# Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022

# Statement of Compatibility

### Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, Yvette D'Ath, Minister for Health and Ambulance Services, make this statement of compatibility with respect to the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022.

In my opinion, the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022 is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

## Overview of the Bill

The Bill amends the Health Practitioner Regulation National Law (National Law), as agreed by Australian Health Ministers on 18 February 2022. The amendments strengthen public protection and increase public confidence in health services provided by practitioners registered under the National Registration and Accreditation Scheme for health professions (National Scheme). The amendments also implement reforms to improve governance and promote the efficient and effective operation of the National Scheme, while ensuring the scheme remains up to date and fit for purpose.

Key reforms in the Bill include:

- refocusing the objectives and guiding principles of the National Law to make public safety and confidence paramount considerations, and to recognise the National Scheme's role in ensuring the development of a culturally safe and respectful health workforce for Aboriginal and Torres Strait Islander Peoples;
- introducing a power for national regulators to issue interim prohibition orders to prohibit or restrict unregistered practitioners from providing health services or using protected titles, similar to the power already given to the Health Ombudsman in Queensland (the Health Ombudsman);
- introducing a power for the Health Ombudsman and national regulators to issue public statements about persons whose conduct poses a serious risk to public health and safety;
- removing barriers to information sharing to protect the public and enable more efficient and appropriate resolution of notifications; and
- improving processes by which National Boards make registration decisions and manage health, conduct and performance issues.

In Queensland, the Office of the Health Ombudsman (OHO) has primary responsibility for managing complaints about a health practitioner's health, conduct or performance, but in appropriate circumstances may refer matters about registered health practitioners to the

national regulators. Generally, OHO retains responsibility for investigating and prosecuting the most serious allegations of misconduct, and refers matters involving a practitioner's health or less serious conduct and performance issues to the national regulators.

To accommodate Queensland's co-regulatory arrangements for registered health practitioners, the Bill amends the *Health Ombudsman Act 2013* and makes minor modifications to how certain amendments to the National Law will operate in Queensland. The modifications are made through amendments to the local application provisions of the National Law in part 4 of the *Health Practitioner Regulation National Law Act 2009*.

# Human Rights Issues

**Human rights relevant to the overall Bill (part 2, divisions 2 and 3 of the *Human Rights Act 2019*)**

While the Bill engages a number of human rights, the human rights of most relevance are:

- rights related to the ability to practise a profession (notably, the right to property and the right to privacy);
- rights related to protecting against reputational harm (notably, the right to privacy and the right to protection against reputational harm); and
- rights related to the standard of health services provided by health practitioners (notably, the right to life, the right to security of the person, and the right to health services).

***Rights related to the ability to practise a profession***

The National Law regulates the right to practise for over 800,000 registered health practitioners across 16 health professions. The amendments in the Bill will impact the ability of health practitioners to practise their profession. For example:

- chapter 2, clause 7 and chapter 3, part 9 of the Bill allow the Health Ombudsman and National Boards to accept undertakings, which may limit the scope of the services a health practitioner can provide; and
- chapter 3, part 21 of the Bill allows national regulators to issue interim prohibition orders to unregistered persons, which can prohibit the person from providing a specified health service or all health services.

Restricting a person's ability to practise a profession may engage their right not to be arbitrarily deprived of one's property under section 24(2) of the Human Rights Act. The European Court of Human Rights has accepted that the right to possessions extends to a right to practise one's profession (so that, for example, removing a lawyer from the roll of practitioners may limit this right).[1] The reason is that a person's right to practise their profession is a valuable thing to them, which they have usually acquired through many years of study and practice. The same might be said of the right to property in Queensland.

However, even if the right to property protects the ability to practise one's profession, the right in section 24(2) of the Human Rights Act will only be limited if the deprivation of property is

[1] *Van Marle v The Netherlands* (1986) 8 EHRR 483, [41]-[42]; *Karni v Sweden* (1988) 55 DR 157, 165.

unlawful or arbitrary. Unlawful in this context means a deprivation which infringes an applicable law. Arbitrary in this context means a deprivation which is capricious, unpredictable, unjust or unreasonable in the sense of not being proportionate to the legitimate aim sought.

Impacting a person's career may also engage the right not to have one's privacy arbitrarily interfered with under section 25(a) of the Human Rights Act. In a human rights context, privacy is a broad concept that can extend beyond data privacy and informational privacy to broader interests in dignity and autonomy. The European Court of Human Rights and the United Kingdom (UK) Supreme Court have accepted that the right to privacy encompasses an individual's right to establish and develop relationships with other human beings, including relationships of a professional or business nature. On this basis, work restrictions have been held to involve an interference with privacy. That is because excluding a person from employment in their chosen field is liable to affect their ability to develop relationships with others. Excluding a person from employment will also impact the person's ability to earn a living which can have serious repercussions for the enjoyment of their private life.[2]

However, as with the right to property, the right in section 25(a) of the Human Rights Act will only be limited if the interference with privacy is unlawful or arbitrary. The same meanings of unlawful and arbitrary described above apply.

***Rights related to protecting against reputational harm***

The Bill introduces changes that could allow harm to a person's reputation. For example, chapter 2, clause 20 and chapter 3, part 23 of the Bill empower the Health Ombudsman, National Agency and National Boards to issue public statements about persons, including registered practitioners, who are the subject of investigations or disciplinary proceedings, and whose conduct poses a serious risk to public health and safety. As another example, chapter 2, clause 29 and chapter 3, part 27 of the Bill extend existing information sharing powers to permit, or in some cases require, National Boards to notify current employers or other associates of serious risks posed by a registered practitioner prior to taking disciplinary action.

Disclosure of any of this information could have a significant adverse impact on a person's private life and reputation. The exercise of one of these powers could hamper a practitioner's ability to continue to work with others in their profession, or even effectively bring their career to an end. In assessing the extent of the harm, it must be remembered that the information relates to the practitioner's own actions and that any loss of reputation may be the foreseeable consequence of those actions.[3]

Chapter 3, part 14 of the Bill also introduces amendments which require registered health practitioners and students to report charges and convictions related to regulated medicines and poisons to the relevant National Board. Previously, they were only required to report charges and convictions for offences punishable by 12 months' imprisonment or more.

A person can have a very real interest in maintaining privacy about their charges or convictions. The UK Supreme Court has taken the position that police cautions take place in private and are therefore an aspect of the right to a private life. Convictions, which take place in public, only

[2] See *ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95].
[3] *Matalas v Greece* [2021] ECHR 247; (2021) 73 EHRR 26, 975-6 [39].

become part of a person's private life as they recede into the past. Ordinarily, a conviction recedes into the past at the point that it becomes spent under the relevant spent convictions regime.[4] In Queensland, under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, the point at which a conviction becomes private is five years, ten years, or longer, depending on the offence and whether the court order has been satisfied. However, existing sections 77, 79 and 135 of the National Law require disclosure of a person's criminal history and authorise National Boards to check a person's criminal history, despite the spent convictions regime of the relevant participating jurisdiction. In particular scenarios, it is possible that some charges or convictions may have little bearing on a person's ability to practise as a health practitioner. However, it may be assumed that regulators will only take into account convictions which are relevant.[5]

Even if the Bill engages the rights to privacy and reputation, the right to privacy in section 25(a) of the Human Rights Act will only be limited if the interference with privacy is unlawful or arbitrary. The right to reputation in section 25(b) will only be limited if there is an attack on reputation which is unlawful.

***Rights related to the standard of health services***

On the other hand, the amendments restrict the ability to practise a profession in order to protect and promote other human rights. The amendments seek to protect the public and ensure public confidence in the safety of services provided by registered health practitioners and students. In human rights terms, the objective is to:

- fulfil the state's obligation under section 16 of the Human Rights Act to protect the right to life;
- protect the right to security of the person in section 29(1) of the Human Rights Act (insofar as that is a standalone right); and,
- protect the right of every person to access health services without discrimination under section 37(1) of the Human Rights Act.

At the international level, the United Nations Committee on Economic, Social and Cultural Rights has acknowledged that the right to health services includes a right to an adequate standard of health services.[6] This right may be engaged by a failure to regulate health practitioners adequately.[7]

**Human rights issues for each reform in the Bill**

***Preliminary (clauses 1-3, 32 and 130)***

Clauses 1 and 2 of the Bill set out preliminary provisions, providing for the short title of the Act and commencement. The preliminary provisions in clauses 3, 32 and 130 set out the law to be amended in each chapter of the Bill. These parts do not limit any human rights.

***Paramount principle (clauses 33-35 and 131)***

[4] *R (T) v Chief Constable of Greater Manchester Police* [2015] AC 49, 65-6 [18].
[5] *Re Gallagher; R (P) v Secretary of State for Justice* [2019] 2 WLR 509, 541-2 [51]-[52].
[6] UN Committee on Economic, Social and Cultural Rights, *General Comment No 14*, UN Doc E/C.12/2000/4 (11 August 2000) 5 [12](d).
[7] UN Committee on Economic, Social and Cultural Rights, *General Comment No 14*, UN Doc E/C.12/2000/4 (11 August 2000) 14 [48], 15 [51].

Clauses 33-35 of the Bill insert a new paramount principle which makes protection of the public and public confidence in the safety of services provided by registered health practitioners and students paramount considerations of the National Law. This new paramount principle serves to promote the following rights under the Human Rights Act: right to life (section 16), the right to security of the person (section 29), and the right to quality health services as an aspect of the right to health services (section 37).

Queensland previously modified the National Law to provide a similar paramount principle. Given the amendment to the National Law, the existing modification is no longer necessary and is removed by clause 131 of the Bill.

Clauses 33-35 and 131 of the Bill promote and do not limit human rights.

***Cultural safety for Aboriginal and Torres Strait Islander Peoples (clauses 36 and 37)***

Clauses 36 and 37 of the Bill insert a new objective and guiding principle that acknowledges the National Scheme's role in ensuring the development of a culturally safe and respectful health workforce that is responsive to Aboriginal and Torres Strait Islander Peoples. The amendments in these clauses align with commitments made by the Commonwealth and all Australian States and Territories to improve health equity for Aboriginal and Torres Strait Islander Peoples, including the National Agreement on Closing the Gap (July 2020).

Clauses 36 and 37 of the Bill promote the following rights under the Human Rights Act:

- the right to equal protection of the law without discrimination (section 15(3)) and the right to equal and effective protection against discrimination (section 15(4));
- the cultural rights of Aboriginal and Torres Strait Islander peoples (section 28), which includes a right to enjoy, maintain, control, protect and develop their identity and cultural heritage (section 28(2)(a)); and,
- the right of every person to access health services without discrimination (section 37(1)).

According to the United Nations Committee on Economic, Social and Cultural Rights, an aspect of the right to health is 'acceptability'. Among other things, this means that all health services must be culturally appropriate; that is, respectful of the culture of individuals, minorities, peoples and communities.[8]

Clauses 36 and 37 of the Bill promote and do not limit human rights.

***Disestablishment of Australian Health Workforce Advisory Council (clauses 38-41 and 132)***

Clauses 38-41 of the Bill dissolve the Australian Health Workforce Advisory Council. As the Council has been in abeyance since 2012, there are no existing appointments to the Council which will be affected by the amendment.

Clause 132 of the Bill removes a Queensland modification of the National Law that is no longer necessary as a result of the dissolution of the Advisory Council.

[8] UN Committee on Economic, Social and Cultural Rights, *General Comment No 14*, UN Doc E/C.12/2000/4 (11 August 2000) 5 [12](c).

Clauses 38-41 and 132 do not limit any human rights.

***Agency Management Committee (clauses 42-51)***

Clauses 42-51 of the Bill rename the Agency Management Committee to the Agency Board, to better reflect its role, function and governance arrangements. A transitional provision is included to ensure that the change does not affect the validity of an appointment of a person to the Committee before the renaming. These clauses do not limit any human rights.

***Functions of National Agency (clause 52)***

Clause 52 expands the National Agency's advisory function, so that the National Agency may provide advice to the Ministerial Council on all matters relating to the National Scheme, not only matters that pertain to the scheme's administration. The amendment also clarifies that the National Agency may do anything necessary or convenient for the effective and efficient operation of the National Scheme, within the scope of the National Law. It is not intended that the new function will extend the scope of the National Agency's powers.

Clause 52 does not limit any human rights. Arguably it promotes freedom of expression in section 21 of the Human Rights Act, although the National Agency is a corporation and therefore does not hold human rights.

***Ministerial Council (clauses 53 and 54)***

Clauses 53 and 54 of the Bill update the definition of 'Ministerial Council' to reflect recent changes in the governance arrangements for intergovernmental relations. These clauses do not limit human rights.

***Commencement of registration (clauses 55-59)***

Clauses 55-59 of the Bill make amendments to allow the commencement of specialist, provisional, limited and non-practising registrations to be post-dated up to 90 days after a registration decision is made. This will resolve administrative challenges, such as difficulties in timing to meet multiple requirements of National Boards, employers and immigration authorities for internationally qualified practitioners. The changes also align the commencement timeframes with those applicable to general registration under section 56 of the National Law.

By allowing a delay in the registration taking effect, these amendments impose a minor impact on the ability to practise a profession. Accordingly, they engage the rights to property and privacy in sections 24 and 25 of the Human Rights Act. However, given that the delay is capped at 90 days, any impact on property or privacy is narrowly tailored to the objective of avoiding administrative challenges and ensuring a smoother registration process for both practitioners and the National Boards. As the impact is lawful and not arbitrary, the rights to property and privacy are not limited. Even if those rights are limited, any limit would be proportionate to the objective of avoiding administrative challenges, and therefore justified under section 13 of the Human Rights Act.

Clauses 55-59 of the Bill are compatible with human rights.

***Undertakings (clauses 7, 60-66 and 133)***

Clauses 60-66 of the Bill amend the National Law to allow National Boards to accept an undertaking from a person when deciding the person's application for registration. Under the existing law, National Boards can impose a condition on a practitioner's registration but cannot accept an undertaking during the registration process. In many cases, an undertaking would be enough to restrict the practitioner's practice without a condition being required. The Bill will allow National Boards to accept undertakings from practitioners applying for registration, endorsement of registration and renewal of registration.

Clause 7 of the Bill amends the Health Ombudsman Act to allow the Health Ombudsman to accept an undertaking from a registered health practitioner as an immediate registration action. This complements existing powers of National Boards. Modifications to the National Law at clause 133 of the Bill allow National Boards to consider any contraventions of an undertaking given to the Health Ombudsman when considering applications for renewal of registration. The National Board can already consider contraventions of undertakings given to the National Board and contraventions of conditions imposed by the Health Ombudsman or National Board when deciding applications for renewal of registration.

Allowing National Boards to propose and accept an undertaking on registration may impact a person's ability to practise their profession. Likewise, allowing the Health Ombudsman to accept an undertaking in response to identified risks may similarly impact a person's ability to practise their profession. For example, an undertaking may prevent a person from performing specific health services or require them to only perform certain health services under supervision of another registered health practitioner. Accordingly, these amendments engage the rights to property and privacy in sections 24 and 25 of the Human Rights Act.

However, the power to accept an undertaking is not unlimited. The undertaking must fall within the scope of the National Law. Further, the undertaking must be voluntary (unlike conditions on registration). This means that any impact on human rights is at the lower end of the scale. The impact is also subject to appropriate safeguards. Registered practitioners can apply to the Health Ombudsman or National Board, as relevant, to change or revoke an undertaking. A decision to refuse such application is subject to appeal.

Taking into account the narrow impact on the rights to property and privacy, as well as the existing safeguards built into the Health Ombudsman Act and National Law, any interference with property or privacy is tailored to the objective of setting appropriate parameters to ensure quality practise in a way that avoids the time and expense involved in setting conditions. As the impact is lawful and not arbitrary, the rights to property and privacy are not limited. Even if those rights are limited, any limit would be proportionate to the objectives of protecting the public and using the Health Ombudsman's and National Board's resources efficiently, and therefore justified under section 13 of the Human Rights Act.

Clauses 7, 60-66 and 133 are compatible with human rights.

***Conditions (clauses 67 and 68)***

The existing legislation sets out a process for National Boards to change or remove a condition on registration, but not to change or remove a condition on an endorsement of registration. Clauses 67 and 68 of the Bill clarify that the process for a National Board to change or remove a condition on an endorsement is the same as for changing or removing a condition on

registration. That process requires the National Board to afford procedural fairness. If the National Board decides to change the condition, the decision is subject to appeal.

The clarification may involve a small impact on the ability to practise a profession. Accordingly, the amendments engage the rights to property and privacy in sections 24 and 25 of the Human Rights Act. However, given the safeguards of procedural fairness and appeal rights built into the National Law, any impact on property or privacy is narrowly tailored to the objective of setting conditions on endorsements of registration to protect the public. As the impact is lawful and not arbitrary, the rights to property and privacy are not limited. Even if those rights are limited, any limit would be proportionate to the objective of protecting the public, and therefore justified under section 13 of the Human Rights Act.

Clauses 67 and 68 are compatible with human rights.

***Withdrawal of registration (clauses 23, 69-74, 134 and 135)***

Clauses 69-74 of the Bill introduce amendments to empower a National Board to withdraw a practitioner's registration if the Board reasonably believes the registration was improperly obtained because of the provision of false or misleading information. This will allow a swifter and more appropriate response to managing falsely obtained registrations, helping to ensure that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered.

Minor amendments to the Health Ombudsman Act at clause 23 of the Bill and modifications in the Health Practitioner Regulation National Law Act at clauses 134 and 135 of the Bill ensure the amendments to the National Law operate effectively in Queensland.

By allowing a National Board to withdraw a practitioner's registration, these amendments impact on the ability of the practitioner to practise their profession. Accordingly, they engage the rights to property and privacy in sections 24 and 25 of the Human Rights Act. Arguably the amendments also limit freedom of expression in section 21 of the Human Rights Act because they allow for consequences to be imposed on the free expression of certain information or ideas (namely information that is false or misleading, or reasonably believed to be false or misleading).

However, there are a number of safeguards built into the amendments:

- the National Board's power is only enlivened if it forms the reasonable belief that the registration was improperly obtained because the practitioner or another entity gave the Board materially false or misleading information or documentation;
- the National Board's power is subject to a show cause process; and
- a decision of the National Board to withdraw a practitioner's registration is subject to appeal.

In light of those safeguards, the amendments which empower a National Board to withdraw a practitioner's registration are tailored to the objective of ensuring that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered. Ultimately, the amendments are tailored to the need to protect the public. When it comes to freedom of expression, the importance of allowing a person to communicate false or

misleading information is at the lower end of the spectrum. It is outweighed by the need to protect the public from health practitioners who are not suitable for registration.

As the impact on the ability to practise a profession is lawful and not arbitrary, the rights to property and privacy are not limited. Even if those rights are limited, any limit would be proportionate to the objective of protecting the public, and therefore justified under section 13 of the Human Rights Act. Similarly, any limit on freedom of expression is proportionate to that public safety purpose, and therefore justified under section 13.

Clauses 23, 69-74, 134 and 135 of the Bill are compatible with human rights.

***Endorsement as midwife practitioner (clauses 75-77)***

Clauses 75-77 of the Bill remove endorsements of registrations for midwife practitioners. In 2010, when the National Scheme commenced, one practitioner was registered as a midwife practitioner under the *Nurses Act 1991* (NSW). This registration was transitioned to the national register with an endorsement as a midwife practitioner. Since this time, the Nursing and Midwifery Board of Australia has not approved any further midwife practitioner endorsements. A new savings provision will ensure that the sole registered midwife practitioner will remain able to practise under that protected title.

The amendments to remove endorsements of registrations for midwife practitioners do not impact the real-world ability of a person to practise a profession. The one person who is endorsed as a as a midwife practitioner will continue to enjoy that endorsement. There is no evidence that there is a workforce requirement for such an endorsement. The Nursing and Midwifery Board does not have a registration standard for endorsement as a midwife practitioner and there are no approved programs of study that qualify a midwife to practice as a midwife practitioner.

Accordingly, clauses 75-77 of the Bill do not engage the rights to property or privacy. Nor do the clauses limit any other human rights.

***Renewal of registration after suspension period (clauses 78-80)***

Clauses 78-80 of the Bill clarify that suspended practitioners whose registration otherwise would have expired during their period of suspension must apply to renew their registration within one month of their suspension ending. These practitioners will need to provide the same information as is required for all renewals, including an annual statement with information about their criminal history, continuing professional development and recency of practice.

By requiring a practitioner to take steps to remain registered, the amendments impose a minor impact on the ability of the practitioner to practise their profession. By requiring practitioners to provide information to renew their registration, including information about their criminal history, the amendments also impact privacy and reputation. Accordingly, clauses 78-80 of the Bill engage the rights to property, privacy and reputation in sections 24 and 25 of the Human Rights Act. Additionally, it could potentially be argued the amendments limit freedom of expression, broadly construed under section 21 of the Human Rights Act, because they allow for consequences to be imposed on the expression of certain information or ideas that are reasonably believed to be false or misleading.

However, the amendments are tailored to a legitimate aim. That objective is to ensure that National Boards are provided with timely information by formerly suspended practitioners, helping Boards to address any regulatory issues affecting suitability to practise that may have arisen during a suspension period. As the impact on the rights to property, privacy and reputation is lawful and not arbitrary, those rights are not limited. Even if those rights are limited, any limit would be proportionate to the objective of protecting the public, and therefore justified under section 13 of the Human Rights Act.

Clauses 78-80 of the Bill are compatible with human rights.

***Scheduled medicine offences (clause 81)***

Clause 81 of the Bill amends section 130 of the National Law to require health practitioners and students to report to the relevant National Board charges and convictions of offences related to regulated medicines and poisons. Many offences related to regulated medicines and poisons (scheduled medicines) are punishable by payment of a fine rather than imprisonment and are therefore not reportable under the existing legislation. As a result, National Boards may not be notified of a practitioner's or student's scheduled medicine offence history, even though it may be relevant to the person's suitability to hold registration.

The relevant charges and convictions do not fall within a person's private sphere. Charges and convictions are a matter of public record and only become part of a person's private life as they recede into the past. Section 130 of the National Law requires health practitioners and students to report to the relevant National Board within 7 days after becoming aware of the charge or conviction. The relevant charges and convictions are therefore not a part of the practitioner or student's private life. This aspect of the right to privacy in section 25 of the Human Rights Act is not engaged.

The expanded reporting requirement may impact the ability to practise a profession. Accordingly, the amendment engages the rights to property and privacy in sections 24 and 25 of the Human Rights Act. However, the impact on those rights is small. Notification of scheduled medicine offences does not lead to automatic consequences for a health practitioner or student. National Boards may be expected to only take relevant charges and convictions into account. Failure to comply with the notice requirement is not a criminal offence (though it may constitute behaviour for which health, conduct or performance action may be taken). Finally, because there are significant differences in the types of offences that exist under each jurisdiction's medicines and poisons laws, the Bill will allow a participating jurisdiction to declare that offences defined under the law of that jurisdiction are not scheduled medicine offences for purposes of the reporting requirements in the National Law. This will ensure that the new reporting requirements are no broader than necessary to protect the public.

On the other hand, the purpose of the amendment is important. Early reporting of these offences will allow National Boards to respond quickly to risks posed to the public by practitioners or students who misuse scheduled medicines. As the Queensland Office of the Health Ombudsman found in its *Investigation report: undoing knots constraining medicine regulation in Queensland*, drug impaired practitioners may present a risk to themselves and the public.

Accordingly, any impact on property or privacy is narrowly tailored to the objective of protecting the public. As the impact is lawful and not arbitrary, the rights to property and privacy are not limited. Even if those rights are limited, any limit would be proportionate to the

objective of protecting the public, and therefore justified under section 13 of the Human Rights Act.

Clause 81 of the Bill is compatible with human rights.

***Previous practice information (clauses 82-84)***

Under the existing legislation, National Boards can require registered health practitioners to provide information about their current employment arrangements. Clauses 82-84 of the Bill extend these information sharing powers by allowing National Boards to request information about a registered practitioner's former employers and former employment arrangements. A National Board can notify these former employers or associates if action is being taken against a registered practitioner. This power is discretionary and available only if the Board reasonably believes the practitioner's conduct posed a risk of harm at the time of the prior employment arrangements. These amendments will capture those circumstances in which practitioners have caused harm to patients through successive workplaces. It will improve information sharing between employers and regulators and allow for identification of previously unknown risks to the public.

The amendments at clauses 82-84 may harm a practitioner's professional relationships, their professional reputation, and ultimately their ability to practise their profession. Accordingly, the amendments engage the rights to property, privacy and reputation in sections 24 and 25 of the Human Rights Act. However, the impact on those rights is lawful and there are safeguards built into the amendments which mean that the impact on those rights is not arbitrary. First, the range of people and entities who may be notified that action is being taken against a registered practitioner is limited. National Boards only have power to notify registered health practitioners with whom the practitioner currently or previously shared premises, and entities with whom the practitioner currently has or previously had a practice arrangement. Second, the National Boards' power to notify former employers or associates is discretionary (though the National Board must give notice to current employers and associates in certain circumstances). Third, the power to notify former employers or associates is available only if the Board reasonably believes the practitioner's conduct posed a risk of harm at the time of the prior arrangements.

Accordingly, any impact on property, privacy or reputation is narrowly tailored to the objective of protecting the public. As the impact is lawful and not arbitrary, the rights to property, privacy and reputation are not limited. Even if those rights are limited, any limit would be proportionate to the objective of protecting the public, and therefore justified under section 13 of the Human Rights Act.

***Advertising offences (clause 85)***

*Use of testimonials*

Currently, section 133(1) of the National Law prohibits the use of testimonials or purported testimonials in advertisements about regulated health services. Clause 85 of the Bill amends section 133 to allow testimonials to be used in advertisements, bringing advertisement restrictions into step with current marketing and advertising practices and consumer expectations.

In this way, the amendment promotes freedom of expression in section 21 of the Human Rights Act, in particular, the freedom to communicate testimonials in advertisements.

*Increase in penalties*

Clause 85 of the Bill also increases the maximum penalties for advertising offences, such as false, misleading or deceptive advertising about a regulated health service. The maximum penalties are increased from $5,000 for an individual and $10,000 for a body corporate to $60,000 for an individual and $120,000 for a body corporate.

Increased penalties may have a chilling effect, by dissuading people from communicating ideas in breach of section 133 of the National Law. This may limit the freedom of expression in section 21 of the Human Rights Act.

The increase in penalties may also engage the right to property in section 24 of the Human Rights Act. The right to property protects the right of all persons to own property and provides that people have a right to not be arbitrarily deprived of their property. The concept of arbitrariness in the context of the right to property means a deprivation which is capricious, unpredictable, unjust or unreasonable in the sense of not being proportionate to the legitimate aim sought. Increasing maximum penalty amounts may be considered to limit the right to property because it could result in a deprivation of property in the form of money.

The limit on freedom of expression and the right to property is proportionate. The objective of section 133 of the National Law is to prevent certain kinds of advertisements about regulated health services in order to protect the public. The increases in maximum penalties are designed to provide effective deterrents and make clear that protecting consumers from false, misleading or deceptive practices is an enforcement priority under the National Law. The amendments will help to achieve that purpose. No other less restrictive alternative would be as effective in dissuading communication in breach of section 133 (in particular, a lower maximum penalty would not disincentivise advertisements to the same extent). Finally, the objective of protecting the public outweighs whatever narrow interest there is in communicating ideas that are false, misleading or deceptive (among other forms of prohibited advertisements).

Different aspects of clause 85 promote and limit freedom of expression. However, the limit on freedom of expression and property rights is justified under section 13 of the Human Rights Act. The clause is compatible with human rights.

***Directing and inciting offences (clause 86)***

Section 136 of the National Law makes it an offence for a person to direct or incite a health practitioner to do anything in their practice that amounts to unprofessional conduct or professional misconduct. Clause 86 of the Bill increases the maximum penalties for this offence from $30,000 for an individual or $60,000 for a body corporate to $60,000 for an individual or $120,000 for a body corporate.

In rare cases, these amendments might prevent a person from practising or teaching their conscientious belief about health care, or communicating their ideas about health care. This may limit freedom of thought, conscience, religion and belief in section 20, or freedom of expression in section 21 of the Human Rights Act.

The increase in penalties may also engage the right to property in section 24 of the Human Rights Act. The right to property protects the right of all persons to own property and provides that people have a right to not be arbitrarily deprived of their property. The concept of arbitrariness in the context of the right to property means a deprivation which is capricious, unpredictable, unjust or unreasonable in the sense of not being proportionate to the legitimate aim sought. Increasing maximum penalty amounts may be considered to limit the right to property because it could result in a deprivation of property in the form of money.

However, these limits on human rights would be proportionate. The objective of section 136 of the National Law is to prevent people from influencing health practitioners to practise in a way that compromises client care and clinical independence. The increases in maximum penalties are designed to make ensure they remain an effective deterrent, and to bring the penalties into line with the penalties for other serious offences under the National Law. The amendments will help to achieve that purpose. No other less restrictive alternative would be as effective in dissuading people from committing directing and inciting offences (in particular, a lower maximum penalty would not disincentivise directing and inciting offences to the same extent). Finally, the objective of protecting the public outweighs any conscientious belief or the communication of ideas that compromises client care and clinical independence. Any limit on freedom of conscience, freedom of expression, and property rights is justified under section 13 of the Human Rights Act.

Clause 86 is compatible with human rights.

***Disciplinary action in relation to health practitioners while unregistered (clauses 87-90 and 136-139)***

Clauses 87-90 of the Bill make amendments to allow National Boards to take disciplinary action against persons who continue to practise or use a protected title after their registration has lapsed. They also clarify when disciplinary proceedings can be undertaken against a registered practitioner for behaviour that occurred while the practitioner was unregistered. Clauses 136-139 of the Bill amend existing modifications to the National Law to ensure the amendments operate in Queensland.

Under the existing legislation, the only existing powers for dealing with this are to prosecute the practitioner for an offence or impose conditions on the practitioner's registration when they apply to renew their registration. The option of prosecuting (rather than taking disciplinary action) may be unnecessarily punitive in some cases, for example, where the lapse in registration was brief and inadvertent. The option of imposing a condition on employment does not arise until the practitioner applies to renew their registration.

Expanding the scope for National Boards to take disciplinary action may impact on the ability of people to practise a profession. Accordingly, clauses 87-90 of the Bill engage the rights to property and privacy in sections 24 and 25 of the Human Rights Act. However, allowing disciplinary action in relation to health practitioners while unregistered gives the National Board the power to respond in a more proportionate way. Prosecuting the health practitioner may be unnecessarily punitive in some cases, and waiting to impose a condition when the practitioner applies to renew their registration risks harm to the public until that action is taken. Accordingly, any impact on property or privacy is narrowly tailored to the objective of protecting the public. As the impact is lawful and not arbitrary, the rights to property and privacy are not limited. Even if those rights are limited, any limit would be proportionate to the

objective of avoiding certain administrative challenges, and therefore justified under section 13 of the Human Rights Act.

Clauses 87-90 and 136-139 of the Bill are compatible with human rights.

***Mandatory notification by employers (clause 91)***

Clause 91 adds a notation to section 142 of the National Law providing an example of when an employee must notify the National Agency of notifiable conduct by a practitioner-employee. The example illustrates that an employer of a registered health practitioner must notify the agency if the employer takes action against the practitioner, such as withdrawing or restricting the practitioner's clinical privileges, because the employer reasonably believes the public is at risk of harm because the practitioner has significantly departed from accepted professional standards.

As the notation is designed to clarify the existing mandatory notification requirements of employers, the amendment may not create any substantive change that limits human rights.

To the extent that the notation results in more notifications by employers, it may impose a very small impact on the ability of practitioner-employees to practise their profession. Accordingly, clause 91 of the Bill may engage the rights to property and privacy in sections 24 and 25 of the Human Rights Act. However, any impact would be very small, taking into account that the notation is merely designed to clarify existing requirements and that any notification by an employer will not have automatic consequence for the practitioner-employee. The amendment is tailored to the objective of protecting the public. As the amendment is lawful and not arbitrary, the rights to property and privacy are not limited. Even if those rights are limited, any limit would be proportionate to the objective of avoiding certain administrative challenges, and therefore justified under section 13 of the Human Rights Act.

Clause 91 of the Bill is compatible with human rights.

***Requirement to provide records for preliminary assessment (clauses 92 and 140)***

Clause 92 of the Bill inserts new sections 149A and 149B into the National Law, allowing National Boards to require practitioners to provide information during a preliminary assessment of a notification. Clause 140 of the Bill amends an existing Queensland modification of the National Law to allow the National Law amendments to apply in Queensland.

When conducting a preliminary assessment of a notification, a National Board can request information from practitioners. However, confidentiality restrictions mean that some clinical records can only be provided if the notification was made by a patient and the patient consents to the disclosure of the records. As there is no ability for National Boards to compel disclosure of documents at this stage, practitioners cannot provide Boards with confidential information. Instead, Boards may be required to commence an investigation to obtain the information necessary to determine whether regulatory action is needed.

By allowing National Boards to compel information, new section 149A impacts on a person's ability to withhold private information, and their freedom not to express certain information.

Accordingly, new section 149A engages freedom of expression in section 21 and the right to privacy in section 25 of the Human Rights Act.

However, new section 149A is carefully designed to minimise the impact on human rights. New section 149A(2) makes it an offence for a person to fail to comply with a request to give specified information or documents, unless they have a reasonable excuse. For the reasonable excuse exception, the person has the evidentiary burden of adducing or identifying evidence of a reasonable excuse. The onus then falls upon the prosecution to prove beyond a reasonable doubt that those facts or circumstances relied upon by the person do not constitute a reasonable excuse. Because new section 149A(2) does not reverse the onus of proof, it respects the right to presumed innocent until proved guilty according to law in section 32(1) of the Human Rights Act. New section 149A(3) also clarifies that a reasonable excuse includes that the information or documents might tend to incriminate the person. This clarification preserves the right in section 32(2)(k) of the Human Rights Act not to be compelled to testify against oneself or to confess guilt.

Taking into account these safeguards, the impacts on privacy and freedom of expression are proportionate. New section 149A is tailored to the purpose of increasing the efficiency of the preliminary assessment process and support timely resolution of matters. That is likely to improve the experience of both practitioners and notifiers. As the impact on privacy is lawful and not arbitrary, the right to privacy is not limited. Even if that right is limited, any limit would be proportionate to the objective of increasing efficiency, and therefore justified under section 13 of the Human Rights Act. Similarly, any limit on freedom of expression is proportionate to that purpose, and therefore justified under section 13.

New section 149B allows a National Board to inspect or make a copy of, or take an extract from, a document provided to it under new section 149A. The Board may also keep the document while it is necessary for the preliminary assessment of the notification. Because this power interferes with a person's property in a document, it engages the right to property in section 24 of the Human Rights Act (in addition to the impacts on privacy dealt with above). However, new section 149B includes safeguards to minimise the impact on property rights to documents. If a National Board keeps the document, section 149B(2) will require the Board to permit a person who is otherwise entitled to possess the document to inspect, make a copy of, or take an extract from the document at the reasonable time and in the reasonable way decided by the Board. With these safeguards, and requirements to act reasonably, the impact on property rights is narrowly tailored to the objective of facilitating access to information needed for a preliminary assessment. As the impact on property is not arbitrary, the right to property is not limited. Even if that right is limited, any limit would be proportionate to the objective of facilitating access to information needed for a preliminary assessment, and therefore justified under section 13 of the Human Rights Act.

Clauses 92 and 140 of the Bill are compatible with human rights.

***Interim prohibition orders (clauses 5, 93-98 and 141-143)***

Clauses 93-98 of the Bill introduce a power for the National Agency and National Boards to issue interim prohibition orders (IPOs) to unregistered persons, including practitioners whose registration has lapsed or been suspended. Under the amendments, an IPO issued by the National Agency or a National Board can prohibit or restrict a person from providing a specified health service or all health services and prohibit a person from using protected titles.

Clauses 5 and 141-143 of the Bill amend the Health Ombudsman Act and the Health Practitioner Regulation National Law respectively to ensure the amendments to the National Law operate effectively in Queensland. These amendments support cooperation between the national regulators and Health Ombudsman by allowing the national regulators to refer matters underlying the issuance of an interim prohibition order to the Health Ombudsman to manage under the Health Ombudsman Act.

The National Law amendments impact on the ability to practise a profession. Accordingly, they engage the rights to property and privacy in sections 24 and 25 of the Human Rights Act.

However, any impact on property or privacy is narrowly tailored to a legitimate aim. That objective is to allow regulators to take swift action to control a serious risk while other action is being finalised or a matter is handed over to another regulator better placed to undertake more comprehensive regulatory action. The ability to make IPOs will help to achieve that objective. There is no less restrictive way to achieve that purpose. In particular, safeguards are included to ensure that an IPO is the least restrictive option. For example, a regulatory body can only issue an IPO if it reasonably believes both that the person poses a serious risk to others and that it is necessary that the person be subject to an order to protect public health or safety. The duration of an IPO is capped at 60 days. It may be extended by a regulatory body for a further period of up to 60 days. Any further extension requires an order of a responsible tribunal. The Bill will require a show cause process to be undertaken as part of the process of issuing an IPO. A regulator will be able to issue an IPO before a show cause process only if it reasonably believes it is necessary to take such urgent action to protect public health or safety. Decisions to issue or extend an IPO will also be subject to appeal. Taking into account these safeguards, the importance of allowing regulators to take swift action to protect the public outweighs the impact on property and privacy.

As the impact is lawful and not arbitrary, the rights to property and privacy are not limited. Even if those rights are limited, any limit would be proportionate to the objective of allowing regulators to take swift action to protect the public, and therefore justified under section 13 of the Human Rights Act.

New section 159N imposes a separate impact on privacy. New section 159N requires the National Agency to publish certain information on its website about a person subject to an IPO unless an exception applies. It must publish the person's name, the day the order starts, and the actions prohibited or the restrictions imposed by the order. Publication of this information can have a serious impact on a person's privacy.

However, there is an exception to the requirement to publish information if the person subject to the order asks the regulatory body not to publish it, and the body reasonably believes publication would present a serious risk to the health and safety of the person or a member of the person's family or an associate of the person. This allows the regulatory body to protect the right to security of the person in section 29(1) of the Human Rights Act. A regulatory body may also decide not to publish information if it issued the order prior to a show cause notice being undertaken and it reasonably believes there is no overriding public interest in the publication of the information prior to confirming the order after a show cause process. The information must be removed from the website if the relevant order is revoked or set aside either by the regulatory body or a responsible tribunal. Taking into account these safeguards, the impact on privacy is lawful and not arbitrary, such that the right to privacy is not limited.

Even if that right is limited, any limit would be proportionate to the objective of protecting the public, and therefore justified under section 13 of the Human Rights Act.

Clauses 5, 93-98 and 141-143 of the Bill are compatible with human rights.

***Prohibition orders (clause 99)***

Clause 99 of the Bill amends section 196 of the National Law to allow a prohibition order issued by a tribunal to place restrictions on a practitioner's provision of health services, in addition to the current ability to prohibit the provision of specified health services or the use of a title.

By allowing restrictions under a prohibition order, these amendments impact the ability to practise a profession. Accordingly, they engage the rights to property and privacy in sections 24 and 25 of the Human Rights Act. However, the amendments are designed to provide increased flexibility for tribunals by permitting restrictions where an outright prohibition on performing a health service may not be necessary. With increased flexibility, tribunals can tailor the impact on practitioners to the individual circumstances giving rise to the order. Any impact on property or privacy is narrowly tailored to that objective. As the impact is lawful and not arbitrary, the rights to property and privacy are not limited. Even if those rights are limited, any limit would be proportionate to the objective of providing increased flexibility for tribunals, and therefore justified under section 13 of the Human Rights Act.

Clause 99 of the Bill is compatible with human rights.

***Contraventions of interim prohibition orders and prohibition orders (Clauses 18, 21 and 28)***

Clauses 18 and 21 of the Bill increase the maximum penalties for contravening an IPO and prohibition order issued under the Health Ombudsman Act. The penalties are raised from 200 penalty units to 450 penalty units or three years imprisonment. These are largely the same as the penalties that apply for the equivalent offences in the National Law. The amendments also designate these offences as indictable offences that are misdemeanours.

The increase in penalties may engage the right to property in section 24 of the Human Rights Act. The right to property might be considered limited by increasing maximum penalty amounts because this could result in a deprivation of property in the form of money. The right to property protects the right of all persons to own property and provides that people have a right to not be arbitrarily deprived of their property. The concept of arbitrariness in the context of the right to property means a deprivation which is capricious, unpredictable, unjust or unreasonable in the sense of not being proportionate to the legitimate aim sought.

Clause 28 amends how indictable offences under the Health Ombudsman Act will be prosecuted. The amendments made by this clause provide that indictable offences are to be heard and decided summarily, unless the Magistrates Court abstains from exercising jurisdiction. The Court must abstain from dealing summarily with a charge of an indictable offence if it is satisfied that there are exceptional circumstances such that the charge should not be heard or decided summarily, or where the Court is satisfied the defendant, if convicted, may not be adequately punished on summary conviction. Under the amendments, the maximum penalty that may be imposed on a summary conviction for an indictable offence is 165 penalty

units. As a result, the full available penalty for an indictable offence under the Health Ombudsman Act will be limited to exceptional circumstances, as decided by a Magistrates Court, or circumstances where the Court is satisfied the defendant, if convicted, may not be adequately punished on summary conviction.

By including imprisonment as a potential penalty for contravening IPOs and prohibition orders, the Bill engages the right of liberty in section 29 of the Human Rights Act. This right protects against the unlawful or arbitrary deprivation of liberty. Arbitrary in these circumstances might involve injustice, inappropriateness, unpredictability, or a lack of due legal process.

Under the amendments, a penalty of imprisonment can only be imposed after lawful court proceedings and only if a Magistrates Court abstains from dealing with the charge summarily. Imprisonment is reasonable and justifiable in circumstances in which health practitioners wilfully ignore a lawful order and continue to practise in a way that could seriously harm the public. The flexibility offered by the amendments is also the least restrictive way to protect the public, as the ability to impose a sentence of imprisonment can only be met in circumstances in which a Magistrates Court abstains from dealing summarily with the charge. As the potential impact of the amendments is lawful and not arbitrary, the right to liberty is not limited. Even if the right is limited, any limit would be proportionate to the objective of protecting the public from serious risk, and therefore justified under section 13 of the Human Rights Act.

The amendments also engage the right to a fair hearing in section 31 of the Human Rights Act, which states that a person has the right to have criminal charges decided by a competent, independent and impartial court or tribunal following a fair, public hearing. This provides a right for parties to be heard and to respond to allegations made against them and requires courts to be unbiased and independent.

Under the amendments, indictable offences 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. As an additional safeguard, the Bill provides that the maximum penalty for an offence decided summarily is 165 penalty units. This is consistent with the limit that applies under section 46 of the *Penalties and Sentences Act 1992*.

What constitutes a 'fair' hearing depends on the facts of the case, and requires a number of public interest factors to be weighed. The flexibility for offences to be dealt with on either indictment or summarily, depending on the circumstances of the case, 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.

Clauses 18, 21 and 28 are compatible with human rights.

***Public statements (clauses 20 and 100-102)***

Clauses 20 and 100-102 of the Bill empower the Health Ombudsman and national regulators respectively to issue public statements about persons, including registered practitioners, who

are the subject of investigations or disciplinary proceedings, and whose conduct poses a serious risk to public health and safety.

Public statements could have a significant adverse impact on a person's private life and reputation. The warning to the public could hamper a practitioner's ability to continue to work with others in their profession, or even jeopardise their career. Accordingly, these amendments engage the rights to property, privacy and reputation in sections 24 and 25 of the Human Rights Act. The right not to have one's reputation unlawfully attacked in section 25(b) is particularly relevant to the amendment which provides that the regulatory body does not incur liability for the making of, or anything done for the purpose of making, a public statement in good faith. This amendment effectively widens the scope of lawful impacts on reputation, thereby narrowing the scope of the right to reputation in section 25(b) of the Human Rights Act.

However, the amendments are tailored to the legitimate aim of allowing a regulatory body to warn the public in order to protect the public from potential health risks. Public statements will help to achieve that objective. There is no less restrictive way to achieve that purpose. Safeguards are included to ensure that issuing a public statement is the least restrictive option. In particular, the power to issue a public statement only arises if the regulator reasonably believes that a person's conduct, performance or health poses a serious risk to others and that a public statement is necessary to protect public health or safety. The decision to issue a public statement will be subject to a show cause process and will be subject to appeal to a relevant tribunal. The regulator will have a power to correct a public statement and will be required to revoke a public statement if satisfied the grounds on which the statement was made no longer exist in relation to the person, or did not exist at the time the statement was made. The public statement revoking the original public statement must be made in the same way or a similar way. Taking into account these safeguards and the narrow circumstances in which the power to issue a public statement will apply, the importance of allowing regulators to make public statements to protect the public outweighs the impact on property, privacy and reputation.

As the impact on the rights to property, privacy and reputation is lawful and not arbitrary, those rights are not limited. Even if those rights are limited, any limit would be proportionate to the objective of protecting the public, and therefore justified under section 13 of the Human Rights Act.

***Referral to other entities (clauses 103, 104 and 144)***

Clause 103 of the Bill inserts new section 150A to the National Law, allowing National Boards to refer matters to another entity after a preliminary assessment of a notification. Clause 144 of the Bill amends an existing modification of the National Law to allow National Boards to similarly refer matters to another entity that have been referred to it by the Health Ombudsman. Clause 104 of the Bill amends section 151 of the National Law to provide that a National Board may decide to take no further action in relation to a matter, or part of a matter, that has been referred to another entity under new section 150A.

A referral may involve disclosure of private information and may potentially start a process that results in consequences for a person's ability to practise their profession. Accordingly, the amendments engage the rights to property and privacy in sections 24 and 25 of the Human Rights Act. However, any impact on property or privacy is very minor (and may be indirect).

The purpose of the amendments is address inefficiencies. Under the current legislation, National Boards have a limited discretion to refer notifications during preliminary assessment of a notification, meaning that matters may unnecessarily proceed down the National Board's notification pathway, even when it is clear from the Board's preliminary assessment that another entity is better placed to manage issues within the notification.

The purpose of addressing those inefficiencies outweighs the minor impacts on property and privacy. As the impact is lawful and not arbitrary, the rights to property and privacy are not limited. Even if those rights are limited, any limit would be proportionate to the objective of avoiding certain addressing inefficiencies, and therefore justified under section 13 of the Human Rights Act.

Clauses 103, 104 and 144 are compatible with human rights.

***Show cause process (clauses 105 and 106)***

Clauses 105 and 106 of the Bill increase the responsiveness of show cause processes. The clauses amend sections 179 and 180 of the National Law to allow a National Board to take appropriate action against a registered health practitioner under the health, conduct and performance provisions in part 8 of the National Law, even if the Board initially proposed to take a different regulatory action under division 10 of part 8.

Currently, once a National Board proposes to take 'relevant action' and initiates a show cause process under division 10, it must either take the proposed action, take no further action, or take a different relevant action under the same division. This could preclude the National Board from taking action under a different division, such as investigating a matter under division 8 or initiating a health or performance assessment under division 9.

It is possible that allowing National Boards to take more appropriate action will mean that more action is taken which impacts on a person's ability to practise their profession. In this way, the amendments may engage the rights to property and privacy in sections 24 and 25 of the Human Rights Act. However, the amendments are designed to provide increased responsiveness of show cause processes (allowing National Boards to take more action which is more tailored to the objective of protecting the public). Any impact on property or privacy is narrowly tailored to that objective. As the impact is lawful and not arbitrary, the rights to property and privacy are not limited. Even if those rights are limited, any limit would be proportionate to the objective of providing increased flexibility for tribunals, and therefore justified under section 13 of the Human Rights Act.

Clause 105 of the Bill also removes the exemption from the show cause process requirements that currently applies when a National Board has already investigated the relevant matter or completed a health or performance assessment of the registered health practitioner or student. In practice, National Boards always afford practitioners opportunity to show cause, so this amendment brings the National Law into line with current practice. This serves to safeguard procedural fairness.

Clauses 105 and 106 of the Bill are compatible with human rights.

***Discretion not to refer matters to responsible tribunal (clauses 107-109, 145 and 146)***

Clause 109 of the Bill inserts new section 193A to the National Law, allowing National Boards to decide not to refer matters to a tribunal where there is no public interest in such a referral. This change promotes the rights to property and privacy in sections 24 and 25 of the Human Rights Act, by allowing National Boards to avoid causing an impact on the ability of a person to practise their profession.

Clauses 107 and 108 of the Bill make amendments consequential to the insertion of new section 193A to the National Law. Clauses 145 and 146 of the Bill amend existing Queensland modifications of the National Law to ensure the National Law amendments operate in Queensland.

To ensure the discretion not to refer matters to a responsible tribunal is exercised in a manner that is appropriate, accountable, and transparent, the National Agency will be required to publish information about these decisions in its annual report. Publication of this information may impact a person's privacy and reputation under section 25 of the Human Rights Act. However, the reporting requirement is a safeguard as part of the change to reduce the overall impact on the rights to property and privacy in sections 24 and 25 of the Human Rights Act. The impact of the reporting requirements on privacy and reputation is tailored to that objective. As the impact is lawful and not arbitrary, the rights to privacy and reputation are not limited. Even if those rights are limited, any limit would be proportionate to the objective of ensuring transparency, and therefore justified under section 13 of the Human Rights Act.

Clauses 107-109, 145 and 146 of the Bill are compatible with human rights.

***Disclosure of information about registered practitioners to protect the public (clause 110)***

Clause 110 of the Bill inserts new section 220A to the National Law. This new section allows a National Board to notify employers or certain other associates of the practitioner of the risks stemming from the registered practitioner's health, conduct or performance prior to taking disciplinary action. This amendment allows a National Board to share vital information in the small number of cases where it has formed a reasonable belief that a practitioner poses a serious risk to the public but has yet to take action, including where the regulator is waiting for further information to finalise a complex matter involving multiple health, performance or conduct concerns.

These amendments may harm a practitioner's professional relationships, their professional reputation, and ultimately their ability to practise their profession. Accordingly, the amendment engages the rights to property, privacy and reputation in sections 24 and 25 of the Human Rights Act. However, the impact on those rights is lawful and there are safeguards built into the amendments which mean that the impact on those rights is not arbitrary. First, the power or obligation is only enlivened if a National Board reasonably believes that the practitioner poses a serious risk to persons because of their health, conduct or performance, and that it is necessary to give a notice to protect public health or safety. Second, this section does not allow the Board to disclose personal health information about a patient. Third, a Board may decide not to share information under new section 220A if it decides it is not in the public interest to do so, for example where sharing the information may impact an investigation, place a notifier at risk, or where the public interest is outweighed by the practitioner's right to privacy. It also

does not have to share information under this section if it has already shared the information with the entity under another provision of the National Law.

Accordingly, any impact on property, privacy or reputation is narrowly tailored to the objective of protecting the public. As the impact is lawful and not arbitrary, the rights to property, privacy and reputation are not limited. Even if those rights are limited, any limit would be proportionate to the objective of protecting the public, and therefore justified under section 13 of the Human Rights Act.

Clause 110 of the Bill is compatible with human rights.

***Disclosure of information about unregistered practitioners to protect the public (clause 111)***

Clause 111 of the Bill inserts new section 220B to the National Law. This new section allows the National Agency or a National Board to notify employers and certain other persons about serious risks posed by unregistered persons who are being investigated or prosecuted for a breach of part 7 of the National Law, for example, for holding themselves out as a registered practitioner. Notifying employers and other associates that a person is under investigation or prosecution for an offence will allow them to take any action they consider necessary to protect the public, such as restricting their scope of practice.

These amendments may harm a practitioner's professional relationships, their professional reputation, and ultimately their ability to practise their profession. Accordingly, the amendment engages the rights to property, privacy and reputation in sections 24 and 25 of the Human Rights Act. However, the impact on those rights is lawful and there are safeguards built into the amendments which mean that the impact on those rights is not arbitrary. First, the power to disclose information to these persons and entities is discretionary and can only be exercised if the regulator reasonably believes that the person poses a serious risk to persons and that it is necessary to give the notice to protect public health or safety. Second, this section does not allow the National Agency or a National Board to disclose personal health information about a patient.

Accordingly, any impact on property, privacy or reputation is narrowly tailored to the objective of protecting the public. As the impact is lawful and not arbitrary, the rights to property, privacy and reputation are not limited. Even if those rights are limited, any limit would be proportionate to the objective of protecting the public, and therefore justified under section 13 of the Human Rights Act.

Clause 111 of the Bill is compatible with human rights.

***Notice of particular matters (Clauses 29 and 30)***

Clauses 29 and 30 of the Bill amend sections 279 and 280 of the Health Ombudsman Act.

The amendments to section 279 and 280 broaden the range of persons to whom the Health Ombudsman may give notice about immediate actions taken, investigations of certain matters or complaints, the issuance or variation of a prohibition order against a health practitioner, and particular decisions of the Queensland Civil and Administrative Tribunal.

Currently, the Health Ombudsman must give notice to each person who the Ombudsman believes is an employer of the practitioner and may give notice to health practitioners with whom the practitioner shares premises, if the practitioner is self-employed and shares the cost of the premises with the other health practitioners. Under the amendments, notice may also be given to people who the Health Ombudsman believes had previously been an employer of the practitioner and other health practitioners with whom the practitioner previously shared premises and the cost of those premises while the practitioner was self-employed.

Notice may only be given to previous employers and previous practitioners who shared premises with the practitioner if the Health Ombudsman believes the practitioner's health, conduct or performance posed a risk of harm to a person or class of persons or a risk to public health or safety at the time of those of the previous employment or shared premises arrangement. This limitation balances public safety and the risk of harm to a practitioner's reputation. It also ensures that any limitation on a practitioner's privacy is done only when necessary for public protection.

These amendments may harm a practitioner's professional relationships, their professional reputation, and ultimately their ability to practise their profession. Accordingly, the amendment engages the rights to property, privacy and reputation in sections 24 and 25 of the Human Rights Act. However, the impact on those rights is lawful and there are safeguards built into the amendments which mean that the impact on those rights is not arbitrary. First, the discretion is only enlivened if the Health Ombudsman reasonably believes that the practitioner posed a risk of harm to a person or class of persons or a risk to public health or safety at the time of those of the previous employment or shared premises arrangement. Second, the Health Ombudsman may decide not to share information under section 279 if it decides giving such notice would put a person's health or safety at serious risk, put a complainant or other person at risk of being harassed or intimidated, or prejudice an investigation or inquiry.

Accordingly, any impact on property, privacy or reputation is narrowly tailored to the objective of protecting the public. As the impact is lawful and not arbitrary, the rights to property, privacy and reputation are not limited. Even if those rights are limited, any limit would be proportionate to the objective of protecting the public, and therefore justified under section 13 of the Human Rights Act.

***Use of an alternative name (Clauses 19, 22 and 112-115)***

Clauses 112-115 of the Bill introduce amendments to allow practitioners to practise under an alternative name and to have that alternative name published on the public register alongside their legal name. Practitioners must formally nominate an alternative name, and only one alternative name will be permitted. This amendment will provide flexibility for practitioners who practise under an alternative name for legitimate reasons, such as adopting an anglicised name. It will also increase safety for the public by allowing people to verify a practitioner's registration under their alternative name and see any relevant conditions or other restrictions on their registration.

Clauses 19 and 22 of the Bill amend the Health Ombudsman Act to recognise alternative names under the National Law.

These amendments protect and promote the right to a name in section 26(3) of the Human Rights Act, which is concerned with protecting legal personality, as well as the right to privacy

in section 25(a) of the Human Rights Act, which protects a person's identity. These amendments also protect and promote cultural rights under sections 27 and 28 of the Human Rights Act for health practitioners who come from culturally diverse backgrounds and operate under a cultural name alongside another name.

Under the amendments, a National Board may refuse to record a nominated name in the public register or on the certificate of registration for several reasons, including if it is obscene or offensive, resembles a protected or specialist title, or is contrary to the public interest.

The power to refuse to record a nominated name may limit the human rights identified above. However, the purpose is to ensure the integrity of the public register and the certificates of registration. The power to refuse to record a nominated name will help to achieve that purpose of ensuring the integrity of the public register and the certificates of registration. Further, given the confined circumstances in which a National Board can refuse to record a nominated name, the amendments represent the least restrictive way of achieving that purpose. Finally, the importance of maintaining the integrity of the public register outweighs the impact on the human rights related to identity in sections 25(a), 26(3), 27 and 28 of the Human Rights Act.

Clauses 19, 22 and 112-115 are compatible with human rights.

***Exclusion of information from registers (clause 116)***

Clause 116 of the Bill gives discretion to National Boards to remove information about a registered health practitioner from the public register if the publication of that information presents a serious risk to the health or safety of a family member or associate of the practitioner. The existing legislation already provides discretion to remove information if it presents a serious risk to the practitioner. This amendment will broaden the scope of the Board's ability to respond to safety concerns.

By allowing National Boards to address safety concerns, including concerns related to domestic violence, these amendments protect and promote the right to security of the person in section 29(1) of the Human Rights Act. Associate and family are defined broadly, and family includes persons connected to the practitioner through Aboriginal and Torres Strait Islander kinship ties. This broad definition may protect the right to non-interference with family in section 25(a), the right to protection of families in section 26(1), and the right of Aboriginal and Torres Strait Islander peoples to enjoy, maintain, control, protect and develop their kinship ties in section 28(2)(c) of the Human Rights Act.

Clause 116 of the Bill promotes and does not limit human rights.

***Regulation-making power (clause 147)***

Clause 147 of the Bill inserts a regulation-making power into the Health Practitioner Regulation National Law Act. This amendment ensures that, where appropriate, regulations can be made to accommodate matters contemplated by the Act and within the authority of the Act.

All regulations made under this provision will be tabled in the Legislative Assembly and will be subject to Parliamentary scrutiny and disallowance procedures and to the requirements applicable to subordinate legislation under the Human Rights Act.

Clause 147 of the Bill does not limit human rights.

***Minor amendments (clauses 117-129)***

Clauses 117-129 of the Bill make other minor and technical amendments to correct typographical errors or otherwise contemporise the National Law. Most of these amendments do not limit human rights.

Clauses 124, 127 and 128 of the Bill replace phrases indicating that a person can inspect a document held by a regulator at a 'reasonable time and place' with a reference to 'at a reasonable time and in the reasonable way' decided by the Board. These changes reflect that the inspection and copying of documents is now often done electronically, rather than in person.

To the extent that this minor change in drafting makes inspection easier, the amendments may impose a minor impact on privacy, as well as property rights to possess a document. These amendments may engage the rights to property and privacy in sections 24 and 25 of the Human Rights Act. However, any impact on property and privacy is minor and tailored to the objective of updating the provisions to reflect the modern reality that inspection and copying of documents is now often done electronically, rather than in person. As the impact is lawful and not arbitrary, the rights to property and privacy are not limited. Even if that right is limited, any limit would be proportionate to the objective of allowing electronic inspection and copying, and therefore justified under section 13 of the Human Rights Act.

Clauses 117-129 of the Bill are compatible with human rights.

# Conclusion

In my opinion, the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022 is compatible with human rights under the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Act.

**YVETTE D'ATH MP**
Minister for Health and Ambulance Services
Leader of the House