

Part 1 **Preliminary**

Short Title

Clause 1 provides for the law to be cited as the *Health Practitioner Regulation National Law*.

Commencement

Clause 2 provides that the National Law commences in Queensland as provided by the *Health Practitioner Regulation National Law Act 2009*. In effect, this means that the National Law will take effect when applied in Queensland on 1 July 2010.

Objectives and guiding principles

Clause 3 identifies the objectives and guiding principles for the national registration and accreditation scheme. These objectives and guiding principles are consistent with the COAG Agreement.

How functions to be exercised

Clause 4 provides that an entity that has functions under the National Law is to exercise its functions having regard to the objectives and guiding principles of the national registration and accreditation scheme set out in clause 3 of the National Law.

Definitions

Clause 5 defines expressions used in the National Law.

Interpretation generally

Clause 6 provides that Schedule 7 to the National Law applies in relation to the National Law. This 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.

Single national entity

The National Law creates a number of national entities including, for example, the Australian Health Practitioner Regulation Agency (the National Agency) and National Health Practitioner Boards (the National Boards) for each of the health professions regulated by the National Law.

Clause 7, subclause (1) clarifies that the effect of each jurisdiction applying the National Law, and therefore a national entity of the same name and membership being established in each jurisdiction, is that only one single national entity of that name is created rather than multiple entities of that name, one in each jurisdiction.

Subclause (2) provides that when a national entity does carry out an act in a jurisdiction in accordance with a function conferred on it by the National Law it is doing so in accordance with the National Law as applied by all jurisdictions, not just the National Law as applied by the jurisdiction in which it does the act.

Subclause (3) clarifies that a national entity may exercise its functions in relation to one jurisdiction, a number of jurisdictions or all jurisdictions.

Extraterritorial operation of Law

Clause 8 provides for the extraterritorial operation of the National Law.

Trans-Tasman mutual recognition principle

Clause 9 clarifies that the National Law does not affect the operation of an Act of a participating jurisdiction providing for the application of the Trans-Tasman mutual recognition principle to occupations.

Law binds the State

Clause 10 provides that the National Law binds the State.

Part 2 Ministerial Council

Part 2 makes provision for the functions and powers of the Australian Health Workforce Ministerial Council (the Ministerial Council) for the national registration and accreditation scheme.

Policy directions

Clause 11, subclauses (1) and (2) provide that the Ministerial Council may give directions to the National Agency and National Boards about policies to be applied in the exercise of its functions under the National Law.

The Ministerial Council is defined in clause 5 to mean the Australian Health Workforce Ministerial Council comprising Ministers of the governments of the participating jurisdictions and the Commonwealth with portfolio responsibility for health.

Participating jurisdiction is defined in clause 5 as meaning a State or Territory that is a party to the COAG Agreement, and in which the National Law applies as a law of the State or Territory, or a law that substantially corresponds to the provisions of the National Law has been enacted.

Subclause (3) provides examples of what a policy direction may relate to, without limiting the Ministerial Council's ability to issue a policy direction.

Subclause (4) clarifies that the Ministerial Council has a 'reserve power' to issue a policy direction about a particular proposed accreditation standard, or a particular proposed amendment of an accreditation standard, for a health profession as identified under subclause (3)(d).

However, such a direction may only be given to a National Board if, in the Council's opinion, the proposed accreditation standard or amendment will have a substantive and negative impact on the recruitment or supply of health practitioners. Further, if the Ministerial Council is to issue such a direction, it must first consider the potential impact of the direction on quality and safety of health care.

Clause 17 of the National Law sets out the requirements for notification and publication of directions and approvals, including that if a policy direction is given under clause 11(3)(d) the published direction must include reasons for the decision to exercise this 'reserve' power.

Subclause (5) provides that a policy direction cannot be about a particular person, or a particular qualification, or a particular application, notification, or proceeding.

Subclause (6) provides that the National Agency or a National Board must comply with a direction given to it by the Ministerial Council under this clause.

The National Law provides transitional arrangements for the continuance of directions given by the Ministerial Council under Queensland's *Health Practitioner Regulation (Administrative Arrangements) National Law Act 2008* (Act A) – see Part 12, Division 1.

Approval of registration standards

Clause 12 provides that the Ministerial Council may approve a registration standard about the registration or renewal of registration of persons in a health profession, or the endorsement or renewal of the endorsement of the registration of registered health practitioners.

In accordance with subclause (2), the Ministerial Council may approve a registration standard only if its approval is recommended by a National Board, and the registration standard does not provide for a matter about which an accreditation standard may provide.

A registration standard means a registration standard developed by a National Board under clause 38. There are matters that a National Board is required to develop a registration standard about, for example appropriate professional indemnity arrangements for a health profession, and other matters that are at the discretion of the board to decide whether a registration standard is necessary, for example, a scope of practice issue. It is expected that, if a board decides it is necessary to address a discretionary matter provided for by clause 38(2) that it will develop a registration standard for the matter, and not a code or guideline.

Subclause (3) provides that the Ministerial Council may ask, at any time, that a National Board review an approved or proposed registration standard. Under the general interpretation provisions in Schedule 7 to the National Law, the Ministerial Council may revoke an approval, for example, if a National Board recommended this occur.

The publication and date of effect for an approved registration standard is provided for in clause 17 of the National Law.

Approvals in relation to specialist registration

Clause 13 provides for specialist recognition to operate under the National Law for medical practitioners and dentists. Specialist recognition may also operate for any other health profession within the National Scheme, if approved by the Ministerial Council on the recommendation of a National Board established for the profession (the relevant National Board).

If specialist recognition operates for a health profession, eligible practitioners may apply for specialist registration and, if granted, have their name appear on a publicly accessible specialists register for the profession – see clauses 57 and 223 of the National Law.

Subclause (2) provides that if specialist recognition operates for a health profession, the Ministerial Council may, on the recommendation of the relevant National Board, approve a list of specialties for the profession, and approve one or more specialist titles for each specialty on the list.

Subclause (3) clarifies that in making a recommendation to the Ministerial Council for the purpose of specialist recognition, a relevant National Board must have regard to any relevant advice provided by an accreditation authority for the profession (such as the Australian Medical Council, or the Australian Pharmacy Council) or a specialist college for the profession (such as the Royal Australasian College of Physicians).

Subclause (4) provides that the Ministerial Council may provide guidance to a relevant National Board for which specialist recognition will operate in relation to the criteria for the approval of specialties for the profession.

Approval of endorsement in relation to scheduled medicines

Clause 14 provides that the Ministerial Council may, on the recommendation of a National Board, decide that the board may endorse the registration of health practitioners for the health profession for which the board is established, in relation to scheduled medicines.

Subclause (2) specifies what must be included in an approval in relation to endorsement for scheduled medicines. This clause should be read in conjunction with clause 94 of the National Law which provides for the endorsement of health practitioners' registration in relation to scheduled medicines.

It should also be noted that health practitioners registered in certain health professions (such as medical practitioners), will be authorised to administer, obtain, possess, prescribe, sell, supply or use scheduled

medicines by or under drugs and poisons legislation of a participating jurisdiction, without the need for the health practitioners to hold a scheduled medicines endorsement under the National Law.

It is anticipated that some National Boards will seek approval of an endorsement in relation to scheduled medicines prior to 1 July 2010, to ensure the availability of the endorsement from the start of the scheme.

Approval of areas of practice for purposes of endorsement

Clause 15 provides that the Ministerial Council may, on the recommendation of a National Board, approve an area of practice in relation to the health profession for which the board is established.

This clause should be read in conjunction with clause 98 of the National Law which provides for the endorsement of health practitioners' registration in relation to approved areas of practice. Such an endorsement could, for example, be used for practitioners' advanced training in a health profession, which enables them to engage in a wider scope of practice than other registrants.

How Ministerial Council exercises functions

Clause 16 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. The clause also clarifies that an act or thing done by the Ministerial Council does not cease to have effect merely because of a change in the Council's membership.

Notification and publication of directions and approvals

Clause 17 requires that a copy of any direction given by the Ministerial Council to the National Agency is to be given to the Chairperson of the Agency Management Committee. If a direction is given by the Ministerial Council to a National Board, the direction must be given to the Chairperson of the National Board.

For transparency, such directions must be published on the relevant national website (ie of the National Agency or a National Board), and be included in the Annual Report to be tabled before the Parliaments of participating jurisdictions and the Commonwealth. The website for the National Agency is <http://www.ahpra.gov.au/> The websites for each

National Board are under construction, but it is intended that the National Agency website will have links to the board websites.

Further, if a policy direction is given by the Ministerial Council to a National Board under clause 11(3)(d) in relation to an accreditation standard, the published direction must include reasons for the decision to exercise the ‘reserve’ power.

Part 3 Australian Health Workforce Advisory Council

Part 3 makes provision for the Advisory Council established for the national registration and accreditation scheme.

Establishment of Advisory Council

Clause 18 establishes the Australian Health Workforce Advisory Council (the Advisory Council).

The National Law provides transitional arrangements for the continuance of appointments of members to the Advisory Council which are made under Act A – see Part 12, Division 3.

Function of Advisory Council

Clause 19 sets out the functions of the Advisory Council. Subclause (2) provides that provision of independent advice from the Advisory Council must not be about a particular person, or a particular qualification, or a particular application, notification, or proceeding.

Publication of advice

Clause 20 requires the Ministerial Council to make arrangements to publish advice provided by the Advisory Council as soon as practicable after the Ministerial Council has had the opportunity to consider the advice. However, the Ministerial Council may decide not to publish advice (or part thereof) if the Advisory Council recommends that the Ministerial Council not publish it in the interests of protecting the privacy of any person.

Powers of Advisory Council

Clause 21 states that the Advisory Council has the powers necessary to perform its function.

Membership of Advisory Council

Clause 22 provides for the Ministerial Council to appoint members to the Advisory Council.

Consistent with the COAG agreement and in accordance with Act A provisions, the first members of the Advisory Council are appointed by the Council of Australian Governments, with subsequent appointments being made under the National Law by the Ministerial Council.

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

Part 4 Australian Health Practitioner Regulation Agency

Part 4 makes provision for the National Agency established for the national registration and accreditation scheme.

Division 1 National Agency

National Agency

Clause 23 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.

The administrative arrangements for the National Agency, including appointment and functions of a chief executive officer, the appointment of

staff, consultants and contractors, and reporting obligations, are set out in Schedule 3 to the National Law.

The National Law provides transitional arrangements for the continuance of employment or engagement of staff, consultants and contractors made under Act A – see Part 12, Division 6.

General powers of National Agency

Clause 24 sets out the general powers of the National Agency.

Functions of National Agency

Clause 25 sets out the functions of the National Agency. These functions build on those provided for the first stage implementation of the National Scheme under Act A and are consistent with the COAG Agreement.

Health profession agreements

A function of the National Agency (clause 25(d)) and the National Boards (clause 35(f)) 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 26 provides that the National Agency may enter into a health profession agreement with a National Board that provides for:

- (a) the fees that will be payable (from 1 July 2010) under the National Law by health practitioners and others, including arrangements relating to refund of fees, waivers of fees, and additional fees for late payments – eg in relation to renewal of registration
- (b) the annual budget of a National Board, including the funding arrangements for its committees and accreditation authorities
- (c) the 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 Law.

Subclause (2) provides that, if the National Agency and a National Board are unable to reach agreement on a matter relating to a health profession agreement, or a proposed health profession agreement, the Ministerial Council may give directions as to how the dispute is to be resolved.

Subclause (3) requires that each National Board publish, on its website, the fees for which provision has been made in a health profession agreement.

The National Law provides transitional arrangements for the continuance of health profession agreements made in anticipation of the scheme's commencement under Act A – see Part 12, Division 4.

Co-operation with participating jurisdictions and Commonwealth

Clause 27 enables the National Agency to perform its functions in co-operation with, or with the assistance of, a person or body of a participating jurisdiction or the Commonwealth.

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 authorisation is subject to any laws of a participating jurisdiction or the Commonwealth that apply to the release of the requested information.

Office of National Agency

Clause 28 requires the National Agency to establish a national office. In May 2009, the Ministerial Council announced that the national office will be located in Melbourne.

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 29 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 to the National Law.

The National Law provides transitional arrangements for the continuance of appointments of members of the Agency Management Committee made under Act A – see Part 12, Division 5.

Functions of Agency Management Committee

Clause 30 sets out the functions of the Agency Management Committee.

Part 5 National Boards

Part 5 makes provision for the National Boards established for the national registration and accreditation scheme.

Division 1 National Boards

Establishment of National Boards

Clause 31 establishes the National Boards for the health professions within the National Scheme.

Ten of these National Boards are a continuation of those established under Act A, namely:

- Chiropractic Board of Australia
- Dental Board of Australia
- 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.

This clause also establishes the boards for the four partially regulated professions joining the scheme on 1 July 2012, namely:

- Aboriginal and Torres Strait Islander Health Practice Board of Australia
- Chinese Medicine Board of Australia
- Medical Radiation Practice Board of Australia
- Occupational Therapy Board of Australia.

Each of the National Boards is a body corporate with perpetual succession, but its powers as a body corporate are limited by clause 32. As a body corporate, a National Board will be able to represent itself in its own name at tribunal hearings, court proceedings, or in other legal matters.

The National Law provides transitional arrangements for the continuance of National Boards, their members, their committees and any delegations made under Act A – see Part 12, Division 8.

Transitional arrangements are also made to commence the National Boards established under clause 31 for the four partially regulated professions on 1 July 2011, to enable board functions to be exercised in anticipation of the four health professions entering the National Scheme on 1 July 2012 – see Part 12, Division 15.

Powers of National Board

Clause 32 states that a National Board has the powers necessary to enable it to perform its functions.

However, subclause (2) stipulates that a National Board does not have power to enter into contracts, employ staff, or acquire, hold, dispose of and deal with real property. The National Agency remains the body corporate with these powers under the National Scheme and its functions and powers provide for the agency to enter into contracts, employ staff, or acquire, hold, dispose and deal with real or personal property.

Subclauses (3) to (5) enable a National Board to perform its functions in co-operation with, or with the assistance of, a person or body of a participating jurisdiction or the Commonwealth.

If a National Board 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 Board for its use under the National Law.

The operation of this authorisation is subject to any laws of a participating jurisdiction or the Commonwealth that apply to the release of the requested information.

Membership of National Boards

Clause 33 provides for membership of the National Boards, including that a National Board is to consist of members appointed in writing by the Ministerial Council.

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 4 to the National Law. The schedule includes administrative arrangements, including a requirement to consult other National Boards about recommendations to the Ministerial Council that may be of interest to another National Board.

Eligibility for appointment

Clause 34 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.

Division 2 Functions of National Boards

Functions of National Boards

Clause 35 sets out the functions of a National Board. These functions build on those provided for the first stage implementation of the National Scheme under Act A and are consistent with the COAG Agreement.

Subclause (2) clarifies the National Boards' exercise of certain functions in relation to a co-regulatory jurisdiction. A co-regulatory jurisdiction is defined in section 5 to mean a jurisdiction in which the Act applying this Law in a jurisdiction declares that the jurisdiction is not participating in the health, performance and conduct process provided by Divisions 3 to 12 of Part 8.

State and Territory Boards

Clause 36 provides that a National Board may specifically establish a committee – a ‘State or Territory Board’ – for a participating jurisdiction to enable the board to exercise its functions in the jurisdiction in a way that provides an effective and timely local response to health practitioners and other persons in the jurisdiction.

Subclauses (2) and (3) provide for the nomenclature and the appointment of State or Territory Board members by a responsible Minister, or Ministers for a participating jurisdiction or jurisdictions. The examples in subclause (3) are to clarify the nomenclature and method of appointment.

The remaining subclauses (4) to (10) provide for the constitution and procedure for a State or Territory Board committee of a National Board. It is anticipated that a State or Territory Board will oversee registration and complaints processes in that State or Territory where these functions are delegated to them by the relevant National Board. A State or Territory Board will perform these functions under the National Law.

Delegation of functions

Clause 37 provides that a National Board may delegate its functions, other than the power of delegation, to the entities identified in subclause (1).

Subclause (2) enables the National Agency to subdelegate any function delegated to the National Agency by a National Board, to a member of the staff of the National Agency.

To clarify, neither the National Agency, nor staff of the agency, can perform a function of a National Board unless so delegated by the board.

Division 3 Registration standards and codes and guidelines

National Board must develop registration standards

Clause 38 provides that a National Board must develop and recommend for approval by the Ministerial Council, one or more registration standards about the following matters for the health profession for which the board is established:

- requirements for professional indemnity insurance arrangements

- matters about the criminal history of applicants for registration, and registered health practitioners and students, including the matters to be considered in deciding whether an individual's criminal history is relevant to the practice of the profession
- requirements for continuing professional development (CPD) for registered health practitioners
- requirements about the English language skills necessary for a health practitioner applicant to be suitable for registration in the health profession
- requirements in relation to recency of practice of the profession by applicants.

In addition, a National Board has the discretion to develop and recommend for approval by the Ministerial Council, other registration standards set out in subclause (2) about the physical or mental health of applicants for registration in a health profession and registered health practitioners and students, the scope of practice of health practitioners registered in the profession, and any other issue relevant to the eligibility of individuals for registration or the suitability of individuals to competently and safely practice the profession. It is intended that, if a board decides it is necessary to address a discretionary matter provided for by clause 38(2) that it will develop a registration standard for the matter, and not a code or guideline.

Importantly, a registration standard may not be about a matter for which an accreditation standard may provide – see clause 46 and definition of accreditation standard in clause 5.

The National Law makes arrangements for any health profession standards (apart from accreditation standards) made under Act A to transition to the National Law as registration standards – see Part 12, clause 254.

Codes and guidelines

Clause 39 provides that a National Board may develop and approve codes and guidelines to provide guidance to the health practitioners it registers, and about other matters relevant to the exercise of its functions. An example of a possible guideline is included in the provision. It is expected that a board will not need to make a code or guideline about a matter already included in a registration standard.

Consultation about registration standards, codes and guidelines

Clause 40 sets out the process for consulting on registration standards, codes and guidelines, including that there must be wide-ranging consultation about its content, and when an approved registration standard or an approved code or guideline takes effect.

Note also that Schedule 4 (clause 9) to the National Law requires a National Board to consult with other National Boards about recommendations to the Ministerial Council that may be of interest to another National Board.

Use of registration standards, codes or guidelines in disciplinary proceedings

Clause 41 provides for use of approved registration standards, codes or guidelines in proceedings against a registered health practitioner, under the National Law or a law of a co-regulatory jurisdiction, as evidence of what constitutes appropriate professional conduct or practice for the health profession.

Part 6 Accreditation

Part 6 makes provision for national accreditation arrangements including the exercise of accreditation functions for the national registration and accreditation scheme.

Division 1 Preliminary

Definition

Clause 42 provides the definition of accreditation function used in Part 6.

Division 2 Accreditation authorities

Accreditation authority to be decided

Clause 43 provides for the National Boards to decide the accreditation authority for the health profession for which the board is established. An accreditation authority is defined in clause 5 of the National Law as meaning an external accreditation entity or an accreditation committee.

This decision-making power is to be exercised in relation to the original ten professions after the prescribed review of arrangements for the exercise of accreditation functions made under Act A – see clause 253. Similarly, for the four partially regulated professions joining the scheme in 2012, there is also a prescribed review of arrangements for the exercise of accreditation functions as made by the Ministerial Council under the National Law – see clause 301.

This approach achieves the Ministerial Council’s decision (announced in its August 2009 communiqué) that the appointment of external accrediting bodies would rest with the Ministerial Council only at the commencement for any health profession. Thereafter, the appointment would lie with the National Board for each profession.

Other transitional arrangements are made to support this decision –

- to enable the Ministerial Council’s assignment of accreditation functions to external accreditation entities (such as the Australian Medical Council and the Australian Pharmacy Council) made under Act A, to continue for a period of 3 years from commencement (ie, to 1 July 2013) – see Part 12, clause 253
- to enable the Ministerial Council to make the initial assignment of accreditation functions to external accreditation entities (as appropriate) for the four partially regulated professions joining the scheme on 1 July 2012 and that these arrangements continue for a period of 3 years (ie, to 1 July 2015) – see Part 15, clause 301.

Subclause (2) provides that the National Agency, consistent with its functions, may charge an entity the relevant fee for the exercise of an accreditation function by an accreditation committee established by a National Board.

National Agency may enter into contracts with external accreditation entities

Clause 44 provides for the National Agency to enter into a contract with an external accreditation entity for the exercise of an accreditation function but only if this is in accordance with the health profession agreement between the National Agency and a National Board.

Accreditation processes to be published

Clause 45 provides that each accreditation authority must publish on its website (or for an accreditation committee, a National Board's website) how it will exercise its accreditation function.

Division 3 Accreditation functions

Development of accreditation standards

Clause 46 provides the requirements for the development of accreditation standards, including that there be wide-ranging consultation about the content of the standard. Accreditation standards will be developed by the external accreditation entity or the accreditation committee of a National Board where an external body has not been assigned the function.

Approval of accreditation standards

Clause 47 provides for the approval, by a National Board, of accreditation standards developed by an accreditation authority, for the health profession for which the board is established. An accreditation standard approved by a National Board must be published on its website, and takes effect on the day it is so published, or on a later day stated in the standard.

The approval of accreditation standards in the National Law is different to that in Act A, hence a consequential amendment to Act A is proposed as per Part 4 of Bill B to ensure alignment. The Ministerial Council decided in May 2009 to revise the approach and therefore, under this National Law, accreditation standards are approved by the National Boards; not the Ministerial Council.

However, as per clause 11 of the proposed legislation, the Ministerial Council retains a 'reserve' power to give a policy direction about a

proposed accreditation standard or a change to an approved accreditation standard, where it believes the standard will have a substantive and negative impact on the recruitment or supply of health practitioners.

National accreditation standards which exist prior to the commencement of the new scheme are to continue until they are replaced by new or amended standards – see clause 253. In addition, the National Law makes arrangements for any accreditation standard approved by the National Board under Act A, to transition to the National Law as an approved accreditation standard – see clause 255.

Accreditation of programs of study

Clause 48 provides for the accreditation of a program of study, by an accreditation authority. This is the first step towards approval, that is, a program of study is first accredited by an accreditation authority, and is then submitted for approval by a National Board. An approved program of study provides an approved qualification for registration as a health practitioner.

An accreditation authority may accredit a program of study with or without conditions. If an accreditation authority decides to refuse to accredit the program of study, the education provider that provides the program of study may apply to the accreditation authority for an internal review of the decision, which must not be carried out by a person who assessed the program of study for the accreditation authority.

Approval of accredited programs of study

Clause 49 provides for a National Board to approve an accredited program of study as providing a qualification for the purposes of registration in the health profession for which the board is established.

The accreditation authority will recommend to a National Board, in a transparent manner, the programs of study it has accredited and that it considers to have met the requirements for registration. The final decision on whether the accreditation program is approved for the purposes of registration is the responsibility of the National Board. The accreditation authority will have the ability to make its recommendations publicly available in the circumstance that agreement between the accreditation authority and the National Board cannot be reached.

A list of approved programs of study must be published on the website of the National Agency, consistent with the COAG agreement. An approval of an accredited program of study does not take effect until it is included in the list published by the agency.

Accreditation authority to monitor approved programs of study

Clause 50 provides that an accreditation authority must monitor approved programs of study to ensure the authority continues to be satisfied that the program and the education provider meet an approved accreditation standard for the health profession.

If an accreditation authority reasonably believes the approved program of study it accredited no longer meets an approved accreditation standard for the health profession, it must take the remedial action set out in subclause (2).

The intent of the requirement to monitor approved programs of study is to provide an opportunity for early intervention if concerns are raised about the approved program of study, to maximise the likelihood that students who are undertaking study in that approved program can complete their studies and graduate with a qualification that will be recognised for the purposes of registration in the health profession.

Changes to approval of program of study

Clause 51 provides that, if a National Board is given notice under clause 50(2)(b) that an accreditation authority has revoked the accreditation of a program of study approved by the board, the board's approval of the program is taken to have been cancelled at the same time the accreditation was revoked.

If a National Board reasonably believes, because of a notice given to the board by the accreditation authority, or for any other reason, that the program no longer provides a qualification for the purposes of registration in the health profession for which the board is established, the board may decide to impose conditions on its approval of the accredited program of study to ensure the program provides a qualification for the purposes of registration or cancel its approval.

Part 7 Registration of health practitioners

Part 7 makes provision for the registration of eligible individuals under the National Law. This part establishes the categories of registration for the National Law and specifies the eligibility criteria for registration and makes provision for the application, registration and renewal processes. This part also makes provision for the registration of students under the National Law. This part further provides for the protection of titles for health practitioners and three restricted practices, provides for endorsements on registration, and other miscellaneous matters.

Transitional arrangements are provided for in Part 12, Division 11, for health practitioners and students registered immediately prior to commencement of the scheme on 1 July 2010, under current State or Territory health practitioner legislation. Part 12, Division 15 of the National Law, makes similar arrangements for the four partially regulated professions joining the scheme on 1 July 2012.

Division 1 General registration

Eligibility for general registration

Clause 52(1) sets out the criteria which a National Board will consider when deciding whether an applicant is eligible for general registration. Without limiting clause 52(1), a National Board may decide an applicant is eligible for general registration in the profession by imposing conditions on the registration in accordance with section 83 of the National Law.

If an individual is granted general registration, his/her name will be entered on the publicly accessible national register kept by the board in accordance with clause 222 of the National Law.

Qualifications for general registration

Clause 53 provides that an individual is qualified for general registration in a health profession, if the individual holds a qualification as described by clause 53(a) to (d) –

- (a) an approved qualification for the health profession (an approved qualification means a qualification obtained by completing an approved program of study for the profession and included in the list published by the National Agency)
- (b) a qualification the National Board established for the health profession considers to be substantially equivalent, or based on similar competencies, to an approved qualification
- (c) a qualification (not referred to in (a) or (b) above) that is relevant to the health profession, and the individual has successfully completed an examination or other assessment required by the National Board for the purpose of general registration in the health profession
- (d) a qualification (not referred to in (a) or (b) above) that under the National Law, or a corresponding prior Act, qualified the individual for general registration (however described) in the health profession, and he/she was previously registered under this National Law or the corresponding prior Act on the basis of holding that qualification.

Item (d) above, is targeted at practitioners who may seek to reinstate their registration after allowing it to lapse for an extended period of time. Clause 53 should be read in conjunction with clause 52(1)(a).

Examination or assessment for general registration

Clause 54 clarifies that, if a National Board requires an individual to undertake an examination or assessment for the purpose of section 52(1)(b)(ii), the examination or assessment must be conducted by an accreditation authority for the health profession (such as the Australian Medical Council), unless the board decides otherwise.

Unsuitability to hold general registration

Clause 55 sets out the matters a National Board may take into account when considering if an individual is not a suitable person to hold general registration in a health profession.

If a National Board determines that an individual is not a suitable person to hold general registration in a health profession, it may decide to refuse to grant the individual general registration – see clause 82 of the National Law.

Period of general registration

Clause 56 provides for the period of registration that is to apply to a health practitioner granted registration in a health profession. The period will be not more than 12 months, at which time the registered health practitioner may renew his/her registration, as provided for in Part 7, Division 9 of the National Law.

It is expected that over a period of 24 months all registrants in a profession will move to a single renewal date. Transitional provisions permit this to occur – see clause 282.

Division 2 Specialist registration

Eligibility for specialist registration

Clause 57 sets out the criteria which a National Board will consider when deciding whether an applicant is eligible for specialist registration in a recognised specialty for a health profession. Without limiting (1), a National Board may decide an applicant is eligible for specialist registration in the profession by imposing conditions on the registration in accordance with section 83 of the National Law.

Except for medical practitioners and dentists, specialist registration is only available if the Ministerial Council has approved specialist recognition operates for the health profession in accordance with clause 13. If an individual is granted specialist registration, his/her name will be entered on the publicly accessible specialists register kept by the board in accordance with clause 223 of the National Law.

An individual may hold general and specialist registration if he/she is eligible for both categories of registration.

Qualifications for specialist registration

Clause 58 provides that an individual is qualified for specialist registration in a recognised specialty for a health profession, if the individual holds a qualification as described by clause 58(a) to (d):

- (a) an approved qualification for the specialty

- (b) another qualification the National Board established for the health profession considers to be substantially equivalent, or based on similar competencies, to an approved qualification for the specialty
- (c) a qualification (not referred to in (a) or (b) above) that is relevant to the specialty and the individual has successfully completed an examination or other assessment required by the National Board for the purpose of registration in the specialty
- (d) a qualification (not referred to in (a) or (b) above) that under the National Law, or a corresponding prior Act, qualified the individual for specialist registration (however described) in the specialty, and he/she was previously registered under this National Law or the corresponding prior Act on the basis of holding that qualification for the specialty.

Item (d) above, is targeted at practitioners with a recognised specialty who may seek to reinstate their specialist registration after allowing it to lapse for an extended period of time. Clause 58 should be read in conjunction with clause 57(1)(a).

Examination or assessment for specialist registration

Clause 59 clarifies that, if a National Board requires an individual to undertake an examination or assessment for the purpose of section 57(1)(b)(ii), the examination or assessment must be conducted by an accreditation authority for the health profession (such as the Australian Medical Council), unless the board decides otherwise.

Unsuitability to hold specialist registration

Clause 60 sets out the matters a National Board may take into account when considering if an individual is not a suitable person to hold specialist registration in a health profession.

If a National Board determines that an individual is not a suitable person to hold specialist registration in a recognised specialty, it may decide to refuse to grant the individual specialist registration – see clause 82 of the National Law.

Period of specialist registration

Clause 61 provides for the period of registration that is to apply to a health practitioner granted specialist registration in a recognised specialty in a health profession. The period will be not more than 12 months, at which time the registered health practitioner may renew his/her registration, as provided for in Part 7, Division 9 of the National Law.

It is intended that the period of specialist registration will be synchronised with the period of general registration for a health profession (that is, it is not expected that there will be different renewal dates if a registrant holds both general and specialist registration).

Division 3 Provisional registration

Eligibility for provisional registration

Clause 62(1) sets out the criteria which a National Board will consider when deciding whether an applicant is eligible for provisional registration.

Provisional registration will mainly be used for applicants who are undertaking an internship year (for example, in medicine) or a period of supervised practice (however described) in another health profession. On completion of the required period of internship or supervised practice, a provisional registrant may decide to apply for general registration in the health profession.

Without limiting (1), a National Board may decide an applicant is eligible for provisional registration in the profession by imposing conditions on the registration in accordance with clause 83 of the National Law.

If an individual is granted provisional registration, his/her name will be entered on the publicly accessible national register kept by the board in accordance with clause 222 of the National Law.

Unsuitability to hold provisional registration

Clause 63 is the equivalent provision to clause 55 (unsuitability to hold general registration). As such, clause 63(1) provides that clause 55 of the National Law applies to a decision by a National Board that an individual is not a suitable person to hold provisional registration in a health profession, with the required changes to terminology as specified in subclause (2).

Period of provisional registration

Clause 64 provides for the period of registration that is to apply to a health practitioner granted provisional registration in a health profession. The period will be not more than 12 months, or the longer period prescribed by regulation, at which time the registered health practitioner may renew his/her registration, as provided for in Part 7, Division 9 of the National Law.

Unlike other types of registration, there is a limitation on how many times a registered health practitioner may renew his/her provisional registration. Provisional registration may not be renewed more than twice.

However, as described in the note below subclause (3), an individual may make a new application for provisional registration in the profession if he/she were unable to complete any supervised practice the individual required for general registration in a health profession. This approach is intended to strike a balance between providing flexibility for a provisional registrant to complete his/her period of supervised practice, while enabling a National Board to take account of a provisional registrant's progress towards becoming eligible for general registration.

Division 4 Limited registration

Eligibility for limited registration

Clause 65(1) sets out the criteria which a National Board will consider when deciding whether an applicant is eligible for limited registration in a health profession.

Without limiting (1), a National Board may decide an applicant is eligible for provisional registration in the profession by imposing conditions on the registration in accordance with section 83 of the National Law.

If an individual is granted limited registration, his/her name will be entered on the publicly accessible national register kept by the National Board in accordance with clause 222 of the National Law. An individual granted limited registration will not have his/her name appear on a specialists register kept by a National Board.

There are four subtypes of limited registration as set out in clauses 66 to 69 of the National Law.

Limited registration for postgraduate training or supervised practice

Clause 66 provides that an individual may apply for limited registration for postgraduate training or supervised practice in a health profession, or to undertake assessment or sit an examination approved by the National Board established for the profession.

Subclause (2) provides that an individual is qualified for the limited registration if the National Board is satisfied the individual has completed a qualification that is relevant to, and suitable for, the postgraduate training, supervised practice, assessment or examination.

Limited registration for area of need

Clause 67 provides that an individual may apply for limited registration to enable the individual to practise a health profession in an area of need decided by the responsible Minister under subclause (5). A responsible Minister means a Minister responsible for the administration of this Law in a participating jurisdiction. In Queensland, the responsible Minister would be the Minister for Health.

As set out in subclause (5), the National Law provides that a responsible Minister may decide there is an area of need for health services in the participating jurisdiction, or part thereof, if the responsible Minister considers there are insufficient health practitioners practising in a particular health profession in the jurisdiction or part thereof, to provide services that meet the needs of people living in the jurisdiction or part thereof. A part of a jurisdiction may be a specific health service, such as a hospital.

If a responsible Minister decides there is an area of need, subclause (7) states that the Minister must give written notice of the decision to the National Board established for the health profession.

Subclause (2) provides that an individual is qualified for limited registration if the National Board is satisfied that the individual's qualifications and experience are relevant to, and suitable for, the practice of the profession in the area of need.

Importantly, subclause (3) clarifies that while a National Board must consider an application for limited registration for area of need, a National Board is not required to register the individual merely because an area of need has been decided by a responsible Minister.

Subclause (4) requires that, if a National Board grants the individual limited registration for area of need, the individual must not practise the profession other than in the area of need specified in the individual's certificate of registration. For transparency and accountability, this information will also be publicly accessible on the national register kept by the board.

Under subclause (7), a responsible Minister may delegate the Minister's power to decide an area of need to an appropriately qualified person, that is, a person having the qualifications, experience or standing appropriate to the exercise of the power.

While the National Law does not restrict limited registration for area of need to any one health profession, area of need registration has traditionally been available only for a limited range of health practitioners in Australia. For example, there are currently no area of need arrangements applying to nursing and midwifery.

Limited registration in public interest

Clause 68 provides that an individual may apply for limited registration in the public interest, to enable the individual to practise a health profession for a limited time, or for a limited scope, in the public interest. For example, in an unexpected situation where a natural disaster has occurred, or a pandemic was declared, and health practitioners were urgently needed.

Subclause (2) provides that an individual is qualified for the limited registration if the National Board is satisfied that it is in the public interest for an individual with his/her qualifications and experience to practise the profession for the limited time or scope.

In addition, transitional arrangements are made for a subset of limited registration in public interest (occasional practice) – see clause 273. While this is a 'closed' type of limited registration that is only available to registrants who transition at commencement of the scheme on 1 July 2010, the requirements set out in clauses 70 to 72 will apply to this subset in the same way as other registered health practitioners with limited registration in public interest.

Limited registration for teaching or research

Clause 69 provides that an individual may apply for limited registration for teaching or research, to enable the individual to fill a teaching or research position.

Subclause (2) provides that the individual is qualified for the limited registration if the National Board established for the profession is satisfied the individual's qualifications are relevant to, and suitable for, the position. For example, the individual may be an experienced overseas qualified academic engaged to fill a teaching or research position in a teaching hospital or a university to enable the practitioner to share his/her expertise.

Unsuitability to hold limited registration

Clause 70 is the equivalent provision to clause 55 (unsuitability to hold general registration). As such, clause 70(1) provides that clause 55 of the National Law applies to a decision by a National Board that an individual is not a suitable person to hold limited registration in a health profession, with the required changes to terminology as specified in subclause (2).

Limited registration not to be held for more than one purpose

Clause 71 provides that an individual may not hold limited registration in the same health profession for more than one purpose under this Division at the same time.

Period of limited registration

Clause 72 provides for the period of registration that is to apply to a health practitioner granted limited registration in a health profession. The period will be not more than 12 months, at which time the registered health practitioner may renew his/her registration, as provided for in Part 7, Division 9 of the National Law.

Similar to provisional registration, there is a limitation on how many times a registered health practitioner may renew his/her limited registration. Limited registration may not be renewed more than three times.

However, as described in the note below subclause (3), an individual may make a new application for limited registration in the health profession if he/she wished to continue holding limited registration in the profession. This approach is intended to strike a balance between providing flexibility

for and clarity about the number of times a registrant may seek to renew a limited form of registration, while enabling a National Board to consider whether a health practitioner granted limited registration has progressed towards becoming eligible for another type of registration, such as general registration.

Division 5 Non-practising registration

Eligibility for non-practising registration

Clause 73 sets out the criteria which a National Board will consider when deciding whether an applicant is eligible for non-practising registration in a health profession.

Although non-practising registration has traditionally been available for medical practitioners in Australia, the National Law does not restrict this type of registration to any one health profession. This type of registration enables a health practitioner who may not wish to practise the profession for a period of time – for example, if the practitioner wishes to take a sabbatical or is on maternity leave – to maintain a form of registration that will keep a practitioner in touch with the profession.

Unsuitability to hold non-practising registration

Clause 74 sets out the matters a National Board may take into account when considering if an individual is not a suitable person to hold non-practising registration in a health profession, that is, taking account of the individual's criminal history for registration purposes, and whether, in the board's opinion, the individual is for any other reason not a fit and proper person to hold non-practising registration.

If a National Board determines that an individual is not a suitable person to hold general registration in a health profession, it may decide to refuse to grant the individual non-practising registration – see clause 82 of the National Law.

Registered health practitioner who holds non-practising registration must not practise the profession

Clause 75 provides that it is a standard requirement that a registered health practitioner who holds non-practising registration in a health profession must not practise the profession.

If a registrant contravenes this standard requirement, the contravention does not constitute an offence, but may constitute behaviour for which health, conduct or performance action may be taken. Health, conduct or performance action is defined in clause 5 to mean action that: a National Board or an adjudication body may take in relation to a registered health practitioner or student at the end of a proceeding under Part 8; or a co-regulatory authority or an adjudication body may take in relation to a registered health practitioner or student at the end of a proceeding that, under the law of a co-regulatory jurisdiction, substantially corresponds to a proceeding under Part 8.

A practitioner who holds non-practising registration is not required to make an annual declaration about having professional indemnity insurance arrangements in place or meeting continuing professional development requirements because the practitioner is not practising the profession – see clause 109(2).

Period of non-practising registration

Clause 76 provides for the period of registration that is to apply to a health practitioner granted non-practising registration in a health profession. The period will be not more than 12 months, at which time the registered health practitioner may renew his/her registration, as provided for in Part 7, Division 9 of the National Law.

A health practitioner granted non-practising registration may, at any time during a registration period, apply for a different type of registration in the health profession such as general registration, by lodging an application for registration form. If granted the other type of registration for the profession, the practitioner will not also hold non-practising registration.

Division 6 Application for registration

Application for registration

Clause 77 sets out the procedural requirements for making an application for registration. Information in the application must, if the approved form requires, be verified by statutory declaration. A form is approved by the National Board.

Subclause (2)(c) requires the application form to be accompanied by supporting documentation, including proof of the applicant's identity. It is expected that a standard 100 point identity check will be used for proof of identity.

Subclause (3)(c) requires an applicant to disclose his/her criminal history, and subclause (3)(d) authorises a National Board to obtain the applicant's criminal history.

Subclause (4) provides that a criminal history law does not apply in relation to the criminal history of the applicant. The procedure for which is set out in clauses 79 below.

Power to check applicant's proof of identity

Clause 78(1) provides that a National Board may verify the validity of a document provided as proof of the applicant's identity. A board does so by way of written notice to the entity that issued the document, and a board may ask the entity to provide other information relevant to the applicant's identity. Subclause (2) clarifies that an entity given a notice under subclause (1) is authorised to give the board the information requested in the notice.

Power to check applicant's criminal history

Clause 79 provides that a National Board has the power to check an applicant's criminal history and must do so before deciding an application. A National Board is required to check an applicant's criminal history before deciding an application for registration.

Subclause (2) identifies the entities from which a criminal history report may be obtained by a National Board. It is intended that CrimTrac (an agency established under the Commonwealth's Public Service Act) will be used to obtain criminal history reports under the scheme, but the proposed

legislation also enables a written report to be obtained from an Australian police commissioner or an equivalent overseas entity. As clause 77(3)(d) authorises a board to obtain the applicant's criminal history, if the board obtains a written report of the criminal history of the applicant from a police commissioner, the commissioner is authorised to provide the written report.

Subclause (3) states that a criminal history law does not apply to a report about an applicant's criminal history. A "criminal history law" is defined in clause 5 as meaning a law of a participating jurisdiction that provides that spent or other convictions do not form part of a person's criminal history and prevents or does not require the disclosure of those convictions. Therefore, a written report on an applicant's criminal history includes convictions and charges that a criminal history law would otherwise exclude. This will enable a board to have a more complete picture of the criminal history of a health practitioner applicant.

The National Law also makes provision to ensure there is an adequate level of transparency and probity in relation to the board's assessment of an applicant's criminal history by requiring each board to develop for Ministerial Council approval, a registration standard in relation to criminal history screening, including the matters to be considered by a board in deciding whether an individual's criminal history is relevant to the practice of the profession – refer to clause 38.

Boards' other powers before deciding application for registration

Clause 80 sets out the National Boards' other powers before deciding an application, including the power to:

- (a) investigate the applicant, for example, by making reasonable inquiries about the applicant to a third party, or by verifying information or a document that relates to the applicant
- (b) require the applicant, within a reasonable time stated in a written notice, to provide further information or documentation that the board reasonably requires to decide the application
- (c) require the applicant to attend before the board, within a reasonable time and at a reasonable place stated in a written notice, to answer questions in relation to the application
- (d) require the applicant, within a reasonable time and at a reasonable place stated in a written notice, to undergo an examination or

assessment to assess the applicant's ability to practise the health profession in which registration is sought

- (e) require the applicant, within a reasonable time and at a reasonable place stated in a written notice, to undergo a health assessment; health assessment is defined in clause 5 as meaning an assessment of a person to determine whether the person has an impairment and includes a medical, physical, psychiatric or psychological examination or test of the person.

Subclause (2) provides that a National Board may require information or a document requested by a written notice under (1)(b) to be verified by a statutory declaration. Subclause (4) provides that, a written notice issued in relation to an examination or assessment described in (d) or (e) above, must state the reason for the examination or assessment and the name and qualifications of the person appointed by the board to conduct the examination or assessment, and the place, date and time at which the examination or assessment is to be conducted.

Subclauses (3) provides that, if a National Board requires an applicant to undertake an examination or assessment to assess the applicant's ability to practice the health profession, the examination or assessment must be conducted by an accreditation authority for the health profession, unless the board decides otherwise.

An applicant who does not comply with these requirements, within a stated period of time, is taken to have withdrawn his or her application and there is no right of appeal. Clause 85 sets out the consequences if a National Board fails to decide an application within 90 days after its receipt.

Applicant may make submissions about proposed refusal of application or imposition of condition

Clause 81(1) requires a National Board to give an applicant written notice if it proposes to refuse to register the applicant, or to register the applicant subject to a condition.

Subclause (2) sets out the notice requirements, including that the applicant is to be invited to make a written or verbal submission to the board about the proposal in clause 81(1) by the date stated in the written notice, being not less than 30 days after the notice is given to the applicant.

Decision about application

Clause 82 requires that, after considering an application for registration and any submission made in accordance with clause 81, a National Board must make one of the following decisions to:

- (a) grant the applicant the type of registration applied for, if the applicant is so eligible
- (b) grant the applicant a type of registration in the health profession, other than the type of registration applied for, for which the applicant is eligible under a relevant section of the National Law
- (c) refuse to grant the applicant registration, if the applicant is ineligible for registration (clause 82(1)(c)(i)(A) to (E) provides the grounds), or if it would be improper to register the applicant because information or a document provided by the individual or someone else with regards to the application was false or misleading in a material particular.

Item (b) is to provide a degree of flexibility for both the applicant and the board, in that a board would not need to require that a health practitioner lodge a new application for the different type of registration, and go through the process in order for the National Board to decide the application. For example, an individual may apply for general registration, but the board determines that the individual is not eligible for general registration, but is eligible for limited registration.

Conditions of registration

Clause 83 provides that, if a National Board decides to register a person in the health profession for which the board is established, the registration is subject to any condition the board considers necessary or desirable in the circumstances. If a board decides to register the person subject to a condition, the board must decide a review period for the condition. The period specified is at the board's discretion.

If a registered health practitioner fails to comply with a condition imposed on his/her registration, such failure does not constitute an offence but may constitute behaviour for which health, conduct or performance action may be taken.

Notice to be given to applicant

Clause 84 sets out the notice requirements after a National Board has made a decision under clause 82.

A decision by a National Board to refuse registration, or to grant registration subject to the imposition of a condition, is an appellable decision, that is, a person may appeal against the decision to a responsible tribunal – see clause 199.

Failure to decide application

Clause 85 provides that, if a National Board fails to decide an application for registration within 90 days after receipt – or the longer period agreed between the board and the applicant – the failure by the board to make a decision is taken to be a decision to refuse to register the applicant, and is therefore an appellable decision.

Division 7 Student registration

Under the National Law, National Boards must register persons undertaking an approved program of study for the health profession. However, students may not be required to be registered from the beginning of their program. Each National Board will decide at what point in the program students need to be registered, having regard to potential risk to public safety. It is intended that the powers of the National Boards with respect of students will extend to assisting a student who may be impaired or taking appropriate action if a student has been charged with or found guilty of a serious offence. Where a student may be impaired, the board may require the student to undergo a health assessment, or take other remedial actions, such as imposing conditions on his/her student registration in order to protect the public. Where the student has been charged or convicted of a serious offence, the board's concern will be to ensure that members of the public are protected, and again, remedial action can be taken, such as imposing conditions on registration.

Subdivision 1 Persons undertaking approved programs of study

Definition for Subdivision 1

Clause 86 defines two terms used in this subdivision: “approved program of study” and “particulars”.

National Board must register persons undertaking approved program of study

Clause 87 provides the flexibility for each National Board to decide the point at which it is appropriate to register students, that is either:

- for the entire period during which the persons are enrolled in the approved program of study, or
- for a particular part of the approved program (for example at the start of a clinical placement) and ending when the person completes, or otherwise ceases to be enrolled in, the program.

Under this approach, it is possible for different National Boards to decide to register students at different stages in their approved program of study.

Subclause (2) provides matters that a National Board must have regard to, in making its decision about when to register students, that is:

- the likelihood of the persons having contact with members of the public in the course of undertaking the approved program of study, and
- if it is likely that persons will have contact with members of the public – at what point in the program this will occur and the potential risk that the contact may pose to members of the public.

Registration for new students who are not currently registered in a participating jurisdiction will not commence until the beginning of the academic year, 1 March 2011 – see transitional arrangements in clause 276 of the National Law.

National Board may ask education provider for list of persons undertaking approved program of study

Clause 88 provides the procedure for obtaining information about students for the purpose of registration by a National Board.

Once a board decides to register students in the relevant health profession, the board must write to an education provider and ask for the particulars of all persons who are undertaking an approved program of study for the relevant health profession, or who will be undertaking the part of the approved program of study specified in the notice.

Particulars means the particulars required to be included in the student register in clause 229 of the proposed law.

It is on the basis of the particulars provided by the education provider, that students are registered by the National Board. Therefore, an education provider must not fail to provide the information specified in the written notice, without reasonable excuse.

While a failure to comply by an education provider does not constitute an offence, a National Board must publish details of the failure to comply with the notice on the board's website. Further, the National Agency may, on the recommendation of a National Board, include a statement about the failure to comply in the annual report that is tabled in the Parliaments of each participating jurisdiction and the Commonwealth.

Registration of students

Clause 89 provides that, on receipt of the particulars from the education provider in accordance with clause 88, the National Board may register the persons as students in the health profession by entering their particulars in the student register kept by the board.

The board may also take the additional step of requiring the persons to complete an application for registration as a student in the form approved by the board, and on receipt of the person's application form, register the person as a student in the health profession by entering the person's particulars in the student register kept by the board.

A National Board must not require a person to pay a fee for registration as a student.

The register of students is not publicly accessible – see clause 229(2) of the National Law.

Period of student registration

Clause 90 provides the period of registration for students, that is students will be registered when their names have been entered by the National Board on the student register for the profession. Registration ends on the day on which the student completes, or otherwise ceases to be enrolled in, the approved program of study.

Subdivision 2 Other persons to be registered as students

This subdivision provides for the registration of other students in a health profession, who are not enrolled in an approved program of study – for example, a student from an overseas program that comes to Australia to undertake a period of clinical training in a profession.

Education provider to provide lists of persons

Clause 91 provides that, if an education provider arranges clinical training in a health profession for a person who is not enrolled in an approved program of study for the profession, the education provider must give the National Board established for the profession, written notice about the arrangement.

Subclause (2) clarifies that this requirement does not apply if the person is a registered health practitioner who is registered in the health profession in which the clinical training is being undertaken. For example, a registered nurse who is a student midwife will not be required to be registered as a student because the individual is already registered in the nursing and midwifery profession. However, if a registered nurse decided to enrol in a program of study for dentistry, the individual could maintain registration as a nurse, and be registered as a student dentist.

Subclauses (3) to (6) set out the notice requirements under subclause (1) and the process for registering these persons as students and the process for registering persons as students – this is the same as for students in an approved program of study as described in the explanatory notes against clause 88 and clause 89.

Subclause (7) provides the period of registration for students, that is students will be registered when their names have been entered by the

National Board on the student register for the profession. Registration ends on the day on which the student completes, or otherwise ceases to undertake the period of clinical training.

Subdivision 3 General provisions applicable to students

Notice to be given if student registration suspended or condition imposed

Clause 92 sets out the notice requirements that apply to a National Board in relation to education providers, if, at any time, a person's registration as a student under the National Law is suspended, or a condition is imposed on a person's registration, or such a condition is changed or removed, or a National Board accepts an undertaking from a student.

Under clause 92(3), if an education provider is given a notice about a student, the education provider must, as soon as practicable after receiving the notice, give notice of the relevant event (outlined above) to any entity with whom the person is undertaking training as part of the approved program of study. For example, giving notice to the student's supervisor at a public teaching hospital where the student is undertaking a clinical placement.

Notice requirements that apply to a National Board in relation to students are included in the relevant clauses in Part 8, if a student's registration is suspended, or conditions on registration are imposed, or a condition is changed or removed, or a board accepts an undertaking from a student.

Report to National Board of cessation of status as student

Clause 93 provides for notice requirements that an education provider must give to the relevant National Board, if a student completes, or ceases to be enrolled in an approved program of study provided by the education provider, or completes or otherwise ceases to undertake the clinical training in the health profession arranged by the education provider.

While a contravention of this requirement by an education provider does not constitute an offence, a National Board must publish details of the contravention on the board's website. Further, the National Agency may, on the recommendation of a National Board, include a statement about the

contravention in the annual report that is tabled in the Parliaments of each participating jurisdiction and the Commonwealth.

Division 8 Endorsement of registration

Subdivision 1 Endorsement in relation to scheduled medicines

Endorsement for scheduled medicines

Clause 94 provides for a scheduled medicines endorsement in accordance with an approval given by the Ministerial Council under clause 14 of the National Law.

A National Board may endorse the registration of a registered health practitioner registered by the board as being qualified to administer, obtain, possess, prescribe, sell, supply or use a scheduled medicine or class of scheduled medicines if the practitioner:

- (a) holds either of the following qualifications relevant to the endorsement:
 - (i) an approved qualification,
 - (ii) another qualification that, in the Board's opinion, is substantially equivalent to, or based on similar competencies to, an approved qualification, and
- (b) complies with any approved registration standard relevant to the endorsement.

To clarify, if there is no approved registration standard relevant to the endorsement, then the requirement under (b) is not applicable, and only (a) above is required to be met.

The term "scheduled medicine" is defined in clause 5 to mean a substance included in a Schedule to the current Poisons Standard within the meaning of the *Therapeutic Goods Act 1989* of the Commonwealth. Substance means any medicine (drugs) or poison.

Importantly, the note under subclause (1) clarifies the relationship between a National Board endorsement and the authorities afforded under States' and Territories' drugs and poisons legislation as follows:

The endorsement of a health practitioner's registration under this section indicates the practitioner is qualified to administer, obtain, possess, prescribe, sell, supply or use the scheduled medicine or class of medicines specified in the endorsement but does not authorise the practitioner to do so. The authorisation of a health practitioner to administer, obtain, possess, prescribe, sell, supply or use scheduled medicines in a participating jurisdiction will be provided for by or under another Act of that jurisdiction. Health practitioners registered in certain health professions (such as medical practitioners) will be authorised to administer, obtain, possess, prescribe, sell, supply or use scheduled medicines by or under an Act of a participating jurisdiction without the need for the health practitioners to hold an endorsement under this Law.

Subdivision 2 Endorsement in relation to nurse practitioners

Endorsement as nurse practitioner

Clause 95(1) provides that the Nursing and Midwifery Board of Australia may endorse the registration of a registered health practitioner whose name is included in the national Register of Nurses as being qualified to practise as a nurse practitioner if the practitioner:

- (a) holds either of the following qualifications relevant to the endorsement:
 - (i) an approved qualification,
 - (ii) another qualification that, in the board's opinion, is substantially equivalent to, or based on similar competencies to, an approved qualification, and
- (b) complies with any approved registration standard relevant to the endorsement.

Subclause (2) requires that such an endorsement must state that the registered health practitioner is entitled to use the title "nurse practitioner" and state any conditions applicable to the practice by the practitioner as a nurse practitioner.

An approval by the Ministerial Council for this type of endorsement is not required.

Subdivision 3 Endorsement in relation to midwife practitioners

Endorsement as midwife practitioner

Clause 96(1) provides that the Nursing and Midwifery Board of Australia may endorse the registration of a registered health practitioner whose name is included in the national Register of Midwives as being qualified to practise as a midwife practitioner if the practitioner:

- (a) holds either of the following qualifications relevant to the endorsement:
 - (i) an approved qualification,
 - (ii) another qualification that, in the board's opinion, is substantially equivalent to, or based on similar competencies to, an approved qualification, and
- (b) complies with any approved registration standard relevant to the endorsement.

Subclause (2) requires that such an endorsement must state that the registered health practitioner is entitled to use the title "midwife practitioner" and state any conditions applicable to the practice by the practitioner as a midwife practitioner.

An approval by the Ministerial Council for this type of endorsement is not required.

Subdivision 4 Endorsement in relation to acupuncture

Endorsement for acupuncture

Clause 97(1) provides that a National Board may endorse the registration of a health practitioner registered by the board as being qualified to practise as an acupuncturist if the practitioner:

- (a) holds either of the following qualifications relevant to the endorsement:
 - (i) an approved qualification,

- (ii) another qualification that, in the board's opinion, is substantially equivalent to, or based on similar competencies to, an approved qualification, and
- (b) complies with any approved registration standard relevant to the endorsement.

Subclause (2) requires that such an endorsement must state that the registered health practitioner is entitled to use the title "acupuncturist" and state any conditions applicable to the practice of acupuncture by the registered health practitioner.

It should be noted that under clause 114, a registered health practitioner whose registration is endorsed under clause 97 does not commit an offence by using the title 'acupuncturist' when it becomes a protected title for Chinese medicine practitioners on 1 July 2012. From 1 July 2012, it will be an offence under the National Law for any person who is not a Chinese medicine practitioner, or a registered health practitioner with an endorsement under clause 97, to take or use the title 'acupuncturist'.

An approval by the Ministerial Council for this type of endorsement is not required.

Subdivision 5 Endorsements in relation to approved areas of practice

Endorsement for approved area of practice

Clause 98(1) provides for an endorsement in relation to approved areas of practice in accordance with an approval given by the Ministerial Council under clause 15 of the National Law.

A National Board may endorse the registration of a registered health practitioner registered by the board as being qualified to practise in an approved area of practice for the profession if the practitioner:

- (a) holds either of the following qualifications relevant to the endorsement:
 - (i) an approved qualification,
 - (ii) another qualification that, in the board's opinion, is substantially equivalent to, or based on similar competencies to, an approved qualification, and

- (b) complies with any approved registration standard relevant to the endorsement.

Subclause (2) requires that such an endorsement must state the approved area of practice to which the endorsement relates, and state any conditions applicable to the practice by the registered health practitioner in the approved area of practice.

Subdivision 6 Application for endorsement

Application for endorsement

Clause 99 sets out the procedural requirements for making an application for endorsement of the individual's registration, and the National Board's powers to require an applicant to provide information relevant to the application.

To clarify, an application for an endorsement of registration can be made at the same time as an application for registration as a health practitioner, or at a later time after the individual is granted registration as a health practitioner.

Boards' other powers before deciding application for endorsement

Clause 100 sets out the National Boards' other powers before deciding an application for endorsement, including the power to:

- (a) investigate the applicant, for example, by making reasonable inquiries about the applicant to a third party, or by verifying information or a document that relates to the applicant
- (b) require the applicant, within a reasonable time stated in a written notice, to provide further information or documentation that the board reasonably requires to decide the application
- (c) require the applicant to attend before the board, within a reasonable time and at a reasonable place stated in a written notice, to answer questions in relation to the application
- (d) require the applicant, within a reasonable time and at a reasonable place stated in a written notice, to undergo a written, oral, or practical

examination to assess the applicant's ability to practise the health profession in accordance with the endorsement sought.

An applicant who does not comply with these requirements, within the stated period of time, is taken to have withdrawn his or her application and there is no right of appeal. Clause 106 sets out the consequences if a National Board fails to decide an application within 90 days after its receipt.

Applicant may make submissions about proposed refusal of application or imposition of condition

Clause 101 requires a National Board to give an applicant written notice if it proposes to refuse to endorse the applicant's registration, or to endorse the applicant's registration subject to a condition.

Subclause (2) sets out the notice requirements, including that the applicant is to be invited to make a written or verbal submission to the board about the proposal in clause 101(1) by the date stated in the written notice, being not less than 30 days after the notice is given to the applicant.

Decision about application

Clause 102 requires that, after considering an application for registration and any submission made in accordance with clause 101, a National Board must decide to endorse, or refuse to endorse, the applicant's registration as sought. The clause clarifies the grounds on which a National Board may refuse to endorse an applicant's registration.

Conditions of endorsement

Clause 103 provides that, if a National Board decides to endorse the applicant's registration under clause 102, the board may decide to impose on the endorsement the conditions the board considers necessary or desirable in the circumstances. If a board decides to impose a condition on the endorsement, the board must decide a review period for the condition. The period specified is at the board's discretion.

To clarify, as with clause 83, if a registered health practitioner fails to comply with any conditions imposed in relation to the endorsement, such failure may constitute behaviour for which health, conduct or performance action may be taken.

Notice of decision to be given to applicant

Clause 104 sets out the notice requirements after a National Board has made a decision under clause 102.

A decision by a National Board to refuse to endorse the applicant's registration, or to endorse the applicant's registration subject to a condition, is an appellable decision, that is, a person may appeal against the decision to a responsible tribunal – see clause 199.

Period of endorsement

Clause 105 provides for the period of endorsement, that is, the period starts when the National Board makes the decision and ends when the practitioner's registration ends. Therefore, the period will be not more than 12 months, at which time the registered health practitioner may renew his/her registration and his/her endorsement of registration, as provided for in Part 7, Division 9 of the National Law.

Failure to decide application for endorsement

Clause 106 provides that, if a National Board fails to decide an application for endorsement within 90 days after receipt – or the longer period agreed between the board and the applicant – the failure by the board to make a decision is taken to be a decision to refuse to endorse the applicant's registration, and is therefore an appellable decision.

Division 9 Renewal of registration

Application for renewal of registration or endorsement

Clause 107 sets out the procedural requirements for making an application for renewal of registration, including that an application for renewal is to be accompanied by the relevant fee and made in the form approved by the relevant National Board. If the registered health practitioner's registration has been endorsed by a National Board, the application is taken to also be an application for renewal of endorsement of registration.

Registration taken to continue in force

Clause 108 provides for a registered health practitioner's registration as applied for under clause 107, to continue in force from the day it would have ended until the National Board decides to renew the registration or until the National Board decides to refuse to renew the applicant's registration.

Further, subclause (2) provides a 'grace period' of one month to enable a registered health practitioner to apply for renewal of registration. It should be noted that an application for late renewal of registration is to be accompanied by the relevant fee for a late application as provided for under clause 107(4)(c).

Subclause (3) clarifies that these provisions do not apply if the practitioner's registration is earlier cancelled under the National Law.

Annual statement

Clause 109 provides that an application for renewal of registration (and as relevant, renewal of endorsement of a registration) must include or be accompanied by a statement that includes the requirements set out in subclause (1)(a) and (b).

Subclause (2) clarifies that certain requirement set out in clause 109(1) do not apply to an applicant who is applying for renewal of non-practising registration.

National Boards' powers before making decision

Clause 110 provides that, before deciding an application for renewal of registration, a National Board may exercise a power under clause 80 (boards' other powers before decided application for registration) as if the application were an application for registration made under clause 77 (application for registration).

This approach provides National Boards with a comprehensive set of powers that it may exercise for renewals of registration, in the same way it may exercise its powers for an application for registration.

Applicant may make submissions about proposed refusal of application for renewal or imposition of condition

Clause 111(1) requires a National Board to give an applicant written notice if it proposes to refuse to renew the applicant's registration, or to renew the applicant's registration subject to a new condition.

Subclause (2) sets out the notice requirements, including that the applicant is to be invited to make a written or verbal submission to the board about the proposal in clause 111(1) by the date stated in the written notice, being not less than 30 days after the notice is given to the applicant.

Decision about application for renewal

Clause 112 requires that, after considering an application for renewal of registration and any submission made in accordance with clause 111, a National Board may decide to renew, or refuse to renew the applicant's registration, or any endorsement on the registration.

Subclause (2) sets out the reasons why a National Board may refuse to renew the applicant's registration or any endorsement. To clarify, a board may decide to renew an applicant's registration and any endorsement, or decide to renew an applicant's registration but not renew an endorsement.

Subclause (3) provides that if a National Board renews a registration, including any endorsement on the registration, the registration or endorsement is subject to any condition to which the registration was subject immediately before the renewal and any condition the board considers necessary or desirable in the circumstances.

It should be noted that a failure by a registered health practitioner to comply with a condition of the practitioner's registration does not constitute an offence but may constitute behaviour for which health, conduct or performance action may be taken.

If a board decides to register the person subject to a condition, the board must decide a review period for the condition. The period specified is at the board's discretion.

Subclause (5) requires that a National Board – if it decides to refuse to renew an applicant's registration or the endorsement of the applicant's registration, or to renew the registration subject to conditions – give the applicant a notice with information required under (a) to (b) of the subclause.

Subclause (6) sets out the period of registration, including any endorsement of registration. It should be noted that the period of registration starts on the day immediately after the applicant's previous period of registration ends or ended – therefore if an applicant lodges a late renewal application, the applicant gains no time benefit from the late renewal.

Division 10 Title and practice protections

Subdivision 1 Title protections

Restriction on use of protected titles

Clause 113 creates an offence in relation to the use of certain specified titles associated with the health professions regulated by the National Law. The provision ensures that only persons who are registered under the National Law in a health profession may use a title associated with that profession if the use of the title could be reasonably expected to create a belief that the person is registered under the National Law in the health profession.

The intent of the section is to protect members of the public by ensuring they are not misled. Specifically, the intent is that if a person uses a title that suggests the person is registered in a health profession under the National Law, a member of the public may be confident that the person is in fact registered under the law and therefore appropriately qualified and competent to practise the profession.

Use of title “acupuncturist”

Clause 114 creates an exception to the offence in section 113 of the National Law. Under section 113 a person cannot use the title “acupuncturist” unless the person is registered in the Chinese medicine profession. However, under section 114 a health practitioner who is registered in a profession other than Chinese medicine, and whose registration has been endorsed by the National Board for the profession as being qualified to practise as an acupuncturist, may use the title “acupuncturist”. The profession of Chinese medicine practice joins the scheme from 1 July 2012.

Restriction on use of specialist titles

Clause 115(1) creates offences in relation to the use of certain titles associated with specialist health practitioners. Specifically, the section provides that:

- (a) a person cannot use the title “dentist specialist” unless the person is registered in a recognised specialty for the dental profession, and
- (b) a person cannot use the title “medical specialist” unless the person is registered in a recognised speciality in the medical profession.

Clause 115(1) also provides that a person cannot use other titles specified by the Ministerial Council in relation to recognised specialities. This provision is the equivalent of section 114 but applies in relation to specialist registration in a health profession rather than general registration.

Clause 115(2) creates an equivalent offence to that provided in section 115(1) but relates to persons who use the relevant titles in relation to other persons rather than themselves.

Claims by persons as to registration as health practitioner

Clause 116(1) creates an offence for circumstances in which a person who is not a registered health practitioner uses a title, name, initial, symbol, word or description (other than the titles specified in clauses 114 and 115) that could lead other persons into believing the person is registered under the National Law or qualified to practise as a health practitioner.

Clause 116(2) creates an equivalent offence to that provided in 116(1) but relates to persons who use the relevant title, name, initial, symbol, word or description in relation to other persons rather than themselves.

Claims by persons as to registration in particular profession or division

Clause 117(1) creates an offence for circumstances in which a registered health practitioner claims to be registered under the National Law in a health profession, or a division of a health profession, in which the health practitioner is not registered.

Clause 117(2) creates an equivalent offence to that provided in section 117(1) but relates to persons who make the claim in relation to other persons rather than themselves.

Claims by persons as to specialist registration

Clause 118 creates offences equivalent to those created in clause 116 but applies to claims about specialist registration in a recognised speciality in a health profession rather than not to claims about general registration in a health profession.

Claims about type of registration or registration in recognised speciality

Clause 119(1) creates an offence for circumstances in which a registered health practitioner claims to hold a type of registration or endorsement, or to hold specialist registration, that the health practitioner does not hold.

Clause 119(2) creates an equivalent offence to that provided in clause 119(1) but relates to persons who make the claim in relation to other persons rather than themselves.

Registered health practitioner registered on conditions

Clause 120(1) creates an offence for circumstances in which a registered health practitioner whose registration is subject to conditions claims to be registered without the conditions or any conditions.

Clause 120(2) creates an equivalent offence to that provided in clause 120(1) but relates to persons who make the claim in relation to other persons rather than themselves.

Subdivision 2 Practice protections

Restricted dental acts

Clause 121 provides that it is an offence for a person to carry out a restricted dental act unless the person:

- (a) is registered in the dental profession or medical profession and carries out the restricted dental act in accordance with any requirements specified in an approved registration standard, or
- (b) is a student who carries out the restricted dental act in the course of activities undertaken as part of:

- (i) an approved program of study for the dental profession or medical profession, or
- (ii) clinical training in the dental profession or medical profession, or
- (c) carries out the restricted dental act in the course of carrying out technical work on the written order of a person registered in the dentists or dental prosthetists division of the dental profession, or
- (d) is a person, or a member of a class of persons, prescribed under a regulation as being authorised to carry out the restricted dental act or restricted dental acts generally.

Clause 5 defines “division” of a health profession to mean a part of a health profession for which a division is included in the national register kept for the profession.

A “restricted dental act” is defined to mean any of the following acts:

- (a) performing any irreversible procedure on the human teeth or jaw or associated structures,
- (b) correcting malpositions of the human teeth or jaw or associated structures,
- (c) fitting or intra-orally adjusting artificial teeth or corrective or restorative dental appliances for a person,
- (d) performing any irreversible procedure on, or the giving of any treatment or advice to, a person that is preparatory to or for the purpose of fitting, inserting, adjusting, fixing, constructing, repairing or renewing artificial dentures or a restorative dental appliance.

The term “technical work” is defined to mean the mechanical construction or the renewal or repair of artificial dentures or restorative dental appliances.

The maximum penalty for an offence against this clause is \$30,000.

Restriction on prescription of optical appliances

Clause 122 provides that it is an offence for a person to prescribe an optical appliance, unless:

- (a) the person is an optometrist or medical practitioner, or
- (b) the appliance is spectacles and the person is an orthoptist who:

- (i) prescribes the spectacles in the course of carrying out duties at a public health facility, or
 - (ii) prescribes the spectacles under the supervision of an optometrist or medical practitioner, or
 - (iii) prescribes the spectacles, on the written referral of an optometrist or medical practitioner, to a person who has had, within the 12 months before the referral, an ocular health examination conducted by an optometrist or medical practitioner, or
- (c) the person is a person, or a member of a class of persons, prescribed under a regulation as being authorised to prescribe an optical appliance of that type or to prescribe optical appliances generally.

Subclause (2) sets out the defined terms used in this clause:

“Optical appliance” means:

- (a) any appliance designed to correct, remedy or relieve any refractive abnormality or defect of sight, including, for example, spectacle lenses, or
- (b) contact lenses, whether or not designed to correct, remedy or relieve any refractive abnormality or defect of sight.

“Optometrist” means a person registered in the optometry profession.

“Orthoptist” means a person whose name is recorded in the Register of Orthoptists kept by the Australian Orthoptists Registration Body Pty Ltd (ACN 095 11 7 678).

It is noted that this provision does not restrict the supply of optical appliances, or restrict the supply or sale of hand held magnifying glasses, or ‘ready made’ spectacles.

The maximum penalty for an offence against this clause is \$30,000.

Restriction on spinal manipulation

Clause 123 provides that it is an offence for a person to perform manipulation of the cervical spine, unless the person:

- (a) is registered in an appropriate health profession, or
- (b) is a student who performs manipulation of the cervical spine in the course of activities undertaken as part of:

- (i) an approved program of study in an appropriate health profession, or
- (ii) clinical training in an appropriate health profession, or
- (c) is a person, or a member of a class of persons, prescribed under a regulation as being authorised to perform manipulation of the cervical spine.

Subclause (2) sets out the defined terms used in this clause:

“appropriate health profession” means any of the following health professions: chiropractic, osteopathy, medical, physiotherapy.

“manipulation of the cervical spine” means moving the joints of the cervical spine beyond a person’s usual physiological range of motion using a high velocity, low amplitude thrust.

The maximum penalty for an offence against this clause is \$30,000.

Division 11 Miscellaneous

Subdivision 1 Certificates of registration

Issue of certificate of registration

Clause 124 provides for the issue of certificates of registration.

Subdivision 2 Review of conditions and undertakings

The clauses in this subdivision use the term “review period” for a condition or undertaking, which is defined in clause 5 to mean the period during which the condition may not be changed or removed, or the undertaking may not be changed or revoked, under clauses 125, 126 or 127. A review period is imposed by a National Board, or a panel, or a responsible tribunal depending on the circumstance. Clause 5 also defines the terms “adjudication body” and “co-regulatory jurisdiction”.

Changing or removing conditions or undertaking on application by registered health practitioner or student

Clause 125 provides the procedural requirements for a registered health practitioner or student to apply to a National Board that registered the practitioner or student to seek to change or remove conditions imposed on registration or to change or revoke an undertaking given to the relevant board.

Subclause (2) provides that an application may not be made during a review period unless the practitioner or student reasonably believes there has been a material change in the practitioner's or student's circumstances.

For a condition imposed by an adjudication body for a co-regulatory jurisdiction, an application may not be made unless the adjudication body decided, when imposing the condition, that this subdivision of the National Law applied to the condition.

Changing conditions on Board's initiative

Clause 126 provides the procedural requirements for a National Board to change a condition imposed on the registration of a registered health practitioner or student on its own initiative.

Subclause (2) provides that the condition may not be changed during a review period applying to the condition unless the National Board reasonably believes there has been a material change in the registered health practitioner's or student's circumstances.

For a condition imposed by an adjudication body for a co-regulatory jurisdiction, the board may not exercise its initiative unless the adjudication body decided, when imposing the condition, that this subdivision of the National Law applied to the condition.

To clarify, a board may decide to exercise this discretionary power at the time a health practitioner submits an application for renewal of registration, if that practitioner has conditions imposed on his/her registration.

Removal of condition or revocation of undertaking

Clause 127 provides the procedural requirements for a National Board to remove a condition imposed on the registration of a registered health practitioner or student or revoke an undertaking given to the board by a

practitioner or student if a board reasonably believes the condition or undertaking is no longer necessary.

Subclause (2) provides that a condition or undertaking may not be removed or revoked during a review period unless the board reasonably believes there has been a material change in the practitioner's or student's circumstances.

For a condition imposed by an adjudication body for a co-regulatory jurisdiction, the board may not remove a condition unless the adjudication body decided, when imposing the condition, that this subdivision of the National Law applied to the condition.

Subdivision 3 Obligations of registered health practitioner or student

Continuing professional development

Clause 128 places an obligation on a registered health practitioner to undertake the continuing professional development required by an approved registration standard for the health profession in which the practitioner is registered. However, the requirements of this clause do not apply to a registered health practitioner who holds non-practising registration.

A contravention of subclause (1) by a registered health practitioner does not constitute an offence but may constitute behaviour for which health, conduct or performance action may be taken.

Professional indemnity insurance arrangements

Clause 129 requires that a registered health practitioner must not practise the health profession in which the practitioner is registered, unless appropriate professional indemnity insurance arrangements are in force in relation to the practitioner's practice of the profession.

A National Board may, at any time by written notice, require a registered health practitioner to give the board evidence of the appropriate professional indemnity insurance arrangements that are in force in relation to the practitioner's practice of the profession. A registered health practitioner must not, without reasonable excuse, fail to comply with a written notice given to the practitioner by the board.

However, the requirements of this clause do not apply to a registered health practitioner who holds non-practising registration. Transitional arrangements apply in respect to an exemption from the requirement for professional indemnity insurance arrangements for midwives practising private midwifery under clause 284 of the National Law.

The term “appropriate professional indemnity insurance arrangements” in relation to a registered health practitioner is defined in clause 5 to mean, professional indemnity insurance arrangements that comply with an approved registration standard for the health profession in which the practitioner is registered.

A contravention of the requirements of this clause by a registered health practitioner does not constitute an offence but may constitute behaviour for which health, conduct or performance action may be taken.

Registered health practitioner or student to give National Board notice of certain events

Clause 130 requires a registered health practitioner or student to give the relevant National Board notice of certain relevant events as set out in subclause (3) within 7 days after becoming aware that a relevant event has occurred in relation to the practitioner or student.

A contravention of the requirements of this clause by a registered health practitioner does not constitute an offence but may constitute behaviour for which health, conduct or performance action may be taken.

Change in principal place of practice, address or name

Clause 131 requires a registered health practitioner to give written notice, within 30 days, of any changes in his/her principal place of practice, or address for board correspondence, or a change in the practitioner’s name.

A contravention of the requirements of this clause by a registered health practitioner does not constitute an offence but may constitute behaviour for which health, conduct or performance action may be taken.

National Board may ask registered health practitioner for employer’s details

Clause 132 provides that a National Board may, at any time, by written notice to a health practitioner registered by the board, ask for information

about the practitioner's employer. This provision requires the practitioner to advise if he/she is employed by another entity (ie, that the practitioner is not self-employed), and if so, the name, address and other contact details of the practitioner's employer.

A registered health practitioner must not, without reasonable excuse, fail to comply with a written notice given to the practitioner by the board. A contravention of the requirements of this clause by a registered health practitioner does not constitute an offence but may constitute behaviour for which health, conduct or performance action may be taken.

Subdivision 4 Advertising

Advertising

Clause 133 restricts the advertising of a regulated health service by a person or a business that provides regulated health services, in a way that may contravene items (a) to (e) in subclause (1).

However, subclause (2) clarifies that a person does not commit an offence against this clause merely because the person, as part of the person's business, prints or publishes an advertisement for another person.

Subclause (3) provides that, in proceedings for an offence against this clause, a court may have regard to a guideline approved by a National Board about the advertising of regulated health services.

The term "regulated health service" means a service provided by, or usually provided by, a health practitioner.

The maximum penalty for an offence against this clause is \$5,000 in the case of an individual, or \$10,000 in the case of a body corporate.

Subdivision 5 Board's powers to check identity and criminal history

Evidence of identity

Clause 134 provides that a National Board may, at any time, by written notice, require a registered health practitioner to provide evidence of a practitioner's identity. A contravention of the requirements of this clause

by a registered health practitioner does not constitute an offence but may constitute behaviour for which health, conduct or performance action may be taken.

A board also has powers, by written notice, to confirm the validity of a document provided as evidence of identity with the entity that issues the document, or require the entity to give the board other information relevant to the practitioner's identity. An entity given a written notice is authorised to provide the information requested.

Criminal history check

Clause 135(1) provides that a National Board may, at any time, obtain a written report about a registered health practitioner's criminal history from any of the following:

- (a) CrimTrac,
- (b) a police commissioner,
- (c) an entity in a jurisdiction outside Australia that has access to records about the criminal history of persons in that jurisdiction.

Without limiting a board's ability to exercise this power, subclause (2) sets out reasons why a board may decide to obtain a written report, including to check a statement made by a registered health practitioner in the practitioner's application for renewal of registration, or as part of an audit carried out by a National Board, to check statements made by registered health practitioners.

Subclause (3) states that a criminal history law does not apply to a report under subclause (1).

Subdivision 6 General

Directing or inciting unprofessional conduct or professional misconduct

Clause 136 provides that a person must not direct or incite a registered health practitioner to do anything, in the course of the practitioner's practice of the profession, that amounts to unprofessional conduct or professional misconduct. The terms "unprofessional conduct", and "professional misconduct" are defined in clause 5 of the National Law.

Subclause (2) provides that subclause (1) does not apply to a person who is the owner or operator of a public health facility. It is not intended that a member of the public who seeks to engage the services of a midwife practising private midwifery commits an offence against subclause (1) merely because the person asks the midwife to attend a home birth.

The maximum penalty for an offence against this clause is \$30,000 in the case of an individual, or \$60,000 in the case of a body corporate.

Surrender of registration

Clause 137 provides that a registered health practitioner may, by written notice to the National Board that registered the practitioner, surrender the practitioner's registration, and also provides for when the surrender of the registration takes effect.

Part 8 Health, performance and conduct

Given the diversity of arrangements in Australia at this time, the Ministerial Council decided in May 2009, that the National Law should provide a flexible model for administrative arrangements for handling complaints. The National Law and/or State or Territory law, depending on each jurisdiction's choice, is to provide the legislative framework for investigations and prosecutions, and the definitions of offences and contraventions and outcomes will be recorded as part of the national framework.

The National Law has therefore been drafted to enable a co-regulatory jurisdiction, such as New South Wales, to adopt and apply the National Law, and use its State legislation for handling complaints about health, conduct or performance matters. A "co-regulatory jurisdiction" means a jurisdiction in which the Act applying this Law declares that the jurisdiction is not participating in the health, performance and conduct process provided by Divisions 3 to 12 of Part 8.

In this Part, in so far as it refers to the handling of notifications, the National Law provides for a range of actions and decisions that may be taken by a National Board in relation to a notification. The Part also

provides flexibility for a board to alter the method by which a notification is being handled as the facts of the case emerge, without the need to ‘restart’ the notification management process.

Division 1 Preliminary

Consistent with the Ministerial Council decision on flexible complaints handling, and the definition of ‘co-regulatory jurisdiction’, Division 1 of the National Law will apply in a co-regulatory jurisdiction.

Part applicable to persons formerly under this Law

Clause 138 provides that Part 8 of the National Law (with the exception of Division 2 (mandatory notifications) and Division 7 (immediate action)), applies to persons formerly registered under this law as if the person were still registered under the National Law in the relevant health profession.

Part applicable to persons formerly registered under corresponding prior Act in certain circumstances

Clause 139 provides for the application in certain circumstances of Part 8 of the National Law to persons formerly registered in a health profession under a corresponding prior Act and who is not, or has not been, registered in the health profession under the National Law. Consistent with clause 138, Division 2 (mandatory notifications) and Division 7 (immediate action), do not apply to these persons.

Division 2 Mandatory notifications

Consistent with the Ministerial Council decision on flexible complaints handling, and the definition of ‘co-regulatory jurisdiction’, this division for mandatory notifications will apply in a co-regulatory jurisdiction.

The purpose of the model of mandatory notifications for the National Scheme, as endorsed by the Ministerial Council, is to increase protection of the public by enabling instances of serious misconduct by registered health practitioners and serious instances of impairment of students to be identified and dealt with appropriately by the National Boards. The

division exempts registered health practitioners from the reporting obligation in specified circumstances. Protection from liability is given to persons who make a notification in good faith under the National Law.

The threshold to be met to trigger the requirement to report notifiable conduct in relation to a registered health practitioner is high; and the practitioner or employer must have first formed a reasonable belief that the behaviour constitutes notifiable conduct. Similarly the threshold that triggers a mandatory notification in relation to students is set at a high level, that is, if a registered health practitioner or education provider reasonably believes that, due to an impairment, the student could place the public at substantial risk of harm in the course of the impaired student undertaking clinical training.

The provisions arise from a concern that in the past a failure to report notifiable conduct of registered health practitioners, or of an impaired student undertaking clinical training, may have prevented State and Territory Boards from taking appropriate action to protect the public.

Notifications under the mandatory reporting requirements are to be treated procedurally in the same way as all other notifications and with the same level of protections for notifiers and practitioners involved.

Definition of notifiable conduct

Clause 140 provides the definition of “notifiable conduct” used in this Division. Notifiable conduct means, in relation to a registered health practitioner, that the practitioner has:

- (a) practised the practitioner’s profession while intoxicated by alcohol or drugs, or
- (b) engaged in sexual misconduct in connection with the practice of the practitioner’s profession, or
- (c) placed the public at risk of substantial harm in the practitioner’s practice of the profession because the practitioner has an impairment, or
- (d) placed the public at risk of harm because the practitioner has practised the profession in a way that constitutes a significant departure from accepted professional standards.

Impairment, in relation to a person, is defined in clause 5 to mean that the person has a physical or mental impairment, disability, condition or

disorder (including substance abuse or dependence), that detrimentally affects or is likely to detrimentally affect:

- (a) for a registered health practitioner or an applicant for registration in a health profession – the person’s capacity to practise the profession, or
- (b) for a student – the student’s capacity to undertake clinical training:
 - (i) as part of the approved program of study in which the student is enrolled, or
 - (ii) arranged by an education provider.

Mandatory notifications by health practitioners

Clause 141 requires that a registered health practitioner (the first practitioner) who – in the course of practising his/her profession – forms a reasonable belief that another registered practitioner (the second practitioner) has behaved in a way that constitutes notifiable conduct, to report the notifiable conduct to the National Agency.

The clause also requires that a registered health practitioner who – in the course of practising his/her profession – forms a reasonable belief that a student has an impairment that, in the course of the student undertaking clinical training, may place the public at substantial risk of harm, to report the impairment to the National Agency.

The registered health practitioner must notify the National Agency as soon as practicable after he/she forms the reasonable belief.

It is a prescribed function of the National Agency to receive, and as soon as practicable refer, notifications to the relevant National Board for assessment.

Protections are afforded to a health practitioner who makes a mandatory notification. Clause 237 of the National Law provides protection from civil, criminal and administrative liability for persons who, in good faith, make a notification under the National Law. Clause 237(3) provides that the making of a notification does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct and nor is any liability for defamation incurred.

Subclause (3) provides that a contravention of the requirement to make a mandatory notification by a registered health practitioner does not constitute an offence but may constitute behaviour for which health, conduct or performance action may be taken against that practitioner.

Subclause (4) specifies the circumstances under which the first practitioner does not form a reasonable belief that the second practitioner has engaged in notifiable conduct for the purposes of clause 141(1), and therefore has no reporting obligation under subclause (2).

These circumstances exist where the first practitioner:

- (a) is employed or otherwise engaged by an insurer that provides professional indemnity insurance that relates to the second practitioner or student, and forms the reasonable belief that the second practitioner has behaved in a way that constitutes notifiable conduct, or the student has an impairment, as a result of a disclosure made during legal proceedings or in the provision of legal advice arising from the insurance policy, or
- (b) forms the reasonable belief in the course of providing advice in relation to the notifiable conduct or impairment for the purposes of legal proceedings or the preparation of legal advice, or
- (c) is also a legal practitioner and forms the reasonable belief in the course of providing legal services to the second practitioner or student in relation to a legal proceedings or the preparation of legal advice in which the notifiable conduct or impairment is an issue, or
- (d) forms the reasonable belief in the course of exercising functions as a member of a quality assurance committee, council, or other body approved or authorised under an Act of a participating jurisdiction, and is unable to disclose the information that forms the basis of the reasonable belief because a provision of that Act prohibits the disclosure of information, or
- (e) knows, or reasonably believes, that the National Agency has been notified of the notifiable conduct or impairment that forms the basis of the reasonable belief.

Mandatory notifications by employers

Clause 142 requires that an employer of a registered health practitioner notify the National Agency if the employer reasonably believes that the health practitioner has behaved in a way that constitutes notifiable conduct.

Protections are afforded to a person who makes a mandatory notification. Clause 237 of the National Law provides protection from civil, criminal and administrative liability for persons who, in good faith, make a notification under the National Law. Clause 237(3) provides that the

making of a notification does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct and nor is any liability for defamation incurred.

Subclause (2) requires, if the National Agency becomes aware that the employer has failed to notify the agency of notifiable conduct as required under clause 142(1) that the agency give a written report about the failure to the responsible Minister for the participating jurisdiction in which the notifiable conduct occurred. As soon as practicable after receiving a such a report, the responsible Minister must report the employer's failure to notify, to a health complaints entity, the employer's licensing authority, or another appropriate entity in that participating jurisdiction.

Mandatory notifications by education providers

Clause 143 requires an education provider to notify the National Agency, if the provider reasonably believes that a student:

- (a) enrolled in a program of study provided by the provider has an impairment that, in the course of the student undertaking clinical training as part of the program of study, may place the public at substantial risk of harm, or
- (b) for whom the education provider has arranged clinical training has an impairment that, in the course of the student undertaking the clinical training, may place the public at substantial risk of harm.

Protections are afforded to a person who makes the mandatory notification. Clause 237 of the National Law provides protection from civil, criminal and administrative liability for persons who, in good faith, make a notification under the National Law. Clause 237(3) provides that the making of a notification does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct and nor is any liability for defamation incurred.

While a contravention of this requirement does not constitute an offence, if an education provider does not comply with the requirements, the National Board that registered the student must publish the details of the failure on the board's website. Further, the National Agency may, on the recommendation of the board, include a statement about the failure in the annual report for the National Scheme that is tabled in the Parliaments of participating jurisdictions and the Commonwealth.

Division 3 Voluntary notifications

Grounds for voluntary notification

Clause 144 provides the grounds for which a voluntary notification (that is, a complaint) may be made about a registered health practitioner or student registered by a National Board.

Who may make voluntary notification

Clause 145 provides that any entity (that is an individual, a company, or an unincorporated body) may make a voluntary notification (complaint) about a registered health practitioner or student if the entity believes one or more of the grounds in clause 144 exists. To clarify, a person making a complaint is not expected to refer to any one or more of the grounds listed in the clause; the grounds are to guide the National Agency and National Boards in receiving and assessing complaints.

Division 4 Making a notification

How voluntary notification is made

Clause 146 provides that a notification (which includes voluntary notifications (complaints) or mandatory notifications under Division 2 of this part) may be made to the National Agency verbally or in writing. The notification must include the particulars, or details, about the matter on which the notification is made. If a notification is made verbally, the agency is required to make a written record of the notification.

It is a function of the National Agency in providing operational support to the National Boards, to receive all notifications and ensure a record of the notification is made in accordance with the agency's procedures, and that the notification is given to the relevant National Board.

National Agency to provide reasonable assistance to notifier

Clause 147 provides that the National Agency can provide reasonable assistance to an entity who wants to make a notification, if asked by the entity. This may include, but is not limited to, assisting the entity put the

notification in writing, or providing assistance to clarify the nature of the notification.

Division 5 Preliminary assessment

The model for handling notifications under the National Law includes that, at preliminary assessment, the National Board and a health complaints entity must agree on one or multiple courses of action, and in the event they cannot reach agreement, the most serious action proposed by either must be one of the actions taken. National Boards will be able to decide a matter at any time following a preliminary assessment and powers of investigation, health assessment and performance assessment will be available to the National Board to use in dealing with a notification. Notifiers will receive a written notice of the outcome of their notification including where no further action is being taken, except where specifically determined otherwise by the National Board. Registrants who are the subject of a notification will be provided written notice of the matter and the course of action being taken in dealing with the matter.

Referral of notification to National Board or co-regulatory authority

Clause 148 requires the National Agency, as soon as practicable after receiving a notification, and subject to the requirements of subclauses (2) and (3), to refer the notification to the National Board that registered the health practitioner or student.

Subclause (2) provides that if the behaviour that is the basis for the notification being made occurred, or is reasonably believed to have occurred, in a co-regulatory jurisdiction, the agency must not deal with the notification and must refer the notification to the co-regulatory authority for the co-regulatory jurisdiction. A “co-regulatory authority” for a co-regulatory jurisdiction is defined in clause 5 to mean an entity that is declared in the Act applying this Law in a co-regulatory jurisdiction to be a co-regulatory authority for the purposes of this Law.

This referral must happen as soon as practicable after the notification is received by the agency, and will enable the co-regulatory authority to deal with the notification under the relevant Act of that co-regulatory jurisdiction.

Subclause (3) applies if the behaviour that is the basis for the notification being made occurred, or is reasonably believed to have occurred, in more than one jurisdiction and one of the jurisdictions is a co-regulatory jurisdiction. If the registered health practitioner's principal place of practice is in the co-regulatory jurisdiction, then the agency must refer the notification to the co-regulatory authority. If not, then the notification is to be dealt with as per subclause (1), through referral to the relevant National Board.

Preliminary assessment

Clause 149 provides the procedural requirements for a National Board to conduct a preliminary assessment of the notification. Refer to Division 10 of this part for the actions that a board may decide to take after conclusion of a preliminary assessment.

Relationship with health complaints entity

Clause 150 clarifies the relationship between a National Board and a participating jurisdiction's health complaints entity, in relation to the receipt and preliminary assessment of a notification or complaint.

The clause requires boards and health complaints bodies to inform each other of notifications or complaints received that are relevant to the other. The board and health complaints entity must also consult each other on the handling of notifications and reach agreement on whether a notification should be taken further by the relevant National Board. If agreement on the proposed course of action cannot be reached, the more serious view of the matter will prevail and the board will carry the notification forward on that basis.

The clause also provides that, if an investigation, conciliation, or other action taken by a health complaints entity raises issues about the health, conduct or performance of a registered health practitioner, then the health complaints entity must give the National Board that registered the practitioner written notice of the issues.

The clause clarifies that if a notification, or part thereof, received by a National Board is referred to a health complaints entity, the board may decide to take no further action in relation to the notification or the part thereof until the health complaints entity gives the board written notice that it has finished dealing with it.

When National Board may decide to take no further action

Clause 151 provides the grounds for which a National Board may decide to take no further action in relation to a notification and requires a board to advise a notifier that no further action is to be taken, and the board's reasons.

The clause also provides that a decision by a National Board to decide to take no further action in relation to a notification does not prevent a board or adjudication body from taking the notification into consideration at a later time as part of a pattern of conduct or practice by the health practitioner. The ability for a board or adjudication body to contemplate whether an earlier notification indicates the emergence of a pattern of conduct or practice is considered an important safeguard for the protection of members of the public and will enable a National Board to take appropriate action to protect the public.

National Board to give notice of receipt of notification

Clause 152 requires a National Board to give written notice of the notification, and the nature of the notification, to the registered health practitioner or student, as soon as practicable after receiving the notification. However, a board is not required to give said notice if it reasonably believes that doing so would prejudice an investigation of the notification or place at risk a person's health or safety, or place a person at risk of intimidation or harassment.

To support operational efficiencies, the National Law enables the issue of combined notices, if a notice is required to be given under more than one provision of the law – see clause 248.

Division 6 Other matters

National Board may deal with notifications about same person together

Clause 153 provides that a National Board may deal with multiple notifications about the same registered health practitioner or student, together.

National Boards may deal with notifications collaboratively

Clause 154 provides that a National Board may deal with notifications about registered health practitioners, or students, collaboratively. For example, this could occur if a notification is received about a registered health practitioner who is registered in more than one profession, or if there is more than one registrant and the practitioners are registered in two or more different health professions, or if a person is registered as a student in more than one health profession, if there is more than one student and the students are registered in two or more different health professions.

Division 7 Immediate action

Definition for Division 7

Clause 155 provides the definition of “immediate action” in relation to a registered health practitioner or student, as used in this division of the National Law.

Power to take immediate actions

Clause 156 empowers a National Board to take immediate action in relation to a registered health practitioner if the board reasonably believes that the practitioner poses a serious risk to persons because of the practitioner’s conduct, performance or health, and the immediate action is necessary or desirable to protect public health or safety.

The clause similarly empowers a National Board to take immediate action in relation to a student registered by the board, if the board reasonably believes the student poses a serious risk to persons because the student has been charged with, or has been convicted or found guilty of, a serious offence as described by subclause (1)(b)(i)(A), or has, or may have, an impairment, or has, or may have, contravened a condition of the student’s registration or an undertaking given by the student to a National Board, and it is necessary to take immediate action to protect public health or safety.

A National Board is also empowered to take immediate action if the registered health practitioner’s registration was improperly obtained as described in subclause (1)(c), or if the registered health practitioner’s or student’s registration has been cancelled or suspended under the law of a

jurisdiction, whether in Australia or elsewhere that is not a participating jurisdiction.

Immediate action that consists of suspending or imposing conditions on the health practitioner's or student's registration, can only be taken if the board complies with clause 157.

Show cause process

Clause 157 requires that a 'show cause' process be taken in relation to a registered health practitioner or student, if a National Board is proposing to take immediate action that consists of suspending or imposing conditions on the health practitioner's or student's registration.

The stated time in the notice from the board to the practitioner or student about the proposed immediate action may be a matter of hours. A practitioner's or student's response to the notice issued under clause 157 may be written or verbal, and a National Board is to take the submission into account in deciding whether to take immediate action in relation to the practitioner or student.

The purpose of the show cause process is to afford the practitioner or student natural justice prior to a National Board deciding whether to take immediate action. It is not intended that this process delay or impede a National Board from taking immediate action, when it is warranted.

Notice to be given to registered health practitioner or student about immediate action

Clause 158 provides the procedural requirements for a National Board to issue written notice to a registered health practitioner or student, immediately after deciding to take immediate action, including that the notice must state, among other things, the practitioner's or student's appeal rights. An appeal is to be heard by a responsible tribunal, and it is expected that if an appeal is lodged, that it will be heard in a timely fashion.

Period of immediate action

Clause 159 provides for the period of immediate action.

Division 8 Investigations

Subdivision 1 Preliminary

When investigation may be conducted

Clause 160 provides that a National Board may investigate a registered health practitioner or student registered by the board, if it decides it is necessary or appropriate because it has received a notification about the practitioner, or on its own motion, or to ensure a practitioner or student is complying with conditions imposed on the practitioner's or student's registration, or an undertaking given to the board by the practitioner or student.

Registered health practitioner or student to be given notice of investigation

Clause 161 sets out the procedural requirements for a National Board to give a registered health practitioner or student written notice about the investigation, as soon as practicable after making the decision to investigate.

However, a board is not required to give said notice if it reasonably believes that doing so would prejudice an investigation of the notification or place at risk a person's health or safety, or place a person at risk of intimidation or harassment.

To support operational efficiencies, the National Law enables the issue of combined notices, if a notice is required to be given under more than one provision of the law – see clause 248.

Investigation to be conducted in timely way

Clause 162 requires a National Board to ensure an investigator it directs to conduct an investigation does so as quickly as practicable, having regard to the nature of the matter to be investigated.

Subdivision 2 Investigators

Appointment of investigators

Clause 163 provides the procedural arrangements for the appointment of investigators. Schedule 5 to the National Law sets out the powers and responsibilities of an investigator.

Identity card

Clause 164 provides the procedural arrangements for the issue of identity cards for investigators, and the return of the identity card on cessation of appointment as an investigator.

Display of identity card

Clause 165 sets out the requirements for an investigator to display his/her identity card.

Subclause (1) provides that an investigator may exercise a power in relation to another person only if the investigator first produces his/her identity card for the person's inspection, or has the identity card displayed so it is clearly visible to the person.

Subclause (2) requires that, if for any reason it is not practicable to comply with subclause (1) before exercising the power, the investigator must produce the identity card for the other person's inspection at the first reasonable opportunity.

Subdivision 3 Procedure after investigation

Investigator's report about investigation

Clause 166 requires an investigator to give a written report about the investigation to the relevant National Board as soon as practicable after completing an investigation under this division. The report must include the investigator's findings and the investigator's recommendations about any action to be taken in relation to the health practitioner or student.

Decision by National Board

Clause 167 requires that a National Board, after considering the investigator's report, must decide to either take no further action in relation to the matter, or to do either or both of the following:

- take the action the board considers necessary or appropriate under another division of the National Law (for example, see Division 9 (health and performance assessments), Division 10 (action by National Board), Division 11 (panels), Division 12 (referral to responsible Tribunal))
- refer the matter to another entity for investigation or action.

Division 9 Health and performance assessments

Definition

Clause 168 provides the definition of “assessment” for this division.

Requirement for health assessment

Clause 169 provides that a National Board may require a registered health practitioner or student to undergo a health assessment, if the board reasonably believes because of a notification or for any other reason, that the practitioner or student has or may have an impairment.

Requirement for performance assessment

Clause 170 provides that a National Board may require a registered health practitioner to undergo a performance assessment, if the board reasonably believes because of a notification or for any other reason, that the way the practitioner practises the profession is or may be unsatisfactory.

Appointment of assessor to carry out assessment

Clause 171 provides for the appointment and payment of an assessor.

For a health assessment, the assessor must be a registered medical practitioner or a psychologist, who is not a member of the National Board.

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, but who is not a member of the board.

An assessor may ask another health practitioner to assist the assessor in carrying out the assessment of the registered health practitioner or student.

Notice to be given to registered health practitioner or student about assessment

Clause 172 requires a National Board to issue a written notice to the registered health practitioner or student who is required to undergo an assessment. The clause identifies the matters that the written notice must state.

Assessor may require information or attendance

Clause 173 empowers an assessor to, by written notice, require the health practitioner or student to provide information or attend before the assessor, for the purposes of conducting an assessment.

Inspection of documents

Clause 174 provides that, if a document is produced to an assessor, following a request under clause 173, the assessor may inspect the document, make a copy or, or take an extract from, the document, and keep the document while it is necessary for the assessment.

The clause also provides that if the assessor keeps the document, the assessor must permit a person otherwise entitled to possession of the document, to inspect, make a copy of, or take an extract from, the document at a reasonable time and place decided by the assessor.

Report from assessor

Clause 175 requires the assessor to give the National Board a report about the assessment, as soon as practicable after carrying out the assessment.

Copy of report to be given to health practitioner or student

Clause 176 provides the procedural requirements for a National Board to give a copy of the assessor's report to the registered health practitioner or student, as soon as practicable after receiving the report, including

arrangements for providing a health assessment report in such a way as to minimise the impact of a report that may be prejudicial to the practitioner's or student's health or wellbeing.

Decision by National Board

Clause 177 provides that a National Board, after considering the assessor's report and the discussions held with the registered health practitioner or student, may decide to:

- take the action the board considers necessary or appropriate under another division of the National Law (for example, see Division 8 (investigations), Division 10 (action by National Board), Division 11 (panels), Division 12 (referral to responsible tribunal))
- refer the matter to another entity for investigation or action
- take no further action in relation to the matter.

Division 10 Action by National Board

National Board may take action

Clause 178 empowers a National Board to take relevant action in relation to a registered health practitioner or student on the basis of its reasonable belief – because of a notification or for any other reason (ie. on own motion) – that:

- (a) the way a registered health practitioner registered by the board practises the health profession, or the practitioner's professional conduct, is or may be unsatisfactory, or
- (b) a registered health practitioner or student registered by the board has or may have an impairment, or
- (c) a student has been charged with an offence, or has been convicted or found guilty of an offence, that is punishable by 12 months imprisonment or more, or
- (d) a student has or may have contravened a condition of the student's registration or an undertaking given by the student to a National Board.

For example, a board may form a reasonable belief about a matter described in (a) to (d) above, following its preliminary assessment of a notification.

However, the board may only decide to take relevant action if the matter is not required to be referred to a responsible tribunal (refer to Division 12, Part 8) and the board decides it is not necessary or appropriate to refer the matter to a panel (see Division 11, Part 8).

Relevant action, in relation to a registered health practitioner or student, is defined in the clause as meaning one or more of the following:

- (a) to caution the registered health practitioner or student
- (b) to accept an undertaking from the registered health practitioner or student
- (c) to impose conditions on the practitioner's or student's registration (examples of conditions a board may decide to impose are included in clause 178(2)(c))
- (d) to refer the matter to another entity, including, for example, a health complaints entity, for investigation or other action.

If the National Board decides to impose a condition on the registered health practitioner's or student's registration, the board must also decide a review period for the condition.

Note that the National Board may decide to take no action in relation to a notification as per clause 151 of the National Law.

Show cause process

To ensure natural justice is afforded to the registered health practitioner or student, clause 179 requires that a 'show cause' process be taken in relation to a registered health practitioner or student, if a National Board is proposing to take relevant action in accordance with clause 178.

A health practitioner's or student's response to the written notice issued under this clause may be written or verbal. A National Board is required to take any submission into account prior to making a decision to take the proposed relevant action or other relevant action, or to refer the matter to another entity, or to take no action.

However, subclause (3) states that the show cause process does not apply if a National Board is proposing to take the relevant action, and has, in

relation to the matter, investigated the registered health practitioner or student under Division 8 or conducted a health or performance assessment under Division 9. These divisions have their own processes for a board notifying a registered health practitioner or student and for the practitioner or student to make a submission in relation to the notice.

Notice to be given to health practitioner or student and notifier

Clause 180 provides the procedural requirements for a National Board to give written notice to the registered health practitioner or student, and, if the decision was a result of a notification, give a written notice to the notifier.

Division 11 Panels

Panel hearings will be convened only if a National Board decides it is necessary or appropriate for a panel to hear a matter, and these hearings will not be open to the public. Registrants may have legal representation in panel hearings only with leave of the panel.

The term “panel” is defined in clause 5 to mean a health panel, or a performance and professional standards panel.

The term “health panel” means a panel established under clause 181, and a “performance and professional standards panel” means a panel established under clause 182.

Establishment of health panel

Clause 181 provides that a National Board may establish a health panel, to hear a matter in relation to a registered health practitioner or student, if the board reasonably believes because of a notification or for any other reason, that a registered health practitioner or student has or may have an impairment, and the board decides it is necessary or appropriate for the matter to be referred to a panel.

The clause includes the membership requirements for the panel.

Establishment of performance and professional standards panel

Clause 182 provides that a National Board may establish a performance and professional standards panel, to hear a matter in relation to a registered health practitioner, if the board reasonably believes because of a notification or for any other reason, that the way a registered health practitioner practises the health profession is or may be unsatisfactory, or the practitioner's professional conduct is or may be unsatisfactory, and the board decides it is necessary or appropriate for the matter to be referred to the panel.

The clause includes the membership requirements for the panel.

List of approved persons for appointment to panels

Clause 183 provides for the appointment of individuals to a list of persons approved to be appointed as members of health panels, or performance and professional standards panels.

Notice to be given to registered health practitioner or student

Clause 184 provides the requirements for a panel to give notice of its hearing of a matter to the registered health practitioner or student who is the subject of the hearing.

Procedure of panel

Clause 185 provides that a panel may decide its own procedures, subject to the requirements set out in subclauses (2) and (3).

Legal representation

Clause 186 provides that at a panel hearing, the registered health practitioner or student who is the subject of the hearing, may be accompanied by an Australian legal practitioner, or another person (for example a support person). The person accompanying the registered health practitioner or student may appear on behalf of the practitioner or student, but only with the leave of the panel. Subclause (3) clarifies the circumstances under which a panel may decide to grant the leave, that is, only if the panel thinks it is appropriate in the particular circumstances. In effect, representation is not the default position – accompaniment is.

Submission by notifier

Clause 187 provides that, if a matter being heard before a panel relates to a notification, the notifier may with the leave of the panel, make a submission to the panel about the matter.

Panel may proceed in absence of registered health practitioner or student

Clause 188 provides that at a hearing, a panel may proceed in the absence of the registered health practitioner or student who is the subject of the proceedings, if the panel reasonably believes the practitioner or student has been given notice of the hearing.

Hearing not open to the public

Clause 189 provides that a panel hearing is not open to the public.

Referral to responsible tribunal

Clause 190 requires a panel to stop hearing a matter and require the National Board that established the panel to refer the matter to a responsible tribunal in the following circumstances:

- the practitioner or student who is the subject of the hearing asks the panel for the matter to be referred to a responsible tribunal
- if, for a registered health practitioner, the panel reasonably believes the evidence demonstrates the practitioner may have behaved in a way that constitutes professional misconduct
- if, for a registered health practitioner, the panel reasonably believes the evidence demonstrates the practitioner's registration may have been improperly obtained.

Clause 5 defines the term "professional misconduct".

Decision of panel

Clause 191(1) provides for the following decisions of a panel, after hearing a matter about a registered health practitioner or student:

- that the practitioner has no case to answer and no further action is to be taken, or

- one or more of the following:
 - (i) the practitioner has behaved in a way that constitutes unsatisfactory professional performance
 - (ii) the practitioner has behaved in a way that constitutes unprofessional conduct
 - (iii) the practitioner has an impairment
 - (iv) the matter must be referred to a responsible Tribunal (for example, if the panel decides under clause 190(b) that the practitioner has behaved in a way that constitutes professional misconduct, and therefore the matter must be referred to the responsible Tribunal)
 - (v) the matter must be referred to another entity for investigation or other action (eg to a health complaints entity).

Subclause (2) expressly provides for the decisions of a health panel, after hearing a health matter about a student:

- the student has an impairment
- the matter must be referred to another entity for investigation or other action
- the student has no case to answer and no further action is to be taken.

Clause 5 defines the terms “unsatisfactory professional performance”, “unprofessional conduct” and “impairment”.

Subclause (3) provides the actions that a panel may decide are required in relation to a registered health practitioner or student who has been the subject of a hearing, if the panel has decided that the practitioner or student has an impairment, or that the practitioner has behaved in a way that constitutes unsatisfactory professional performance, or unprofessional conduct as per subclause (1).

If a panel decides to impose a condition on a registered health practitioner’s or student’s registration, the panel must also decide a review period for the condition. The period specified for the review period is at the panel’s discretion.

Subclause (5) provides that a decision by a panel that a registered health practitioner has no case to answer in relation to a matter, does not prevent a National Board or adjudication body from taking the notification into consideration at a later time as part of a pattern of conduct or practice by

the health practitioner. The ability for a board or adjudication body to contemplate whether an earlier notification indicates the emergence of a pattern of conduct or practice is considered an important safeguard for the protection of members of the public.

Notice to be given about panel's decision

Clause 192 provides the procedural requirements for a panel to give written notice of its decision to the National Board that established it, as soon as practicable after making a decision under clause 191.

Division 12 Referring matter to responsible tribunals

Tribunal hearings will be public hearings undertaken by the responsible tribunal nominated by each State and Territory. The method of determining the relevant tribunal to hear a matter is by primary practice address of the registrant if the conduct the subject of the matter being heard had occurred in more than one State or Territory, otherwise it will be the State or Territory in which the conduct occurred. Any appeal against a decision made by a responsible tribunal will be appealable under the jurisdiction currently available in each State and Territory.

Matters to be referred to responsible tribunal

Clause 193 provides the procedural requirements for referral of matters by a National Board to a responsible tribunal, including that written notice of the referral be given to the registered health practitioner or student to whom the matter relates.

Parties to the proceedings

Clause 194 specifies the parties to the proceedings relating to a matter being heard by a responsible tribunal.

Costs

Clause 195 provides that the responsible tribunal may make any order about costs it considers appropriate for the proceedings.

Decision by responsible tribunal about registered health practitioner

Clause 196 sets out the decisions a responsible tribunal may make after hearing a matter about a registered health practitioner.

After hearing a matter about a registered health practitioner, a responsible tribunal may decide:

- the practitioner has no case to answer and no further action is to be taken in relation to the matter, or
- one or more of the following:
 - (i) the practitioner has behaved in a way that constitutes unsatisfactory professional performance,
 - (ii) the practitioner has behaved in a way that constitutes unprofessional conduct,
 - (iii) the practitioner has behaved in a way that constitutes professional misconduct,
 - (iv) the practitioner has an impairment,
 - (v) the practitioner's registration was improperly obtained

If a responsible tribunal makes a decision outlined in (i) to (v) above, the tribunal may decide to do one or more of the following:

- (a) caution or reprimand the practitioner
- (b) impose a condition on the practitioner's registration (examples of conditions that may be imposed are included in the provision)
- (c) require the practitioner to pay a fine of not more than \$30,000 to the National Board that registers the practitioner,
- (d) suspend the practitioner's registration for a specified period
- (e) cancel the practitioner's registration.

If a responsible tribunal decides to impose a condition on a registered health practitioner's registration, the tribunal must also decide a review period for the condition. The period specified for the review period is at the tribunal's discretion.

If the tribunal decides to cancel a person's registration under the National Law, or the person does not hold registration under the National Law, the tribunal may also decide to disqualify the person from applying for

registration as a registered health practitioner for a specified period, or prohibit the person from using a specified title or providing a specified health service. To clarify, a specified title is not limited to the titles protected under this law (such as under clause 113).

Decision by responsible tribunal about student

Clause 197 sets out the decisions a responsible tribunal may make after hearing a matter about a student.

A responsible tribunal may decide that the student has an impairment, or that the student has no case to answer and no further action is to be taken in relation to the matter.

If the responsible tribunal decides the student has an impairment, the tribunal may decide to impose a condition on the student's registration or suspend the student's registration.

Relationship with Act establishing responsible tribunal

Clause 198 provides that this division applies despite any provision to the contrary of the Act that establishes the responsible tribunal but does not otherwise limit the Act.

Division 13 Appeals

Consistent with the Ministerial Council decision on flexible complaints handling, and the definition of 'co-regulatory jurisdiction', this division for appeals in relation to appellable decisions, will apply in a co-regulatory jurisdiction. Some jurisdictions may be more familiar with the terminology 'reviewable decision', whereas, the National Law uses 'appellable decision'.

Appellable decisions

Clause 199 identifies the decisions (an appellable decision) that a person may appeal against, to an appropriate responsible tribunal. A person who is the subject of an appellable decision may lodge the appeal.

The appellable decisions under the National Law are as follows:

- (a) a decision by a National Board to refuse to register the person
- (b) a decision by a National Board to refuse to endorse the person's registration
- (c) a decision by a National Board to refuse to renew the person's registration
- (d) a decision by a National Board to refuse to renew the endorsement of the person's registration
- (e) a decision by a National Board to impose or change a condition on a person's registration or the endorsement of the person's registration, other than a condition relating to the person's qualification for general registration in the health profession, or a condition imposed under clause 112(3)(a), ie any condition to which the registration was subject immediately before a renewal
- (f) a decision by a National Board to refuse to change or remove a condition imposed on the person's registration or the endorsement of the person's registration
- (g) a decision by a National Board to refuse to change or revoke an undertaking given by the person to the board
- (h) a decision by a National Board to suspend the person's registration
- (i) a decision by a panel to impose a condition on the person's registration
- (j) a decision by a health panel to suspend the person's registration
- (k) a decision by a performance and professional standards panel to reprimand the person.

As per the definition of "responsible tribunal" in clause 5, each participating jurisdiction declares the tribunal or court that will be the responsible tribunal for that jurisdiction, for the purposes of the National Law. Thus, there will be a responsible tribunal from each participating State and Territory that is granted jurisdiction to hear matters under the National Law.

Subclause (2) clarifies which of these responsible tribunals has jurisdiction to hear an appellable decision –

- for a decision to take health, conduct or performance action, the appropriate responsible tribunal is the tribunal in the participating jurisdiction in which the behaviour occurred, or if the behaviour

occurred in more than one jurisdiction, then it is the responsible tribunal for the participating jurisdiction in which the health practitioner's principal place of practice is located

- for another decision in relation to a registered health practitioner, it is the responsible tribunal in the jurisdiction in which the health practitioner's principal place of practice is located
- for another decision in relation to a student, it is the responsible tribunal in the jurisdiction in which the student is studying or undertaking clinical training
- for a decision in relation to another person (for example, an applicant not granted registration), it is the responsible tribunal in which the person lives, or in the case of an overseas person, it is the responsible tribunal for the participating jurisdiction nominated by the National Board that made the appellable decision, and which is specified in the required notice given to the person about the appellable decision. To clarify, a national board may delegate registration decisions to a state or territory board – in which case the nominated tribunal would be the one located in the same jurisdiction as the state or territory board that made the decision.

Parties to the proceedings

Clause 200 specifies the parties to the proceedings relating to an appellable decision being heard by a responsible tribunal.

Costs

Clause 201 provides that the responsible tribunal may make any order about costs it considers appropriate for the proceedings.

Decision

Clause 202 provides that after hearing the matter, the responsible tribunal may decide to confirm the appellable decision, amend the appellable decision, or substitute another decision for the appellable decision.

Subclause (2) clarifies that in substituting another decision for the appellable decision, the responsible tribunal has the same powers as the entity that made the appellable decision.

Relationship with Act establishing responsible tribunal

Clause 203 provides that this division applies despite any provision to the contrary of the Act that establishes the responsible tribunal but does not otherwise limit the Act.

Division 14 Miscellaneous

Consistent with the Ministerial Council decision on flexible complaints handling, and the definition of ‘co-regulatory jurisdiction’, this division, which includes the requirement for an adjudication body to notify the National Boards of its decisions in relation to a health practitioner or student, will apply in a co-regulatory jurisdiction.

Notice from adjudication body

Clause 204 requires an adjudication body, other than a Court, to give written notice to a National Board, if it makes a decision in relation to a health practitioner or student registered in a health profession. Subclause (2) identifies what the written notice must state.

The term “adjudication body” is defined in clause 5 to mean:

- (a) a panel, or
- (b) a responsible tribunal, or
- (c) a Court, or
- (d) an entity of a co-regulatory jurisdiction that is declared in the Act applying this Law to be an adjudication body for the purposes of this Law.

This clause provides the mechanism through which National Boards are formally advised of decisions about registrants that are made by other entities – particularly if a matter is being dealt with in a co-regulatory jurisdiction. While a Court is not compelled under this clause to provide the written notice described in subclause (2), a National Board may well be a party to proceedings involving registered health practitioners or students being heard by a Court, and be given a court order (if made) in order to implement the Court’s decision, as required under clause 205.

Implementation of decisions

Clause 205(1) requires that a National Board give effect to a decision of an adjudication body, unless the decision is stayed on appeal.

Without limiting subclause (1) if the notice given to the board states that a health practitioner's or student's registration is cancelled, the board must remove the practitioner's or student's name from the appropriate register kept by the board – see clause 222 (National Registers for health practitioners), clause 223 (Specialists Registers), and clause 229 (student registers).

National Board to give notice to registered health practitioner's employer

Clause 206 sets out the procedural requirements for a National Board to give written notice to a registered health practitioner's employer. That is, if a board decides to take health, conduct or performance action against a registered health practitioner, or a board receives notice from an adjudication body or from a co-regulatory authority that health, conduct or performance action is being taken, and the board has been advised by the practitioner that he/she is employed by another entity (ie is not self-employed). Note that under clause 132, a board may ask a registrant to give the board information about whether or not the practitioner is employed by another entity, and if so, for the employer's details.

Effect of suspension

Clause 207 provides for the effect of suspension of a person's registration as a health practitioner or student.

Part 9 Finance

Australian Health Practitioner Regulation Agency Fund

Clause 208 establishes the Australian Health Practitioner Regulation Agency Fund (the Agency Fund), to be administered by the National Agency. The Agency Fund is to have a separate account for each National Board. The National Agency may establish accounts with any financial institution for money in the Fund, and the Fund does not form part of the

consolidated fund or account of a participating jurisdiction or the Commonwealth.

The National Law provides a transitional arrangement for the continuance of the Australian Health Practitioner Regulation Agency Fund established under Act A – see Part 9, clause 267.

Payments into Agency Fund

Clause 209 provides for payments into the Agency Fund. Any money paid into the Agency Fund, for or on behalf of a National Board, must be paid into the board's account kept within the Agency Fund.

Payments out of Agency Fund

Clause 210 provides for payments out of the Agency Fund.

Subclause (1) identifies for what purpose payments may be made from the Agency Fund.

Subclause (2) provides that a payment may be made from the Agency Fund to a responsible tribunal to meet the expenses of the responsible tribunal in performing functions under the National Law.

Subclause (3) provides that a payment under subclause (1) may be made from a National Board's account kept within the Agency Fund only if the payment is in accordance with the board's budget or otherwise approved by the board. As provided for in clause 26 of the National Law, the National Boards, as part of a health profession agreement with the National Agency, will have an annual budget.

Investment of money in Agency Fund

Clause 211 provides that the National Agency may invest money in the Agency Fund in the way it considers appropriate.

Subclause (2) provides that that National Agency may invest money in a National Board's account kept within the Agency Fund only after consulting the board about the investment.

Subclause (3) requires that an investment under this clause must be in Australian money and undertaken in Australia.

Subclause (4) requires that the National Agency must use its best efforts to invest money in the Agency Fund in a way it considers is most appropriate

in all the circumstances. Subclause (5) requires that the National Agency must keep records that show it has met the requirement in subclause (4).

Subclause (6) requires the National Agency to hold a security, safe custody acknowledgement or other document evidencing title accepted, guaranteed or issued for an investment arrangement.

Duties of National Agency and Boards with respect to financial management

Clause 212 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 to clause 26 of the National Law). This clause therefore requires a National Board to ensure its operations are efficient, effective, and economical, and to take any necessary action to ensure the National Agency is able to comply with its financial management responsibilities under the proposed law.

Part 10 Information and privacy

Division 1 Privacy

Application of Commonwealth Privacy Act

Clause 213 provides for the *Privacy Act 1988* of the Commonwealth, as in force from time to time, to apply as a law of a participating jurisdiction for the purposes of the National Scheme, but with modifications to ensure that the application of the Privacy Act is as a law of each State and Territory, and not as a Commonwealth law and that the scheme is administered by a State or Territory authority.

Therefore, the Privacy Act applies as if a reference to the Commonwealth Office of the Privacy Commissioner were a reference to the Office of the National Health Practitioners Privacy Commissioner, and as if a reference

to the Commonwealth Privacy Commissioner were a reference to the National Health Practitioners Privacy Commissioner.

Further modifications will be needed, as aspects of the Privacy Act are either not relevant to the National Scheme, or will need to be tailored to ensure that the privacy protections work efficiently and effectively for the scheme. These modifications are provided for by way of National Law regulations, which are to be developed prior to the start of the National Scheme on 1 July 2010 – subject to the passage of Bill B.

This approach is to ensure the Commonwealth's National Privacy Principles and privacy regime are adopted, and modified as appropriate, for the purposes and nature of the National Scheme, while giving registrants and consumers the consistent national protection needed in relation to information collected by the National Boards and the National Agency.

Division 2 Disclosure of information and confidentiality

Definition

Clause 214 provides the definition of “protected information” to mean information that comes to a person’s knowledge in the course of, or because of, the person exercising functions under this Law.

Application of Commonwealth FOI Act

Clause 215 provides for the *Freedom of Information Act 1982* of the Commonwealth, as in force from time to time, to apply as a law of a participating jurisdiction to the National Scheme subject to the modifications provided by subclause (2), and any further modification made by the regulations. This is consistent with the approach outlined in clause 213 with regards to privacy protections for the National Scheme.

Duty of confidentiality

Clause 216 imposes a duty of confidentiality on a person who is, or has been, exercising functions under the National Law. The clause also provides for disclosure of information in limited circumstances, ie if the disclosure is provided for in the exercise of a function or for the purposes of the proposed law, or to a co-regulatory authority, or as required or

permitted by another law, or with agreement of the person to whom the information relates, or in a form that does not identify a person, or is otherwise available to the public, or otherwise authorised by the Ministerial Council.

A maximum penalty of \$5,000 in the case of an individual, or \$10,000 in the case of a body corporate, may apply to a breach of this clause.

Disclosure of information for workforce planning

Clause 217 provides for the Ministerial Council to request that a National Board collects information that is relevant to workforce planning and that a board must provide any such requested information in a way that does not identify any registered practitioner. When a board is requested to collect workforce planning information for Ministerial Council, the board must make the request of practitioners. However, there is no requirement for registered health practitioners to provide this information. Any workforce planning information received by Ministerial Council through this clause must be made publicly available in a timely manner.

Disclosure of information for information management and communication purposes

Clause 218 provides for disclosure of protected information to an information management agency subject to authorisation being provided by Ministerial Council. An information management agency may include an agency that has functions providing for the identification of health practitioners and is likely to include a national e-health body in the future, subject to Ministerial Council authorisation following consideration of the privacy protections in place and the need for the protected information.

Disclosure of information to other Commonwealth, State and Territory entities

Clause 219 provides for protected information to be released to relevant Commonwealth, State and Territory entities subject to the person releasing the information from the National Scheme being satisfied that the privacy of person to whom the protected information relates will be protected and that the provision of the protected information is necessary.

Disclosure to protect health or safety of patients or other persons

Clause 220 provides for the disclosure of protected information where the National Board believes that a registered health practitioner poses or may pose a risk to public health or that the health or safety of patients is or may be at risk. Relevant protected information may be released to a Commonwealth, State or Territory entity that is required to take action in relation to the risk.

Disclosure to registration authorities

Clause 221 provides for disclosure of protected information to a registration authority if the information is necessary to the exercise of the registration authority's functions.

Division 3 Registers in relation to registered health practitioner

National Registers

Clause 222 requires the National Boards in conjunction with the National Agency to keep public national registers of all the registered health practitioners, other than specialist health practitioners who have public specialist registers provided for at clause 223. The table in subclause (2) identifies the public national registers and their divisions. In addition, each National Board must keep a public national register that includes the names of health practitioners who have had their registration cancelled by an adjudication body.

Specialists Registers

Clause 223 provides for public specialist registers to be kept for specialist medical practitioners, specialist dentists and any other health profession or division of a health profession approved for specialist registration by the Ministerial Council under clause 13. In addition, each National Board must keep a public national register that includes the names of all specialist health practitioners whose registration has been cancelled by an adjudication body.

Way registers to be kept

Clause 224 provides that the registers are to be kept up to date and accurate, and in way that the National Agency considers appropriate.

Information to be recorded in National Register

Clause 225 specifies the information for each registered health practitioner that must be included in the national registers and specialist registers that will be available to the public. This information includes all relevant information that a member of the public or an employer should require in relation to each registrant such as the period of registration, the type of registration and any conditions on the practitioner's registration.

National Board may decide not to include or to remove certain information in register

Clause 226 provides for the National Board to determine not to include or remove certain information from the national register or the specialist register because either the board believes it is necessary to protect the practitioner's privacy or the practitioner has requested it not be included and the board believes that including it would present a serious risk to health or safety of the practitioner.

A National Board is also empowered to remove a reprimand from the national register or the specialist register because it is considered no longer necessary or appropriate.

Register about former registered health practitioners

Clause 227 provides that National Boards must keep a public national register that includes the name of any former registered health practitioner who has had their registration cancelled by an adjudication body. The register must also provide the grounds upon which the registration was cancelled and if the hearing that resulted in cancellation was open to the public then the details of the conduct that led to the cancellation.

Inspection of registers

Clause 228 provides for the National Agency to ensure that the registers kept by each National Board are open for inspection by members of the public and that they are accessible through both the internet and in person

at any of the agency's offices. Additionally the National Agency may provide on request an extract from the register for a fee or a copy of the register, provided it is satisfied it would be in the public interest to do so.

Division 4 Student registers

Student registers

Clause 229 provides for each National Board, in conjunction with the National Agency, to keep a student register that is not open for inspection by the public. Subclause (2) identifies the information that must be included for each student whose name appears in the register.

Information to be recorded in student register

Clause 230 provides for each National Board to have its student register kept in a way the National Agency considers appropriate. The details to be recorded for each registered student are specified.

Division 5 Other records

Other records to be kept by National Boards

Clause 231 provides for a record of information that must be kept for current and former health practitioners, by National Boards. This provision does not prevent a National Board from keeping other information relevant to their functions. These records are separate to the requirements of the public national registers, and public specialists registers.

Record of adjudication decisions to be kept and made publicly available

Clause 232 provides for a National Board to publish the decisions of panels and tribunals following hearing into matters that relate to registered health practitioners and students. The publication of these decisions must be done in a way that does not identify the persons involved in the matter unless the decision was made by a tribunal and the hearing was open to the public.

Division 6 Unique identifier

Unique identifier to be given to each registered health practitioner

Clause 233 requires a National Board give a unique identifier to each health practitioner when first registering. This unique identifier is to be used for any subsequent registrations by the same person.

Part 11 Miscellaneous

Division 1 Provisions relating to persons exercising functions under Law

General duties of persons exercising functions under this Law

Clause 234 imposes a duty on a person exercising functions under the National Law to be accountable for his/her actions and to act honestly and with integrity when exercising his/her functions.

Application of Commonwealth Ombudsman Act

Clause 235 provides for the *Ombudsman Act 1976* of the Commonwealth, as in force from time to time, to apply as a law of a participating jurisdiction to the National Scheme, subject to the modifications provided by subclause (2), and any further tailoring made by the regulations. The regulations will be made prior to 1 July 2010 – subject to passage of Bill B. This is consistent with the approach outlined in clause 213 with regards to privacy protections, and in clause 215 with regards to freedom of information arrangements, for the National Scheme.

Protection from personal liability for persons exercising functions

Clause 236 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.

This clause also defines “protected person” in relation to entities exercising functions under the National Law. A protected person means a member of the Advisory Council, a member of the Agency Management Committee, a member of a National Board or a committee of the National Board, a member of an external accreditation entity, a member of the staff of the National Agency, a consultant or contractor engaged by the National Agency, a person appointed by the National Agency to conduct an examination or assessment for a National Board, or a person employed or engaged by an external accreditation entity to assist it with its accreditation function. An Investigator or an Inspector appointed under the National Law is afforded these protections, as they are appointed as staff or contractors by the National Agency.

Protection from liability for persons making notification or otherwise providing information

Clause 237 provides protection from liability for persons making a notification (mandatory or voluntary), or otherwise providing information.

Subclause (1) provides that a person is not liable, who, in good faith makes a notification under the National Law, or gives information in the course of an investigation or for another purpose under the National Law to a person exercising functions under the National Law.

Subclause (2) provides that the person is not liable, civilly, criminally or under an administrative process, for giving the information. Further, subclause (3) provides that the making of the notification or giving of the information does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct, nor is any liability for defamation incurred by the person.

Subclause (4) specifies that the protection given to the person by this clause extends to a person who, in good faith, provided the person with any information on the basis of which the notification was made or the information was given, and a person who, in good faith, was otherwise concerned in the making of the notification or giving of the information.

Division 2 Inspectors

Functions and powers of inspectors

Clause 238 provides that an Inspector appointed under the National Law has the function of conducting investigations to enforce compliance with the National Law. Schedule 6 to the National Law sets out the powers and responsibilities of an Inspector.

Appointment of inspectors

Clause 239 provides the procedural arrangements for the appointment of inspectors, including that a National Board may appoint members of the National Agency's staff, or contractors engaged by the National Agency, as inspectors.

Identity card

Clause 240 provides the procedural arrangements for the issue of identity cards for inspectors, and the return of the identity card on cessation of appointment as an inspector.

Display of identity card

Clause 241 sets out the requirements for an inspector to display his/her identity card.

Subclause (1) provides that an inspector may exercise a power in relation to another person only if the inspector first produces the inspector's identity card for the other person's inspection, or has the identity card displayed so it is clearly visible to the other person.

Subclause (2) requires that, if for any reason it is not practicable to comply with subclause (1) before exercising the power, the inspector must produce the identity card for the other person's inspection at the first reasonable opportunity.

Division 3 Legal proceedings

Proceedings for offences

Clause 242 provides that a proceeding for an offence against the National Law is to be by way of a summary proceeding before a court of summary jurisdiction.

Conduct may constitute offence and be subject of disciplinary proceedings

Clause 243 provides that, if a person's behaviour constitutes an offence against the National Law, or another Act, a National Board may take relevant action in relation to the behaviour, even if the conduct is being dealt with by another entity. For example, if a registered health practitioner is charged with a criminal offence that is being investigated by police, a board may also decide that the subject of the alleged offence constitutes professional misconduct, unsatisfactory professional performance, or unprofessional conduct. If so, the board is not prevented from taking relevant action while the police conducts its investigation.

Subclause (2) provides that a health complaints entity and a National Board may take action in relation to the same behaviour, at the same time.

Evidentiary certificates

Clause 244 allows the chief executive officer of the National Agency to provide a certificate to a Court that certifies the things mentioned in the section. The Court is then able to accept the certificate as evidence of the things in the certificate. This has the effect of removing the need for the prosecution to prove the things stated in the certificate. This provision does not remove the right of the accused to contest the things stated in the certificate.

Division 4 Regulations

National regulations

Clause 245 provides a general head of power for regulations (National Law regulations) to be made under, and for the purposes of, the National Law, by the Ministerial Council.

National law regulations are to be published by the Victorian Government Printer in accordance with the arrangements for the publication of the making of regulations in Victoria. The clause further specifies that a National Law regulation commences on the day or days specified in the regulation for its commencement (being not earlier than the date it is published).

Parliamentary scrutiny of national regulations

Clause 246 provides for a disallowance process for a regulation made under the National Law.

Subclause (1) provides that a regulation made under the National Law may be disallowed in a participating jurisdiction by a House of the 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 was published by the Victorian Government Printer.

Subclause (2) provides that a regulation disallowed under subclause (1) does not cease to have effect in the participating jurisdiction, or any other participating jurisdiction, unless the regulation is disallowed in a majority of the participating jurisdictions.

Subclause (3) specifies that if a regulation is disallowed in a majority of the participating jurisdictions, it ceases to have effect in all participating jurisdictions on the date of its disallowance in the last of the jurisdictions forming the majority.

Subclause (4) defines the term “regulation” used in this clause to mean a provision of a regulation.

Effect of disallowance of national regulation

Clause 247 sets out the effect of disallowance of National Law regulations.

Subclause (1) provides that the disallowance of a regulation in a majority of jurisdictions has the same effect as a repeal of the regulation.

Subclause (2) specifies that if a regulation ceases to have effect under clause 246 any law or provision of a law repealed or amended by the regulation is revived as if the disallowed regulation had not been made.

Subclause (3) provides that the restoration or revival of a law under subclause (2) takes effect at the beginning of the day on which the disallowed regulation by which it was amended or repealed ceases to have effect.

Subclause (4) defines the term “regulation” used in this clause to include a provision of a regulation.

Division 5 Miscellaneous

Combined notice may be given

Clause 248 enables a combined notice to be given, if an entity is required under the National Law to give another entity, the *recipient*, notices under more than one provision.

Fees

Clause 249 provides for a general power in relation to fees set, refunded, or waived, in accordance with a health profession agreement entered into with a National Board by the National Agency. Clause 26 sets out the requirements regarding a health profession agreement.

Part 12 Transitional provisions

This part sets out the transitional arrangements for the National Scheme, and arrangements for the legal continuity of decisions, appointments and establishment of entities, under the *Health Practitioner Regulation (Administrative Arrangements) National Law Act 2008* of Queensland (Act A).

Division 1 Preliminary

Definitions

Clause 250 provides the definitions of key terms specific to use in this division, namely “commencement day”, “local registration authority”, “participation day”, “relevant health profession”, and “repealed law”.

References to registered health practitioners

Clause 251 provides that references to the repealed law (Act A), or to a health practitioner registered in a health profession under a corresponding prior Act, may if the context permits, be taken to be a reference to the National Law or, after the participation day, be taken to be a reference to a health practitioner registered in the health profession under this Law.

Division 2 Ministerial Council

Directions given by Ministerial Council

Clause 252 provides for the legal continuity of policy directions given by the Ministerial Council to the National Agency or National Board under the repealed law (Act A), is taken from the commencement day to be a policy direction under this Law (provided the Act A policy direction was in force immediately prior to 1 July 2010).

Accreditation functions exercised by existing accreditation entities

Clause 253 provides for the legal continuity of an assignment of accreditation functions given under Act A by the Ministerial Council to an external accreditation entity.

The clause also requires, consistent with the COAG Agreement, that the original assignment given under Act A be reviewed by the relevant National Board, not later than 3 years after the commencement day of the scheme (ie not later than 1 July 2015). The review must include wide-ranging consultation about the arrangements. The clause also preserves the Ministerial Council assignment for a period of 3 years (ie. up

to 1 July 2015) to provide certainty for the external accreditation entities who are exercising accreditation functions.

Note that clause 253(3) makes arrangements for an accreditation standard approved by an entity for a health profession, and in force immediately before the commencement day, to be taken to be an approved accreditation standard for the health profession under this National Law. Over time, and as necessary, it is anticipated that these national accreditation standards will be amended or replaced by accreditation standards developed and approved under the provisions of the National Law.

Health profession standards approved by Ministerial Council

Clause 254 provides for the legal continuity of any health profession standards developed by a National Board, and approved by the Ministerial Council, under Act A, prior to commencement of the scheme. These approved standards are taken, from 1 July 2010 to be an approved registration standard under this Law.

Accreditation standards approved by National Board

Clause 255 provides for the legal continuity of any accreditation standards developed and approved by a National Board under Act A (as distinct from accreditation standards described under clause 253(3)). These approved standards are taken, from 1 July 2010, to be approved accreditation standards under this Law.

Division 3 Advisory Council

Members of Advisory Council

Clause 256 provides the legal continuity of appointments made under Act A, and in force immediately prior to 1 July 2010, of members and the Chairperson of, the Australian Health Workforce Advisory Council. Appointees continue to hold office on the same terms and conditions.

Division 4 National Agency

Health profession agreements

Clause 257 provides for the legal continuity of a health profession agreement entered into prior to 1 July 2010, by the National Agency under Act A.

Service agreement

Clause 258 provides that the National Agency, from the participation day for a participating jurisdiction, may enter into an agreement to provide services to a local registration authority that had functions under a law of a participating jurisdiction that includes the registration of persons as health practitioners. For example, this clause would enable the National Agency to provide services to a local registration authority that registers health practitioners that are not provided for under the National Scheme, if the local registration authority was agreeable because, for example, the arrangement would be more efficient and achieve better economies of scale.

Division 5 Agency Management Committee

Members of Agency Management Committee

Clause 259 provides for the legal continuity of appointments made under Act A, and in force immediately prior to 1 July 2010, as members and the Chairperson of the Agency Management Committee. Appointees continue to hold office on the same terms and conditions.

Division 6 Staff, consultants and contractors of National Agency

Chief executive officer

Clause 260 provides for the legal continuity for the appointment of the person who immediately before 1 July 2010 held office as the chief executive officer of the National Agency, having been appointed to the role

under Act A. The chief executive officer continues to hold office on the same terms and conditions.

Staff

Clause 261 provides for the legal continuity of a person who immediately before the commencement day of 1 July 2010 was employed by the Agency under Act A. Similarly, continuity is provided for a staffing secondment arrangement that is in force immediately before commencement of the National Law on July 2010.

Consultants and contractors

Clause 262 provides for the legal continuity of appointment of a person, who immediately before the commencement day of 1 July 2010, was engaged as a consultant or contractor by the Agency under Act A.

Division 7 Reports

Annual report

Clause 263 provides that clauses 35 and 36 of Act A which provide the requirements for the preparation of an annual report by the National Agency, and reporting by National Boards, to continue to apply to the preparation and submission of the first annual report of the National Agency as if this Law had not commenced.

Division 8 National Boards

Members of National Boards

Clause 264 provides for the legal continuity of appointments made under Act A, and in force immediately prior to 1 July 2010, of members and the Chairperson of the National Boards. Members and the Chair are taken to be members of the National Board of the same name under this Law, and continue to hold office on the same terms and conditions.

Committees

Clause 265 provides for the legal continuity of a committee established by a National Board under Act A, and in existence immediately prior to 1 July 2010. Members of such a committee continue to hold office as a member of the committee as continued under this clause.

Delegation

Clause 266 provides for the legal continuity of delegations or subdelegations made under Act A, by a National Board or a National Agency, that were in force immediately prior to 1 July 2010.

Division 9 Agency Fund

Agency Fund

Clause 267 provides that, from 1 July 2010, the Agency Fund established under Act A is taken to be the Agency Fund established by this Law.

Division 10 Miscellaneous

Offences

Clause 268 provides that proceedings for an offence against Act A may be started or continued as if this Law had not commenced.

Division 11 Registration

It is expected that the majority of health practitioners and students registered under the laws of a participating jurisdiction will transition into the National Scheme in accordance with the transitional arrangements in clauses 269 to 276. For practitioners whose registration does not readily translate into a National Law category, this division provides that a registration transition plan is to be used to map registrants across to the National Scheme. The National Boards are working with State and Territory registration boards to ensure that health practitioners are advised,

prior to their transition, of what their type of registration will be, and administrative processes will be put in place to manage any queries or concerns. Where conditions apply to a practitioner's registration, these will translate verbatim to their registration on 1 July 2010.

Health practitioners will retain their registration expiry date as at transition. To ensure a seamless transition, the transitional arrangements enable a National Board to decide that the first renewal of registration may be for a period of not more than 2 years, rather than the usual 12 months. Transitional arrangements are also made to enable certain specialist health practitioners to continue to use a protected title, that is provided for in their jurisdiction, for a limited period of time.

General registration

Clause 269 provides for the transition into the National Scheme of health practitioners who hold general registration (however described) under a law of a participating jurisdiction immediately prior to that jurisdiction's participation day. For example, in Queensland, this transitional provision will apply from 1 July 2010. Provided the health practitioner holds general registration (however described) on 30 June 2010, he/she will transition into the National Scheme, and hold national general registration in his/her health profession.

Specialist registration

Clause 270 provides for the transition into the National Scheme of specialist health practitioners who hold registration in a specialty in a health profession under a law of a participating jurisdiction immediately prior to that jurisdiction's participation day. From the participation day, if the practitioner's speciality is a recognised specialty under the National Law, or a recognised specialty under this Law includes or is equivalent to, the practitioner's specialty, then the person is taken to hold specialist registration in the recognised specialty in the health profession under this Law. Specialist registration arrangements in a profession are subject to the approval of Ministerial Council.

Provisional registration

Clause 271 provides for the transition into the National Scheme of persons who, immediately before the participation day for a participating jurisdiction, held registration (however described) under a law of that

jurisdiction, to enable the person to complete a period of supervised practice or internship, in order to be eligible for general registration (however described) in the health profession. Practitioners will transition into holding provisional registration.

Limited registration

Clause 272 provides for the transition into the National Scheme of persons who, immediately before the participation day for a participating jurisdiction, held a type of registration in a health profession under a law of that jurisdiction, that was granted for the practice of the health profession that is equivalent to, or substantially equivalent to, a purpose for which limited registration may be granted under this Law (for example, limited registration for teaching or research). Practitioners will transition into the relevant subcategory of limited registration.

Limited registration (public interest-occasional practice)

Clause 273 provides for the transition into the National Scheme of persons who, immediately before the participation day for a participating jurisdiction, held a type of registration (however described) that enabled a form of occasional practice, or conferred the practitioner with a form of registration that allowed limited referral or prescribing rights, provided the practitioner received no fee or benefit. Practitioners transition under this clause into the subcategory of limited registration (public interest).

This subcategory of limited registration (public interest) is a closed category, meaning that it is only available to those health practitioners who transition into the National Scheme under clause 273. Practitioners registered in this category will be required, as are other practitioners granted limited registration, to meet the requirements for professional indemnity insurance and continuing professional development. However, these requirements will be commensurate with the occasional nature of their practice set by the relevant National Board.

Non-practising registration

Clause 274 provides for the transition into the non-practising type of registration under the National Scheme of persons who, immediately before the participation day for a participating jurisdiction, held a type of registration that was granted subject to the condition that the person must

not practise the profession. Practitioners will transition into non-practising registration.

Registration for existing registered students

Clause 275 provides for the transition into the National Scheme of students who, immediately before the participation day for a participating jurisdiction, were registered as students under a law of that jurisdiction. To ensure continuity of registration, these students will be taken to be students registered under the National Law. It is anticipated that information on registered students will be provided to the National Board by the participating jurisdiction at the time of transition.

Registration for new students

Clause 276 provides that, if immediately before the participation day for a participating jurisdiction, a student was undertaking a program of study in a health profession that becomes an approved program of study under the National Law, but was not required to be registered as a student in that jurisdiction, that student does not transition into the National Scheme. Instead, from March 2011, registration of these students will occur under the main provisions of this National Law (see Part 7, Division 7).

Other registrations

Clause 277 provides for a registration transition plan to be used to transition classes of health practitioners whose registration does not readily translate into the National Scheme registration types and therefore do not transition under the general transition provisions provided for in clauses 269 to 276.

From the participation day for a participating jurisdiction, these persons are taken to hold the type of registration in the health profession that is specified for the class of persons in the registration transition plan prepared by the National Board established for that health profession.

A National Board must prepare – before the participation day – a registration transition plan that includes details of the type of registration that is to be held under this Law by a class of persons.

In preparing the registration transition plan, a board must comply with any directions given by the Ministerial Council that are relevant to the transitional arrangements and have regard to the principle that persons in

the class are to be given the widest possible scope of practice of the profession that is consistent with the authority the class of persons had to practise the profession before the participation day, and the protection of the safety of the public.

Endorsements

Clause 278 provides for endorsements in relation to a health practitioner's registration, to transition into the National Scheme.

A person who, immediately prior to the participation day for a participating jurisdiction, held -

- a type of registration in that jurisdiction in a health profession for a purpose that is equivalent to, or substantially equivalent to, a purpose for which an endorsement may be granted under this Law (ie a corresponding purpose), or
- the person held general registration in that jurisdiction in a health profession that had been endorsed for a corresponding purpose

will, from the participation day, be taken to hold general registration in that health profession with the corresponding endorsement. It is noted that only a limited number of endorsements are set down unconditionally in the proposed National Law. All other endorsements are subject to the approval of the Ministerial Council.

Conditions imposed on registration or endorsement

Clause 279 provides that if, immediately prior to the participation day for a participating jurisdiction, a person's registration was subject to a condition, or an endorsement on a person's registration was subject to a condition, then when that person transitions into the National Scheme, the person's registration or endorsement of registration is taken to be subject to the same condition.

Expiry of registration and endorsement

Clause 280 provides that for a person who transitions into the National Scheme as a registered health practitioner under the National Law, their national registration is taken to expire at the end of the latest day that a person's registration (or registrations) would have expired under the law of a participating jurisdiction, or their national registration is taken to expire at

the end of the latest day on which an annual registration fee for any of the registrations would have become payable.

A health practitioner may then lodge an application for renewal of their national registration in accordance with the procedural requirements of Part 7, Division 9 of the National Law. Note clause 282 enables a National Board to decide that the first renewal of registration may be for a period of not more than 2 years.

Protected titles for certain specialist health practitioners

Clause 281 provides transitional arrangements for continued use of protected titles for certain specialist health practitioners who transition into the National Scheme. A person does not commit an offence during the transition period (from 1 July 2010 to 30 June 2013) merely because the person takes or uses the title “specialist health practitioner” or another title that the person was entitled to use under the law of the participating jurisdiction (as in force immediately prior to the participation day).

These arrangements apply if, immediately before the participation day for a participating jurisdiction, a person held specialist registration in a health profession in that jurisdiction, and on the participation day the health profession is not a profession for which specialist recognition operates under this Law.

It is intended that the transition period for use of certain specialist health practitioners will afford a National Board sufficient time to seek Ministerial Council approval for specialist recognition to operate under the National Law for that health profession – if this is the approach recommended by the board for that profession.

First renewal of registration or endorsement

Clause 282 empowers a National Board to decide that the first period for which registrations (and endorsement of registration) are renewed under the National Scheme, is a period not more than 2 years. This arrangement is designed to enable registration renewal cycles to move to a common date for each profession within a period of 2 years.

Programs of study

Clause 283 provides for a program of study that provided a qualification for registration in a health profession in a participating jurisdiction

immediately prior to the jurisdiction's participating day, to be taken to be an approved program of study for that health profession as if it had been approved under this Law. The National Agency must, as soon as practicable after the participation day, include an approved program of study in the list published under clause 49(5) of the National Law.

Exemption from requirement for professional indemnity insurance arrangements for midwives practising private midwifery

Clause 284 provides an exemption from the requirements in relation to professional indemnity insurance (PII) arrangements – see clauses 109 and 129 – for privately practising midwives who are unable to obtain professional indemnity insurance for attending a homebirth.

The exemption will apply from the start of the National Scheme on 1 July 2010, provided that:

- (a) the private midwifery practice occurs in a participating jurisdiction that, immediately before it applied the proposed National Law as a law of its jurisdiction, did not prohibit such practice unless PII arrangements were in place, and
- (b) informed consent has been given to the woman in relation to whom the midwife is practising private midwifery, and
- (c) the midwife complies with any requirements set out in a code or guideline approved by the National Board under clause 39 of the National Law, including any reporting requirements and any requirement relating to the safety and quality of the practise of private midwifery.

The end date for the exemption to be prescribed by a National Law regulation, subject to passage of Bill B, is proposed to be 30 June 2012. However, subclause (4) provides that if the Nursing and Midwifery Board of Australia decides appropriate PII arrangements are available (for example, at an earlier date in relation to the practice of private midwifery), the board may recommend to the Ministerial Council that the transition period, and the exemption provided under this clause, should end.

Division 12 Applications for registration and endorsement

Applications for registration

Clause 285 provides that if an application for registration or renewal of registration in a health profession was made to a local registration authority for the jurisdiction immediately prior to its participation day, but had not been decided, then that application is taken to have been made under this Law to the National Board for the health profession. Therefore a person will not need to lodge a new application for renewal or registration with the National Board, but the application will be decided under the National Law provisions.

Applications for endorsement

Clause 286 provides that if an application for an endorsement of registration or a renewal of an endorsement of registration in a health profession was made to a local registration authority for the jurisdiction immediately prior to its participation day, but had not been decided, then that application is taken to have been made under this Law to the National Board for the health profession. Therefore a person will not need to lodge a new application in relation to the endorsement with the National Board, but the application will be decided under the National Law provisions.

Disqualifications and conditions relevant to applications for registration

Clause 287 provides that any decisions that were made under a corresponding prior Act of a participating jurisdiction immediately prior to the jurisdiction's participation day, about disqualifications in relation to a person's registration, or conditions under which a person might reapply for registration in the profession, or conditions that must be imposed on a person's future registration, continue as if the decisions had been made under this Law by the responsible tribunal in the participating jurisdiction.

Division 13 Complaints, notifications and disciplinary proceedings

Complaints and notifications made but not being dealt with on participation day

Clause 288 provides that if, immediately prior to the participation day for a participating jurisdiction, a local registration authority for that jurisdiction had received, but not started dealing with a complaint or notification about a person registered in a health profession by that authority, then the complaint or notification is taken to be a notification under this Law to the National Agency. This means that the notification will be dealt with under Part 8 of the National Law – except in a co-regulatory jurisdiction, where this transitional provision does not apply.

Complaints and notifications being dealt with on participation day

Clause 289 provides transitional arrangements if, immediately prior to the participation day for a participating jurisdiction, a local registration authority for that jurisdiction had received, but started dealing with a complaint or notification about a person registered in a health profession by that authority but had not completed dealing with the complaint or notification.

From the participation day, the complaint or notification is taken to be a notification made under this Law and is to be dealt with by the National Board for the health profession, but the notification is to be dealt with as if the Act of the participating jurisdiction under which the notification was made had not been repealed. Subclause (3) modifies the application of certain references used in the Act of the participating jurisdiction to enable this to occur.

The National Board is required to give effect to a decision completed under the Act of the participating jurisdiction as if it were a decision made under this Law.

However, this transitional provision does not apply to a co-regulatory jurisdiction.

Effect of suspension

Clause 290 provides for the continuance of a suspension of a person's registration, if immediately prior to the participation day for a participating jurisdiction, the person's registration was suspended under a law of that participating jurisdiction, and because of another provision of this Part 12, the person is taken to be registered under this Law.

Undertakings and other agreements

Clause 291 provides for the continuance of an undertaking or other agreement entered into between a person registered under a corresponding prior Act and the local registration authority for a health profession, immediately before the participation day for that jurisdiction.

Orders

Clause 292 provides for the continuance of orders made by an adjudication body that were in force immediately prior to the participation day of a participating jurisdiction, and were made under a corresponding prior Act of a participating jurisdiction about a health practitioner's practice or conduct. The term "adjudication body" is specifically defined for use in this clause as meaning a court, tribunal, panel or local registration authority.

List of approved persons

Clause 283 provides that – if immediately prior to a participation day for a participating jurisdiction – a person was appointed as a member of a list of persons approved to be appointed as members of a body that exercised functions that correspond to a panel for a health profession under this Law, then that person is taken to have been appointed by the National Board established for the health profession to the approved list kept by that board under clause 183.

Division 14 Local registration authority

Definition for Division 14

Clause 294 provides the definition of “transfer day” which is used in this division.

“Transfer day”, for a participating jurisdiction, means:

- (a) for a health profession, other than a relevant health profession – 1 July 2010, or the later day on which the jurisdiction became a participating jurisdiction
- (b) for a relevant health profession – 1 July 2012.

A “relevant health profession” is defined in clause 250 to mean:

- (a) Aboriginal and Torres Strait Islander health practice
- (b) Chinese medicine
- (c) medical radiation practice
- (d) occupational therapy.

Assets and liabilities

Clause 295 provides the transitional arrangements for assets and liabilities of a local registration authority for a health profession in a participating jurisdiction, from the transfer day for that jurisdiction.

In particular –

- the assets and liabilities of a local registration authority for a health profession in a participating jurisdiction are taken to be assets and liabilities of the National Agency and are to be paid into or out of the account kept in the Agency Fund for the National Board established for the profession, and
- any contract – other than an employment contract (that is, a contract of employment or a contract for services) – entered into by or on behalf of the local registration authority and all guarantees, undertakings and securities given by or on behalf of the authority, in force immediately before the participation day, are taken to have been entered into or given by or to the National Agency and may be enforced against or by the agency, and

- any property that, immediately before the participation day, was held on trust, or subject to a condition, by the local registration authority continues to be held by the National Agency on the same trust, or subject to the same condition and is to be paid into the account kept in the Agency Fund for the National Board.

Records relating to registration and accreditation

Clause 296 provides for the transfer of records kept by a local registration authority in relation to registration and accreditation, from the transfer day of a participating jurisdiction.

In particular, a record that relates to the authority's function in relation to –

- the registration of individuals
- complaints and notifications and proceedings against individuals who are or were registered
- accreditation of courses that qualify for registration from the transfer day for that jurisdiction

is taken to be a record of the National Board for the health profession from the transfer day.

Financial and administrative records

Clause 297 provides for the transfer of records kept by a local registration authority in relation to the authority's financial or administrative functions. From the transfer day of the participating jurisdiction, the financial or administrative records are taken to be a record of the National Agency.

Pharmacy businesses and premises

Clause 298 provides that clauses 295 to 297 do not apply to an asset, liability, contract, property, or record of a local registration authority that relates to the regulation of a pharmacy business, pharmacy premises, a pharmacy department or any other pharmacy-related entity that is not an individual. The COAG agreement specifically provided that pharmacy ownership remained the responsibility of States and Territories, and would not form part of the National Scheme.

Members of local registration authority

Clause 299 provides for the transition to the National Scheme, of members of State and Territory registration boards – under specified circumstances.

The application of this clause is triggered by a decision of a National Board established for a health profession – in anticipation of a jurisdiction becoming a participating jurisdiction – to establish a State or Territory Board (a committee) as provided for under clause 36 of the National Law.

A person who, immediately before the State or Territory Board was established by the National Board under the National Law, was a member of the local registration authority for the profession in the participating jurisdiction, is taken to be a member of the State or Territory Board during the transition period of 12 months.

The requirements of clause 36(5) and 36(6) in relation to the required number of practitioner members and community members required by a State or Territory Board do not apply to the membership of a State or Territory Board for a period of 12 months after this transition occurs (ie, after the jurisdiction becomes a participating jurisdiction).

Division 15 Staged commencement for certain health professions

Division 15 provides for the staged commencement of requirements of the National Law, in relation to the four partially regulated health professions that will join the National Scheme on 1 July 2012, that is, Aboriginal and Torres Strait Islander health practice, Chinese medicine, medical radiation practice, and occupational therapy.

Application of Law to relevant profession between commencement and 1 July 2012

Clause 300 provides that no requirements of the National Law apply with respect to the relevant health profession during the period starting on 1 July 2010 and ending on 30 June 2011.

For the period starting on 1 July 2010, and ending on 30 June 2011, Part 7 (Registration of health practitioners) and Parts 8 to 11 (Health performance and conduct; Finance; Information and Privacy; and Miscellaneous) do not apply with respect to the relevant health profession.

The exception to this rule is Division 10 of Part 7 (title and practice protections). This means that title and practice protections do apply with respect to the relevant health professions. For example, if a person who is from a relevant health profession were to use a protected title for one of the other ten professions, such as “medical practitioner”, then that person would contravene the National Law, and could be prosecuted for the breach.

However, despite the above, a person does not contravene the National Law merely by taking or using a title, name, initial, symbol, word or description that having regard to its use, could be reasonably understood to indicate the person is authorised or qualified to practise in a relevant health profession, or merely because the person uses a protected title that is reserved for use by that relevant health profession in the table to clause 113.

For example, if a person from the relevant health profession of occupational therapy were to use the protected title “occupational therapist” prior to 1 July 2012, then that person is not committing an offence against the National Law. Similarly, if a person uses the title ‘acupuncturist’ prior to 1 July 2012, then that person is not committing an offence against the National Law, as the relevant health profession of Chinese medicine does not fully enter the scheme until 1 July 2012.

Ministerial Council may appoint external accreditation entity

Clause 301 provides that the Ministerial Council may assign an accreditation function to an external accreditation entity for a relevant health profession, in the first instance.

Without limiting the above, an entity that accredited courses for the purposes of registration in that health profession under a corresponding prior Act may be appointed to exercise an accreditation function for the relevant health profession under this Law.

Consistent with the first assignments for the ten health professions that were made under Act A and continued under this National Law (see clause 253), the National Board established for the relevant health profession must, not later than 1 July 2015, review the arrangements for the exercise of the accreditation functions for that health profession. The board must ensure the process for the review includes wide-ranging consultation about the arrangements for the exercise of the accreditation functions.

If an entity is appointed to exercise an accreditation function for a relevant health profession, the National Board established for the profession must not, before 1 July 2015, end that entity's appointment.

The relevant National Board, from 1 July 2015 can determine the arrangements for the exercise of accreditation functions in accordance with clause 43 of the National Law.

Application of Law to appointment of first National Board for relevant professions

Clause 302 provides similar arrangements for appointments of the first National Board for the relevant health professions, to those provided under Act A for the first appointments of the first National Boards for the original ten health professions.

As the first National Board for these professions will be established from 1 July 2011, practitioner members will not be able to meet the eligibility requirement under clause 34(2) of the National Law that the person is a registered health practitioner in the health profession for which the board is established. Registered in this context means registered under this National Law, which will not be possible until 1 July 2012.

Therefore, clause 302 provides that, despite clause 34(2), a person is eligible for appointment as a practitioner member for a relevant health profession if the person:

- is registered in the profession under a law of a participating jurisdiction
- holds a qualification that entitles the person to registration in the profession under a law of a participating jurisdiction
- is otherwise eligible to apply for or hold registration in the profession under the law of a participating jurisdiction.

Standard police and probity checks will apply as now to all individuals prior to appointment to the first National Boards for the relevant health professions.

Qualifications for general registration in relevant profession

Clause 303 provides a degree of flexibility in relation to qualifications and experience a National Board can accept for general registration in the relevant health profession, for an individual who applies for registration in

the profession before 1 July 2015 (providing a three year transitional period). This is because some of these professions, for example, Aboriginal and Torres Strait Islander health practice, are only registered in one jurisdiction, and for many members of this profession, this will be the first time they have been required to hold registration in order to practise the profession.

However, it is important to note that this flexibility only applies to a qualification for general registration – that is, for the purposes of clause 52(1)(a) of the National Law only.

All of the other eligibility requirements for general registration will apply to applicants from the relevant health professions, including any required period of supervised practice or examination or assessment, and that the person is a suitable person to hold general registration in the health profession, and the individual is not disqualified under this Law or a law of a co-regulatory jurisdiction from applying for registration or being registered in the health profession, and the individual meets any other requirements for registration stated in an approved registration standard for the health profession.

Relationship with other provisions of Law

Clause 304 provides clarification of the relationship of this division with other provisions of the National Law.

Division 16 Savings and transitional regulations

Savings and transitional regulations

Clause 305 provides that the National Law regulations (see Part 11, Division 4) may contain provisions of a savings or transitional nature.

Savings and transitional provisions may have retrospective operation, to a day not earlier than the participation day for the relevant participating jurisdiction.

In addition, this clause and any savings and transitional provisions expire on 30 June 2015.

Schedule 1 Constitution and procedure of Advisory Council

Schedule 1 to the National Law provides for the constitution and procedure of the Australian Health Workforce Advisory Council – see clause 18.

Schedule 2 Agency Management Committee

Schedule 2 to the National Law provides for the constitution and procedure of the Australian Health Practitioner Regulation Agency Management Committee – see clause 29.

Schedule 3 National Agency

Schedule 3 to the National Law provides for administrative procedures of the Australian Health Practitioner Regulation Agency, including appointments of the Chief Executive Officer and staff, consultants and contractors – see clause 23.

Schedule 4 National Boards

Schedule 4 to the National Law provides for the constitution and procedure of the National Boards for the health professions regulated under the National Law and certain functions and powers – see clause 31.

Schedule 5 Investigators

Schedule 5 to the National Law provides for the powers of Investigators appointed under the National Law and general matters – see clause 163.

Schedule 6 Inspectors

Schedule 6 to the National Law provides for the powers of Inspectors appointed under the National Law and general matters – see clause 238.

Schedule 7 Miscellaneous provisions relating to interpretation

Schedule 7 to the National Law provides the uniform interpretation provisions of a kind usually contained in the Interpretation Act of a State or Territory. These provisions are standard for national scheme legislation – see clause 6.

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