

# Health Ombudsman and Other Legislation Amendment Regulation (No. 1) 2015

Explanatory notes for SL 2015 No. 131

made under the

*Cooperatives Act 1997*

*Guide, Hearing and Assistance Dogs Act 2009*

*Health Ombudsman Act 2013*

*State Penalties Enforcement Act 1999*

## General Outline

### Short title

*Health Ombudsman and Other Legislation Amendment Regulation (No. 1) 2015*

### Authorising law

Section 245(5) of the *Cooperatives Act 1997*

Section 118 of the *Guide, Hearing and Assistance Dogs Act 2009*

Section 288 of the *Health Ombudsman Act 2013*

Section 165 of the *State Penalties Enforcement Act 1999*

### Policy objectives and the reasons for them

The objective of the *Health Ombudsman and Other Legislation Amendment Regulation (No. 1) 2015* (the Regulation) is to amend the *Health Ombudsman Regulation 2014* to declare ‘the ‘National Code of Conduct for health care workers (Queensland)’, dated 1 October 2015, published by the department’ as a prescribed conduct document.

The Regulation will also make the following amendments to non-Health portfolio Regulations:

- the *Cooperatives Regulation 1997* and *Guide, Hearing and Assistance Dogs Regulation 2009*, to remove references to repealed Health portfolio Acts and abolished health statutory bodies
- the *Guide, Hearing and Assistance Dogs Regulation 2009*, to amend the meaning of ‘speech pathologist’

- the *State Penalties and Enforcement Regulation 2014*, to assign a Prescribed Infringement Notice (PIN) of up to 10 penalty units for unlicensed pest management activities.

### ***National Code of Conduct for health care workers***

On 17 April 2015, Ministers of the Council of Australian Governments (COAG) Health Council agreed to the first National Code of Conduct for Health Care Workers (the Code). The purpose of a nationally consistent code of conduct is to protect the public by setting minimum standards of conduct and practice for all health care workers.

The National Registration and Accreditation Scheme for Health Professions (National Scheme) provides the framework to regulate registered health practitioners. For such registered health professions, entry to practice requires compliance with nationally-uniform minimum qualifications and probity checking. However, there may not always be equivalent, enforceable entry requirements applicable to health professions not regulated under the National Scheme. Accordingly, there is no nationally-uniform or consistent mechanism for prohibiting or restricting practice when the impairment, incompetence or professional misconduct of an unregistered health practitioner presents a serious risk to the public.

Pursuant to section 288(1) of the *Queensland Health Ombudsman Act 2013* (HO Act), a regulation may prescribe a ‘prescribed conduct document’, being a code of conduct, standard or other document giving guidance to health service providers about standards of service that should be provided. The Queensland Health Ombudsman and the Queensland Civil and Administrative Tribunal may consider a prescribed conduct document when taking action against a health practitioner, including under sections 68 (interim prohibition order) and section 113 (prohibition order) of the *Health Ombudsman Act 2013*.

### ***Cooperatives Regulation 1997***

Section 18 of the *Cooperatives Regulation 1997* provides that a name for a cooperative will be an ‘unsuitable’ name if it contains anything listed in Schedule 5 of the Regulation. Item 12 of this Schedule lists such a thing as being names that are subject to restrictions under the *Dental Technicians Registration Act 2001*, the *Speech Pathologists Registration Act 2001* or other stated legislation. As these two specific Acts have now been repealed, the references to them in the Schedule are now redundant.

### ***Guide, Hearing and Assistance Dogs Regulation 2009***

Within the Schedule (Dictionary) of the *Guide, Hearing and Assistance Dogs Regulation 2009*, the meaning of ‘registered health practitioner’ includes a person registered under the *Speech Pathologists Registration Act 2001*. As this Act has been repealed, it is necessary to update the way in which a speech pathologist is defined.

### ***State Penalties and Enforcement Regulation 2000***

Section 11 of the *Pest Management Act 2001* prohibits a person from carrying out a pest management activity unless the person is a licenced pest management technician or is a trainee being supervised by a pest management technician holding a licence for the activity. Section 11 provides a maximum penalty of 1000 penalty units for contravening this section.

Pest management activities pose varying levels of risk due to exposure of the public to harmful pesticides, and ensuring pest management technicians are licensed is the best way to manage such risks due to the competency requirements attaching to licences.

Presently, the enforcement option available to inspectors for unlicensed pest management activity is prosecution, although this process has proven slow and costly. Assignment of a PIN for such breaches is a cost effective alternative enforcement option.

A penalty amount of 10 penalty units is proposed for a PIN issued in relation to a breach of section 11. Lesser safety-related offences under the *Pest Management Regulation 2003*, for which the option to issue a PIN already exists, have been assigned 2 penalty units, and previous prosecution action taken in relation to breaches of section 11 has often resulted in courts imposing fines equivalent to only 20 penalty units. As such, the proposed 10 penalty units is an appropriate amount, given the relative seriousness of the offence involved and the imperative to provide a discount on the penalty likely to result from full prosecution action.

## **Achievement of policy objectives**

### ***National Code of Conduct for health care workers***

The Regulation will amend section 5 of the *Health Ombudsman Regulation 2014*, which defines a ‘prescribed conduct document’ (pursuant to section 288 of the HO Act), to include the following document:

- ‘the ‘National Code of Conduct for health care workers (Queensland)’, dated 1 October 2015, published by the department’.

### ***State Penalties Enforcement Regulation 2014***

The Regulation will amend Schedule 1 of the *State Penalties Enforcement Regulation 2014*, which defines infringement notice offences and fines for nominated laws, to include a new infringement notice offence for section 11 of the *Pest Management Act 2001*. A PIN amount of 10 penalty units will be prescribed.

### ***Cooperatives Regulation 1997***

The Regulation will amend 5 Schedule (Undesirable matter for names) of the *Cooperatives Regulation 1997* to remove references to the repealed *Dental Technicians Registration Act 2001* and the *Speech Pathologists Registration Act 2001*.

### ***Guide, Hearing and Assistance Dogs Regulation 2009***

The Regulation will amend part (b) within the meaning of ‘registered health practitioner’ in the Schedule (Dictionary) so that a speech pathologist means a person who is eligible for practising membership of The Speech Pathology Association of Australia Limited ACN 008 393 440. The proposed definition of a speech pathologist is consistent with the definition used in other Queensland legislation.

## **Consistency with policy objectives of authorising law**

The Regulation is consistent with the policy objectives of the *Cooperatives Act 1997*, *Guide, Hearing and Assistance Dogs Act 2009*, *Health Ombudsman Act 2013* and *State Penalties Enforcement Act 1999*.

## **Inconsistency with policy objectives of other legislation**

The Regulation is consistent with the policy objectives of other legislation.

## **Alternative ways of achieving policy objectives**

The Regulation is the only effective means of achieving the policy objectives.

## **Benefits and costs of implementation**

The Regulation imposes no additional costs on the persons or organisations to which they apply.

## **Consistency with fundamental legislative principles**

The Regulation is consistent with fundamental legislative principles, as set out in section 4 of the *Legislative Standards Act 1992*.

## **Consultation**

The Office of Best Practice Regulation was consulted on the Regulation, and advised that a Regulatory Impact Statement was not required.

The Health Ombudsman has been consulted about the most appropriate way to implement the Code in Queensland.

Speech Pathology Australia (the peak body for speech pathologists in Australia) supports the amendment to the definition of 'registered health practitioner' in the *Guide, Hearing and Assistance Dogs Regulation 2009*.

# Notes on provisions

## Part 1 Preliminary

### Short Title

*Clause 1* provides that the short title is the *Health Ombudsman and Other Legislation Amendment Regulation (No. 1.) 2015*.

### Commencement

*Clause 2* provides that the Regulation commences on 1 October 2015, so that ‘the ‘National Code of Conduct for health care workers (Queensland)’, dated 1 October 2015, published by the department’ can commence on that date.

## Part 2 Amendment of Cooperatives Regulation 1997

### Regulation amended

*Clause 3* specifies that this part amends the *Cooperatives Regulation 1997*.

### Amendment of sch 5 (Undesirable matter for names)

*Clause 4* omits the *Dental Technicians Registration Act 2001* and the *Speech Pathologists Registration Act 2001* from Schedule 5. Section 18 of the *Cooperatives Regulation 1997* provides that a name for a cooperative will be an ‘unsuitable’ name if it contains anything listed in Schedule 5 of the Regulation. Item 12 of this Schedule lists such a thing as being names that are subject to restrictions under the *Dental Technicians Registration Act 2001*, the *Speech Pathologists Registration Act 2001* or other stated legislation. As these two specific Acts have now been repealed, the references to them in the Schedule are now redundant.

## Part 3 Amendment of Guide, Hearing and Assistance Dogs Regulation 2009

### Regulation amended

*Clause 5* specifies that this part amends the *Guide, Hearing and Assistance Dogs Regulation 2009*.

### Amendment of schedule (Dictionary)

*Clause 6* amends the definition of ‘registered health practitioner’ so that a speech pathologist will continue to be recognised despite the Speech Pathologists Board of Queensland being abolished following the repeal of the *Speech Pathologists Registration Act 2001*.

For a person with a disability to be issued with a handler’s identity card under the *Guide, Hearing and Assistance Dogs Regulation 2009*, a certificate of disability signed by a registered health practitioner (which includes a speech pathologist) must be provided. It is important for speech pathologists to continue to be authorised under that Regulation to sign such certificates. Therefore, a Speech Pathologist will be defined as a person who is eligible for practising membership of The Speech Pathology Association of Australia Limited ACN 008 393 440.

## **Part 4 Amendment of Health Ombudsman Regulation 2014**

### **Regulation amended**

*Clause 7* specifies that this part amends the *Health Ombudsman Regulation 2014*.

### **Amendment of s 5 (Prescribed conduct document—Act, s 288)**

*Clause 8* provides that ‘the ‘National Code of Conduct for health care workers (Queensland)’, dated 1 October 2015, published by the department’ be declared a prescribed conduct document in the *Health Ombudsman Regulation 2014*.

The Queensland Health Ombudsman and the Queensland Civil and Administrative Tribunal may consider a prescribed conduct document when taking action against a health practitioner, including under sections 68 (interim prohibition order) and section 113 (prohibition order) of the *Health Ombudsman Act 2013*.

## **Part 5 Amendment of State Penalties Enforcement Regulation 2014**

### **Regulation amended**

*Clause 9* specifies that this part amends the *State Penalties and Enforcement Regulation 2014*.

### **Amendment of sch 1 (Infringement notice offences and fines for nominated laws)**

*Clause 10* provides that section 11 of the *Pest Management Act 2001* be included as a new infringement notice offence in schedule 1 of the *State Penalties and Enforcement Regulation 2014*, with a prescribed PIN amount of 10 penalty units.

The assignment of a PIN is an alternative to prosecution through the court system and is a cost effective method of enforcement. Lesser safety-related offences under the *Pest Management Regulation 2003*, for which the option to issue a PIN already exists, have been assigned 2 penalty units, and previous prosecution action taken in relation to breaches of section 11 has often resulted in courts imposing fines equivalent to only 20 penalty units. As such, the proposed 10 penalty units is an appropriate amount, given the relative seriousness of the offence involved and the imperative to provide a discount on the penalty likely to result from full prosecution action.