

Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2018

Explanatory Notes

Short title

The short title of the Bill is the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2018.

Policy objectives and the reasons for them

Summary of Bill

The Bill amends the Health Practitioner Regulation National Law (National Law) as agreed by the Council of Australian Governments (COAG) Health Council on 12 October 2018 to:

- introduce reforms to mandatory reporting by treating practitioners, to ensure health practitioners have confidence to seek treatment for health conditions, while protecting the public from harm
- double the penalties for holding out and related offences under the National Law from \$30,000 to \$60,000, and introduce a maximum imprisonment term of three years for the most serious offences.

The Bill makes consequential amendments to the Queensland local application provisions of the *Health Practitioner Regulation National Law Act 2009* (Qld) to:

- align Queensland's approach to mandatory reporting by treating practitioners with the approach in the National Law by removing a Queensland-specific provision
- provide for circumstances in which the holding out and related offences are prosecuted on indictment and summarily in Queensland.

The Bill also makes consequential amendments to the *Ambulance Service Act 1991* (Qld) and *Hospital and Health Boards Act 2011* (Qld).

Background to the Health Practitioner Regulation National Law

The *Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions* (Intergovernmental Agreement) was agreed by COAG in March 2008. The Intergovernmental Agreement provides the basis for the establishment of the National Registration and Accreditation Scheme for the Health Professions (National Scheme). The National Scheme was implemented through the adoption of the National Law by all states and territories in 2009 and 2010.

Queensland is the host jurisdiction for the National Law under the *Health Practitioner Regulation National Law Act 2009* (Qld) and the National Law is set out in the schedule to that

Act. Under the Intergovernmental Agreement, proposed amendments to the National Law must be approved by COAG Health Council.

The National Law establishes 15 National Boards that register and regulate health practitioners from 16 regulated health professions. It also establishes the Australian Health Practitioner Regulation Agency (AHPRA) to provide regulatory services for the National Boards and advice and assistance to COAG Health Council in relation to the National Scheme.

The National Scheme and National Law ensure that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered. It allows health practitioners to have a single registration recognised anywhere in Australia and provides mechanisms for detecting and addressing practitioner health, conduct or performance issues. The National Law also provides powers to prosecute persons who falsely hold themselves out to be registered or use a protected professional title.

Some local modifications apply in certain States and Territories. In particular, the complaints handling and disciplinary functions of Queensland and New South Wales operate under ‘co-regulatory’ arrangements recognised by the National Law. The Queensland Health Ombudsman is the single point of entry for all health service complaints in Queensland. The Health Ombudsman deals with more serious matters about registered health practitioners, but may refer other matters to AHPRA. In New South Wales, the health professional councils work with the Health Care Complaints Commission to assess and manage concerns about practitioners’ health, conduct or performance.

Meaning of ‘treating practitioner’

The Bill contains reforms to mandatory reporting by ‘treating practitioners’. In the Bill, a ‘treating practitioner’ is a registered health practitioner who provides a health service to another registered health practitioner or a student registered under the National Law (see clause 19, new sections 141A(1) and 141B(1) and (3)). The term ‘treating practitioner’ is used in the explanatory notes to have the same meaning as in the Bill.

Reforms to mandatory reporting by treating practitioners

The National Law contains mandatory reporting obligations for registered health practitioners, employers and education providers. Mandatory reporting obligations aim to protect the public by ensuring that AHPRA and the National Boards are aware of practitioners who may be placing the public at risk of harm. In addition to mandatory reporting requirements, practitioners have ethical and professional obligations to report other practitioners who may pose a risk to the public.

Under the National Law, registered health practitioners, including treating practitioners, and employers are required to notify AHPRA if they reasonably believe another registered health practitioner has behaved in a way that constitutes ‘notifiable conduct’. Notifiable conduct is defined in section 140 of the National Law and means a practitioner has:

- practised their health profession while intoxicated by alcohol or drugs (‘intoxication’)
- engaged in sexual misconduct in connection with the practice of their profession (‘sexual misconduct’)

- placed the public at risk of substantial harm in the practice of their profession because of an impairment ('impairment')
- placed the public at risk of harm by practising their profession in a way that constitutes a significant departure from accepted professional standards ('practice outside of professional standards').

'Impairment' is defined as "a physical or mental impairment, disability, condition or disorder (including substance abuse or dependence) that detrimentally affects or is likely to detrimentally affect ... the person's capacity to practise the profession".

The National Law also requires registered health practitioners to notify AHPRA if they reasonably believe a student who is registered under the National Law has an impairment that may place the public at substantial risk of harm when the student is undertaking clinical training.

In Queensland, mandatory reports are made to the Queensland Health Ombudsman and are dealt with under Queensland's co-regulatory arrangements. In New South Wales, mandatory reports are made to AHPRA, but AHPRA refers them to the Health Care Complaints Commission and the relevant health professional council in New South Wales.

Queensland and Western Australia have modified the operation of the National Law about mandatory reporting by treating practitioners:

- Queensland only requires treating practitioners to report another registered health practitioner's impairment if the impairment would place the public at substantial risk of harm in the future. This means, for example, that if a practitioner's health condition is being treated and the public would not be at substantial risk of harm if the practitioner continued practising, a treating practitioner is not required to make a mandatory report. Treating practitioners are required to report other forms of notifiable conduct in Queensland, including intoxication, sexual misconduct and practice outside of professional standards.
- Western Australia exempts treating practitioners from mandatory reporting for all forms of notifiable conduct if their patient is a registered health practitioner. However, treating practitioners may make voluntary reports based on their professional and ethical obligations to report matters that may place the public at risk of harm.

Some stakeholders have raised concerns that current mandatory reporting requirements under the National Law create a barrier for practitioners and students seeking treatment for health conditions, especially mental illness or drug and alcohol issues. Concerns have also been raised that, if a practitioner or student seeks treatment, they may be reluctant to be open and honest with their treating practitioner for fear of being subject to mandatory reporting.

It is not in the public interest for a practitioner or student to avoid seeking treatment for a health issue or to withhold information from their treating practitioner, as this may put the health or safety of the practitioner or the public at risk.

COAG Health Council considered this issue extensively at its meetings in 2017 and 2018 and conducted two rounds of consultation on the reforms. Details of the consultation processes are outlined below under the heading 'Consultation'.

On 13 April 2018, COAG Health Council agreed to progress amendments to mandatory reporting requirements for treating practitioners, noting that Western Australia will retain its current arrangements of a complete exemption from mandatory reporting by treating practitioners. Health Ministers agreed that the reforms should ensure that registered health practitioners can seek help when needed, but must also protect the public from harm.

On 12 October 2018, COAG Health Council approved the reforms to mandatory reporting by treating practitioners in the Bill. After considering the feedback from the targeted consultation process in August 2018, Health Ministers concluded that the amendments released for consultation to stakeholders achieve the appropriate balance between encouraging practitioners with an impairment to feel confident that they can seek treatment, while protecting the public from harm by requiring treating practitioners to make mandatory reports about other registered health practitioners that pose a substantial risk of harm to the public or are engaging in sexual misconduct in connection with the practice of their profession.

Increased penalties for holding out and related offences

High-profile cases of individuals holding themselves out as registered health practitioners when they are not registered prompted a review of the adequacy of penalties for the National Law offences of holding out, using a protected title, undertaking restricted practices and contravening a prohibition order. The current penalties of \$30,000 for an individual and \$60,000 for a body corporate for these offences are considered inadequate for the significant harm to patients that could occur if a person does not hold registration as a health practitioner and the breach of trust it involves for members of the community. In several cases of this type, magistrates have stated that they would have imposed an imprisonment term for these offences if one was available.

At its meeting of 24 March 2017, COAG Health Council agreed that new multi-year imprisonment terms and increased fines were needed for these offences. COAG Health Council agreed to amend the National Law to:

- double the maximum monetary penalties for these offences to \$60,000 for an individual and, where relevant, \$120,000 for a body corporate
- introduce an imprisonment term with a maximum period of three years, which can be used for offences involving the most serious conduct.

Achievement of policy objectives

Reforms to mandatory reporting by treating practitioners

The Bill includes reforms to mandatory reporting by treating practitioners agreed by COAG Health Council on 12 October 2018. The reforms ensure health practitioners have confidence to seek treatment for health conditions, while protecting the public from harm.

The Bill sets out revised mandatory reporting requirements for treating practitioners, in new sections 141A to 141C of the National Law (see clause 19 of the Bill). The requirements apply to a registered health practitioner, referred to as the treating practitioner, who forms a reasonable belief about another registered health practitioner or student in the course of providing a health service. The requirements replace the general mandatory reporting

requirements in section 141 which currently apply to treating practitioners (see clause 18, insertion of new section 141(2A)).

The Bill strengthens reporting of sexual misconduct by treating practitioners. New section 141A of the National Law requires a treating practitioner to report past, current and future risk of sexual misconduct by another registered health practitioner in connection with the practice of that person's profession. The requirement to report future risk of sexual misconduct is based on the unique professional relationship with a treating practitioner. It may apply, for example, if a patient discloses a plan to engage in sexual misconduct or discloses conduct that amounts to 'grooming'. The strengthened reporting of sexual misconduct is in line with community expectations and the findings of the Royal Commission into Institutional Responses to Child Sexual Abuse.

New section 141B of the National Law is the provision which contains the main reforms to mandatory reporting by treating practitioners. It sets out the requirements for reporting other forms of 'notifiable conduct', namely impairment, intoxication and practice outside of professional standards. The key changes incorporated in section 141B are:

- Higher threshold for reporting – A treating practitioner will only be required to make a mandatory report if their practitioner-patient's conduct involving impairment, intoxication or departure from professional standards meets a higher threshold of risk of *placing the public at substantial risk of harm*. This threshold will not apply to mandatory reporting of sexual misconduct.
- Holistic assessment of risk – A treating practitioner may make an overall assessment about a practitioner-patient's conduct relating to impairment, intoxication or departure from professional standards in deciding whether a mandatory report should be made. All three types of conduct are measured against the same threshold for reporting. If an impairment issue is connected to, or a significant cause of, intoxication or departure from professional standards, a treating practitioner is able to take into account the effectiveness of treatment or engagement in treatment of an impairment by the practitioner-patient in deciding whether there is likely to be an ongoing risk of harm to the public.
- Guidance about factors a treating practitioner may consider – The new provision states that a treating practitioner may consider any matter relevant to the risk of harm a practitioner's or student's impairment poses to the public. However, the provision also provides guidance to treating practitioners about matters they may consider when deciding whether a mandatory report is required. These factors are:
 - the nature, extent and severity of an impairment
 - the steps a practitioner-patient is taking or willing to take to manage an impairment
 - the extent to which an impairment can be managed with appropriate treatment
 - any other matter a treating practitioner considers is relevant to the risk of harm the impairment poses to the public.

The higher threshold for reporting, together with the guidance factors treating practitioners may consider, make it clear that only serious impairments that are not being appropriately managed through treatment or mitigation strategies need to be reported if the safety of patients would be at risk. These reforms will give registered health practitioners greater confidence to seek treatment for their health issues.

While it is important for health practitioners to be able to seek treatment for health issues, Health Ministers consider it is also vital that health consumers have confidence that registered health practitioners will be reported in appropriate cases, ensuring patient safety and maintaining the community's trust. For this reason, section 141B requires mandatory reporting if the practitioner-patient's conduct meets the threshold of placing the public at substantial risk of harm.

New section 141C of the National Law includes equivalent exceptions to mandatory reporting by treating practitioners that are available to other registered health practitioners under existing mandatory reporting provisions. The exceptions include matters dealt with under a professional indemnity insurance policy; matters involving legal advice or a legal proceeding; the exercise of functions as part of a quality assurance committee, council or other body that is bound by confidentiality laws; and matters that the treating practitioner knows or reasonably believes have already been reported to AHPRA.

The Bill also amends the definition of 'notifiable conduct' in section 140 to place the definition in the present tense. This reflects current legislative drafting practice and makes clear that the definition always applies. However, there is no change to the substantive obligations created by any provisions that use the defined term. For example, the Bill does not amend section 141(1)(a) of the National Law, which requires a registered health practitioner to make a mandatory report if another registered health practitioner 'has behaved in a way that constitutes notifiable conduct'.

More details about these issues are included in the 'Notes on provisions' section of the explanatory notes.

Increased penalties for holding out and related offences

The Bill amends the National Law to increase penalties and introduce a maximum imprisonment term of three years for holding out and related offences.

Sections 113 and 115 of the National Law provide offences for the improper use of protected titles for each health profession regulated by the National Law. Sections 116 to 119 provide offences for making false or misleading claims about a person's registration under the National Law.

Sections 121 to 123 of the National Law place restrictions on who can carry out certain dental acts, prescribe optical appliances and perform spinal manipulation. A person who contravenes these provisions commits an offence.

Section 196A also makes it an offence to contravene a prohibition order. Section 196(4) authorises a responsible tribunal to issue a 'prohibition order' if the tribunal decides to cancel a person's registration or the person does not hold registration. The prohibition order may prohibit the person, either permanently or for a stated period, from providing health services or using a specified title.

Each of these offences carries a maximum penalty of \$30,000 for an individual and, where relevant, \$60,000 for a body corporate.

The Bill amends sections 113, 115 to 119, 121 to 123 and 196A of the National Law to double the maximum monetary penalty for these offences to \$60,000 for an individual and, where relevant, \$120,000 for a body corporate (see clauses 8 to 16 and 20). In addition, each of these offences will carry an imprisonment term of up to three years. It is intended a prosecutor would seek an imprisonment term for the most serious cases.

As a result of these offences having an imprisonment term of up to three years, the offences will automatically be categorised as indictable offences in some States and Territories. To maintain national consistency in the way these offences are dealt with, the Bill inserts a new provision to provide that these offences are indictable offences in all jurisdictions (see clause 21 and new section 241A(1)). Categorising these offences as indictable reflects the significant harm that may result from the conduct to which the offences apply.

The conduct that may fall under these offences ranges from very serious conduct where patients have been harmed to less serious cases involving the public being misled about a person's specialty or qualifications. Therefore, the Bill provides flexibility for the offences to be dealt with either on indictment or summarily, depending on the circumstances of the case (see clause 21 and new section 241A(2)). This will ensure the consequences of offending are proportional, allowing the most serious instances with the greatest potential to cause harm to be liable to higher penalties and the consequences that result from conviction on indictment. Less serious cases would continue to be dealt with summarily.

To minimise any potential impact on the justice arrangements in each jurisdiction, the Bill provides that decisions about whether to proceed summarily or on indictment will be made in accordance with the applicable justice legislation of each State or Territory (see clause 21 and new section 241A(3)).

The Bill makes consequential amendments to schedule 6 of the National Law to enable inspectors to keep a seized document for longer than six months for an investigation (see clause 23, amendment to schedule 6, section 16). This change is a consequence of the holding out and related offences becoming indictable offences. As these offences will no longer be subject to a time limit for instituting proceedings, evidence may need to be kept for longer periods of time, beyond six months.

Consequential amendments to the National Law as applied in Queensland

Section 4 of the *Health Practitioner Regulation National Law Act 2009* (Qld) applies the National Law in Queensland, subject to modifications set out in part 4 of the Act. Part 4 modifies the application of certain provisions of the National Law in Queensland. In some cases, it inserts specific provisions that replace or supplement the National Law as it applies in Queensland.

The Bill includes consequential amendments to a number of Queensland-specific modifications to the National Law.

Aligning Queensland's approach to mandatory reporting by treating practitioners with the approach in the National Law

As outlined above, Queensland has modified the National Law to include a specific provision that provides that treating practitioners are only required to report another registered health

practitioner's impairment if the impairment would place the public at substantial risk of harm in the future (see section 25 of the *Health Practitioner Regulation National Law Act 2009* (Qld)). The current Queensland provision is similar to the approach to mandatory reporting by treating practitioners in the Bill. For example, both approaches use a reporting threshold of 'substantial risk of harm' to the public. However, the reforms to the National Law for mandatory reporting by treating practitioners are more extensive, as they also apply the guidance factors and apply the threshold of 'substantial risk of harm' to intoxication and practice outside of professional standards.

Queensland has agreed to adopt the National Law approach to mandatory reporting by treating practitioners, which will lead to improved national consistency. To achieve this, the Bill removes Queensland's current modification, and the provisions of the National Law in the Bill will apply (see clause 4 which omits section 25(3)).

Prosecution of indictable offences in Queensland

The Bill includes a Queensland-specific modification that sets out how the indictable offences in sections 113, 115 to 119, 121 to 123 and 196A of the National Law will be prosecuted in Queensland (see clause 6 which inserts a new section 56A and replaces section 241A of the National Law).

The provision classifies these offences as misdemeanours. This is necessary to ensure the offences are classed as indictable offences in Queensland, as section 3 of the *Criminal Code* provides that an offence is an indictable offence if it is designated as a crime or misdemeanour. The section provides that the holding out and related offences will ordinarily be heard summarily by a Magistrates Court. However, it also provides for circumstances in which a Magistrates Court must abstain from dealing with the offence summarily. If a Magistrates Court is satisfied, on application by the prosecution or the defence, that there are exceptional circumstances, the matter must be heard on indictment. The provision includes examples of what may constitute 'exceptional circumstances', which are the same as those in section 552D of the *Criminal Code*. Exceptional circumstances may include if there are associated charges proceeding on indictment and the offences should be tried together or there is an important issue of law involved.

The provision also states that the maximum monetary penalty a Magistrates Court in Queensland can impose when dealing with an indictable offence under the National Law summarily is 165 penalty units (currently \$21,540). This is the same penalty a Magistrates Court can impose under section 46 of the *Penalties and Sentences Act 1992* (Qld).

As this is less than the maximum monetary penalty of \$60,000 that will apply to these offences, the provision also states that a Magistrates Court must abstain from dealing with an offence summarily if satisfied that, because of the nature or seriousness of the offence or another reason, the defendant may not be adequately punished. This will mean the more serious cases of holding out and related offences, where a high monetary penalty is sought, may need to proceed on indictment.

Consequential amendments to other Queensland legislation

The Bill makes minor consequential amendments to the *Ambulance Service Act 1991* (Qld) and the *Hospital and Health Boards Act 2011* (Qld). These Acts refer to the exemption from mandatory reporting in section 141(4)(d) of the National Law for registered health practitioners who participate in approved root cause analysis and quality assurance activities. The Bill updates the cross-references in these Acts to include references to the equivalent exemption provisions included in new section 141C (see clauses 28, 30 and 31).

Consequential amendments are also made to the same Acts to update the definitions of ‘excluded notifiable conduct’ and ‘public risk notifiable conduct’ to place them in present tense (see clauses 26, 27 and 32). These changes are consistent with the changes made to the definition of ‘notifiable conduct’ in section 140 of the National Law.

Alternative ways of achieving policy objectives

As the Bill deals with the operation of existing legislation, legislation is the only option for achieving the proposed policy objectives.

In May 2018, the Commonwealth Office of Best Practice Regulation confirmed that the amendments in the Bill did not require further analysis from a regulatory impact perspective, as the amendments are of an enforcement nature or have only minor impacts.

In May 2018, the Queensland Office of Best Practice Regulation, Queensland Productivity Commission, advised that the amendments are excluded from further regulatory impact analysis under *The Queensland Government Guide to Better Regulation* under exclusion category (k) – regulatory proposals that clearly do not add to the burden, and it is reasonably clear there are no significant adverse impacts.

Estimated cost for government implementation

The amendments to the National Law will be implemented by AHPRA and do not have any financial implications for the Queensland Government, as AHPRA is wholly funded by registrant fees.

The amendments to Queensland legislation are consequential in nature and there are no financial implications for these amendments.

Consistency with fundamental legislative principles

The increased penalties and introduction of imprisonment terms for the holding out and related offences under the National Law are relevant to the fundamental legislative principle that a penalty should be proportionate to the offence (see clauses 8 to 16 and 20 of the Bill which amend sections 113, 115 to 119, 121 to 123 and 196A of the National Law).

It is considered that the penalties provided in the Bill are appropriate in light of the significant breach of public trust and harm to patients that could occur if a person takes or uses a protected title or holds themselves out to be a registered health practitioner when they are not.

The Bill contains safeguards to ensure that penalties are proportionate to the offences to which they apply. It provides flexibility for offences to be dealt with either on indictment or summarily, depending on the circumstances of the case, which will allow the most serious instances with the greatest potential to cause harm to be liable to the higher penalties and consequences that result from conviction on indictment in exceptional circumstances (see clause 21 which inserts new section 241A). Less serious cases will continue to be dealt with summarily.

The Queensland modifications to proposed section 241A of the National Law provide additional protections by limiting the monetary penalty that may be imposed in summary proceedings in accordance with the limit that applies under section 46 of the *Penalties and Sentences Act 1992* (Qld) (see clause 6 and new section 241A(5)). The Queensland-specific section also provides that a Magistrates Court must abstain from dealing summarily with an offence if satisfied that, because of the nature or seriousness of the offence or any other relevant consideration, the defendant may not be adequately punished if convicted (see clause 6 and new section 241A(3)(b)).

Proposed section 241A(2) as it applies in Queensland provides that the indictable offences in the National Law will ordinarily be dealt with summarily, that is, by a magistrate alone. This may appear to result in reduced access to a trial by jury for defendants. However, the Bill provides that defendants will have the ability to proceed to a trial with a jury, if on an application by either the prosecution or defence, the magistrate is satisfied there are exceptional circumstances that mean the charge should be committed for trial. This is broadly consistent with the approach contained in section 552D of the Criminal Code.

Consultation

Reforms to mandatory reporting by treating practitioners

The amendments in the Bill dealing with mandatory reporting by treating practitioners have been the subject of two rounds of consultation.

In September 2017, a discussion paper was released inviting submissions on four options for reforms to mandatory reporting by treating practitioners. Two national forums were held with practitioner and consumer stakeholders. Forty-seven (47) written submissions were received. Approximately half of the submissions supported the Western Australian model of providing a complete exemption from mandatory reporting by treating practitioners. Other written submissions supported a model that would continue to require mandatory reporting by treating practitioners for sexual misconduct, intoxication and practice outside of professional standards, but were approximately evenly divided on whether there should be mandatory reporting for impairment.

On 13 April 2018, COAG Health Council considered the results of consultation and agreed to progress amendments to mandatory reporting requirements for treating practitioners. Health Ministers did not support the Western Australian model and agreed that the reforms should ensure that registered health practitioners can seek help when needed, but must also protect the public.

On 2 August 2018, COAG Health Council agreed to release proposed mandatory reporting amendments to stakeholders for targeted consultation. Consultation was undertaken from 8 to

31 August 2018 with stakeholders, including professional bodies representing registered health professions, consumer groups, National Boards and professional indemnity insurers. Stakeholders were provided with a consultation draft of the proposed amendments and a consultation paper providing an explanation of the reforms. Meetings were held with the Australian Medical Association and Consumers Health Forum of Australia in Canberra and with the Royal Australian College of General Practitioners in Melbourne. Briefings were also held with National Board Chairs, the AHPRA Professions Reference Group consisting of representatives from each registered health profession and the AHPRA Community Reference Group consisting of individual community members.

In Queensland, meetings were held with the Australian Medical Association Queensland, Queensland Nurses and Midwives' Union and Health Consumers Queensland.

Twenty-nine written submissions were received from stakeholders to the targeted consultation process. The majority of stakeholders supported the overall approach of the draft amendments, although some stakeholders suggested possible improvements to the draft legislation.

Threshold for reporting

Some stakeholders, principally professional bodies representing health practitioners, raised concerns about the threshold of 'substantial risk of harm'.

These stakeholders argued the proposed test of 'substantial risk of harm' could be interpreted to require mandatory reporting of low-level or trivial harm provided there is a 'substantial risk' that the harm will occur. These stakeholders argued that both the likelihood of the harm occurring and the level of harm should be specifically referred to in the threshold test, such as requiring a test of 'substantial risk of substantial harm'. Some stakeholders also believe the threshold may be confusing because it uses similar wording to the existing threshold.

The current threshold for reporting impairment is 'risk of substantial harm' (see paragraph (c) of the definition of 'notifiable conduct' in section 140 of the National Law). The threshold of 'substantial risk of harm' was agreed by Health Ministers to represent a significantly higher threshold for reporting impairment than currently applies.

The test of 'substantial risk of harm' is not intended to require reporting of low level or trivial types of harm or mere inconvenience. The threshold must be considered in the context of the overall purpose of the provisions and by the fact that only serious impairments which are not being appropriately treated are intended to require reporting. As such, harm would need to be 'material' to reach the threshold of 'substantial risk of harm'.

As this is a higher threshold for reporting, it will give practitioners and students greater confidence that they can seek treatment and discuss impairment issues with their treating practitioner. The guidance factors included in the legislation also send a clear signal to practitioners and students that, provided they are engaged in treatment and willing to take steps to address their impairment, a treating practitioner is not required to make a mandatory report, unless the safety of patients would be at risk. A treating practitioner is able to use their professional judgement and expertise in considering whether an impairment is being managed appropriately to mitigate risks to the public.

Health Ministers were satisfied that the threshold of ‘substantial risk of harm’ achieves the appropriate balance between encouraging practitioners with an impairment to feel confident that they can seek treatment, while also ensuring that practitioners are not practising in a way that puts the health and safety of the public and patients at risk.

Holistic assessment of risk

Stakeholders were generally supportive of a treating practitioner being able to take a holistic approach to considering a practitioner-patient’s conduct relating to impairment, intoxication and departure from professional standards. Some stakeholders argued that the legislation should specifically recognise that instances of intoxication or departure from professional standards may be linked to an underlying impairment and, in these circumstances, should be required to be assessed using the same guidance factors that apply to an impairment.

Health Ministers were satisfied that the proposed legislation provides a sufficient basis for a treating practitioner to consider a practitioner-patient’s conduct in its entirety. The guidance factors were developed specifically with impairment in mind and do not lend themselves to being automatically applied to other categories of conduct. A practitioner-patient’s conduct for impairment, intoxication and departure from professional standards is assessed against the same threshold of ‘substantial risk of harm’. This allows a treating practitioner to make a holistic assessment of risk against each of these types of conduct.

Also, in cases where an impairment may be impacting on, or causing, instances of intoxication at work or departure from professional standards, a treating practitioner may consider the guidance factors related to the impairment first, such as the extent to which treatment is likely to be successful and the practitioner-patient’s engagement with treatment. If the treating practitioner is satisfied the impairment issue is being managed appropriately and does not reach the threshold of ‘substantial risk of harm’, the treating practitioner would not be required to make a mandatory report for the impairment. The treating practitioner could then consider, in light of the impairment issue being managed, whether future instances of intoxication at work or departure from professional standards are likely to recur. If, given appropriate management of the impairment, they are not likely to recur, the mandatory reporting threshold of ‘substantial risk of harm’ would not be met. In this way, the current provisions provide adequate flexibility for a holistic assessment of risk.

Some stakeholders also argued there is an overlap between the categories of ‘intoxication’ and ‘impairment’. However, there are clear differences between them. The definition of ‘impairment’ includes a substance abuse or dependence condition. This must be contrasted with the reporting requirements for intoxication which only apply if a practitioner has practised their profession while intoxicated. It would be possible for a practitioner to have a substance abuse or dependence disorder, but it may be something that only affects their personal life or only occurs while they are away from their workplace. This type of conduct should be considered as an ‘impairment’ for which it is appropriate to apply the guidance factors. However, the risks associated with a practitioner being intoxicated at work are considered significant, so that if a treating practitioner becomes aware that a person is practising while intoxicated, they should be subject to mandatory reporting if their conduct reaches the threshold.

Health Ministers agreed these issues could be further clarified in guidelines and education programs to be developed by the National Boards and AHPRA as part of the implementation

process for the reforms. The guidelines and education programs will be developed in consultation with stakeholders.

Telephone advisory services

Some stakeholders also sought an exemption from mandatory reporting for telephone advisory services that provide early intervention or referrals for practitioners. Some consumer stakeholders were wary that such an exemption could be perceived to be, or could be used as, a 'loophole' for practitioners to avoid mandatory reporting requirements. Health Ministers were not satisfied that such an exemption was necessary or appropriate at this time. Health Ministers were concerned about protection of health consumers and ensuring that mandatory reporting occurred in appropriate cases if a practitioner's practice poses a substantial risk to public safety, in circumstances where an early intervention service may be the only point of contact. Ministers considered these services could continue to provide valuable support to practitioners without an exemption.

Increased penalties for holding out and related offences

In April and May 2017, targeted consultation was undertaken with stakeholders about the proposals to increase penalties in the National Law and introduce an imprisonment term. Three national consultation forums were held by teleconference and 36 written submissions were received. Stakeholders were broadly supportive of changes to increase penalties and introduce an imprisonment term for the holding out and related offences.

Consistency with legislation of other jurisdictions

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

Western Australia has notified COAG Health Council that it will not implement the changes to mandatory reporting by treating practitioners in the Bill. Western Australia will retain its current arrangements of a complete exemption for mandatory reporting by treating practitioners.

Notes on provisions

Part 1 Preliminary

Short title

Clause 1 states this Act may be cited as the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2018*.

Commencement

Clause 2 states that the Act commences on a day to be fixed by proclamation.

Part 2 Amendment of Health Practitioner Regulation National Law Act 2009

Act amended

Clause 3 states that part 2 amends the *Health Practitioner Regulation National Law Act 2009* (Qld). The amendments in part 2 of the Bill are specific to Queensland and do not apply in other States and Territories.

Part 4 of the *Health Practitioner Regulation National Law Act 2009* (Qld) modifies the operation of the National Law in Queensland. The modifications take account of Queensland's co-regulatory arrangements, including the Health Ombudsman and the *Health Ombudsman Act 2013* (Qld).

The amendments in this part are consequential amendments resulting from changes to the Health Practitioner Regulation National Law (National Law) in part 3 of the Bill or modify amendments to the National Law so that they apply appropriately in Queensland.

Amendment of s 25 (Amendment of s 141 (Mandatory notifications by health practitioners))

Clause 4 amends section 25, which modifies the operation of section 141 of the National Law in Queensland.

Clause 4(1) amends the heading to section 25 so that it is consistent with the amendment to the heading of section 141 in clause 18 of the Bill.

Clause 4(2) omits the current modification in section 25(3), which provides that treating practitioners are only required to report another registered health practitioner's impairment if the impairment would place the public at substantial risk of harm in the future. The modification is no longer necessary because Queensland has agreed to adopt the approach to mandatory reporting by treating practitioners under new sections 141A to 141C of the National Law (see clause 19). The current Queensland modification is similar to the approach to

mandatory reporting by treating practitioners in the Bill. For example, both approaches use a reporting threshold of ‘substantial risk of harm’ to the public. However, the reforms to the National Law for mandatory reporting by treating practitioners in the Bill are more extensive than the current Queensland modification, as they also apply the guidance factors and apply the threshold of ‘substantial risk of harm’ to intoxication and practice outside of professional standards.

The removal of section 25(3) by this clause has the effect that the provisions of the National Law in clause 19 of the Bill about mandatory reporting by treating practitioners will apply.

Insertion of new ss 25A–25C

Clause 5 inserts new sections 25A to 25C, which make minor modifications to the mandatory reporting requirements for treating practitioners in new sections 141A to 141C of the National Law. The amendments modify the terminology used in those sections so that the mandatory reporting requirements operate appropriately under Queensland’s co-regulatory arrangements for dealing with health complaints.

New section 25A (Amendment of s 141A (Mandatory notifications by treating practitioners of sexual misconduct)) modifies new section 141A of the National Law.

Section 25A(1) amends the requirement for a treating practitioner to notify the Australian Health Practitioner Regulation Agency (AHPRA) under section 141A(2) with a requirement to notify the Queensland Health Ombudsman. This reflects Queensland’s co-regulatory arrangements, under which all health complaints are made to the Health Ombudsman, including mandatory reports.

Section 25A(2) inserts a reference to the Health Ombudsman Act in section 141A(3) of the National Law. Section 141A(3) provides that a treating practitioner who does not make a mandatory notification as required under section 141A(2) may be subject to health, conduct or performance action under part 8 of the National Law. The amendment is necessary because, under Queensland’s co-regulatory arrangements, health, conduct or performance action may be taken under either the National Law or the Health Ombudsman Act, depending on the circumstances.

New section 25B (Amendment of s 141B (Mandatory notifications by treating practitioners of substantial risk of harm to public)) modifies new section 141B of the National Law.

Section 25B(1) amends the requirement for a treating practitioner to notify AHPRA under sections 141B(2) and (4) with a requirement to notify the Queensland Health Ombudsman. This reflects Queensland’s co-regulatory arrangements, under which all health complaints are made to the Health Ombudsman, including mandatory reports.

Section 25B(2) inserts a reference to the Health Ombudsman Act in section 141B(6) of the National Law. Section 141B(6) provides that a treating practitioner who does not make a mandatory notification as required under section 141B(2) and (4) may be subject to health, conduct or performance action under part 8 of the National Law. The amendment is necessary because, under Queensland’s co-regulatory arrangements, health, conduct or performance action may be taken under either the National Law or the Health Ombudsman Act, depending on the circumstances.

Clause 5 inserts section 25C (Amendment of s 141C (When practitioner does not form reasonable belief in course of providing health service)), which modifies new section 141C(2)(e) of the National Law. Section 141C(2)(e) applies if a treating practitioner knows, or reasonably believes, AHPRA has been notified of the matter that the treating practitioner would otherwise be required to report. The amendment replaces the reference to AHPRA with a reference to the Queensland Health Ombudsman. This reflects Queensland's co-regulatory arrangements, under which all health complaints are made to the Health Ombudsman, including mandatory reports.

Insertion of new s 56A

Clause 6 inserts section 56A, which replaces section 241A of the National Law with a provision setting out how the indictable offences in sections 113, 115 to 119, 121 to 123 and 196A of the National Law will be prosecuted in Queensland.

The provision classifies these offences as misdemeanours. This is necessary to ensure the offences are classed as indictable offences in Queensland, as section 3 of the *Criminal Code* provides that an offence is an indictable offence if it is designated as a crime or misdemeanour.

The section provides that the holding out and related offences will ordinarily be heard summarily by a Magistrates Court. However, it also provides for circumstances in which a Magistrates Court must abstain from dealing with the offence summarily. If a Magistrates Court is satisfied, on application by the prosecution or the defence, that there are exceptional circumstances, the matter must be heard on indictment. The provision includes examples of what may constitute 'exceptional circumstances', which are the same as those in section 552D of the *Criminal Code*. Exceptional circumstances may include if there are associated charges proceeding on indictment and the offences should be tried together, or there is an important issue of law involved.

The provision also states that the maximum monetary penalty a Magistrates Court in Queensland can impose when dealing with an indictable offence under the National Law summarily is 165 penalty units (currently \$21,540). This is the same penalty a Magistrates Court can impose under section 46 of the *Penalties and Sentences Act 1992* (Qld).

As this is less than the maximum monetary penalty of \$60,000 that will apply to these offences, the provision also states that a Magistrates Court must abstain from dealing with an offence summarily if satisfied that, because of the nature or seriousness of the offence or another reason, the defendant may not be adequately punished. This will mean the more serious cases of holding out and related offences, where a high monetary penalty is sought, may need to proceed on indictment.

The provision requires that a Magistrates Court must be constituted by a magistrate when dealing summarily with a charge of an indictable offence under the National Law. It also provides that a Magistrates Court has jurisdiction to deal summarily with a charge of an indictable offence under the National Law despite the time that has elapsed since the matter of complaint of the charge arose. This is consistent with the approach in section 552F of the *Criminal Code*. It has the effect of overriding the general one year limitation period under section 52(1) of the *Justices Act 1886* (Qld) and falls within section 52(3) of that Act. This means that no limitation period will apply to a charge of an indictable offence under the National Law being dealt with summarily in Queensland.

Part 3 Amendment of Health Practitioner Regulation National Law

Law amended

Clause 7 states that part 3 amends the Health Practitioner Regulation National Law in the schedule to the *Health Practitioner Regulation National Law Act 2009* (Qld).

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

Clause 8 amends section 113 to increase the maximum penalty for offences under section 113(1) and (2) to \$60,000 or 3 years imprisonment or both for an individual, and \$120,000 for a body corporate.

Amendment of s 115 (Restriction on use of specialist titles)

Clause 9 amends section 115 to increase the maximum penalty for offences under section 115(1) and (2) to \$60,000 or 3 years imprisonment or both for an individual, and \$120,000 for a body corporate.

Amendment of s 116 (Claims by persons as to registration as health practitioner)

Clause 10 amends section 116 to increase the maximum penalty for offences under section 116(1) and (2) to \$60,000 or 3 years imprisonment or both for an individual, and \$120,000 for a body corporate.

Amendment of s 117 (Claims by persons as to registration in particular profession or division)

Clause 11 amends section 117 to increase the maximum penalty for offences under section 117(3) to \$60,000 or 3 years imprisonment or both for an individual, and \$120,000 for a body corporate.

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

Clause 12 amends section 118 to increase the maximum penalty for offences under section 118(1) and (2) to \$60,000 or 3 years imprisonment or both for an individual, and \$120,000 for a body corporate.

Amendment of s 119 (Claims about type of registration or registration in recognised specialty)

Clause 13 amends section 119 to increase the maximum penalty for offences under section 119(3) to \$60,000 or 3 years imprisonment or both for an individual, and \$120,000 for a body corporate.

Amendment of s 121 (Restricted dental acts)

Clause 14 amends section 121 to increase the maximum penalty for offences under section 121(1) to \$60,000 or 3 years imprisonment or both.

Amendment of s 122 (Restriction on prescription of optical appliances)

Clause 15 amends section 122 to increase the maximum penalty for offences under section 122(1) to \$60,000 or 3 years imprisonment or both.

Amendment of s 123 (Restriction on spinal manipulation)

Clause 16 amends section 123 to increase the maximum penalty for offences under section 123(1) to \$60,000 or 3 years imprisonment or both.

Amendment of s 140 (Definition of notifiable conduct)

Clause 17 amends the definition of ‘notifiable conduct’ in section 140 to place the definition in the present tense. This reflects current legislative drafting practice and makes clear that the definition always applies. However, there is no change to the substantive obligations created by any provisions that use the defined term.

Amendment of s 141 (Mandatory notifications by health practitioners)

Clause 18 amends section 141 so that treating practitioners are no longer subject to the mandatory reporting requirements in section 141. Instead, treating practitioners will be subject to the mandatory reporting obligations set out in new sections 141A to 141C.

Insertion of new ss 141A–141C

Clause 19 inserts new sections 141A to 141C, which set out new requirements for mandatory reporting by treating practitioners.

Clause 19 inserts new section 141A (Mandatory notifications by treating practitioners of sexual misconduct), which sets out requirements for treating practitioners to make mandatory notifications about sexual misconduct by registered health practitioners.

Under section 141A, a treating practitioner must notify AHPRA if the treating practitioner forms a reasonable belief that another registered health practitioner under the care of the treating practitioner has engaged, is engaging or is at risk of engaging in sexual misconduct in connection with the practitioner’s profession. This is similar to the existing obligation to make mandatory reports about sexual misconduct, except that it extends to a future risk of engaging in sexual misconduct. The strengthening of reporting of sexual misconduct by treating practitioners is based on the unique professional relationship between a treating practitioner and patient. A treating practitioner may become aware of a future risk if, for example, a patient discloses a plan to engage in sexual misconduct or discloses conduct that amounts to ‘grooming’.

A treating practitioner who does not make a mandatory notification as required by section 141A does not commit an offence, but may be subject to health, conduct or performance action under

part 8 of the National Law. This is consistent with the approach to mandatory reporting that currently applies under section 141.

A treating practitioner is not required to make a mandatory notification under section 141A if the matter falls into one of the exceptions in new section 141C.

Clause 19 also inserts new section 141B (Mandatory notifications by treating practitioners of substantial risk of harm to public), which sets out requirements for a treating practitioner to notify AHPRA about certain conduct by registered health practitioners and students if the conduct is placing the public at substantial risk of harm.

Section 141B(1) and (2) require a treating practitioner to make a mandatory notification to AHPRA if the treating practitioner forms a reasonable belief that another registered health practitioner is placing the public at substantial risk of harm by practising their profession:

- while the practitioner has an impairment ('impairment')
- while intoxicated by alcohol or drugs ('intoxication'), or
- in a way that constitutes a significant departure from accepted professional standards ('practice outside of professional standards').

Under section 141B(1) and (2), a treating practitioner is only required to make a mandatory report if they form a reasonable belief that the public is being placed at 'substantial risk of harm'. The 'substantial risk of harm' threshold is higher than the current threshold for reporting impairment, intoxication and practice outside of professional standards that applies under sections 140 and 141 of the National Law. The higher threshold is considered appropriate given the nature of the treatment or therapeutic relationship, which affords a treating practitioner unique insight into a patient's health, the risks this may pose to the public and the extent to which those risks are being managed effectively through treatment. The higher reporting threshold will provide greater confidence to practitioners that if they seek treatment and take appropriate steps to manage any risks to patients associated with their health issues and practice of their profession, their treating practitioner is not required to make a mandatory report.

The potential harm that must be reported under the 'substantial risk of harm' threshold must be material harm, not trivial or insubstantial harm or mere inconvenience. The threshold must be considered in the context of the overall purpose of the provisions and by the fact that only serious impairments that are not being appropriately managed to ensure the safety of patients are intended to require reporting.

In addition, because the reporting threshold focuses on current and prospective risks of harm, a treating practitioner is not required to make a notification about past behaviour that is being addressed through treatment and is unlikely to recur. For example, if a practitioner-patient is complying with treatment and taking other steps necessary to ensure they can practise safely, the treating practitioner would not be required to make a mandatory notification. In contrast, a treating practitioner would be required to make a mandatory notification if a practitioner-patient's impairment poses a substantial risk of harm that cannot be managed effectively through treatment, or if the practitioner-patient is unwilling to acknowledge their impairment or take action to mitigate the risks that the impairment poses.

The issues of impairment, intoxication and practice outside of professional standards dealt with by section 141B(1) may overlap or be interrelated. For example, a practitioner may have an impairment, such as alcohol or substance abuse, that creates a risk that they will practise while intoxicated or in a way that significantly departs from accepted professional standards. In assessing whether the public is being placed at substantial risk of harm, and therefore whether a notification is required under section 141B, a treating practitioner may consider whether the treatment and management of a patient's impairment will also mitigate the risks of related conduct that could harm the public.

Section 141B(3) and (4) deals with a treating practitioner's mandatory reporting obligations for students registered under the National Law. A mandatory notification is required if the treating practitioner forms a reasonable belief that a student has an impairment that may place the public at substantial risk of harm when the student is undertaking clinical training. As outlined above, the 'substantial risk of harm' threshold is a high threshold which is intended to encourage students to seek treatment for health conditions.

Section 141B(5) provides guidance to treating practitioners about matters they may consider when assessing whether a registered health practitioner's or a student's impairment poses a substantial risk of harm to the public. Section 141B(5) provides that a treating practitioner may consider:

- the nature, extent and severity of the impairment
- the extent to which the second health practitioner or student is taking, or is willing to take, steps to manage the impairment
- the extent to which the impairment can be managed with appropriate treatment, and
- any other matter the treating practitioner considers is relevant to the risk of harm the impairment poses to the public.

These factors enable a treating practitioner to use their professional judgement and expertise to decide whether a mandatory report about an impairment is required. The guidance factors included in section 141B(5) send a clear signal to practitioners and students that, provided they are engaged in treatment and willing to take steps to address their impairment, a treating practitioner is not required to make a mandatory report unless the safety of patients would be at risk. This guidance is a key part of the mandatory reporting reforms and will give registered health practitioners and students greater confidence to seek treatment for health issues.

Although these factors relate to assessing whether an impairment poses a substantial risk of harm, they may also be relevant if an impairment is connected to, or a significant cause of, intoxication or departure from professional standards. A treating practitioner may consider that, if an impairment issue is being treated or managed, future instances of intoxication or departure from professional standards are unlikely to recur. If so, and the treating practitioner is satisfied the threshold of 'substantial risk of harm' would not be met, they are not required to make a mandatory report.

Section 141B(6) provides that a treating practitioner who does not make a mandatory notification as required by section 141B does not commit an offence, but may be subject to health, conduct or performance action under part 8 of the National Law. This is consistent with the approach to mandatory reporting that currently applies under section 141.

Section 141B(7) provides that a treating practitioner is not required to make a mandatory notification under section 141B if the matter falls into one of the exceptions in new section 141C.

Clause 19 inserts new section 141C (When practitioner does not form reasonable belief in course or providing health service), which provides exceptions to the mandatory reporting requirements for treating practitioners. Under section 141C, the same exceptions apply to mandatory reporting by treating practitioners as apply to other forms of mandatory reporting under section 141(4) of the National Law. Section 141C uses the term ‘first health practitioner’ instead of ‘treating practitioner’ given that the circumstances provided for in section 141C are not in the nature of a treating practitioner relationship.

Amendment of s 196A (Offences relating to prohibition orders)

Clause 20 amends section 196A to increase the maximum penalty for offences under section 196A(1) to \$60,000 or 3 years imprisonment or both.

Insertion of new s 241A

Clause 21 inserts new section 241A (Proceedings for indictable offences), which designates the following offences under the National Law as indictable offences:

- taking or using a protected title (sections 113 and 115)
- holding out offences (sections 116 to 119)
- carrying out a ‘restricted dental act’ (section 121)
- restrictions on prescribing an ‘optical appliance’ (section 122)
- restrictions on performing spinal manipulation (section 123), and
- contravening a prohibition order (section 196A).

The Bill doubles the monetary penalties and introduces an imprisonment term of up to three years for these offences. The introduction of an imprisonment term means that these offences will automatically become indictable offences in some, but not all, States and Territories. To promote national consistency, section 241A(1) states that the offences are indictable. Categorising the offences as indictable reflects the significant harm that may result from the conduct to which the offences apply.

The conduct that may fall under these offences ranges from very serious conduct where patients have been harmed to less serious cases involving the public being misled about a person’s specialty or qualifications. Therefore, section 241A(2) provides flexibility for the offences to be dealt with either on indictment or summarily, depending on the circumstances of the case. This will ensure the consequences of offending are proportional, allowing the most serious instances with the greatest potential to cause harm to be liable to the higher penalties and consequences that result from conviction on indictment. Less serious cases will continue to be dealt with summarily.

To minimise any potential impact on the justice arrangements in each jurisdiction, section 241A(3) provides that decisions about whether to proceed summarily or on indictment will be made in accordance with the applicable justice legislation of each State or Territory.

The Bill also includes a Queensland-specific provision that provides for the circumstances in which the indictable offences will be dealt with summarily in Queensland (see clause 6 which replaces section 241A of the National Law for Queensland only).

Amendment of s 242 (Proceedings for offences)

Clause 22 makes consequential amendments to section 242, which currently 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. The amendments clarify that section 242 no longer applies to the indictable offences specified in section 241A.

Amendment of sch 6, s 16 (Return of seized things)

Clause 23 makes consequential amendments to schedule 6, section 16 to enable inspectors to keep a seized document for longer than six months for an investigation. This change is a consequence of the holding out and related offences becoming indictable offences. As these offences will no longer be subject to a time limit for instituting proceedings, evidence may need to be kept for longer periods of time, beyond six months.

Amendment of sch 6, s 17 (Access to seized things)

Clause 24 makes minor amendments to schedule 6, section 17, which currently requires an inspector to allow the owner of a seized thing to inspect it and, if it is a document, to copy it, unless allowing such access is impracticable or would be unreasonable. The amendments clarify that, in addition to copying a document, the owner of the document may take an extract of the document. This is consistent with the approach in sections 174(2) and schedule 6, section 3(2) of the National Law.

Part 4 Amendment of other legislation

Division 1 Amendment of Ambulance Service Act 1991

Act amended

Clause 25 states that division 1 amends the *Ambulance Service Act 1991* (Qld).

Amendment of s 36A (Definitions for pt 4A)

Clause 26 makes a consequential amendment to the definition of ‘public risk notifiable conduct’ in section 36A to place the definition in the present tense. The changes are consistent with the changes made to the definition of ‘notifiable conduct’ in section 140 of the National Law (see clause 17).

Amendment of s 36L (Definitions for div 5)

Clause 27 makes a consequential amendment to the definition of ‘excluded notifiable conduct’ in section 36L to place the definition in the present tense. The changes are consistent with the changes made to the definition of ‘notifiable conduct’ in section 140 of the National Law (see clause 17).

Amendment of s 36NA (Information about excluded notifiable conduct)

Clause 28 makes a consequential amendment to section 36NA(1) to insert a cross-reference to new section 141C(2)(d) of the National Law.

Section 36NA(1) currently refers to the exemption from mandatory reporting in section 141(4)(d) of the National Law, which applies to registered health practitioners who exercise functions as members of a committee, council or other body approved or authorised under an Act. The effect of the reference to section 141(4)(d) is that registered health practitioners who exercise functions as members of root cause analysis teams under the Ambulance Service Act are exempt from mandatory reporting. Section 141C(2)(d) provides an equivalent exemption from mandatory reporting to section 141(4)(d). The inclusion of the cross-reference ensures the exemption under both sections applies to root cause analysis teams under the Ambulance Service Act.

Division 2 Amendment of Hospital and Health Boards Act 2011

Act amended

Clause 29 states that division 2 amends the *Hospital and Health Boards Act 2011* (Qld).

Amendment of s 86 (Information about excluded notifiable conduct)

Clause 30 makes a consequential amendment to section 86 to insert a cross-reference to new section 141C(2)(d) of the National Law.

Section 86 currently refers to the exemption from mandatory reporting in section 141(4)(d) of the National Law, which applies to registered health practitioners who exercise functions as members of a committee, council or other body approved or authorised under an Act. The effect of the reference to section 141(4)(d) is that registered health practitioners who exercise functions as members of quality assurance committees under the Hospital and Health Boards Act are exempt from mandatory reporting. Section 141C(2)(d) provides an equivalent exemption from mandatory reporting to section 141(4)(d). The inclusion of the cross-reference ensures the exemption under both sections applies to quality assurance committees under the Hospital and Health Boards Act.

Amendment of s 107 (Information about excluded notifiable conduct)

Clause 31 makes a consequential amendment to section 107 to insert a cross-reference to new section 141C(2)(d) of the National Law.

Section 107 currently refers to the exemption from mandatory reporting in section 141(4)(d) of the National Law, which applies to registered health practitioners who exercise functions as

members of a committee, council or other body approved or authorised under an Act. The effect of the reference to section 141(4)(d) is that registered health practitioners who exercise functions as members of root cause analysis teams under the Hospital and Health Boards Act are exempt from mandatory reporting. Section 141C(2)(d) provides an equivalent exemption from mandatory reporting to section 141(4)(d). The inclusion of the cross-reference ensures the exemption under both sections applies to root cause analysis teams under the Hospital and Health Boards Act.

Amendment of sch 2 (Dictionary)

Clause 32 omits the definitions of ‘excluded notifiable conduct’ and ‘public risk notifiable conduct’ in schedule 2 and replaces the definitions so that they are drafted in the present tense. The changes are consistent with the changes made to the definition of ‘notifiable conduct’ in section 140 of the National Law (see clause 17).