

Health Legislation (Health Practitioner Regulation National Law) Amendment Bill 2012

Explanatory Notes

Short Title

The short title of the Bill is the Health Legislation (Health Practitioner Regulation National Law) Amendment Bill 2012 (the Bill).

Policy objectives and the reasons for them

The principal objective of the Bill is to abolish the state registration scheme for Queensland medical radiation practitioners and occupational therapists, to support their transition into the National Registration and Accreditation Scheme for the Health Professions (the National Scheme) from 1 July 2012.

On 26 March 2008, the Council of Australian Governments (COAG) signed the ‘Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions’ (the COAG-IGA), which provides for a single national registration and accreditation scheme for health professions to replace individual state and territory based schemes.

COAG agreed to the inclusion of the following ten professions into the National Scheme from 1 July 2010: chiropractic, dental, medical, nursing and midwifery, optometry, osteopathy, pharmacy, physiotherapy, podiatry and psychology.

On 5 March 2009, the Australian Health Workforce Ministerial Council agreed to include an additional three health professions into the National Scheme from 1 July 2012, increasing this on 27 August 2009 to the following four professions: Aboriginal and Torres Strait Islander health practice, Chinese medicine practice, medical radiation practice and occupational therapy.

Parliament has previously enacted three pieces of legislation to implement the National Scheme. The first piece of legislation, the *Health Practitioner*

Regulation (Administrative Arrangements) National Law Act 2008, provided for the adoption of a National Law, hosted by Queensland, prescribing limited matters for the first stage of implementation of the National Scheme. This Act also created the Australian Health Practitioner Regulation Agency (AHPRA) and national boards, operational from 1 February 2009 and 1 July 2009 respectively, but did not confer authority for registration functions.

The second piece of legislation was the *Health Practitioner Regulation National Law Act 2009*. Scheduled to this Act is the *Health Practitioner Regulation National Law* (the National Law) containing the substantive content of the National Scheme, including authority for registration, accreditation and disciplinary processes. In accordance with the COAG-IGA, all other jurisdictions have implemented adopting or corresponding legislation applying the National Law in that jurisdiction.

The third piece of legislation, the *Health Legislation (Health Practitioner Regulation National Law) Amendment Act 2010* repealed or partially rescinded the 12 health practitioner registration Acts that were replaced by the National Law. This Act also consequentially amended various Health and other portfolio Acts which refer to Acts, bodies and matters affected by the transition of the original ten professions to the National Scheme.

Consistent with the third piece of legislation, this current Bill is required to fully implement the National Scheme in Queensland. It abolishes the state registration Acts for medical radiation practitioners and occupational therapists and makes the necessary administrative and consequential amendments to legislation across Government required to accommodate and appropriately reflect the transition of medical radiation practitioners and occupational therapists to the National Scheme on 1 July 2012.

In addition, the Bill restores the ability to recruit suitably qualified psychiatrists to assess and examine involuntary patients under the *Mental Health Act 2000* in regional and remote areas of the state.

Achievement of policy objectives

To achieve its objectives, the Bill will:

- repeal the *Medical Radiation Technologists Registration Act 2001* and the *Occupational Therapists Registration Act 2001*;
- amend the *Health Practitioner (Professional Standards) Act 1999* to partially rescind its application to medical radiation practitioners and

occupational therapists and include these professions in provisions applying only to the National Scheme professions;

- amend the *Health Practitioner Registration Boards (Administration) Act 1999* to rescind its application to medical radiation practitioners and occupational therapists; and
- consequentially amend various Health and other portfolio Acts which refer to Acts, bodies and matters affected by the transition of medical radiation practitioners and occupational therapists to the National Scheme.

The Bill will also amend the definition of ‘psychiatrist’ in the *Mental Health Act 2000* to extend the meaning to include a medical practitioner, granted limited registration in an area of need under the National Law, to practise in a specialist position in psychiatry.

Repeal registration Acts

The *Medical Radiation Technologists Registration Act 2001* and the *Occupational Therapists Registration Act 2001* currently address registration, accreditation and disciplinary matters in relation to the registration of medical radiation practitioners and occupational therapists in Queensland.

As these matters will be wholly dealt with for these professions under the National Law, the Bill repeals these two registration Acts from 1 July 2012. This has the effect of abolishing the boards currently responsible for performing registration and accreditation functions in relation to the affected professions. From 1 July 2012, these functions will be wholly performed by the two national boards established under the National Law.

Amendments to the Health Practitioners (Professional Standards) Act

The National Law provides for questions of professional misconduct by a registered health practitioner to be heard by a responsible tribunal. Questions of unsatisfactory professional conduct or impairment may be decided by a national board or a performance and professional standards panel or health panel. These panels may be established by national boards in response to notifications or other concerns about the health, performance or conduct of a nationally registered health practitioner.

Jurisdiction to review certain disciplinary and other decisions of boards and panels is vested in each jurisdiction's responsible tribunal. The *Health Practitioner Regulation National Law Act 2009* (Qld) declares the Queensland Civil and Administrative Tribunal (QCAT) to be Queensland's responsible tribunal.

The *Health Practitioner (Professional Standards) Act 1999* currently prescribes a range of matters regarding the handling of investigations and disciplinary matters in relation to Queensland-registered health practitioners (that is, dental technicians, speech pathologists, occupational therapists and medical radiation practitioners). These matters include the powers of State boards and professional conduct review panels, the review by QCAT of decisions of boards and panels and the further review and appeal of QCAT decisions. As the majority of these matters are prescribed in relation to National Scheme professions under the National Law, the Health Practitioner (Professional Standards) Act will need to be amended to rescind its application to medical radiation practitioners and occupational therapists.

However, while the National Law prescribes the substantive disciplinary matters that a responsible tribunal may hear, it otherwise leaves each jurisdiction free to prescribe the form, constitution and procedures of the responsible tribunal for that jurisdiction (though not inconsistently with the National Law). Consequently, the Health Practitioner (Professional Standards) Act contains provisions that apply to nationally-registered health practitioners. Therefore, those provisions will need to apply to disciplinary proceedings involving medical radiation practitioners and occupational therapists.

The Bill therefore amends the Health Practitioner (Professional Standards) Act to allow that Act to provide for public and professional panels of assessors for use in disciplinary proceedings involving medical radiation practitioners and occupational therapists once they transition to the National Scheme.

In addition, the Bill substantially replicates transitional provisions provided for in the *Health Legislation (Health Practitioner Regulation National Law) Amendment Act 2010*, to apply section 289 of the National Law (which provides for the continuation of existing complaints and notifications about disciplinary matters for professions transitioning to the National Scheme). The transitional provisions deal with existing bodies, officeholders, proceedings and other matters established, appointed or commenced under the *Health Practitioners (Professional Standards) Act*

1999 in relation to medical radiation practitioners and occupational therapists.

Amendments to the Health Practitioner Registration Boards (Administration) Act

The *Health Practitioner Registration Boards (Administration) Act 1999* establishes the Office of Health Practitioner Registration Boards (OHPRB) and requires the Queensland health practitioner registration boards to source all administrative and operational services from the OHPRB under a service agreement. The Medical Radiation Technologists Board of Queensland and the Occupational Therapists Board of Queensland, which currently source services from the OHPRB, will be replaced by national boards under the National Law from 1 July 2012. The National Boards will be required to source these services from AHPRA from that time.

The Bill therefore rescinds the application of the *Health Practitioner Registration Boards (Administration) Act 1999* to medical radiation practitioners and occupational therapists upon their transition to the National Scheme on 1 July 2012, with the Act continuing wholly in force for the remaining two professions.

Consequential amendments to other Queensland portfolio legislation

A significant number of Acts across government refer to Acts, bodies and matters affected by the transition of medical radiation practitioners and occupational therapists to the National Scheme on 1 July 2012. To this end, they use definitions of ‘health practitioner registration Act’, ‘health practitioner’ and other related definitions which will be rendered in part or in whole obsolete by the transition of medical radiation practitioners and occupational therapists to the National Scheme. The Bill amends these Acts by updating these definitions to reflect the new statutory distribution of registration and accreditation responsibilities.

In addition, a number of minor consequential amendments were identified since enactment of the *Health Legislation (Health Practitioner Regulation National Law) Amendment Act 2010*. These amendments are related to definitions and section numbering.

Amendment of the Mental Health Act

The *Health Legislation (Health Practitioner Regulation National Law) Amendment Act 2010* amended the definition of ‘psychiatrist’ in the Mental Health Act to refer to a person registered under the National Law rather than the *Medical Practitioners Registration Act 2001* (which was repealed under the Amendment Act). An unintended practical effect of this amendment is impacting upon the ability to utilise suitably qualified “area of need” registrants in remote and regional areas of the State.

Areas of need are geographical or health care service areas where it has been difficult to recruit health professionals. These areas are declared under section 67 of the National Law. Under the National Law, a person may be granted “limited registration” under an area of need if that person does not have the full qualifications and accreditation needed for general registration, but does meet a minimum standard for an area of need as determined by the relevant health practitioner registration board.

Under the previous definition of ‘psychiatrist’, both specialist registrants (in psychiatry) and limited registrants (i.e. area of need registrants practising in a specialist position in psychiatry) were able to perform the functions of an ‘authorised psychiatrist’ under the Mental Health Act. However, the 2010 amendment inadvertently limited this to only specialist registrants.

The greatest impact of this anomaly has been felt in regional areas where Mental Health Services have more difficulty recruiting specialist psychiatry registrants and rely on area of need registrants. Since the issue was identified, it has been addressed administratively, by requiring unaffected psychiatrists to endorse decisions made by area of need registrants. However, this has proven difficult (particularly in remote locations) and can only be an interim measure until the definition is updated. Restoring the previous policy will mitigate any impediment to the provision of mental health services in regional Queensland resulting from the 2010 amendment.

Alternative ways of achieving policy objectives

There are no viable alternatives that would achieve the policy objectives other than the proposed Bill.

Estimated Cost for Government Implementation

COAG previously agreed to a contribution by governments of \$19.8 million to transition to the National Scheme by 1 July 2010, after which the scheme would be self-funding. No additional costs to government arise from the current Bill.

Consistency with Fundamental Legislative Principles

The Bill makes consequential amendments stemming from implementation of a national scheme. This raises the question of whether the legislation erodes Parliament's sovereign power due to being based on an agreement between the executives of participating jurisdictions. In its Alert Digest No. 12 of 2008, in which it considered the Health Practitioner Regulation (Administrative Arrangements) National Law Bill 2008, the former Parliamentary Scrutiny of Legislation Committee raised concerns that:

- the National Scheme establishes and confers authority in relation to health practitioners practising in Queensland on AHPRA and national boards, which are only indirectly accountable to Parliament;
- the COAG IGA commits participating jurisdictions to use their best endeavours not to submit legislation to their legislatures which is inconsistent with the National Law;
- the COAG IGA confers authority on the Australian Health Workforce Ministerial Council to determine whether to seek to amend the National Law; and
- the COAG IGA commits participating jurisdictions to only withdraw from the National Scheme as a last resort.

The Explanatory Notes for the previous three Bills relating to the National Scheme (being the Health Practitioner Regulation (Administrative Arrangements) National Law Bill 2008, the Health Practitioner Regulation National Law Act 2009 and the Health Legislation (Health Practitioner Regulation National Law) Amendment Bill 2010) observed that 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 relevant legislative powers rest with the States and Territories, and not with the Commonwealth. In the case of the National Scheme, the Explanatory Notes also identify that Queensland Parliament remains sovereign. This sovereignty arises both because Queensland is the host

jurisdiction for the national scheme legislation and because the power to decide whether to apply or to continue applying the National Law in Queensland rests with the Queensland Parliament.

In its consideration of the Health Practitioner Regulation National Law Bill 2009, Parliament was satisfied that the benefits of the National Scheme, such as improved safeguards, reduced red tape, greater efficiency and improved workforce mobility, are sufficient to justify Queensland's application of national scheme legislation. Parliament consequently endorsed Queensland's entry into the National Scheme.

It is considered that, as the current Bill only makes those administrative and consequential amendments required to continue to give effect to Parliament's decision to host and apply the National Law in Queensland, no new fundamental legislative principles regarding national scheme legislation arise.

The amendment to the Mental Health Act could be regarded as affecting the rights and liberties of individuals by applying retrospectively.

Retrospective application of this amendment is deemed necessary to correct an oversight that occurred unintentionally through passage of the National Law in 2009 and that was not identified for inclusion in the *Health Legislation (Health Practitioner Regulation National Law) Amendment Act 2010*. Backdating the amendment to 1 July 2010 will ratify decisions and provide surety to affected registrants who have been performing functions under the Mental Health Act under an interim directive that requires all area of need registrants to have clinical decisions confirmed by a registered specialist psychiatrist.

Retrospectivity will not detrimentally impact on any individual or business and citizens will not be deprived of their legal rights. Retrospectivity is intended purely to clarify the legitimacy of any official medical role and does not remove any legal right to take action for an alleged clinical failure towards a patient.

The level of care provided to patients, and the safeguards in place have not changed with the commencement of the National Law. Under the National Law the affected registrants are considered, for all intents and purposes, psychiatrists and can practice psychiatry.

Consultation

Extensive consultation was undertaken nationally prior to the signing of the COAG agreement on 26 March 2008 and during development of the first two pieces of legislation for the National Scheme.

This consultation included the release of a series of consultation papers, release of exposure draft legislation, the holding of numerous State, Territory and National forums and meetings with representatives of key professional and consumer organisations.

Consultation was overseen 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; and
- the Legislative Drafting Group, appointed by Health Chief Executive Officers, comprising senior policy and legislation officials from each jurisdiction's health department.

The following key stakeholders have been consulted during the development of the current Bill:

- Australian Health Practitioner Regulation National Agency;
- Office of Health Practitioner Registration Boards;
- Medical Radiation Technologists Board of Queensland;
- Occupational Therapists Board of Queensland;
- Australian Medical Association (Queensland); and
- Royal Australian and New Zealand College of Psychiatrists.

In addition, the following key stakeholders were consulted and offered an opportunity to comment on the amendment to the definition of 'psychiatrist' in the Mental Health Act:

- Mental Health Review Tribunal
- Queensland Alliance
- Australian Medical Association Queensland Branch
- Royal Australian and New Zealand College of Psychiatrists.

Notes on Provisions

Part 1 Preliminary

Short title

Clause 1 sets out the short title of the Act – the *Health Legislation (Health Practitioner Regulation National Law) Amendment Act 2012*.

Commencement

Clause 2 provides for the Act to commence on 1 July 2012. This commencement date coincides with the date on which medical radiation practitioners and occupational therapists are transitioning to the National Scheme.

Part 2 Amendment of Ambulance Service Act 1991

Act amended

Clause 3 specifies that Part 2 amends the *Ambulance Service Act 1991*.

Amendment of s 50D (Definitions for div 1)

Clause 4 amends the definition of ‘health professional’ in section 50D to remove the references to the *Medical Radiation Technologists Registration Act 2001* and the *Occupational Therapists Registration Act 2001*, which are both being repealed. The amended definition includes persons registered under the Health Practitioner Regulation National Law to practise, other than as a student, in the medical radiation practice and occupational therapy professions.

Amendment of schedule (Dictionary)

Clause 5 inserts a definition into the Schedule for ‘Health Practitioner Regulation National Law (Queensland)’, as this term is used in the Act but is not defined. The definition links the reader back to the meaning outlined in section 4 of the *Health Practitioner Regulation National Law Act 2009*, which outlines how the Health Practitioner Regulation National Law set out in the Schedule of the Act may be applied and referred to in Queensland.

Part 3 Amendment of Child Protection Act 1999

Act amended

Clause 6 specifies that Part 3 amends the *Child Protection Act 1999*.

Amendment of sch 3 (Dictionary)

Clause 7 amends the definition of ‘health practitioner’ in Schedule 3 to remove the reference to the *Occupational Therapists Registration Act 2001*, which is being repealed. The amended definition includes persons registered under the Health Practitioner Regulation National Law to practise, other than as a student, in the occupational therapy profession.

Part 4 Amendment of Commission for Children and Young People and Child Guardian Act 2000

Act amended

Clause 8 specifies that Part 4 amends the *Commission for Children and Young People and Child Guardian Act 2000*.

Amendment of sch 7 (Dictionary)

Clause 9 amends the definition of ‘registered health practitioner’ in Schedule 7 to remove the references to the *Medical Radiation Technologists Registration Act 2001* and the *Occupational Therapists Registration Act 2001*, which are both being repealed. The amended definition still applies to persons registered under the Health Practitioner Regulation National Law to practise in the medical radiation practice and occupational therapy professions.

In addition, the definition is amended to clarify that the term ‘registered health practitioner’ used throughout the Act does not include persons registered as students under the Health Practitioner Regulation National Law. Removing nationally-registered students from the definition is consistent with similar definitions in other legislation and both clarifies and recognises that student registrants are not qualified to perform some of the functions under the Act that need to be performed by suitably qualified registrants.

Part 5 Amendment of Dental Technicians Registration Act 2001

Act amended

Clause 10 specifies that Part 5 amends the *Dental Technicians Registration Act 2001*.

Amendment of s 124 (Notification of certain events to interstate regulatory authorities and other entities)

Clause 11 inserts a definition into section 124 to define ‘Health Practitioner Regulation National Law (Queensland)’, as this term is used in the Act but is not defined. The definition links the reader back to the meaning outlined in section 4 of the *Health Practitioner Regulation National Law Act 2009*, which outlines how the Health Practitioner Regulation National Law set out in the Schedule of the Act may be applied and referred to in Queensland.

Amendment of sch 4 (Dictionary)

Clause 12 amends the definition of ‘health practitioner registration Act’ in Schedule 4 to remove the references to the *Medical Radiation Technologists Registration Act 2001* and the *Occupational Therapists Registration Act 2001*, which are both being repealed. The amended definition will capture all health practitioners registered under the Health Practitioner Regulation National Law or a specified state-based registration Act.

Clause 12 also amends the definition of ‘Queensland health practitioner registration Acts’ in Schedule 4 to remove the references to the *Medical Radiation Technologists Registration Act 2001* and the *Occupational Therapists Registration Act 2001*, which are both being repealed. The amended definition will capture only the state-based registration Acts in existence after commencement of the Act, being the *Dental Technicians Registration Act 2001* and the *Speech Pathologists Registration Act 2001*.

Part 6 Amendment of Disability Services Act 2006

Act amended

Clause 13 specifies that Part 6 amends the *Disability Services Act 2006*.

Amendment of sch 7 (Dictionary)

Clause 14 amends the definition of ‘registered health practitioner’ to remove the references to the *Medical Radiation Technologists Registration Act 2001* and the *Occupational Therapists Registration Act 2001*, which are both being repealed. The amended definition includes persons registered under the Health Practitioner Regulation National Law to practise in the medical radiation practice and occupational therapy professions.

Part 7 **Amendment of Forensic Disability Act 2011**

Act amended

Clause 15 specifies that Part 7 amends the *Forensic Disability Act 2011*.

Amendment of sch 2 (Dictionary)

Clause 16 amends the definition of ‘registered health practitioner’ in Schedule 2 to remove the reference to the *Occupational Therapists Registration Act 2001*, which is being repealed. The amended definition includes persons registered under the Health Practitioner Regulation National Law to practise, other than as a student, in the occupational therapy profession.

Part 8 **Amendment of Health Act 1937**

Act amended

Clause 17 specifies that Part 8 amends the *Health Act 1937*.

Amendment of s 5 (Interpretation)

Clause 18 amends the definition of ‘health practitioner registration Act’ in section 5 to remove the references to the *Medical Radiation Technologists Registration Act 2001* and the *Occupational Therapists Registration Act 2001*, which are both being repealed. The amended definition will capture all health practitioners registered under the Health Practitioner Regulation National Law or a specified state-based registration Act.

Part 9 **Amendment of Health and Hospitals Network Act 2011**

Act amended

Clause 19 specifies that Part 9 amends the *Health and Hospitals Network Act 2011*.

Amendment of sch 3 (Dictionary)

Clause 20 amends the definition of ‘health practitioner registration Act’ in Schedule 3 to remove the references to the *Medical Radiation Technologists Registration Act 2001* and the *Occupational Therapists Registration Act 2001*, which are both being repealed. The amended definition will capture all health practitioners registered under the Health Practitioner Regulation National Law or a specified state-based registration Act.

Part 10 **Amendment of Health Practitioner Registration Boards (Administration) Act 1999**

Act amended

Clause 21 specifies that Part 10 amends the *Health Practitioner Registration Boards (Administration) Act 1999*.

Amendment of schedule (Dictionary)

Clause 22 amends the definition of ‘health practitioner registration Act’ in the Schedule to remove the references to the *Medical Radiation Technologists Registration Act 2001* and the *Occupational Therapists Registration Act 2001*, which are both being repealed. The amended definition will capture only the remaining specified state-based registration Acts, as the Health Practitioner Registration Boards (Administration) Act does not apply to National Scheme professions.

Part 11 **Amendment of Health Practitioners (Professional Standards) Act 1999**

Act amended

Clause 23 specifies that Part 11 amends the *Health Practitioners (Professional Standards) Act 1999*.

Amendment of s 39 (Panels of assessors)

Clause 24 amends section 39 to omit the panels of assessors for the medical radiation technology and occupational therapy professions. The primary functions of a professional panel of assessors under the Professional Standards Act are to furnish members of professional conduct review panels and to assist QCAT in hearing disciplinary matters. The amendment to section 39 will leave in place panels of assessors for State-registered professions only (being speech pathology and dental technology).

Amendment of s 398ZL (Panel of assessors)

Clause 25 amends section 398ZL to establish panels of assessors for the medical radiation practice and occupational therapy professions for disciplinary proceedings under the National Law.

For the sake of clarity and convenience, the *Health Legislation (Health Practitioner Regulation National Law) Amendment Act 2010* duplicated and consolidated all provisions of the Act in relation to disciplinary matters for National Scheme registrants, arising under either a State Act or the National Law, in Part 12A of the Act. Section 398ZL, which provides for the creation of panels of assessors for National Scheme professions, is included in Part 12A.

Renumbering of pt 13, div 5 (Transitional provision for Criminal History Screening Legislation Amendment Act 2010)

Clause 26 rectifies a duplication of numbering for Part 13, Division 5 of the Health Practitioners (Professional Standards) Act. The clause amends

the first occurring Part 13, division 5 to renumber it as Part 13, Division 4A.

Renumbering of s 405L (Giving particular information to Commissioner for Children and Young People and Child Guardian)

Clause 27 rectifies a duplication of numbering for section 405L of the Health Practitioners (Professional Standards) Act. The clause amends the first occurring section 405L to renumber it as section 405KA.

Insertion of new pt 13, div 6

Clause 28 inserts a transitional Division 6 to apply section 289 of the National Law to the Health Practitioner (Professional Standards) Act and to deal with existing bodies, officeholders, proceedings and other matters established, appointed or commenced under the Professional Standards Act in relation to medical radiation practitioners and occupational therapists transitioning to the National Scheme on 1 July 2012.

New section 405W inserts definitions for Division 6.

New section 405X provides that the existing panels of assessors for the medical radiation practice and occupational therapy professions are taken to be the panels of assessors for those professions under Part 12A.

New section 405Y applies section 289 of the National Law to the Professional Standards Act. Section 289 of the National Law provides for complaints or proceedings commenced but not completed under a Queensland law by the commencement day (in Queensland's case, 1 July 2012) to continue to be dealt with as if that law had not been repealed. However, section 289 does not apply to the Health Practitioners (Professional Standards) Act, because it is not being repealed. Therefore, new section 405Y also applies section 289 to complaints, proceedings and appeals commenced but not completed under the Professional Health Practitioners (Professional Standards) Act, despite that Act not having been repealed.

New section 405Z further applies section 289 of the National Law to disciplinary matters and related proceedings or appeals commenced under the Health Practitioners (Professional Standards) Act, despite no complaint or notification having been received by the relevant registration board. This catches up situations where the registration board has commenced

proceedings because of relevant information that has become known to it other than through a complaint or notification.

New section 405ZA provides that existing tribunal proceedings and existing appeals underway on Queensland's participation day must continue to be dealt with as if the Act or Acts under which they were commenced had not been repealed. The new section further provides that the relevant national board takes the place in any proceedings of the state board which it succeeds.

New section 405ZB provides for the ending of appointments of investigators. The new section states that the appointment under the Health Practitioners (Professional Standards) Act of investigators by state boards which are abolished on the commencement day, ends at that time. The investigator must provide to the relevant national board, all documents and other things relating to complaint and non-complaint disciplinary matters taken for the purposes of investigating that matter under section 289 of the National Law.

New section 405ZC provides for the ending of appointments of inspectors. The new section states that the appointment under the Health Practitioners (Professional Standards) Act of inspectors by state boards which are abolished on the commencement day, ends at that time. Any investigation being conducted by the person also ends at that time. The section further clarifies that the inspector may make a voluntary notification to the relevant national board of any information gleaned by them in the course of conducting an investigation under the Health Practitioners (Professional Standards) Act.

New section 405ZD requires that certain records, which otherwise would have been required to be provided to the relevant state board, must, from the commencement day, be provided to the succeeding national board.

New section 405ZE requires that registrants, who would otherwise have been required to give notice of certain matters to the relevant state board, must, from the commencement day, give notice of those matters to the succeeding national board.

New section 405ZF transfers liability for acts done or omissions made by persons acting under the Health Practitioners (Professional Standards) Act or the repealed health practitioner registration Acts (for medical radiation practitioners and occupational therapists) from the relevant Queensland registration board to the National Agency. This does not affect the scope of the existing vesting of liability in the relevant board, but simply nominates

the appropriate body under the National Scheme in which liability should instead be vested.

New section 405ZG deals with penalties payable in relation to offences against the Health Practitioners (Professional Standards) Act or a repealed health practitioner registration Act (for medical radiation practitioners and occupational therapists). Where a court has not finished hearing a proceeding for an offence brought by a former board, any penalties that may be ordered paid to the board must instead be ordered paid to the relevant national board.

Amendment of schedule (Dictionary)

Clause 29 inserts or amends a number of definitions in the Schedule as a result of medical radiation practitioners and occupational therapists transitioning to the National Scheme on 1 July 2012

Subclause (1) inserts a definition for ‘Health Practitioner Regulation National Law (Queensland)’, as this term is used in the Act but is not defined. The definition links the reader back to the meaning outlined in section 4 of the *Health Practitioner Regulation National Law Act 2009*, which outlines how the Health Practitioner Regulation National Law set out in the Schedule of the Act may be applied and referred to in Queensland.

Subclause (2) amends the definition of ‘amending Act’ to refer to the multiple uses of this term in the Act. An additional meaning of commencement is required for the transitional provisions being inserted for the *Health Legislation (Health Practitioner Regulation National Law) Act 2012*.

Subclause (3) amends the definition of ‘commencement’ to refer to the multiple uses of this term in the Act. An additional meaning of commencement is required for the transitional provisions being inserted for the *Health Legislation (Health Practitioner Regulation National Law) Act 2012*.

Subclause (4) amends the definition of ‘former board’ to refer to both the existing transitional provisions for the *Health Legislation (Health Practitioner Regulation National Law) Act 2010* and the new transitional provisions for the *Health Legislation (Health Practitioner Regulation National Law) Act 2012*.

Subclause (5) amends the definition of ‘health practitioner registration Act’ to remove the references to the *Medical Radiation Technologists Registration Act 2001* and the *Occupational Therapists Registration Act 2001*, which are both being repealed. The amended definition will capture only the remaining specified state-based registration Acts.

Subclause (6) amends the definition of ‘profession’ to omit references to the medical radiation technology and occupational therapy professions. These professions will be captured under subclause (c) of this definition which describes the National Scheme professions.

Subclause (7) amends the first occurring definition of ‘repealed health practitioner registration Act’ in the Schedule to refer to the definition under existing Division 5 (Provisions for *Health Legislation (Health Practitioner Regulation National Law) Amendment Act 2010*), section 405L (Definitions for div 5) and to a new definition being inserted under new section 405W to provide for transitional provisions for the *Health Legislation (Health Practitioner Regulation National Law) Amendment Act 2012*.

Part 12 Amendment of Health Practitioners (Special Events Exemption) Act 1998

Act amended

Clause 30 specifies that Part 12 amends the *Health Practitioners (Special Events Exemption) Act 1998*.

Amendment of schedule (Dictionary)

Clause 31 amends the definition of ‘health registration Act’ in the Schedule to remove the references to the *Medical Radiation Technologists Registration Act 2001* and the *Occupational Therapists Registration Act 2001*, which are both being repealed. The amended definition will capture all health practitioners registered under the Health Practitioner Regulation National Law or a specified state-based registration Act.

Part 13 **Amendment of Health Quality and Complaints Commission Act 2006**

Act amended

Clause 32 specifies that Part 13 amends the *Health Quality and Complaints Commission Act 2006*.

Amendment of sch 5 (Dictionary)

Clause 33 amends the definition of ‘state health law’ in Schedule 5 to remove the references to the *Medical Radiation Technologists Registration Act 2001* and the *Occupational Therapists Registration Act 2001*, which are both being repealed under this Act. The amended definition will capture only the remaining specified state-based registration Acts.

Part 14 **Amendment of Mental Health Act 2000**

Act amended

Clause 34 specifies that Part 14 amends the *Mental Health Act 2000*.

Insertion of new ch 16, pt 6

Clause 35 inserts a new Chapter 16, Part 6 into the Mental Health Act to provide a validation provision for the *Health Legislation (Health Practitioner Regulation National Law) Amendment Act 2012*. New section 618 provides clarity around the retrospective application of the amended definition of psychiatrist in the following clause.

The reason for this clause is to retrospectively validate decisions made and actions taken by a qualified ‘area of need’ registrant practising in a specialist position in psychiatry following an amendment of the definition of psychiatrist that occurred in 2010. The amendment, made through the *Health Legislation (Health Practitioner Regulation National Law)*

Amendment Act 2010, unintentionally revoked the authority for these area of need registrants to perform functions under the Mental Health Act.

Retrospectivity provides surety for practitioners who have been providing competent and professional services during the period since commencement of the 2010 amendment. It does not impact on the rights of patients who may have grievances, to pursue investigation or action about mistreatment or negligence. Retrospectivity will not penalise professionals or patients in any way, it merely ensures there is no doubt over the provision of professional services over the last two years.

Therefore, the effect of the validation clause is to provide that the amended definition of ‘psychiatrist’ is taken always to have applied as if the amended definition had commenced on 1 July 2010 immediately after the commencement of the *Health Legislation (Health Practitioner Regulation National Law) Amendment Act 2010*.

Amendment of schedule (Dictionary)

Clause 36 amends the definition of ‘occupational therapist’ in the Schedule to remove the reference to the *Occupational Therapists Registration Act 2001*, which is being repealed. The amended definition includes persons registered under the Health Practitioner Regulation National Law to practise, other than as a student, in the occupational therapy profession.

Clause 36 also amends the definition of ‘psychiatrist’ to capture both specialist medical registrants (in psychiatry) and area of need medical registrants (in a specialist psychiatry position), to enable both types of registrants to perform the functions of an ‘authorised psychiatrist’ under the Mental Health Act.

The practical effect of this amendment is to restore the ability to recruit suitably qualified psychiatrists to assess and examine involuntary patients in regional and remote areas of the state, where area of need registrants are necessary to meet workforce demands. The amendment restores the arrangements that were in place prior to commencement of the National Registration and Accreditation Scheme in 2010.

Part 15 Amendment of Nuclear Facilities Prohibition Act 2007

Act amended

Clause 37 specifies that Part 15 amends the *Nuclear Facilities Prohibition Act 2007*.

Amendment of s 5 (Relationship with other Acts or laws)

Clause 38 amends section 5 to remove a reference to the *Medical Radiation Technologists Registration Act 2001*, which becomes redundant as a result of the repeal of this Act.

Part 16 Amendment of Radiation Safety Act 1999

Act amended

Clause 39 specifies that Part 16 amends the *Radiation Safety Act 1999*.

Amendment of s 209 (Confidentiality of information)

Clause 40 amends section 209 to specify that the provision applies to registration boards established under both the Health Practitioner Regulation National Law and the State-based health practitioner registration Acts. This amendment is consequential to an amendment to the definition of ‘health practitioner registration Act’ in the following clause, which removes the Health Practitioner Regulation National Law from that definition.

Amendment of sch 2 (Dictionary)

Clause 41 amends the definition of ‘health practitioner’ in Schedule 2 to consolidate the definition to refer to all registered health practitioners under the Health Practitioner Regulation National Law and the two remaining State-based health practitioner registration Acts (following the repeal of the *Medical Radiation Technologists Registration Act 2001* and the

Occupational Therapists Registration Act 2001), in addition to other persons practising in health-related fields.

This clause also amends the definition of ‘health practitioner registration Act’ to remove the references to the Health Practitioner Regulation National Law, as well as the *Medical Radiation Technologists Registration Act 2001* and the *Occupational Therapists Registration Act 2001*, which are both being repealed. The amended definition will capture only health practitioners registered under a specified state-based registration Act.

Part 17 Amendment of Speech Pathologists Registration Act 2001

Act amended

Clause 42 specifies that Part 17 amends the *Speech Pathologists Registration Act 2001*.

Amendment of sch 3 (Dictionary)

Clause 43 amends the definition of ‘health practitioner registration Act’ in Schedule 3 to remove the references to the *Medical Radiation Technologists Registration Act 2001* and the *Occupational Therapists Registration Act 2001*, which are both being repealed. The amended definition will capture all health practitioners registered under the Health Practitioner Regulation National Law or a specified state-based registration Act.

This clause also amends the definition of ‘Queensland health practitioner registration Acts’ to remove the references to the *Medical Radiation Technologists Registration Act 2001* and the *Occupational Therapists Registration Act 2001*, which are both being repealed. The amended definition will capture only the remaining specified state-based registration Acts.

Part 18 Amendment of Transport Operations (Road Use Management) Act 1995

Act amended

Clause 44 specifies that Part 18 amends the *Transport Operations (Road Use Management) Act 1995*.

Amendment of s 142 (Health professional’s disclosure not breach of confidence)

Clause 45 amends the definition of ‘health professional’ in section 142 to remove the reference to the *Occupational Therapists Registration Act 2001*, which is being repealed. The amended definition includes persons registered under the Health Practitioner Regulation National Law to practise, other than as a student, in the occupational therapy profession.

Part 19 Amendment of Victims of Crime Assistance Act 2009

Act amended

Clause 46 specifies that Part 19 amends the *Victims of Crime Assistance Act 2009*.

Amendment of sch 3 (Definitions)

Clause 47 amends the definition of ‘health practitioner’ in Schedule 3 to remove the reference to the *Occupational Therapists Registration Act 2001*, which is being repealed. The amended definition includes persons registered under the Health Practitioner Regulation National Law to practise, other than as a student, in the occupational therapy profession.

Part 20 **Repeal of Acts**

Repeals

Clause 48 repeals the *Medical Radiation Technologists Registration Act 2001* and the *Occupational Therapists Registration Act 2001*. The repeal of these Acts will abolish the state registration boards established under those Acts, following transition of medical radiation practitioners and occupational therapists to national registration on 1 July 2012.

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