

THIS PUBLIC BILL has this day been read a Third time and passed

*The Clerk of the Parliament.*

*Legislative Assembly Chamber,  
Brisbane,            October 2022*



Queensland

**No.  
A BILL for**

**An Act to amend the Health Ombudsman Act 2013 and the Health Practitioner Regulation National Law Act 2009 for particular purposes**





Queensland

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

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**2022**

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**A Bill**

for

***An Act to amend the Health Ombudsman Act 2013 and the Health Practitioner Regulation National Law Act 2009 for particular purposes***

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[s 1]

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**The Parliament of Queensland enacts—**

## **Chapter 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022*.

### **2 Commencement**

The following provisions commence on a day to be fixed by proclamation—

- (a) chapter 2;
- (b) chapter 3, parts 7 to 11, 13 to 15, 18, 20, 21 and 23 to 30;
- (c) sections 99(3) and (4), 117(2), 119, 124, 127 and 128;
- (d) chapter 4, parts 4 to 10.

## **Chapter 2 Amendment of Health Ombudsman Act 2013**

### **3 Act amended**

This chapter amends the *Health Ombudsman Act 2013*.

### **4 Amendment of s 14 (Dealing with health service complaints and other matters)**

- (1) Section 14(3)(a)—

*omit, insert—*

- (a) for a registered health practitioner—
  - (i) suspending, or imposing conditions on, the practitioner’s registration; or
  - (ii) accepting undertakings from the practitioner; or
- (2) Section 14(3)(b), ‘other health practitioners’—

*omit, insert—*

another health practitioner

**5 Amendment of s 37 (Matters referred by National Boards or government entities)**

- (1) Section 37, heading, ‘National Boards or government’—

*omit, insert—*

**other**

- (2) Section 37(1)(a)(i)—

*omit, insert—*

- (i) a referral under the National Law from the National Agency or a National Board; or

**6 Insertion of new pt 7, div 1, sdiv 1, hdg**

Before section 57—

*insert—*

**Subdivision 1 General provisions**

**7 Amendment of s 57 (Meaning of *immediate registration action*)**

Section 57, definition *immediate registration action*, from ‘means’—

*omit, insert—*

[s 8]

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means—

- (a) suspending, or imposing a condition on, the practitioner's registration; or
- (b) accepting an undertaking from the practitioner.

**8 Amendment of s 58A (Varying immediate registration action on health ombudsman's own initiative)**

- (1) Section 58A, heading, before 'immediate'—

*insert—*

**particular**

- (2) Section 58A—

*insert—*

- (1A) However, this section does not apply if the immediate registration action is accepting an undertaking from the registered health practitioner.

- (3) Section 58A(2), 'may vary an'—

*omit, insert—*

may vary the

- (4) Section 58A(1A) to (3)—

*renumber* as section 58A(2) to (4).

**9 Amendment of s 58B (Varying immediate registration action on application by registered health practitioner)**

- (1) Section 58B, heading, before 'immediate'—

*insert—*

**particular**

- (2) Section 58B(1), before 'health practitioner'—

*insert—*



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registered

(3) Section 58B—

*insert—*

(1A) However, subsection (1) does not apply if the immediate registration action is accepting an undertaking from the registered health practitioner.

(4) Section 58B(6), ‘sections 59(1) to (3)’—

*omit, insert—*

sections 59(2) to (4)

(5) Section 58B(1A) to (10)—

*renumber* as section 58B(2) to (11).

## 10 **Amendment of s 59 (Show cause process)**

(1) Section 59, heading, after ‘process’—

*insert—*

**for particular immediate registration action**

(2) Section 59(1)—

*omit, insert—*

(1) This section applies if the health ombudsman proposes to take immediate registration action in relation to a registered health practitioner, other than action that is accepting an undertaking from the practitioner.

(1A) The health ombudsman must give the registered health practitioner a notice—

(a) stating the proposed immediate registration action; and

(b) inviting the practitioner to make a submission to the health ombudsman, within a stated period of at least 5 business days

[s 11]

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starting after the notice is given, about the proposed action.

- (3) Section 59(4), ‘subsections (1) to (3)’—

*omit, insert—*

subsections (2) to (4)

- (4) Section 59(1A) to (4)—

*renumber* as section 59(2) to (5).

## **11 Amendment of s 60 (Notice about immediate registration action)**

- (1) Section 60(2)(d) and (e)—

*omit, insert—*

(d) to the extent the immediate registration action is suspending, or imposing a condition on, the practitioner’s registration—

(i) that the practitioner may apply to QCAT for a review of the decision to take the action; and

(ii) how, and the period within which, the practitioner may apply for the review of the decision.

- (2) Section 60(4), note—

*omit, insert—*

*Note—*

See section 279 in relation to other persons to whom the health ombudsman must or may give notice.

## **12 Amendment of s 61 (Show cause process after taking action)**

- (1) Section 61(1)—

*omit, insert—*

- (1) This section applies if, under section 59(5), the health ombudsman takes immediate registration action in relation to a registered health practitioner without complying with section 59(2) to (4).
- (2) Section 61(2), from ‘days’—  
*omit, insert—*  
days starting after the notice is given, about the immediate registration action taken.
- (3) Section 61(3)(a), ‘action’—  
*omit, insert—*  
immediate registration action

### **13 Amendment of s 62 (Period of immediate registration action)**

Section 62(2)(b)—

*omit, insert—*

- (b) the health ombudsman—
  - (i) ends the immediate registration action under section 65; or
  - (ii) grants an application to revoke the immediate registration action under section 65B.

### **14 Amendment of s 63 (Application to QCAT for review)**

- (1) Section 63—

*insert—*

- (1A) However, subsection (1) does not apply to the extent the immediate registration action is accepting an undertaking from the registered

[s 15]

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health practitioner.

(2) Section 63(1A) and (2)—

*renumber* as section 63(2) and (3).

**15 Amendment of s 65 (Health ombudsman may end immediate registration action)**

(1) Section 65, heading, ‘Health ombudsman may’—

*omit, insert—*

**When health ombudsman must**

(2) Section 65(2)(a)—

*omit, insert—*

(a) do the following—

- (i) if the immediate registration action is suspending the registered health practitioner’s registration—revoke the suspension;
- (ii) if the immediate registration action is imposing a condition on the registered health practitioner’s registration—remove the condition;
- (iii) if the immediate registration action is accepting an undertaking from the registered health practitioner—revoke the acceptance of the undertaking; and

**16 Insertion of new pt 7, div 1, sdiv 2**

After section 65—

*insert—*

**Subdivision 2 Special provisions for varying or revoking accepted undertakings**

### **65A Application to vary or revoke accepted undertaking by registered health practitioner**

- (1) This section applies if—
  - (a) the health ombudsman has, as an immediate registration action taken under subdivision 1, accepted an undertaking from a registered health practitioner; and
  - (b) the undertaking is in effect; and
  - (c) there is a material change in relation to the matter giving rise to the immediate registration action.
- (2) The registered health practitioner may apply to the health ombudsman to vary or revoke the undertaking.
- (3) The application must—
  - (a) be in the approved form; and
  - (b) be accompanied by any other information reasonably required by the health ombudsman.
- (4) An application made under this section is an *undertaking application*.

### **65B Decision about undertaking application**

- (1) The health ombudsman must, after considering an undertaking application, decide to grant, or refuse to grant, the application.
- (2) The health ombudsman may grant the undertaking application only if the health ombudsman is satisfied the material change mentioned in section 65A(1)(c) for the application justifies granting the application.

### **65C Show cause process**

- (1) If the health ombudsman proposes to refuse to grant an undertaking application made by a registered health practitioner, the health ombudsman must give the practitioner a notice—
  - (a) stating the proposed decision; and
  - (b) inviting the practitioner to make a submission to the health ombudsman, within a stated period of at least 5 business days starting after the notice is given, about the proposed decision.
- (2) The registered health practitioner may make submissions to the health ombudsman orally or in writing.
- (3) The health ombudsman must have regard to any submissions made by the registered health practitioner within the stated period before deciding whether to refuse the undertaking application.

### **65D Notice of decision**

- (1) This section applies if the health ombudsman decides to grant, or refuse to grant, an undertaking application made by a registered health practitioner.
- (2) Immediately after making the decision, the health ombudsman must give notice of the decision to the registered health practitioner.
- (3) If the health ombudsman decides to grant the undertaking application, the health ombudsman must give a copy of the notice to the relevant National Board.
- (4) If the health ombudsman decides to refuse to grant the undertaking application, the notice must state—

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) that the registered health practitioner may apply to QCAT for a review of the decision; and
- (d) how, and the period within which, the registered health practitioner may apply for the review of the decision.

### **65E Period of variation**

- (1) If the health ombudsman grants an undertaking application made by a registered health practitioner to vary an undertaking, the decision takes effect on—
  - (a) the day the notice under section 65D(2) is given to the practitioner; or
  - (b) if a later day is stated in the notice—the later day.
- (2) The decision continues to have effect until the earlier of—
  - (a) if another notice under section 65D(2) is given to the registered health practitioner in relation to the undertaking—
    - (i) the day the other notice is given; or
    - (ii) if a later day is stated in the other notice—the later day; or
  - (b) the day the health ombudsman otherwise revokes acceptance of the undertaking under section 65.

### **65F Application to QCAT for review**

If the health ombudsman refuses to grant an undertaking application made by a registered

[s 17]

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health practitioner, the practitioner may apply, as provided under the QCAT Act, to QCAT for a review of the decision.

**17 Amendment of s 71 (Notice to complainant)**

Section 71, note—

*omit, insert—*

*Note—*

See section 279 in relation to other persons to whom the health ombudsman must or may give notice.

**18 Amendment of s 78 (Offence of contravening order)**

Section 78, penalty—

*omit, insert—*

Maximum penalty—450 penalty units or 3 years imprisonment.

**19 Amendment of s 79 (Publication of orders)**

Section 79—

*insert—*

(4) In this section—

*name*, of a health practitioner, includes an alternative name for the practitioner recorded in a National Register or Specialists Register under the National Law, section 225(aa).

**20 Insertion of new pt 8AA**

After section 90—

*insert—*

**Part 8AA Public statements**



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## **90AA Making of public statement**

- (1) The health ombudsman may make a public statement about a person if—
  - (a) either of the following applies—
    - (i) the health ombudsman reasonably believes the person is contravening, or has contravened, a relevant provision;
    - (ii) the person’s conduct, performance or health is the subject of an assessment under part 5 or an investigation under part 8; and
  - (b) the health ombudsman reasonably believes that—
    - (i) because of the person’s conduct, performance or health, the person poses a serious risk to persons; and
    - (ii) it is necessary to issue a public statement to protect public health or safety.
- (2) A public statement made by the health ombudsman may be made in a way the health ombudsman considers appropriate.
- (3) If the health ombudsman considers it appropriate in the circumstances, the health ombudsman may identify, and give warnings or information about—
  - (a) a person; or
  - (b) a health service provided by a person.
- (4) No liability is incurred by the health ombudsman for the making of, or for anything done for the purpose of making, a public statement under this section in good faith.
- (5) In this section—

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*relevant provision* means any of the following provisions of the National Law—

- (a) section 113;
- (b) sections 115 to 119;
- (c) sections 121 to 123;
- (d) section 133;
- (e) section 136.

### **90AB Show cause process for public statement**

- (1) If the health ombudsman proposes to make a public statement about a person, the health ombudsman must give the person a notice that includes the following information—
  - (a) that the health ombudsman proposes to make a public statement about the person;
  - (b) the way in which it is proposed to make the public statement;
  - (c) the content of the proposed public statement;
  - (d) that the person may make written or verbal submissions to the health ombudsman, within the reasonable period stated in the notice, about the proposed public statement.
- (2) After considering any submission made by the person in accordance with the notice, the health ombudsman must decide—
  - (a) not to make the public statement; or
  - (b) to make the public statement as proposed; or
  - (c) to make the public statement in a different way or with different content.
- (3) The health ombudsman must give notice of the decision, that includes the following information,

to the person—

- (a) the decision;
- (b) the reasons for the decision;
- (c) if the decision is to make the public statement—
  - (i) that the person may appeal against the decision; and
  - (ii) how an application for an appeal may be made; and
  - (iii) the period within which the application must be made.
- (4) The notice must be given—
  - (a) as soon as practicable after the decision is made; and
  - (b) if the decision is to make the public statement—at least one business day before the statement is to be made.

### **90AC Revision of public statement**

- (1) The health ombudsman may revise a public statement if the health ombudsman reasonably believes it is necessary in the circumstances.
- (2) If the proposed revision changes the public statement in a material way, sections 90AA(2) and (3) and 90AB apply to the proposed revision, with any necessary modifications, as if it were the proposed making of a public statement.

### **90AD Revocation of public statement**

- (1) The health ombudsman must revoke a public statement in relation to a person if the health ombudsman is satisfied the grounds on which the statement was made—

[s 21]

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- (a) no longer exist in relation to the person; or
  - (b) did not exist at the time the statement was made.
- (2) As soon as practicable after deciding to revoke the public statement, the health ombudsman must—
- (a) give the person a notice stating—
    - (i) the health ombudsman has decided to revoke the public statement; and
    - (ii) the date on which the public statement will be revoked; and
  - (b) make a public statement revoking the original public statement in the same way, or a similar way, to the way in which the original public statement was made.

**21 Amendment of s 90P (Offence of contravening prohibition order)**

Section 90P, penalty—

*omit, insert—*

Maximum penalty—450 penalty units or 3 years imprisonment.

**22 Amendment of s 90Q (Publication of prohibition orders)**

Section 90Q—

*insert—*

- (6) In this section—
- name***, of a health practitioner, includes an alternative name for the practitioner recorded in a National Register or Specialists Register under the National Law, section 225(aa).

**23 Amendment of s 91C (Complaint or matter indicating serious matter must not be referred)**

Section 91C(1), ‘if it relates’—

*omit, insert—*

to the extent it relates

**24 Amendment of s 94 (QCAT’s jurisdiction)**

(1) Section 94(1)(a)(i) and (iii), after ‘practitioner’—

*insert—*

, other than action to accept an undertaking from the practitioner

(2) Section 94(1)(a)—

*insert—*

(iva) to refuse an application to vary or revoke an undertaking given by a registered health practitioner and accepted by the health ombudsman as an immediate registration action; or

(3) Section 94(1)(a)(viii), ‘and’—

*omit, insert—*

or

(4) Section 94(1)(a)—

*insert—*

(ix) to make or revise a public statement about a person under part 8AA; and

(5) Section 94(1)(a)(iva) to (ix)—

*renumber* as section 94(1)(a)(v) to (x).

**25 Amendment of s 97 (Constitution of QCAT)**

Section 97(2)(b)—

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*omit, insert—*

- (b) the review of a decision by the health ombudsman to make or revise a public statement about a person under part 8AA; or
- (c) the review of either of the following appellable decisions under the National Law, section 199—
  - (i) an appellable decision relating to a decision made under part 7 of that Law;
  - (ii) an appellable decision mentioned in section 199(1)(ha) or (hb) of that Law.

## **26 Amendment of s 262 (Offence for taking reprisal)**

Section 262(2)—

*omit.*

## **27 Amendment of s 269 (Summary offences)**

- (1) Section 269, heading, ‘Summary’—

*omit, insert—*

### **Proceedings for summary**

- (2) Section 269(1)—

*omit, insert—*

- (1) A proceeding for an offence against this Act, other than an offence against section 78, 90P or 262, is to be heard and decided summarily.

*Note—*

See section 271 in relation to indictable offences.

- (3) Section 269(2), from ‘A summary proceeding’ to ‘summary offence’—

*omit, insert—*

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The proceeding

**28 Replacement of s 271 (Proceedings for indictable offences)**

Section 271—

*omit, insert—*

**271 Proceedings for indictable offences**

- (1) An offence against section 78, 90P or 262 is an indictable offence that is a misdemeanour.
- (2) Subject to subsection (3), a proceeding for an indictable offence is to be heard and decided summarily.
- (3) A Magistrates Court must abstain from dealing summarily with a charge of an indictable offence—
  - (a) if satisfied, on an application made by the prosecution or the defence, that because of exceptional circumstances the charge should not be heard and decided summarily; or

*Examples of exceptional circumstances—*

- 1 There is sufficient connection between the offence the subject of the charge, and other offences allegedly committed by the defendant and to be tried on indictment, to allow all the offences to be tried together.
  - 2 There is an important issue of law involved.
  - 3 An issue of general community importance or public interest is involved, or the holding of a trial by jury is justified in order to establish contemporary community standards.
- (b) if satisfied, at any stage and after hearing any submissions by the prosecution and defence, that because of the nature or seriousness of the offence or any other relevant consideration the defendant, if

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convicted, may not be adequately punished on summary conviction.

- (4) If a Magistrates Court abstains from jurisdiction—
  - (a) the court must stop treating the proceeding as a proceeding to hear and decide the charge summarily; and
  - (b) the proceeding for the charge must be conducted as a committal proceeding; and
  - (c) a plea of the defendant at the start of the hearing must be disregarded; and
  - (d) the evidence already heard by the court is taken to be evidence in the committal proceeding; and
  - (e) the *Justices Act 1886*, section 104 must be complied with for the committal proceeding.
- (5) The maximum penalty that may be imposed on a summary conviction for an indictable offence is 165 penalty units.
- (6) A Magistrates Court that summarily deals with a charge of an indictable offence—
  - (a) must be constituted by a magistrate; and
  - (b) has jurisdiction despite the time that has elapsed from the time when the matter of complaint of the charge arose.

## **29 Amendment of s 279 (Notice to employers about particular serious matters)**

- (1) Section 279(2), from ‘immediate action’—

*omit, insert—*

action mentioned in subsection (1) to each person who the health ombudsman believes is an



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employer of the health practitioner.

(2) Section 279(3)—

*omit, insert—*

(3) The health ombudsman may also give notice of the action mentioned in subsection (1) to—

- (a) a person who the health ombudsman believes has previously been an employer of the health practitioner; or
- (b) other health practitioners with whom the health practitioner shares premises, if the practitioner—
  - (i) is self-employed; and
  - (ii) shares the cost of the premises with the other health practitioners; or
- (c) other health practitioners with whom the health practitioner has previously shared premises, if, at the time the premises were shared, the practitioner—
  - (i) was self-employed; and
  - (ii) shared the cost of the premises with the other health practitioners.

(3) Section 279—

*insert—*

(4A) Also, the health ombudsman may give notice under subsection (3)(a) or (c) only if the health ombudsman believes that at the time the health practitioner was employed or shared the premises, the practitioner's health, conduct or performance posed—

- (a) a risk of harm to a person or a class of persons; or
- (b) a risk to public health or safety.

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- (4) Section 279(4A) and (5)—  
*renumber* as section 279(5) and (6).

**30 Amendment of s 280 (Notice to employers about particular QCAT decisions)**

- (1) Section 280(2), ‘practitioner’—  
*omit, insert*—  
registered health practitioner
- (2) Section 280(3)—  
*omit, insert*—
- (3) The health ombudsman may also give notice of the decision to—
- (a) a person who the health ombudsman believes has previously been an employer of the registered health practitioner; or
  - (b) other health practitioners with whom the registered health practitioner shares premises, if the practitioner—
    - (i) is self-employed; and
    - (ii) shares the cost of the premises with the other health practitioners; or
  - (c) other health practitioners with whom the registered health practitioner has previously shared premises, if, at the time the premises were shared, the practitioner—
    - (i) was self-employed; and
    - (ii) shared the cost of the premises with the other health practitioners.
- (4) However, the health ombudsman may give notice to a person under subsection (3)(a) or (c) only if the health ombudsman believes that at the time the registered health practitioner was employed or

shared the premises, the practitioner's health, conduct or performance posed—

- (a) a risk of harm to a person or a class of persons; or
- (b) a risk to public health or safety.

### 31 Amendment of sch 1 (Dictionary)

- (1) Schedule 1—

*insert—*

*undertaking application*, for part 7, division 1, subdivision 2, see section 65A(4).

- (2) Schedule 1, definition *reasonably believes*, ‘, for part 15,’—

*omit.*

## Chapter 3 Amendment of Health Practitioner Regulation National Law

### Part 1 Preliminary

#### 32 Law amended

This chapter amends the Health Practitioner Regulation National Law set out in the schedule to the *Health Practitioner Regulation National Law Act 2009*.



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scheme only if it is necessary to ensure health services are provided safely and are of an appropriate quality.

**35 Amendment of s 4 (How functions to be exercised)**

Section 4, ‘section 3’—

*omit, insert—*

sections 3 and 3A

**Part 3 Cultural safety for Aboriginal and Torres Strait Islander Peoples**

**36 Amendment of s 3 (Objectives)**

Section 3(2), after paragraph (c)—

*insert—*

(ca) to build the capacity of the Australian health workforce to provide culturally safe health services to Aboriginal and Torres Strait Islander Peoples; and

**37 Amendment of s 3A (Guiding principles)**

Section 3A(2), after paragraph (a)—

*insert—*

(aa) the scheme is to ensure the development of a culturally safe and respectful health workforce that—

(i) is responsive to Aboriginal and Torres Strait Islander Peoples and their health; and



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*omit.*

## **Part 5                      Agency Management    Committee**

### **42      Amendment of s 5 (Definitions)**

(1) Section 5, definition *Agency Management Committee*—

*omit.*

(2) Section 5—

*insert—*

*Agency Board* means the Australian Health Practitioner Regulation Agency Board established by section 29.

### **43      Amendment of s 17 (Notification and publication of directions and approvals)**

Section 17(1)(a), ‘Agency Management Committee’—

*omit, insert—*

Agency Board

### **44      Replacement of pt 4, div 2, hdg (Agency Management Committee)**

Part 4, division 2, heading—

*omit, insert—*

**Division 2                      Agency Board**

### **45      Amendment of s 29 (Agency Management Committee)**

(1) Section 29, heading—

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*omit, insert—*

### **29 Agency Board**

- (2) Section 29(1), ‘Australian Health Practitioner Regulation Agency Management Committee’—

*omit, insert—*

Australian Health Practitioner Regulation Agency  
Board

- (3) Section 29(2) and (4), ‘Agency Management Committee’—

*omit, insert—*

Agency Board

## **46 Amendment of s 30 (Functions of Agency Management Committee)**

- (1) Section 30, heading—

*omit, insert—*

### **30 Functions of Agency Board**

- (2) Section 30(1) and (2), ‘Agency Management Committee’—

*omit, insert—*

Agency Board

- (3) Section 30(1)(c), ‘Committee’—

*omit, insert—*

Board

## **47 Amendment of s 33 (Membership of National Boards)**

Section 33(8), ‘Agency Management Committee’—

*omit, insert—*

Agency Board



**48 Amendment of s 236 (Protection from personal liability for persons exercising functions)**

Section 236(3), definition *protected person*, paragraph (b), ‘Agency Management Committee’—

*omit, insert—*

Agency Board

**49 Insertion of new pt 14**

After part 13—

*insert—*

**Part 14 Transitional provisions for Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022**

**324 Renaming of Agency Management Committee**

(1) The renaming of the Agency Management Committee by the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022* does not affect the validity of an appointment of a person to the Committee before the renaming.

(2) In this section—

*Agency Management Committee* means the Australian Health Practitioner Regulation Agency Management Committee established by section 29, as in force immediately before the commencement of this section.

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**50 Amendment of sch 2 (Agency Management Committee)**

- (1) Schedule 2, heading—

*omit, insert—*

**Schedule 2 Agency Board**

- (2) Schedule 2, clause 1, definition *Committee*—

*omit.*

- (3) Schedule 2, clause 1, definitions *Chairperson* and *member*, ‘Committee’—

*omit, insert—*

Agency Board

- (4) Schedule 2, clause 4, ‘Committee’—

*omit, insert—*

Agency Board

- (5) Schedule 2, clause 5, ‘the Committee’—

*omit, insert—*

the Agency Board

- (6) Schedule 2, clause 5(2), note, ‘Agency Management Committee’—

*omit, insert—*

Agency Board

- (7) Schedule 2, clauses 7 to 16, ‘Committee’—

*omit, insert—*

Agency Board

**51 Amendment of sch 3 (National Agency)**

Schedule 3, ‘Agency Management Committee’—

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*omit, insert—*

Agency Board

## **Part 6 Functions of National Agency**

### **52 Amendment of s 25 (Functions of National Agency)**

(1) Section 25(j)—

*omit, insert—*

(j) to give advice to the Ministerial Council on issues relating to the national registration and accreditation scheme;

(2) Section 25, after paragraph (k)—

*insert—*

(ka) to do anything else necessary or convenient for the effective and efficient operation of the national registration and accreditation scheme;

## **Part 7 Ministerial Council**

### **53 Amendment of s 5 (Definitions)**

Section 5, definition *Ministerial Council*—

*omit, insert—*

***Ministerial Council*** means a body, however described, that consists of the Minister of each participating jurisdiction, and the Commonwealth, who is responsible, or principally responsible, for matters relating to health.

[s 54]

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**54 Amendment of s 12 (Approval of registration standards)**

Section 12—

*insert—*

- (4) The Ministerial Council may delegate any of the Council’s powers under subsection (1) to an entity it considers appropriate to exercise the power.

**Part 8 Commencement of registration**

**55 Amendment of s 56 (Period of general registration)**

Section 56(2)(a)—

*omit, insert—*

- (a) starts—
- (i) if the Board specifies a day, not more than 90 days after the day the Board makes the decision—on that day; or
- (ii) otherwise—when the Board makes the decision; and

**56 Amendment of s 61 (Period of specialist registration)**

Section 61(2)(a)—

*omit, insert—*

- (a) starts—
- (i) if the Board specifies a day, not more than 90 days after the day the Board makes the decision—on that day; or
- (ii) otherwise—when the Board makes the decision; and

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**57 Amendment of s 64 (Period of provisional registration)**

Section 64(2)(a)—

*omit, insert—*

- (a) starts—
  - (i) if the Board specifies a day, not more than 90 days after the day the Board makes the decision—on that day; or
  - (ii) otherwise—when the Board makes the decision; and

**58 Amendment of s 72 (Period of limited registration)**

Section 72(2)(a)—

*omit, insert—*

- (a) starts—
  - (i) if the Board specifies a day, not more than 90 days after the day the Board makes the decision—on that day; or
  - (ii) otherwise—when the Board makes the decision; and

**59 Amendment of s 76 (Period of non-practising registration)**

Section 76(2)(a)—

*omit, insert—*

- (a) starts—
  - (i) if the Board specifies a day, not more than 90 days after the day the Board makes the decision—on that day; or
  - (ii) otherwise—when the Board makes the decision; and

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## Part 9 Undertakings

### 60 Amendment of s 52 (Eligibility for general registration)

Section 52(2), ‘by imposing conditions on the registration under section 83.’—

*omit, insert—*

by doing either or both of the following—

- (a) imposing conditions on the registration under section 83;
- (b) accepting an undertaking from the individual under section 83A.

### 61 Amendment of s 57 (Eligibility for specialist registration)

Section 57(2), ‘by imposing conditions on the registration under section 83.’—

*omit, insert—*

by doing either or both of the following—

- (a) imposing conditions on the registration under section 83;
- (b) accepting an undertaking from the individual under section 83A.

### 62 Amendment of s 62 (Eligibility for provisional registration)

Section 62(2), ‘by imposing conditions on the registration under section 83.’—

*omit, insert—*

by doing either or both of the following—

- (a) imposing conditions on the registration under section 83;

- (b) accepting an undertaking from the individual under section 83A.

### **63 Amendment of s 65 (Eligibility for limited registration)**

Section 65(2), ‘registration in the profession by imposing conditions on the registration under section 83.’—

*omit, insert—*

limited registration in the profession by doing either or both of the following—

- (a) imposing conditions on the registration under section 83;
- (b) accepting an undertaking from the individual under section 83A.

### **64 Insertion of new s 83A**

After section 83—

*insert—*

#### **83A Undertakings at registration**

If a National Board decides to register a person in a health profession for which the Board is established, the Board may accept any undertaking from the person the Board considers necessary or desirable in the circumstances.

### **65 Insertion of new s 103A**

After section 103—

*insert—*

#### **103A Undertakings at endorsement**

If a National Board decides to endorse the applicant’s registration under section 102, the Board may accept any undertaking from the

[s 66]

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applicant the Board considers necessary or desirable in the circumstances.

**66 Amendment of s 112 (Decision about application for renewal)**

(1) Section 112(2), after paragraph (b)—

*insert—*

(ba) if the applicant failed to comply with any undertaking given by the applicant to the Board that was in effect during the applicant's previous period of registration or endorsement; or

(2) Section 112(3)(b), 'circumstances'—

*omit, insert—*

circumstances; and

(c) any undertaking given by the applicant to the Board that was in effect immediately before the renewal; and

(d) any undertaking given by the applicant to the Board that the Board considers necessary or desirable in the circumstances.

(3) Section 112(3), note, after 'registration'—

*insert—*

, or an undertaking given by the practitioner to the Board,

## **Part 10 Conditions**

**67 Amendment of s 126 (Changing conditions on Board's initiative)**

(1) Section 126(1)—



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*omit, insert—*

- (1) This section applies if a National Board established for a health profession reasonably believes it is necessary to change a condition imposed on—
  - (a) for a registered health practitioner registered in the health profession—the practitioner’s registration or endorsement; or
  - (b) for a student registered in the health profession—the student’s registration.
- (2) Section 126(6), after ‘registration’—

*insert—*

or endorsement

**68 Amendment of s 127 (Removal of condition or revocation of undertaking)**

Section 127(1)—

*omit, insert—*

- (1) This section applies if a National Board established for a health profession reasonably believes the following is no longer necessary—
  - (a) for a registered health practitioner registered in the health profession—
    - (i) a condition imposed on the practitioner’s registration or endorsement; or
    - (ii) an undertaking given to the Board by the practitioner;
  - (b) for a student registered in the health profession—
    - (i) a condition imposed on the student’s registration; or



registered health practitioner's registration under section 85A, the Board must give the practitioner written notice of the proposal.

- (2) The notice must—
  - (a) state the reasons for the proposal; and
  - (b) invite the registered health practitioner to make a written or verbal submission to the National Board, within the reasonable time stated in the notice, about the proposal.
- (3) This section does not prevent a National Board from taking immediate action under Division 7 of Part 8 in relation to the registered health practitioner.

### **85C Decision about withdrawal of registration**

After considering any submissions made in accordance with a notice under section 85B, the National Board must—

- (a) decide—
  - (i) the registration was not improperly obtained on the ground the registered health practitioner or someone else gave the Board information or a document that was false or misleading in a material particular; and
  - (ii) no further action is to be taken; or
- (b) decide the registration was improperly obtained because the practitioner or someone else gave the Board information or a document that was false or misleading in a material particular and do one or more of the following—
  - (i) withdraw the practitioner's registration;

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- (ii) refer the matter to a responsible tribunal;
- (iii) take other appropriate action under Part 8.

### **85D Notice to be given to registered health practitioner**

- (1) The National Board must give the registered health practitioner written notice of the Board's decision under section 85C as soon as practicable, but no later than 30 days after making the decision.
- (2) If the National Board decides to withdraw the registered health practitioner's registration, the notice must state—
  - (a) the reasons for the decision; and
  - (b) that the practitioner may appeal against the decision; and
  - (c) how the application for appeal may be made and the period within which the application must be made.

*Note—*

If, under section 85C(b)(ii) or (iii), the National Board decides to refer the matter to a responsible tribunal or take other appropriate action under Part 8, notice of the referral or other action will be given to the registered health practitioner under the relevant provision of Part 8.

### **85E When decision takes effect**

The decision by the National Board to withdraw a person's registration takes effect on—

- (a) the day notice of the Board's decision is given to the person; or

(b) the later day stated in the notice.

**71 Amendment of s 178 (National Board may take action)**

Section 178(1)(a)(iv), ‘and’—

*omit, insert—*

or

- (v) a registered health practitioner’s registration was improperly obtained because the practitioner or someone else gave the Board information or a document that was false or misleading in a material particular; and

**72 Replacement of s 190 (Referral to responsible tribunal)**

Section 190—

*omit, insert—*

**190 Referral to responsible tribunal or National Board**

- (1) A panel must stop hearing a matter and require the National Board that established the panel to refer the matter to a responsible tribunal under section 193 if, at any time—
- (a) the practitioner or student the subject of the hearing asks the panel for the matter to be referred to a responsible tribunal under section 193; or
  - (b) if the subject of the hearing is a registered health practitioner—the panel reasonably believes the evidence demonstrates the practitioner may have behaved in a way that constitutes professional misconduct.
- (2) A panel must stop hearing a matter and refer the

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matter to the National Board that established the panel if the panel reasonably believes the evidence demonstrates the practitioner's registration may have been improperly obtained because the practitioner or someone else gave the Board information or a document that was false or misleading in a material particular.

**73 Amendment of s 193 (Matters to be referred to responsible tribunal)**

(1) Section 193(1)(a)—

*omit, insert—*

(a) for a registered health practitioner, the Board reasonably believes, based on a notification or for any other reason, the practitioner has behaved in a way that constitutes professional misconduct; or

(2) Section 193—

*insert—*

(3) Subsection (1)(a) does not require a National Board to refer a matter to a responsible tribunal if the behaviour constituting the professional misconduct consists of a registered health practitioner improperly obtaining registration because the practitioner or someone else gave the Board information or a document that was false or misleading in a material particular.

*Note—*

See section 85C(b) which provides for the action a National Board may take if the Board decides a registered health practitioner's registration was improperly obtained.

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**74 Amendment of s 199 (Appellable decisions)**

Section 199(1), after paragraph (a)—

*insert—*

- (aa) a decision by a National Board to withdraw the person’s registration;

**Part 12 Endorsement as midwife practitioner**

**75 Omission of pt 7, div 8, sdiv 3 (Endorsement in relation to midwife practitioners)**

Part 7, division 8, subdivision 3—

*omit.*

**76 Amendment of s 102 (Decision about application)**

Section 102(3), definition *relevant section*, ‘96,’—

*omit.*

**77 Insertion of new s 325**

After section 324—

*insert—*

**325 Saving of endorsement of midwife practitioner**

- (1) If, immediately before the commencement of section 75 of the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022*, a registered health practitioner’s registration was endorsed as being qualified to practise as a midwife practitioner, the practitioner may do any of the following as if section 96 had not been repealed—





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**80 Insertion of new pt 7, div 9, sdiv 2**

Part 7, division 9—

*insert—*

**Subdivision 2 Renewal of registration  
after suspension period**

**112A Application of Subdivision**

- (1) This Subdivision applies if, during a period (the *suspension period*) in which a person's registration in a health profession is suspended under this Law, the person's registration would have ended if the person were not suspended.
- (2) Section 108(2) does not apply to a registration to which this Subdivision applies.

**112B Application for renewal of registration**

- (1) The person's registration as a registered health practitioner is reinstated on the day the suspension period ends.
- (2) If the registered health practitioner intends to renew the practitioner's registration in the profession, the practitioner must apply to the National Board established for the practitioner's health profession within one month after the suspension period ends.
- (3) If the practitioner's registration has been endorsed by the National Board, the application for renewal of the practitioner's registration is taken to also be an application for a renewal of the endorsement.
- (4) The application for renewal of registration must be—
  - (a) in the form approved by the National Board;  
and

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- (b) accompanied by the relevant fee; and
- (c) accompanied by the annual statement required under section 109, as applied by section 112D; and
- (d) accompanied by any other information reasonably required by the Board.

### **112C End of registration**

- (1) If a registered health practitioner applies to renew the practitioner's registration under section 112B, the applicant's registration, including any endorsement of the registration, continues in force from the day the suspension period ends until—
  - (a) if the National Board decides to renew the applicant's registration—the day a new certificate of registration is issued to the applicant; or
  - (b) if the National Board decides to refuse to renew the applicant's registration—the day the applicant is given notice of the decision.
- (2) If a registered health practitioner does not apply to renew the practitioner's registration under section 112B, the practitioner's registration, including any endorsement of the registration, continues in force from the day the suspension period ends until the end of the day that is one month after the day on which the suspension period ends.

### **112D Sections 109 to 112 apply to application for renewal under this Subdivision**

- (1) Sections 109 to 112 apply to an application for renewal of registration made under this Subdivision as if the application had been made under section 107 for renewal of registration

under Subdivision 1.

- (2) For the purposes of subsection (1)—
- (a) section 109 applies as if a reference in that section to the applicant's preceding period of registration were a reference to both the applicant's period of registration preceding the suspension period and the suspension period; and
  - (b) section 112(2)(c) applies as if a reference in that paragraph to the applicant's previous period of registration were a reference to both the applicant's period of registration preceding the suspension period and the suspension period; and
  - (c) section 112(3)(a) applies as if a reference in that paragraph to immediately before the renewal were a reference to immediately before the start of the suspension period; and
  - (d) section 112(6) applies as if a reference in that subsection to this Subdivision were a reference to Subdivision 2.

## Part 14                      Scheduled medicine offences

### 81            **Amendment of s 130 (Registered health practitioner or student to give National Board notice of certain events)**

(1) Section 130—

*insert—*

- (2A) To avoid doubt, a registered health practitioner is not required to give the National Board written notice of an event within the meaning of paragraphs (e) or (f) of the definition of *relevant*

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*event* if the notification is prohibited by the *Health Insurance Act 1973* of the Commonwealth.

- (2) Section 130(3), definition *relevant event*—  
*omit, insert*—

*relevant event*, in relation to a registered health practitioner, means—

- (a) the practitioner is charged with—
- (i) a scheduled medicine offence; or
  - (ii) an offence punishable by 12 months imprisonment or more, whether in a participating jurisdiction or elsewhere; or
- (b) the practitioner is convicted of or is the subject of a finding of guilt for—
- (i) a scheduled medicine offence; or
  - (ii) an offence punishable by imprisonment, whether in a participating jurisdiction or elsewhere; or
- (c) appropriate professional indemnity insurance arrangements are no longer in place in relation to the practitioner's practice of the profession; or
- (d) the practitioner's right to practise at a hospital or another facility at which health services are provided is withdrawn or restricted because of the practitioner's conduct, professional performance or health; or
- (e) the practitioner is disqualified under an agreement under section 92 of the *Health Insurance Act 1973* of the Commonwealth

- because of the practitioner's conduct, professional performance or health; or
- (f) the practitioner is subject to a final determination under section 106TA of the *Health Insurance Act 1973* of the Commonwealth that contains a direction under section 106U(1)(g) or (h) of that Act that the practitioner be disqualified because of the practitioner's conduct, professional performance or health; or
  - (g) the practitioner's authority under a law of a State or Territory to administer, obtain, possess, prescribe, sell, supply or use a scheduled medicine or class of scheduled medicines is cancelled or restricted; or
  - (h) a complaint is made about the practitioner to an entity referred to in section 219(1)(a) to (e); or
  - (i) the practitioner's registration under the law of another country that provides for the registration of health practitioners is suspended or cancelled or made subject to a condition or another restriction.

***relevant event***, in relation to a student, means—

- (a) the student is charged with—
  - (i) a scheduled medicine offence; or
  - (ii) an offence punishable by 12 months imprisonment or more, whether in a participating jurisdiction or elsewhere; or
- (b) the student is convicted of or is the subject of a finding of guilt for—
  - (i) a scheduled medicine offence; or

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- (ii) an offence punishable by imprisonment, whether in a participating jurisdiction or elsewhere; or
- (c) the student's registration under the law of another country that provides for the registration of students has been suspended or cancelled.

***scheduled medicine offence*** means an offence against a law of a participating jurisdiction—

- (a) if—
  - (i) the law regulates the authority of registered health practitioners or students to administer, obtain, possess, prescribe, sell, supply or use scheduled medicines; and
  - (ii) the offence relates to registered health practitioners or students administering, obtaining, possessing, prescribing, selling, supplying or using scheduled medicines; but
- (b) does not include an offence declared or prescribed by a law of the jurisdiction not to be a scheduled medicine offence for the purposes of this Law.

## Part 15 Previous practice information

### 82 Amendment of s 5 (Definitions)

Section 5—

*insert—*

***practice arrangement***, between a registered

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health practitioner or unregistered person, and an entity—

(a) includes—

(i) a contract of employment, contract for services or another arrangement or agreement between the practitioner or person and the entity in relation to the provision of services; or

(ii) an agreement for the practitioner or person to provide services for or on behalf of the entity, whether in an honorary capacity, as a volunteer or otherwise, and whether or not the practitioner or person receives payment for the services; but

(b) does not include a contract or agreement not directly related to the provision of a health service.

***unregistered person*** means a person who is not registered, or whose registration is suspended, under this Law.

### 83 **Amendment of s 132 (National Board may ask registered health practitioner for practice information)**

Section 132(4), definition *practice information*—

*omit, insert*—

***practice information***, for a registered health practitioner practising in the health profession for which the practitioner is registered, means each of the following, as it applies to the current practice, and all previous practices, of the profession by the practitioner—

(a) if the practitioner is, or was, self-employed—

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- (i) that the practitioner is, or was, self-employed; and
  - (ii) the address of each of the premises at which the practitioner practises, or practised; and
  - (iii) if the practitioner practises, or practised, under a business name or names—each business name; and
  - (iv) if the practitioner shares, or shared, premises and the cost of the premises with other registered health practitioners—the names of the other registered health practitioners;
- (b) if the practitioner has, or had, a practice arrangement with one or more entities—the name, address and contact details of each entity;

*Example of practice arrangement—*

A physiotherapist practises, or practised, physiotherapy as a volunteer at a sporting club or charity under an arrangement with that entity.

- (c) if the practitioner practises, or practised, under a name or names that are not the same as the name under which the practitioner is registered under this Law—the other name or names.

**84 Amendment of s 206 (National Board to give notice to registered health practitioner’s employer and other entities)**

Section 206(2)—

*omit, insert—*

- (2) If the practice information given to the National Board, or of which the Board becomes aware, is



information referred to in paragraph (a) of the definition of *practice information* in section 132(4) and includes the names of other registered health practitioners, the Board, as soon as practicable after an event specified in subsection (1)(a) occurs, may give written notice of the decision to—

- (a) the named registered health practitioners with whom the practitioner currently shares premises and the cost of the premises; and
  - (b) the named registered health practitioners with whom the practitioner previously shared premises and the cost of the premises if the Board reasonably believes the practitioner's health, conduct or performance while the practitioner shared the premises with the registered health practitioners posed—
    - (i) a risk of harm to a person or a class of persons; or
    - (ii) a risk to public health or safety.
- (3) If the practice information given to the Board, or of which the Board becomes aware, is information referred to in paragraph (b) of the definition of *practice information* in section 132(4), the Board, as soon as practicable after an event specified in subsection (1)(a) occurs—
- (a) if the registered health practitioner has a current practice arrangement with an entity named in the information—must give written notice of the decision to the entity; or
  - (b) if the practitioner had a previous practice arrangement with an entity named in the information—may give written notice of the decision to the entity if the Board

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reasonably believes the practitioner's health, conduct or performance while the practitioner had a practice arrangement with the entity posed—

- (i) a risk of harm to a person or a class of persons; or
- (ii) a risk to public health or safety.

(4) In this section—

*decision* means a decision of a National Board or adjudication body to take health, conduct or performance action against a registered health practitioner.

## Part 16 Advertising offences

### 85 Amendment of s 133 (Advertising)

(2) Section 133(1), penalty, paragraph (a), '\$5,000'—

*omit, insert—*

\$60,000

(3) Section 133(1), penalty, paragraph (b), '\$10,000'—

*omit, insert—*

\$120,000

## Part 17 Directing and inciting offences

### 86 Amendment of s 136 (Directing or inciting unprofessional conduct or professional misconduct)

(1) Section 136(1), penalty, paragraph (a), '\$30,000'—

*omit, insert—*

\$60,000

- (2) Section 136(1), penalty, paragraph (b), ‘\$60,000’—  
*omit, insert—*

\$120,000

## **Part 18                      Disciplinary action in relation to health practitioners while unregistered**

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

Section 117(3), note, after ‘practitioner’—

*insert—*

, or in some cases by a person who was a  
registered health practitioner,

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

Section 118(2), note, after ‘practitioner’—

*insert—*

, or in some cases by a person who was a  
registered health practitioner,

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

Section 119(3), note, after ‘practitioner’—

*insert—*

, or in some cases by a person who was a  
registered health practitioner,

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## **90 Replacement of ss 138 and 139**

Sections 138 and 139—

*omit, insert—*

### **138 Application of Part to persons who are registered health practitioners**

- (1) A notification may be made under this Part about, and proceedings may be taken under this Part against, a person who is a registered health practitioner in relation to behaviour that—
  - (a) occurs while the practitioner is registered in a health profession under this Law; or
  - (b) occurred before the practitioner was registered in a health profession under this Law; or
  - (c) occurred during any other period in which the practitioner was not registered in a health profession under this Law, including, for example, if the registration had ended or was cancelled, suspended or withdrawn.
- (2) A registered health practitioner's behaviour that occurred at a time specified in subsection (1)(b) or (c) may not constitute—
  - (a) unsatisfactory professional performance; or
  - (b) unprofessional conduct, except as provided by section 139.

### **139 Proceedings in relation to practitioner's behaviour while temporarily unregistered**

- (1) This section applies if—
  - (a) proceedings are taken under this Part against a person who is a registered health practitioner; and

- (b) the panel or tribunal is satisfied the behaviour to which the proceedings relate occurred—
  - (i) after the practitioner’s registration ended under section 108(2)(a); and
  - (ii) while the practitioner continued to practise the health profession.
- (2) The proceedings may be taken and findings may be made as if the practitioner were registered at the time the behaviour occurred.
- (3) Subsection (2) does not prevent a finding of unprofessional conduct on the basis the person was contravening a provision of Division 10 of Part 7, whether or not the person has been prosecuted for, or convicted of, an offence in relation to the contravention.
- (4) In this section—

*behaviour* includes—

  - (a) continuing to take or use a title protected under Subdivision 1 of Division 10 of Part 7 for a health profession; or
  - (b) continuing to undertake a practice protected under Subdivision 2 of Division 10 of Part 7 for a health profession.

### **139A Application of Part to persons who were registered health practitioners**

- (1) This section applies to a person who was, but is no longer, registered in a health profession under this Law.
- (2) A notification may be made under this Part about, and proceedings may be taken under this Part against, the person as if the person were still registered in a health profession under this Law in

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relation to behaviour that occurred while the person was registered.

- (3) For the purposes of subsection (2), this Part (other than Divisions 2 and 6) applies, with any necessary changes, to the person as if a reference to a registered health practitioner included that person.

### **139B Application of Part to persons who were registered under corresponding prior Act**

- (1) This section applies to a person who—
  - (a) was registered in a health profession under a corresponding prior Act; and
  - (b) is not, and has not been, registered in a health profession under this Law.
- (2) A notification may be made under this Part about, and proceedings may be taken under this Part against, the person as if the person were registered in a health profession under this Law in relation to behaviour that occurred while the person was registered under the corresponding prior Act.
- (3) However, subsection (2) applies only to the extent—
  - (a) a notification about the person's behaviour could have been made under the corresponding prior Act; and
  - (b) proceedings could have been taken under the corresponding prior Act.
- (4) For the purposes of subsection (2), this Part (other than Divisions 2 and 7) applies, with any necessary changes, to the person as if a reference to a registered health practitioner included that person.

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## Part 19                      **Mandatory notification by employers**

### 91            **Amendment of s 142 (Mandatory notifications by employers)**

Section 142(1), before the note—

*insert—*

*Example—*

An employer takes action against a registered health practitioner by withdrawing or restricting the practitioner's clinical privileges at a hospital because the employer reasonably believes the public is at risk of harm by the practitioner practising the profession in a way that constitutes a significant departure from accepted professional standards—see paragraph (d) of the definition of *notifiable conduct* in section 140. The employer must notify the National Agency of the notifiable conduct.

## Part 20                      **Requirement to provide records for preliminary assessment**

### 92            **Insertion of new ss 149A and 149B**

After section 149—

*insert—*

#### **149A Power to require information**

- (1) For the purpose of conducting the preliminary assessment of a notification, a National Board may, by written notice given to a person, require the person to give specified information or produce specified documents to the Board within a specified reasonable time and in a specified

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reasonable way.

- (2) The person must comply with the notice unless the person has a reasonable excuse.

Maximum penalty—

- (a) in the case of an individual—\$5,000; or
  - (b) in the case of a body corporate—\$10,000.
- (3) Without limiting subsection (2), it is a reasonable excuse for an individual not to give information or produce a document if giving the information or producing the document might tend to incriminate the individual.

### **149B Inspection of documents**

- (1) If a document is produced to a National Board, the Board may—
  - (a) inspect the document; and
  - (b) make a copy of, or take an extract from, the document; and
  - (c) keep the document while it is necessary for the preliminary assessment of a notification.
- (2) If the National Board keeps the document, the Board must permit a person otherwise entitled to possession of the document to inspect, make a copy of, or take an extract from, the document at the reasonable time and in the reasonable way decided by the Board.

## **Part 21 Interim prohibition orders**

### **93 Amendment of s 5 (Definitions)**

Section 5—



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*insert—*

***interim prohibition order***, for Division 7A of Part 8, see section 159B.

***regulatory body***, in relation to a person, means any of the following—

- (a) the National Agency;
- (b) for a person who is or was a registered health practitioner—a National Board for a health profession in which the person is or was registered.

***relevant provision—***

- (a) for Division 7A of Part 8, see section 159B;  
or
- (b) for Division 7B of Part 8, see section 159P.

## 94 Insertion of new pt 8, div 7A

Part 8, after division 7—

*insert—*

### **Division 7A Interim prohibition orders**

#### **159B Definitions**

In this Division—

***interim prohibition order***, in relation to an individual named in the order, means an order in relation to any or all of the following—

- (a) prohibiting the individual from doing either or both of the following—
  - (i) providing a specified health service or all health services;

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- (ii) taking or using a specified title or any title protected under Subdivision 1 of Division 10 of Part 7;
- (b) imposing restrictions on the provision of a specified health service or all health services by the individual.

*relevant provision* means any of the following provisions—

- (a) section 113;
- (b) sections 115 to 119;
- (c) sections 121 to 123;
- (d) section 133;
- (e) section 136.

### **159C Issuing of interim prohibition order**

- (1) A regulatory body may issue an interim prohibition order to an unregistered person if—
  - (a) the person—
    - (i) has, in the regulatory body's reasonable belief, contravened a relevant provision; or
    - (ii) is the subject of an assessment, investigation or other proceedings under this Part; and
  - (b) the regulatory body reasonably believes that—
    - (i) the person poses a serious risk to persons; and
    - (ii) it is necessary that the person be subject to an interim prohibition order to protect public health or safety.

- (2) Subsection (1)(a) extends to an unregistered person who—
  - (a) contravened a relevant provision while the person was a registered health practitioner; or
  - (b) is the subject of an assessment, investigation or other proceedings under this Part in relation to the person's conduct while the person was a registered health practitioner.

### **159D Show cause process for interim prohibition orders**

- (1) If a regulatory body proposes to issue an interim prohibition order to an unregistered person, the body must give the person notice of the proposed order.
- (2) Notice given under subsection (1)—
  - (a) may be given in writing or verbally; and
  - (b) must invite the unregistered person to make written or verbal submissions to the regulatory body, within the stated time, about the proposed interim prohibition order.
- (3) After considering any submission made by the unregistered person in accordance with the notice, the regulatory body must—
  - (a) decide whether or not to issue the interim prohibition order; and
  - (b) immediately after making the decision, give the unregistered person written notice of the body's decision.
- (4) The notice of the regulatory body's decision must include the following—

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- (a) the decision made by the body;
- (b) the reasons for the body's decision;
- (c) if the decision is to issue the interim prohibition order—
  - (i) that the unregistered person may appeal against the decision; and
  - (ii) how an application for an appeal may be made; and
  - (iii) the period within which the application must be made.

### **159E Decision to take urgent action to issue interim prohibition order**

- (1) This section applies if a regulatory body—
  - (a) proposes to issue an interim prohibition order to an unregistered person under section 159C; and
  - (b) reasonably believes it is necessary to take urgent action to issue the interim prohibition order to protect public health or safety.
- (2) Despite section 159D, the regulatory body may issue the unregistered person with an interim prohibition order without complying with the requirements of that section.
- (3) The interim prohibition order must be accompanied by a notice inviting the unregistered person to make a written or verbal submission to the regulatory body, within the time stated in the notice, about the interim prohibition order.
- (4) The time stated in the notice for the making of the submission must not be less than 7 days after the notice is given to the unregistered person.
- (5) The regulatory body must consider any

submissions made by the unregistered person within a reasonable time.

- (6) After considering any submission made by the unregistered person in accordance with the notice, the regulatory body must—
  - (a) decide to confirm the issue of the interim prohibition order or revoke it; and
  - (b) give the unregistered person written notice of the body's decision.
- (7) The notice of the regulatory body's decision must include the following—
  - (a) the decision made by the body;
  - (b) the reasons for the body's decision;
  - (c) if the decision is to confirm the issue of the interim prohibition order—
    - (i) that the unregistered person may appeal against the decision; and
    - (ii) how an application for an appeal may be made; and
    - (iii) the period within which the application must be made.

### **159F Duration of interim prohibition order**

- (1) An interim prohibition order starts on the later of the following days—
  - (a) the day the order is issued to the unregistered person the subject of the order;
  - (b) the day, if any, stated in the order.
- (2) Subject to section 159J(3), an interim prohibition order ends on—

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- (a) unless the order is revoked or extended by a regulatory body—
  - (i) the day that is 60 days after the day on which the order starts; or
  - (ii) the day stated in the order, which cannot be more than 60 days after the day on which the order starts; or
- (b) the day the order is revoked under section 159G; or
- (c) if the order is extended by a regulatory body under section 159H—the day decided by the regulatory body.

### **159G Revocation or variation of interim prohibition order**

- (1) A regulatory body must, as soon as practicable, revoke an interim prohibition order issued by the regulatory body to an unregistered person if the regulatory body is satisfied the grounds on which the order was issued—
  - (a) no longer exist in relation to the person; or
  - (b) did not exist at the time the interim prohibition order was issued to the person.
- (2) Despite subsection (1), a regulatory body may vary the grounds on which an interim prohibition order was issued to an unregistered person (a *varied interim prohibition order*) if the regulatory body—
  - (a) is satisfied a different or additional ground specified in section 159C(1)(a) exists in relation to the person; and
  - (b) continues to reasonably believe the ground specified in section 159C(1)(b) exists in relation to the person.

- (3) Section 159E(3) to (7) applies to the varied interim prohibition order, with any necessary modifications, as if it were the issue of an interim prohibition order.
- (4) Despite subsections (1) and (2), an interim prohibition order that has been extended or substituted by a responsible tribunal may only be revoked or varied by the tribunal.

*Note—*

See sections 159L and 159M.

### **159H Extension of interim prohibition order by regulatory body**

- (1) A regulatory body may extend an interim prohibition order, by a period of not more than 60 days, if the body reasonably believes it is necessary in the circumstances.
- (2) Sections 159C to 159E apply to the proposed extension of an interim prohibition order, with any necessary modifications, as if it were the proposed issue of an interim prohibition order.
- (3) A regulatory body may extend an interim prohibition order under this section only once.

### **159I Regulatory body may give information to notifier about interim prohibition order**

- (1) This section applies if either of the following results in the issue of an interim prohibition order to an unregistered person—
  - (a) a notification about an unregistered person who was, but is no longer, a registered health practitioner;
  - (b) a complaint about an unregistered person.

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- (2) After issuing or extending the interim prohibition order, the regulatory body may inform the following persons of the decision to issue or extend the order and the reasons for the decision—
  - (a) the notifier who made the notification;
  - (b) the person who made the complaint.

### **159J Application for extension of interim prohibition order by regulatory body**

- (1) This section applies if a regulatory body reasonably believes either of the following grounds still exist and will continue to exist beyond the day on which the interim prohibition order will expire—
  - (a) the grounds on which the order was issued;
  - (b) the grounds on which the order was varied.
- (2) The regulatory body may, before the interim prohibition order expires, apply to a responsible tribunal to extend the order.
- (3) If the regulatory body applies to a responsible tribunal for an extension of the interim prohibition order, the order continues until—
  - (a) if the tribunal confirms the order—the day the order would have ended under section 159F; or
  - (b) if the tribunal extends the order—the day the tribunal decides the order will end; or
  - (c) if the tribunal substitutes another interim prohibition order for the order issued by the regulatory body—the day the substituted order starts; or



- (d) if the order is set aside—the day the order is set aside.

### **159K Decision about extension of interim prohibition order**

- (1) After hearing an application under section 159J about an interim prohibition order, the responsible tribunal may decide—
  - (a) an interim prohibition order is necessary; or
  - (b) an interim prohibition order is not necessary.
- (2) Without limiting subsection (1), in deciding whether an interim prohibition order is necessary, the responsible tribunal must have regard to—
  - (a) the nature and extent of the risk the unregistered person, because of the person's health, conduct or performance, poses to—
    - (i) persons; or
    - (ii) public health or safety; and
  - (b) whether the regulatory body has acted, and is continuing to act, as quickly as practicable in the circumstances to deal with the matter that forms the grounds for issuing the interim prohibition order.
- (3) If the responsible tribunal decides an interim prohibition order is necessary, it may—
  - (a) confirm the interim prohibition order issued by the regulatory body; or
  - (b) extend the interim prohibition order issued by the regulatory body, with or without amendment, for the period the tribunal considers appropriate in the circumstances; or

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- (c) substitute another interim prohibition order for the order issued by the regulatory body.
- (4) If the responsible tribunal substitutes another interim prohibition order for the order issued by the regulatory body, the substituted order continues for the period the tribunal considers appropriate in the circumstances.
- (5) If the responsible tribunal decides an interim prohibition order is not necessary, the interim prohibition order is set aside.

**159L Revocation of extended or substituted interim prohibition order by responsible tribunal**

- (1) This section applies if—
  - (a) a responsible tribunal has extended or substituted an interim prohibition order under section 159K(3) (an *extended or substituted interim prohibition order*); and
  - (b) a regulatory body is satisfied the grounds on which the interim prohibition order was issued—
    - (i) no longer exist in relation to the person; or
    - (ii) did not exist at the time the interim prohibition order was issued.
- (2) A regulatory body may, before the extended or substituted interim prohibition order ends, apply to the responsible tribunal to revoke the order.
- (3) If the regulatory body applies to the responsible tribunal for the revocation of the extended or substituted interim prohibition order, the order continues until—

- (a) if the responsible tribunal decides the order is necessary—the day on which the order ends; or
  - (b) the day the order is revoked under subsection (5).
- (4) After hearing a matter about an extended or substituted interim prohibition order, the responsible tribunal may decide—
- (a) an interim prohibition order is necessary; or
  - (b) an interim prohibition order is not necessary.
- (5) If the responsible tribunal decides an interim prohibition order is not necessary, the order is revoked.

### **159M Variation of interim prohibition order by responsible tribunal**

- (1) This section applies if—
- (a) a responsible tribunal has extended or substituted an interim prohibition order under section 159K(3) (an *extended or substituted interim prohibition order*); and
  - (b) a regulatory body—
    - (i) is satisfied a different or additional ground specified in section 159C(1)(a) exists in relation to the person; and
    - (ii) continues to reasonably believe the ground specified in section 159C(1)(b) exists in relation to the person.
- (2) A regulatory body may, before the extended or substituted interim prohibition order ends, apply to the responsible tribunal to vary the order.
- (3) After hearing an application under subsection (2), the responsible tribunal may decide—

[s 94]

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- (a) not to vary the extended or substituted interim prohibition order if the tribunal is not satisfied a different or additional ground specified in section 159C(1)(a) exists in relation to the person; or
  - (b) to vary the extended or substituted interim prohibition order if the tribunal is satisfied—
    - (i) a different or additional ground specified in section 159C(1)(a) exists in relation to the person; and
    - (ii) the ground specified in section 159C(1)(b) continues to exist in relation to the person; or
  - (c) an interim prohibition order is not necessary.
- (4) If the responsible tribunal decides an interim prohibition order is not necessary, the order is revoked.

### **159N Publication of information about interim prohibition orders**

- (1) The National Agency must publish the following information about a person subject to an interim prohibition order on its website—
  - (a) the person's name;
  - (b) the day the order starts;
  - (c) the action prohibited or restrictions imposed by the order.
- (2) If the name of the person subject to an interim prohibition order is included in a National Register or Specialists Register, the requirement in subsection (1) is satisfied if the information specified in that subsection is included in the register.

- (3) The requirement to publish the information does not apply if—
  - (a) the regulatory body that issued the order—
    - (i) issued the order without complying with the requirements of section 159D; and
    - (ii) reasonably believes there is no overriding public interest in the publication of the information; or
  - (b) the person subject to the order asks the regulatory body that issued the order not to publish the information and the regulatory body reasonably believes the publication of the information would present a serious risk to the health or safety of—
    - (i) the person; or
    - (ii) a member of the person’s family or an associate of the person.
- (4) If a regulatory body decides to confirm the issue of the interim prohibition order after considering any submission made by the unregistered person under section 159E(5), the regulatory body must publish the information specified in subsection (1).
- (5) Despite subsection (4), a regulatory body may decide not to publish the information specified in subsection (1) if—
  - (a) the person subject to the order asks the regulatory body not to publish the information; and
  - (b) the regulatory body reasonably believes the publication of the information would present a serious risk to the health or safety of—

[s 94]

---

- (i) the person; or
  - (ii) a member of the person's family or an associate of the person.
- (6) If an interim prohibition order is revoked or set aside—
  - (a) a regulatory body must remove the information specified in subsection (1) from its website; and
  - (b) for information included in a National Register or Specialists Register—the National Board must remove the information specified in subsection (1) from the register.
- (7) In this section—

*associate*, of a person, includes a friend, neighbour or colleague of the person.

*family*, of a person, includes—

  - (a) other persons related to the person by blood, marriage or adoption, for example, the person's spouse, children and parents; and
  - (b) other persons in a de facto relationship with the person; and
  - (c) other persons connected to the person through Aboriginal and Torres Strait Islander kinship ties.

### **1590 Offences relating to interim prohibition orders**

- (1) A person must not contravene an interim prohibition order.

Maximum penalty—\$60,000 or 3 years imprisonment or both.

- (2) A person who is subject to an interim prohibition order (the *prohibited person*) must, before providing a health service, give written notice of the order to the following persons—
- (a) the person to whom the prohibited person intends to provide the health service or, if that person is under 16 years of age or under guardianship, a parent or guardian of the person;
  - (b) if the health service is to be provided by the prohibited person as an employee—the person’s employer;
  - (c) if the health service is to be provided by the prohibited person under a contract for services or any other arrangement with an entity—that entity;
  - (d) if the health service is to be provided by the prohibited person as a volunteer for or on behalf of an entity—that entity.

Maximum penalty—\$5,000.

- (3) A person must not advertise a health service to be provided by a prohibited person unless the advertisement states that the prohibited person is subject to an interim prohibition order.

Maximum penalty—

- (a) in the case of an individual—\$5,000; or
- (b) in the case of a body corporate—\$10,000.

## 95 Amendment of s 199 (Appellable decisions)

Section 199(1), after paragraph (h)—

*insert—*

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---

- (ha) a decision by a regulatory body to issue or extend an interim prohibition order under Division 7A;

**96 Amendment of s 222 (Public national registers)**

Section 222(4)(b), ‘order.’—

*omit, insert—*

order; and

- (c) the names of all persons who were previously registered health practitioners (other than persons who were previously specialist health practitioners) who are subject to an interim prohibition order.

**97 Amendment of s 223 (Specialists Registers)**

Section 223(b)(ii), ‘order.’—

*omit, insert—*

order; and

- (iii) persons who were previously specialist health practitioners who are subject to an interim prohibition order.

**98 Amendment of s 241A (Proceedings for indictable offences)**

Section 241A(1), from ‘part 7’ to ‘offence.’—

*omit, insert—*

any of the following provisions is an indictable offence—

- (a) Division 10 of Part 7;
- (b) section 159O(1);



(c) section 196A(1).

## Part 22 Prohibition orders

### 99 Amendment of s 196 (Decision by responsible tribunal about registered health practitioner)

(1) Section 196(4)(b), after ‘from’—

*insert—*

doing either or both of the following

(2) Section 196(4)(b)(i), ‘service; or’—

*omit, insert—*

service;

(3) Section 196(4)(b)(ii), ‘title.’—

*omit, insert—*

title; or

(4) Section 196(4), after paragraph (b)—

*insert—*

(c) impose restrictions, either permanently or for a stated period, on the provision of any health service or a specified health service by the person.

## Part 23 Public statements

### 100 Insertion of new pt 8, div 7B

Part 8, after division 7A—

*insert—*

**Division 7B Public statements**

[s 100]

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### **159P Definition**

In this Division—

*relevant provision* means any of the following provisions—

- (a) section 113;
- (b) sections 115 to 119;
- (c) sections 121 to 123;
- (d) section 133;
- (e) section 136.

### **159Q Making of public statement**

- (1) A regulatory body may make a public statement about a person if—
  - (a) the person—
    - (i) has, in the regulatory body’s reasonable belief, contravened a relevant provision; or
    - (ii) is the subject of an assessment, investigation or other proceedings under this Part; and
  - (b) the regulatory body reasonably believes that—
    - (i) because of the person’s conduct, performance or health, the person poses a serious risk to persons; and
    - (ii) it is necessary to issue a public statement to protect public health or safety.
- (2) A public statement made by a regulatory body may be made in a way the body considers appropriate.

- (3) The regulatory body may identify and give warnings or information about either or both of the following if the body considers it appropriate in the circumstances—
  - (a) a person;
  - (b) health services provided by a person.
- (4) No liability is incurred by the regulatory body for the making of, or for anything done for the purpose of making, a public statement under this section in good faith.

### **159R Show cause process for public statement**

- (1) If a regulatory body proposes to make a public statement about a person, the body must give the person a written notice that includes the following information—
  - (a) that the body proposes to make a public statement about the person;
  - (b) the way in which it is proposed to make the public statement;
  - (c) the content of the proposed public statement;
  - (d) that the person may make written or verbal submissions to the regulatory body, within the reasonable time stated in the notice, about the proposed public statement.
- (2) After considering any submission made by the person in accordance with the notice, the regulatory body must decide—
  - (a) not to make the public statement; or
  - (b) to make the public statement as proposed; or
  - (c) to make the public statement in a different way or with different content.

[s 100]

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- (3) The regulatory body must give written notice of the body's decision, that includes the following information, to the person—
  - (a) the decision made by the body;
  - (b) the reasons for the body's decision;
  - (c) if the decision is to make the public statement—
    - (i) that the person may appeal against the decision; and
    - (ii) how an application for an appeal may be made; and
    - (iii) the period within which the application must be made.
- (4) The regulatory body must give the notice to the person—
  - (a) as soon as practicable after the decision is made; and
  - (b) if the decision is to make the public statement—at least one business day before the statement is to be made.

### **159S Revision of public statement by regulatory body**

- (1) A regulatory body that made a public statement about a person may revise the statement if the regulatory body reasonably believes it is necessary in the circumstances.
- (2) If the proposed revision changes the public statement in a material way, sections 159Q(2) and (3) and 159R apply to the proposed revision, with any necessary modifications, as if it were the proposed making of a public statement.

### **159T Revocation of public statement**

- (1) A regulatory body that made a public statement about a person must revoke the public statement if the body is satisfied the grounds on which the statement was made—
  - (a) no longer exist in relation to the person; or
  - (b) did not exist at the time the statement was made.
- (2) As soon as practicable after deciding to revoke the public statement, the regulatory body must—
  - (a) give the person a written notice stating—
    - (i) the regulatory body has decided to revoke the public statement; and
    - (ii) the date on which the public statement will be revoked; and
  - (b) make a public statement revoking the original public statement in the same way, or a similar way, to the way in which the original public statement was made.

### **101 Amendment of s 199 (Appellable decisions)**

Section 199(1), after paragraph (ha)—

*insert—*

- (hb) a decision by a regulatory body to make or revise a public statement under Division 7B;

### **102 Amendment of s 200 (Parties to the proceedings)**

- (1) Section 200(b)(ii), ‘decision.’—

*omit, insert—*

decision; and

[s 103]

---

(2) Section 200, after paragraph (b)—

*insert—*

(c) the National Agency if—

- (i) the appellable decision is a decision mentioned in section 199(1)(ha) or (hb); and
- (ii) the National Agency made the appellable decision.

## **Part 24 Referral to other entities**

### **103 Insertion of new s 150A**

After section 150—

*insert—*

#### **150A Referral to other entities**

- (1) If, after conducting the preliminary assessment of a notification, the National Board decides the subject matter, or part of the subject matter, of the notification may be dealt with by another entity, the Board may refer the notification or part of the notification to the other entity.
- (2) A decision by the National Board to refer a notification or part of a notification to another entity does not prevent the Board from continuing to deal with the notification or part of the notification.
- (3) If the National Board decides to refer a notification or part of a notification to another entity, it must give the other entity—
  - (a) a copy of the notification or, if the notification was not made in writing, a copy

of the Board's record of the details of the notification; and

- (b) any other information the Board has that is relevant to the notification.
- (4) The National Board may ask the other entity to give the Board information about how the subject matter of the notification or the part of the notification was resolved.
- (5) The other entity may provide the information requested by the National Board.

**104 Amendment of s 151 (When National Board may decide to take no further action)**

- (1) Section 151(1)(e)(ii)—

*omit, insert—*

- (ii) has been referred by the Board under section 150 or 150A to another entity to be dealt with by that entity; or

- (2) Section 151—

*insert—*

- (1A) A National Board may decide to take no further action in relation to part of a notification if the subject matter of the part of the notification has been referred by the Board under section 150 or 150A to another entity to be dealt with by that entity.

## **Part 25 Show cause processes**

**105 Amendment of s 179 (Show cause process)**

- (1) Section 179(2)(b)—

[s 106]

---

*omit, insert—*

- (b) do any of the following—
  - (i) take the proposed relevant action or other relevant action;
  - (ii) take other action under this Part;
  - (iii) refer the matter to another entity, including, for example, a health complaints entity, for investigation or other action.

(2) Section 179(3)—

*omit.*

**106 Amendment of s 180 (Notice to be given to health practitioner or student and notifier)**

Section 180(1), ‘or 178(2), if section 179 does not apply’—

*omit.*

**Part 26 Discretion not to refer matters to responsible tribunal**

**107 Amendment of s 178 (National Board may take action)**

Section 178(1)(b), after ‘section 193’—

*insert—*

, including because of a decision made under section 193A that it is not in the public interest

**108 Amendment of s 193 (Matters to be referred to responsible tribunal)**

Section 193(1), ‘A National Board’—



*omit, insert—*

Subject to section 193A, a National Board

## 109 Insertion of new s 193A

After section 193—

*insert—*

### **193A National Boards may decide not to refer certain matters**

- (1) A National Board may decide not to refer a matter about a registered health practitioner mentioned in section 193(1)(a) to a responsible tribunal if the Board decides there is no public interest in the matter being heard by a responsible tribunal.
- (2) In deciding whether or not there is public interest in the matter being heard by a responsible tribunal, the National Board must have regard to the following—
  - (a) the need to protect the health and safety of the public;
  - (b) the seriousness of the alleged conduct, including whether the registered health practitioner may have engaged in wilful misconduct;
  - (c) whether the practitioner is the subject of more than one notification or has previously been the subject of a notification;
  - (d) whether the practitioner is still registered and, if not still registered, may again seek registration in the future;
  - (e) any other benefit the public may receive by having the matter referred to a responsible tribunal, including the benefit of a public decision in relation to the matter;



- (2) If the practice information given to the National Board, or of which the Board becomes aware, is information referred to in paragraph (a) of the definition of *practice information* in section 132(4) and includes the names of other registered health practitioners, the Board may give the following to the named registered health practitioners with whom the practitioner currently shares premises and the cost of the premises—
  - (a) written notice of the risk;
  - (b) any relevant information about the registered health practitioner.
- (3) If the practice information given to the National Board, or of which the Board becomes aware, is information referred to in paragraph (b) of the definition of *practice information* in section 132(4), the Board, as soon as practicable after receiving or becoming aware of the information, must give the following to a named entity that has a current practice arrangement with the registered health practitioner—
  - (a) written notice of the risk;
  - (b) any relevant information about the registered health practitioner.
- (4) To avoid doubt, subsections (2) and (3) do not allow the Board to give health information about a patient to—
  - (a) the named registered health practitioners with whom the practitioner currently shares premises and the cost of the premises; or
  - (b) the named entity that has a current practice arrangement with the practitioner.
- (5) Subsections (2) and (3) do not apply if the National Board decides it is not in the public interest to give the notice.

[s 111]

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*Examples—*

A National Board may decide it is not in the public interest to give the notice because—

- (a) it would impact on an investigation into the registered health practitioner; or
  - (b) it would place a notifier at risk of harassment, harm or intimidation; or
  - (c) the public interest is outweighed by the registered health practitioner's right to privacy.
- (6) Subsection (3) does not apply if the National Board has already notified the named entity about the practitioner, in relation to the same risk, under section 206 or another provision of this Law.
- (7) In this section—
- health information* has the same meaning as in the *Privacy Act 1988* of the Commonwealth.

## Part 28

## Disclosure of information about unregistered persons to protect the public

### 111 Insertion of new s 220B

After section 220A—

*insert—*

#### **220B Disclosure of information about unregistered persons to protect health or safety of persons**

- (1) This section applies if—
- (a) because of an investigation into a possible offence against Part 7, or a prosecution of an offence against that Part, the National Agency or a National Board reasonably believes that—

- 
- (i) an unregistered person poses a serious risk to persons; and
  - (ii) it is necessary to give notice under this section to protect public health or safety; and
- (b) the unregistered person—
- (i) is self-employed and shares premises and the cost of the premises with registered health practitioners; or
  - (ii) has a practice arrangement with an entity.
- (2) The National Agency or the National Board may give written notice of the risk, and any relevant information about the unregistered person, to the registered health practitioners or entities mentioned in subsection (1)(b).
- (3) To avoid doubt, subsection (2) does not allow the Board to give health information about a patient to the registered health practitioners or entities mentioned in subsection (1)(b).
- (4) In this section—
- health information* has the same meaning as in the *Privacy Act 1988* of the Commonwealth.

## Part 29 Use of an alternative name

### 112 Amendment of s 124 (Issue of certificate of registration)

Section 124(3), after paragraph (a)—

*insert—*

- (aa) any alternative name for the practitioner that has been notified to the National Board under section 131A, unless—

[s 113]

---

- (i) the alternative name is a prohibited name; and
- (ii) the National Board has decided under section 131A(2)(b) to refuse to include the name on the registered health practitioner's certificate of registration;

**113 Amendment of s 131 (Change in principal place of practice, address or name)**

Section 131(1)(c)—

*omit, insert—*

- (c) a change in—
  - (i) the practitioner's name; or
  - (ii) an alternative name for the practitioner notified to the Board under section 131A.

**114 Insertion of new ss 131A and 131B**

After section 131—

*insert—*

**131A Nomination of an alternative name**

- (1) A registered health practitioner registered in a health profession, or an applicant for registration in a health profession, may, by written notice given to the National Board for the health profession, nominate an alternative name.
- (2) If the alternative name nominated by a registered health practitioner is a prohibited name, the National Board may decide to—
  - (a) refuse to record the name in a National Register or Specialists Register; and

- (b) refuse to include the name on the registered health practitioner's certificate of registration.
- (3) If the National Board makes a decision under subsection (2), it must give written notice of the decision, including the reasons for the decision, to the registered health practitioner.
- (4) In this section—
  - prohibited name*** means a name that—
    - (a) is obscene or offensive; or
    - (b) could not practicably be established by repute or usage—
      - (i) because it is too long; or
      - (ii) because it consists of or includes symbols without phonetic significance; or
      - (iii) because it is or includes a statement or phrase; or
      - (iv) for another reason; or
    - (c) includes or resembles—
      - (i) an official title or rank; or
      - (ii) a protected title specified in the Table to section 113; or
      - (iii) a specialist title; or
      - (iv) the title 'dental specialist'; or
      - (v) the title 'medical specialist'; or
    - (d) is contrary to the public interest for another reason.

[s 115]

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### **131B Use of names**

- (1) A registered health practitioner must not use a name in connection with the practitioner's provision of a health service, including advertising the provision of a health service, other than—
  - (a) either or both of the following names recorded in a National Register or Specialists Register under section 225—
    - (i) the practitioner's name;
    - (ii) an alternative name for the practitioner notified to the Board under section 131A; or
  - (b) a business name.
- (2) A contravention of subsection (1) by a registered health practitioner does not constitute an offence but may constitute behaviour for which health, conduct or performance action may be taken.

### **115 Amendment of s 225 (Information to be recorded in National Register)**

- (1) Section 225, heading, after 'National Register'—

*insert—*

#### **or Specialists Register**

- (2) Section 225, after paragraph (a)—

*insert—*

- (aa) any alternative name for the practitioner that has been notified to the National Board under section 131A, unless—
  - (i) the alternative name is a prohibited name; and



- (ii) the National Board has decided under section 131A(2)(a) to refuse to record the name in a National Register or Specialists Register;

## Part 30 Exclusion of information from registers

### 116 Amendment of s 226 (National Board may decide not to include or to remove certain information in register)

- (1) Section 226(2)(b)—

*omit, insert—*

- (b) the Board reasonably believes the inclusion of the information in the register would present a serious risk to the health or safety of—

- (i) the practitioner; or
- (ii) a member of the practitioner’s family or an associate of the practitioner.

- (2) Section 226—

*insert—*

- (2A) A National Board may decide to record information, which it previously excluded under subsection (2), in a National Register or Specialists Register if the Board reasonably believes the circumstances on which the previous exclusion was based have changed.

- (3) Section 226—

*insert—*

- (4) In this section—

*associate*, of a registered health practitioner,

[s 117]

---

includes a friend, neighbour or colleague of the practitioner.

*family*, of a registered health practitioner, includes—

- (a) persons related to the practitioner by blood, marriage or adoption, for example, the practitioner's spouse, children and parents; and
- (b) persons in a de facto relationship with the practitioner; and
- (c) persons connected to the practitioner through Aboriginal and Torres Strait Islander kinship ties.

## Part 31 Minor amendments

### 117 Amendment of s 5 (Definitions)

- (1) Section 5, definition *COAG Agreement*, note, 'Council of Australian Governments' website'—

*omit, insert—*

National Agency's website

- (2) Section 5—

*insert—*

*suspension period*, in relation to a person's registration in a health profession, for Subdivision 2 of Division 9 of Part 7, see section 112A.

### 118 Amendment of s 35 (Functions of National Boards)

Section 35(1)(j), 'undertaking'—

*omit, insert—*

---

undertakings

**119 Amendment of s 109 (Annual statement)**

(1) Section 109(1)(d)—

*omit, insert—*

(d) if, during the applicant’s preceding period of registration and because of the applicant’s conduct, professional performance or health, the applicant was—

(i) disqualified under an agreement under section 92 of the *Health Insurance Act 1973* of the Commonwealth; or

(ii) subject to a final determination under section 106TA of the *Health Insurance Act 1973* of the Commonwealth that contained a direction under section 106U(1)(g) or (h) of that Act that the applicant be disqualified;

(2) Section 109—

*insert—*

(1A) To avoid doubt, subsection (1)(d) applies only to the extent the applicant is not prohibited from disclosing information about the disqualification or final determination by the *Health Insurance Act 1973* of the Commonwealth.

**120 Amendment of s 127A (When matters under this subdivision may be decided by review body of a co-regulatory jurisdiction)**

Section 127A(3), ‘is to decide’—

*omit, insert—*

agrees to decide

[s 121]

---

**121 Amendment of s 155 (Definition)**

Section 155, definition *immediate action*, paragraph (c),  
'registration.'—

*omit, insert—*

registration; or

**122 Amendment of s 156 (Power to take immediate action)**

Section 156(1)(a)(i), 'conduct, performance or health'—

*omit, insert—*

health, conduct or performance

**123 Amendment of s 161 (Registered health practitioner or student to be given notice of investigation)**

Section 161(1), 'within'—

*omit.*

**124 Amendment of s 174 (Inspection of documents)**

Section 174(2), 'and place'—

*omit, insert—*

and in the reasonable way

**125 Amendment of s 219 (Disclosure of information to other Commonwealth, State and Territory entities)**

Section 219(1)(a)—

*omit, insert—*

- (a) the Chief Executive Medicare under the *Human Services (Medicare) Act 1973* of the Commonwealth;

- 126 Omission of pt 12, div 16 (Savings and transitional regulations)**  
Part 12, division 16—  
*omit.*
- 127 Amendment of sch 5 (Investigators)**  
Schedule 5, clause 3(2), ‘and place’—  
*omit, insert—*  
and in the reasonable way
- 128 Amendment of sch 6 (Inspectors)**  
Schedule 6, clause 3(2), ‘and place’—  
*omit, insert—*  
and in the reasonable way
- 129 Amendment of sch 7 (Miscellaneous provisions relating to interpretation)**  
Schedule 7, clause 38, after ‘and’—  
*insert—*  
in

[s 130]

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## **Chapter 4            Amendment of Health Practitioner Regulation National Law Act 2009**

### **Part 1                    Preliminary**

#### **130    Act amended**

This chapter amends the *Health Practitioner Regulation National Law Act 2009*.

*Editor's note—*

For a consolidated reprint of the National Law as it applies in Queensland, see the *Health Practitioner Regulation National Law (Queensland)*.

### **Part 2                    Paramount principle**

#### **131    Omission of ss 13 and 14**

Sections 13 and 14—

*omit.*

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

#### **132    Omission of s 17 (Amendment of s 19 (Function of Advisory Council))**

Section 17—

*omit.*

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## Part 4 Undertakings

### 133 Insertion of new ss 20A and 20B

After section 20—

*insert—*

#### **20A Amendment of s 112 (Decision about application for renewal)**

- (1) National Law provisions, section 112(2)(ba), after ‘Board’—

*insert—*

, or to the health ombudsman under the *Health Ombudsman Act 2013*, part 7, division 1,

- (2) National Law provisions, section 112(3)(c), after ‘Board’—

*insert—*

, or to the health ombudsman under the *Health Ombudsman Act 2013*, part 7, division 1,

- (3) National Law provisions, section 112(3), note, after ‘Board’—

*insert—*

or health ombudsman

#### **20B Amendment of s 125 (Changing or removing conditions or undertaking on application by registered health practitioner or student)**

National Law provisions, section 125(1)(a)(ii), after ‘practitioner’—

*insert—*

to the Board

[s 134]

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## **Part 5** **Withdrawal of registration**

### **134 Amendment of s 47 (Replacement of s 190 (Referral to responsible tribunal))**

- (1) Section 47, heading, after ‘tribunal’—  
*insert—*

**or National Board**

- (2) Section 47, inserted section 190(1)—  
*omit, insert—*

- (1) This section applies if, at any time while hearing a matter, a panel reasonably believes the evidence demonstrates—
  - (a) the registered health practitioner the subject of the hearing may have behaved in a way that constitutes professional misconduct; or
  - (b) there is another ground for suspending, cancelling or withdrawing the registration of the registered health practitioner the subject of the hearing.

### **135 Amendment of s 50 (Replacement of pt 8, div 12, hdg and ss 193–195)**

- (1) Section 50, inserted section 193(1)(a)(ii), ‘the suspension or cancellation of’—  
*omit, insert—*

suspending, cancelling or withdrawing

- (2) Section 50, inserted section 193(1A), from ‘subject of’—  
*omit, insert—*

subject of a referral to the National Agency under the *Health Ombudsman Act 2013*, part 9, division 1.





[s 137]

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**21 Amendment of s 138 (Application of Part to persons who are registered health practitioners)**

National Law provisions, section 138—

*insert—*

- (1A) Also, a referred matter may be dealt with under this Part about a person who is a registered health practitioner in relation to the practitioner's behaviour at a time specified in subsection (1)(a) to (c).

**22 Amendment of s 139A (Application of Part to persons who were registered health practitioners)**

- (1) National Law provisions, section 139A—

*insert—*

- (2A) Also, a referred matter may be dealt with under this Part about the person as if the person were still registered in a health profession under this Law in relation to behaviour that occurred while the person was registered.

- (2) National Law provisions, section 139A(3), 'subsection (2)'—

*omit, insert—*

subsections (2) and (2A)

**22A Amendment of s 139B (Application of Part to persons who were registered under corresponding prior Act)**

- (1) National Law provisions, section 139B—

*insert—*

- (2A) Also, a referred matter may be dealt with

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under this Part about the person as if the person were registered in a health profession under this Law in relation to behaviour that occurred while the person was registered under the corresponding prior Act.

- (2) National Law provisions, section 139B(3), ‘subsection (2) applies’—

*omit, insert—*

subsections (2) and (2A) apply

- (3) National Law provisions, section 139B(4), ‘subsection (2)’—

*omit, insert—*

subsections (2) and (2A)

### **138 Amendment of s 23 (Insertion of new s 139A)**

- (1) Section 23, heading, ‘s 139A’—

*omit, insert—*

#### **s 139C**

- (2) Section 23, ‘section 139’—

*omit, insert—*

section 139B

- (3) Section 23, inserted section 139A—

*renumber* as section 139C.

### **139 Amendment of s 24 (Insertion of new s 139B)**

- (1) Section 24, heading, ‘s 139B’—

*omit, insert—*

#### **s 139D**

- (2) Section 24, inserted section 139B—

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*renumber* as section 139D.

## **Part 7**

# **Requirement to provide records for preliminary assessment**

### **140 Amendment of s 34 (Replacement of pt 8, div 5 (Preliminary assessment))**

Section 34, after inserted section 150—

*insert*—

#### **150A Power to require information**

- (1) For the purpose of conducting the preliminary assessment of a referred matter, a National Board may, by written notice given to a person, require the person to give specified information or produce specified documents to the Board within a specified reasonable time and in a specified reasonable way.
- (2) The person must comply with the notice unless the person has a reasonable excuse.

Maximum penalty—

- (a) in the case of an individual—\$5,000; or
- (b) in the case of a body corporate—\$10,000.
- (3) Without limiting subsection (2), it is a reasonable excuse for an individual not to give information or produce a document if giving the information or producing the document might tend to incriminate the individual.

#### **150B Inspection of documents**

- (1) If a document is produced to a National Board, the

Board may—

- (a) inspect the document; and
  - (b) make a copy of, or take an extract from, the document; and
  - (c) keep the document while it is necessary for the preliminary assessment of a referred matter.
- (2) If the National Board keeps the document, the Board must permit a person otherwise entitled to possession of the document to inspect, make a copy of, or take an extract from, the document at the reasonable time and in the reasonable way decided by the Board.

## Part 8 Interim prohibition orders

### 141 Insertion of new ss 35B and 35C

After section 35A—

*insert—*

#### **35B Insertion of new s 159EA**

National Law provisions, after section 159E—

*insert—*

#### **159EA Regulatory body must notify health ombudsman of interim prohibition order**

- (1) This section applies if—
  - (a) a regulatory body issues an interim prohibition order to an unregistered person under section 159C; and
  - (b) either—
    - (i) the interim prohibition order is issued in relation to the person's

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- conduct occurring in this jurisdiction; or
- (ii) the person's principal place of residence is in this jurisdiction.
- (2) The regulatory body must, within 7 days after issuing the interim prohibition order, give the health ombudsman a written notice about the interim prohibition order.
- (3) The notice must include the following—
- (a) the name of the unregistered person;
  - (b) details of the health service or health services to which the interim prohibition order relates, if any;
  - (c) the day on which the interim prohibition order starts;
  - (d) details of the grounds on which the interim prohibition order was issued.

### **35C Amendment of s 159F (Duration of interim prohibition order)**

National Law provisions, section 159F—

*insert—*

- (3) However, if the interim prohibition order is issued in relation to a matter referred under section 193A to the health ombudsman, the day specified in subsection (2) cannot be less than 14 days after the day the matter was referred.

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**142 Amendment of s 50 (Replacement of pt 8, div 12, hdg and ss 193–195)**

Section 50, inserted section 193A—

*insert—*

- (5) Also, a regulatory body that has issued an interim prohibition order to an unregistered person under section 159C may, while the order is in effect and with the health ombudsman’s agreement, refer the matter in relation to which the order was issued to the health ombudsman to be dealt with under the *Health Ombudsman Act 2013*.

**143 Amendment of s 56A (Replacement of s 241A)**

Section 56A, inserted section 241A(1), after ‘section’—

*insert—*

159O(1) or

## **Part 9 Referral to other entities**

**144 Amendment of s 34 (Replacement of pt 8, div 5 (Preliminary assessment))**

- (1) Section 34, after inserted section 150B—

*insert—*

**150C Referral to other entities**

- (1) If, after conducting the preliminary assessment of a referred matter, the National Board decides the subject matter, or part of the subject matter, of the referred matter may be dealt with by another entity, the Board may refer the referred matter or part of the referred matter to the other entity.
- (2) A decision by the National Board to refer a

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referred matter or part of a referred matter to another entity does not prevent the Board from continuing to deal with the referred matter or part of the referred matter.

- (3) If the National Board decides to refer a referred matter or part of a referred matter to another entity, the Board must give the other entity—
    - (a) if the referred matter is a health service complaint under the *Health Ombudsman Act 2013*—details of the complaint, the complainant and the health service provider to whom the complaint relates; and
    - (b) any other information the Board has that is relevant to the referred matter.
  - (4) The National Board may ask the other entity to give the Board information about how the subject matter of the referred matter or the part of the referred matter was resolved.
  - (5) The other entity may provide the information requested by the National Board.
- (2) Section 34, inserted section 151(1)(e)(ii)—  
*omit, insert—*
- (ii) has been referred by the Board under section 150 or 150C to another entity to be dealt with by that entity; or
- (3) Section 34, inserted section 151—  
*insert—*
- (1A) A National Board may decide to take no further action in relation to part of a referred matter if the subject matter of the part of the referred matter has been referred by the Board under section 150 or 150C to another entity to be dealt with by that entity.



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## Part 10 Discretion not to refer matters to responsible tribunal

### 145 Amendment of s 41 (Amendment of s 178 (National Board may take action))

Section 41(2), inserted section 178(1)(b), after ‘tribunal’—  
*insert—*

, including because of a decision made under section 193C that it is not in the public interest

### 146 Amendment of s 50 (Replacement of pt 8, div 12, hdg and ss 193–195)

(1) Section 50, inserted section 193B(1), ‘A National Board’—  
*omit, insert—*

Subject to section 193C, a National Board

(2) Section 50, after inserted section 193B—  
*insert—*

#### **193C National Board may decide not to refer certain matters**

- (1) A National Board may decide not to refer a matter about a registered health practitioner mentioned in section 193(1)(a) to a responsible tribunal if the Board decides there is no public interest in the matter being heard by a responsible tribunal.
- (2) In deciding whether or not there is public interest in the matter being heard by a responsible tribunal, the National Board must have regard to the following—
  - (a) the need to protect the health and safety of the public;

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- (b) the seriousness of the alleged conduct, including whether the registered health practitioner may have engaged in wilful misconduct;
  - (c) whether the practitioner is the subject of more than 1 complaint or has previously been the subject of a complaint;
  - (d) whether the practitioner is still registered and, if not still registered, may again seek registration in the future;
  - (e) any other benefit the public may receive by having the matter referred to a responsible tribunal, including the benefit of a public decision in relation to the matter;
  - (f) any other matter the Board considers relevant to the decision.
- (3) If a decision is made under this section to not refer a matter to a responsible tribunal—
- (a) the Board must give written notice of the decision, including the reasons for the decision, to the health ombudsman; and
  - (b) the National Agency must publish information about the decision in its annual report.

## Part 11 Other amendment

### 147 Insertion of new s 9A

After section 9—

*insert—*

#### **9A Regulation-making power**

The Governor in Council may make regulations

under this Act.

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