

Health Practitioner Regulation National Law Regulation 2018

made under the

Health Practitioner Regulation National Law as applied by the law of States and Territories

General Outline

Short title

Health Practitioner Regulation National Law Regulation 2018

Authorising law

Section 245 of the *Health Practitioner Regulation National Law* (National Law) as applied by the law of States and Territories.

Policy objectives and the reasons for them

The National Law was adopted by all States and Territories in 2009 and 2010.

The *Health Practitioner Regulation National Law Regulation* (National Law Regulation 2010) was made by the Australian Health Workforce Ministerial Council on 17 June 2010 and published in the Victorian Government Gazette on 22 June 2010. The *Health Practitioner Regulation National Law (WA) Regulations 2010* (National Law WA Regulation) was made by the Australian Health Workforce Ministerial Council on 18 November 2010 and published in the Western Australian Government Gazette on 26 November 2010.

Sections 213, 215 and 235 of the National Law adopt the following Commonwealth legislation for the purpose of the National Registration and Accreditation Scheme (National Scheme), with any modifications made by a regulation:

- *Privacy Act 1988* (Privacy Act)
- *Freedom of Information Act 1982* (FOI Act)
- *Ombudsman Act 1976* (Ombudsman Act).

The National Law Regulation 2010 and National Law WA Regulation primarily provide for modifications to the Privacy Act, FOI Act and Ombudsman Act to make them applicable to the National Scheme.

The Health Practitioner Regulation National Law Regulation 2018 (National Law Regulation 2018) includes provisions which reflect:

- the passage of the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2017* (Qld) and *Health Practitioner Regulation National Law (WA) Amendment Act 2018* (WA), (together referred to as the National Law Amendment Acts) and
- changes to the Commonwealth Privacy Act, FOI Act and Ombudsman Act since the National Law was developed in 2009.

Changes to the National Law

The *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2017* (Qld) was passed by the Queensland Parliament on 6 September 2017 and received assent on 13 September 2017. The *Health Practitioner Regulation National Law (WA) Amendment Act 2017* (WA) was passed by the Western Australian Parliament on 10 April 2018 and received assent on 19 April 2018.

The National Law Amendment Acts provide that a regulation must prescribe:

- a National Health Practitioner Board (National Board) for each health profession, including by continuing, establishing or dissolving a National Board
- which National Board is to keep each public national register.

Participation day for paramedicine

The National Law Amendment Acts also amend the definition of health profession in the National Law to include paramedicine as a health profession. An individual must be registered in the paramedicine health profession from the ‘participation day’ in order to use the protected title ‘paramedic’. The National Law Amendment Acts provide that the ‘participation day’ is to be prescribed by regulation.

Changes to the Commonwealth information and privacy provisions

In 2010, the Commonwealth *Freedom of Information Amendment (Reform) Act 2010* (FOI Reform Act) made significant changes to the FOI Act and minor changes to the Privacy Act and Ombudsman Act. Due to the timing of the FOI Reform Act and the commencement of the National Law, the National Law Regulation 2010 did not reflect the amendments made by the FOI Reform Act. Instead, the National Law Regulation 2010 provided that the FOI Act, Ombudsman Act and Privacy Act applied as if the FOI Reform Act had not taken effect.

The most significant changes made by the FOI Reform Act were:

- introduction of an information publication scheme, which requires agencies to proactively publish information, including the agency’s structure, functions, annual reports, arrangements for consultation on policy proposals and operational information (section 8 of the FOI Act)
- establishing a system for the information commissioner to review certain decisions, including decisions to refuse applications to access information (part VII of the FOI Act)
- setting up a system for investigations by the information commissioner if a person complains about the action taken by an agency (part VIIB of the FOI Act).

The Commonwealth also amended the Privacy Act through the *Privacy Amendment (Enhancing Privacy Protection) Act 2012*, which replaced the National Privacy Principles and the Information Privacy Principles with the Australian Privacy Principles.

In November 2010, the Commonwealth *Australian Information Commissioner Act 2010* (AIC Act) commenced. The AIC Act established the Commonwealth Office of the Australian Information Commissioner and set out the Office's freedom of information, privacy and information commissioner functions. The National Law Amendment Acts apply the AIC Act to the National Scheme, with any modifications made by a regulation.

Achievement of policy objectives

The National Law Regulation 2018 replaces the National Law Regulation 2010 and National Law WA Regulation and combines them into a single National Law Regulation that will apply in all jurisdictions.

The National Law Regulation 2018 will:

- continue the National Boards for each health profession and prescribe which National Board is to keep each public national register
- prescribe the participation day for registration of paramedics as 1 December 2018
- modify application of the Commonwealth AIC Act, FOI Act, Ombudsman Act and Privacy Act to ensure the application of these Acts is appropriate for the purposes of the National Scheme and reflect changes made to the legislation since the National Law was developed in 2009
- retain the current transition period in relation to professional indemnity insurance arrangements for midwives practising private midwifery until 31 December 2019.

National Boards and public national registers

The National Law Amendment Acts give COAG Health Council power to change the governance and membership of National Boards by regulation. The changes to the National Law require the National Board for each health profession to be provided for in a regulation and provides that a regulation may continue, establish or dissolve a National Board.

The National Law Regulation 2018 continues the existing National Boards for each health profession and does not make any changes to the current structure of National Boards.

Any changes required to the structure of National Boards in future will be able to be done by COAG Health Council by regulation, rather than by amending the National Law. Before any changes are made to the structure of National Boards, the National Law requires COAG Health Council to undertake public consultation.

The National Law Regulation 2018 also prescribes which National Board is to keep each public national register. There are no changes to the current arrangements about which Board is to keep each register.

Participation day for paramedicine

The Paramedicine Board of Australia (Paramedicine Board) was established by the National Law Amendment Acts, with the inaugural Board members appointed in October 2017. The Paramedicine Board has developed registration standards for the profession and is engaging with the profession to support its transition to national regulation.

The National Law Regulation 2018 prescribes 1 December 2018 as the ‘participation day’ for registration of paramedics. This means paramedics will need to be registered under the National Law from 1 December 2018 in order to use the protected title ‘paramedic’. This date has been agreed by the Paramedicine Board and Australian Health Practitioner Regulation Agency (AHPRA). The 1 December date allows the profession to become part of the annual registration renewal cycle with all health professions in the National Scheme except the medical, nursing and midwifery professions.

Modifications to Commonwealth AIC, FOI, Privacy and Ombudsman legislation

The National Law Regulation 2018 is generally consistent with the National Law Regulation 2010 and National Law WA Regulation, but makes the modifications necessary to reflect the changes made to the Commonwealth FOI Act, Ombudsman Act and Privacy Act. The National Law Regulation 2018 also makes the modifications necessary to the AIC Act to make it applicable to the National Scheme.

The National Law Regulation 2018 makes the following modifications to the AIC Act for the purposes of the National Scheme (see part 3 of the National Law Regulation 2018):

- reflecting the National Scheme terminology, for example, by providing that a reference to the Freedom of Information Commissioner, Privacy Commissioner or an information officer in the AIC Act is a reference to the National Health Practitioner Privacy Commissioner
- providing for the appointment, conditions and staff of the National Health Practitioner Privacy Commissioner
- ensuring that the National Health Practitioner Privacy Commissioner’s operations are carried out efficiently, effectively, economically and with appropriate safeguards
- setting out the requirements for the National Health Practitioner Privacy Commissioner’s annual report
- ensuring the functions of the National Health Practitioner Privacy Commissioner, under the AIC Act, are relevant functions for the purposes of the National Scheme
- providing that regulations made under the AIC Act do not apply.

The National Law Regulation 2018 makes the following modifications to the FOI Act for the purposes of the National Scheme (see part 4 of the National Law Regulation 2018):

- reflecting National Scheme terminology, for example, by providing that a reference to the Administrative Appeals Tribunal is a reference to a relevant tribunal of a participating jurisdiction
- providing that the FOI Act applies to agencies that form part of the National Scheme, including the National Agency (AHPRA) and National Boards

- providing that the review of decisions under part VII of the FOI Act, by the National Health Practitioner Privacy Commissioner, will commence from 1 February 2019
- providing that agencies must comply with the requirement to develop an information publication scheme by 1 June 2019
- providing that regulations made under the FOI Act do not apply, except in relation to fees and charges
- including a transitional provision for the period 1 December 2018 to 1 February 2019 to ensure that rights of review to a relevant tribunal continue to be available.

The National Law Regulation 2018 makes the following modifications to the Ombudsman Act for the purposes of the National Scheme (see part 5 of the National Law Regulation 2018):

- reflecting National Scheme terminology, for example, by providing that a reference to the Prime Minister in the Ombudsman Act is a reference to a member of the Ministerial Council nominated by the Council
- providing that the Ombudsman Act applies to prescribed authorities that form part of the National Scheme, including the National Agency (AHPRA) and National Boards, and agency service providers
- providing for the appointment, conditions and staff of the National Health Practitioner Ombudsman
- ensuring that the National Health Practitioner Ombudsman's operations are carried out efficiently, effectively, economically and with appropriate safeguards
- setting out the requirements for the National Health Practitioner Ombudsman's annual report
- providing that regulations made under the Ombudsman Act do not apply, except in relation to witness expenses.

The National Law Regulation 2018 makes the following modifications to the Privacy Act for the purposes of the National Scheme (see part 6 of the National Law Regulation 2018):

- reflecting National Scheme terminology, for example, by providing that a reference to the Minister in the Privacy Act is a reference to a member of the Ministerial Council nominated by the Council
- providing that the Privacy Act applies to agencies that form part of the National Scheme, including the National Agency (AHPRA) and National Boards, and contracted service providers
- ensuring that the National Health Practitioner Privacy Commissioner's operations are carried out efficiently, effectively, economically and with appropriate safeguards
- providing for the process for the National Health Practitioner Privacy Commissioner to make a public interest determination
- ensuring the functions of the National Health Practitioner Privacy Commissioner under the Privacy Act are functions that are relevant to the National Scheme
- providing that regulations made under the Privacy Act do not apply.

Consistency with policy objectives of authorising law

The National Law Regulation 2018 is consistent with the policy objectives of the authorising law.

Inconsistency with policy objectives of other legislation

No inconsistencies with the policy objectives of other legislation have been identified. As outlined above, the National Law Regulation 2018 makes modifications to the Commonwealth AIC Act, FOI Act, Privacy Act and Ombudsman Act to make them applicable to the National Scheme.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives.

Estimated cost for government implementation

The National Scheme is self-funded from fees paid by registrants. There will be no costs for governments as a result of the National Law Regulation 2018.

The National Law Regulation 2018 is largely consistent with the National Law Regulation 2010 and National Law WA Regulation. Most of the changes are administrative in nature and will be implemented by AHPRA and the National Health Practitioner Ombudsman and Privacy Commissioner within existing resources.

AHPRA will be required to develop an information publication scheme by 1 June 2019. AHPRA has recruited staff to undertake this work to ensure it will be able to comply with its obligations from 1 June 2019.

The National Health Practitioner Privacy Commissioner will undertake the role of reviewing decisions under part VII of the FOI Act from 1 February 2019 and investigating complaints under part VIIB of the FOI Act from 1 December 2018. The National Health Practitioner Privacy Commissioner estimates this may result in a small additional workload. It will monitor the workload impacts and seek approval from the Australian Health Ministers' Advisory Council for additional funding from AHPRA, if needed. It is expected any increase in workload would be no more than 0.5 or 1 additional staff member.

Consultation

All States and Territories, the Commonwealth, AHPRA and the National Health Practitioner Ombudsman and Privacy Commissioner were consulted. All organisations consulted were supportive of the National Law Regulation 2018.

The Commonwealth Office of Best Practice Regulation was consulted and advised that no regulatory impact statement was required.

Notes on provisions

Part 1 Preliminary

1 Short title

Clause 1 states that the Regulation may be cited as the *Health Practitioner Regulation National Law Regulation 2018*.

2 Commencement

Clause 2 provides that the Regulation will commence on 1 December 2018, except for clause 41.

Clause 41, which prescribes the ‘participation day’ for registration of paramedics, will commence on the date the regulation is published:

- for Western Australia – in the Western Australian government gazette, and
- for all other participating jurisdictions – by the Victorian Government Printer.

Clause 41 commences on the date of publication to provide certainty about the date from which paramedics must be registered under the National Law.

3 Definitions

Clause 3 sets out the definitions for the Regulation.

Part 2 National Boards and registers

4 National Boards for health professions

Clause 4 continues the National Health Practitioner Boards (National Boards) established under section 31(1) of the Health Practitioner Regulation National Law (National Law) and the Paramedicine Board of Australia, established under section 307 of the National Law.

5 National Boards required to keep public national registers

Clause 5 prescribes the National Boards that are required to keep each public national register. The public national registers that must be kept are set out in section 222 of the National Law.

Part 3 Application of AIC Act

6 Application of AIC Act

Clause 6 provides that part 3 of the Regulation sets out modifications to the Commonwealth *Australian Information Commissioner Act 2010* (AIC Act) for the purposes of the National Scheme, in accordance with section 212A(2)(c) of the National Law.

7 References in AIC Act to particular terms

Clause 7 modifies the AIC Act so terms used in the AIC Act apply appropriately to the National Scheme.

8 Modifications relating to appointment of National Health Practitioner Privacy Commissioner and staff

Clause 8 modifies the AIC Act in relation to the National Health Practitioner Privacy Commissioner and its staff.

Clause 8(a) provides that provisions of the AIC Act relating to the appointment, general terms and conditions of service, remuneration and leave of absences for information officers, do not apply (see sections 14, 15, 17 and 18 of the AIC Act). However, provisions of the AIC Act about the appointment of an acting information officer apply (see section 21 of the AIC Act).

Clause 8(b) provides that the National Health Practitioner Privacy Commissioner is appointed with the remuneration and on the terms and conditions decided by the Ministerial Council.

Clause 8(c) provides that a person may be appointed to act as an information officer despite not holding a degree from a university or a similar educational qualification in the field of law (see sections 14(3) and 21(3) of the AIC Act). In making an acting appointment, the member of the Ministerial Council making the appointment must be satisfied that the appointment is appropriate.

Clause 8(d) provides that the National Health Practitioner Privacy Commissioner may employ staff and engage contactors or consultants in a way the Commissioner considers appropriate. This clause also provides that the Commissioner may enter into arrangements with another entity for the provision of staff or resources. As the Commissioner may employ staff and consultants in a way the Commissioner considers appropriate, the provisions of the AIC Act relating to the hiring of staff and consultants do not apply (see sections 23 and 24 of the AIC Act).

Clause 8(d) also provides that the National Health Practitioner Privacy Commissioner may delegate the Commissioner's functions or powers to any person the Commissioner considers appropriate. This has the effect that the delegation provisions of the AIC Act do not apply (see section 25 of the AIC Act).

9 Modifications about financial matters

Clause 9 modifies the AIC Act relating to financial matters to require the National Health Practitioner Privacy Commissioner's operations to be carried out efficiently, effectively, economically and with appropriate safeguards.

10 Modifications about annual report

Clause 10 sets out the requirements for the annual report to be prepared by the National Health Practitioner Privacy Commissioner. These requirements replace provisions of the AIC Act about preparing an annual report (see section 30 of the AIC Act).

Clause 10 also requires each member of the Ministerial Council to give a copy of the annual report to each House of Parliament in the jurisdiction the member represents.

11 Miscellaneous modifications

Clause 11 makes various modifications so the AIC Act applies appropriately to the National Scheme.

Clause 11(1)(a) provides that the National Health Practitioner Privacy Commissioner only has the privacy functions conferred by the Commonwealth *Privacy Act 1988* (Privacy Act). This has the effect that the National Health Practitioner Privacy Commissioner does not have privacy functions under the Commonwealth *Crimes Act 1914*, *Data-matching Program (Assistance and Tax) Act 1990*, *National Health Act 1953* or *Telecommunications Act 1977* (see section 9 of the AIC Act).

Clause 11(1)(b) provides that the National Health Practitioner Privacy Commissioner must disclose a material personal interest the Commissioner has to the Ministerial Council. Clause 11(2) defines ‘material personal interest’ and clause 11(3) defines ‘spouse’.

Clause 11(1)(c) provides that provisions of the AIC Act relating to the following matters do not apply:

- establishment of the Office of the Australian Information Commissioner (see section 5 of the AIC Act)
- a review of the operation of the AIC Act (see section 33 of the AIC Act)
- disclosures of interests (see section 22 of the AIC Act), but clause 11(1)(b) applies instead
- establishment of the Information Advisory Committee (see sections 26 to 27A of the AIC Act)
- promoting awareness and understanding of the FOI Act and its objects (see section 8(a) of the AIC Act)
- providing information, advice, assistance and training on matters relevant to the FOI Act (see section 8(d) of the AIC Act)
- reporting on matters relating to a Commonwealth Government policy or practice about managing information held by the Commonwealth Government (see section 7(a) of the AIC Act)
- reports and recommendations about legislative change (see section 8(f)(i) of the AIC Act)
- functions and powers mentioned in sections 11 and 12 of the AIC Act.

The National Health Practitioner Privacy Commissioner has the following functions, because these are not excluded or modified:

- information commissioner functions under section 7(b) of the AIC Act
- freedom of information functions under sections 8(b), (c), (e), (f)(ii), and (g) to (l) of the AIC Act
- privacy functions under sections 9(1) and (2) of the AIC Act, to the extent they relate to the Privacy Act (see clause 11(1)(a)).

Clause 11(d) provides that the AIC Act applies with any other modifications that are necessary.

12 Regulations

Clause 12 provides that regulations made under the AIC Act do not apply.

Part 4 Application of FOI Act

13 Application of FOI Act

Clause 13 provides that part 4 of the Regulation sets out modifications to the Commonwealth *Freedom of Information Act 1982* (FOI Act) for the purposes of the National Scheme, in accordance with section 215(2)(c) of the National Law.

14 References in FOI Act to particular terms

Clause 14 modifies the FOI Act so terms used in the FOI Act apply appropriately to the National Scheme.

Clause 14(b) provides that a reference to the Commonwealth or the Government of the Commonwealth in the FOI Act, is a reference to a participating jurisdiction or the Government of a participating jurisdiction. However, this does not apply to references to matters affecting the security of the Commonwealth, defence, international relations or the national economy. This ensures the exemption framework for these matters under the FOI Act continues to apply.

Clause 14(f) provides that a reference to relations, arrangements or communications between the Commonwealth and a State in the FOI Act, includes a reference to relations, arrangements or communications between States. The term ‘includes’ has the effect that references may still refer to relations, arrangements or communications between the Commonwealth and a State.

Clause 14(h) provides that a reference to a security clearance at an appropriate level is a reference to a security clearance at a level the National Health Practitioner Privacy Commissioner considers appropriate. This ensures the intent of section 89P of the FOI Act is met, but makes it applicable to the National Scheme.

15 Modifications relating to National Agency and National Boards

Clause 15 modifies the application of the FOI Act, as it relates to agencies, for the purposes of the National Scheme.

Clauses 15(a) and (b) provide that the FOI Act only applies in relation to agencies and lists those agencies as the Advisory Council, National Agency (AHPRA), Agency Management Committee and each of the National Boards.

Clause 15(c) provides for the principal officer of each agency.

Clause 15(d) provides that agencies must publish the information in section 8(2) of the FOI Act by 1 June 2019, which means that agencies are required to develop an information publication scheme by this date. This provides a period of six months from commencement to complete this work. Clause 22 sets out transitional arrangements and provides that until 1 June 2019, agencies must continue to publish the information required under section 15(e) of the National Law Regulation 2010 and National Law WA Regulation, which are being repealed.

Clause 15(e) provides that an agency is not required to publish details of the appointment of officers of the agency (see section 8(2)(d) of the FOI Act). This means the information publication scheme will need to comply with sections 8(2)(a) to (c) and (e) to (j).

Clause 15(f) provides that agencies must complete the first review of the information publication scheme by 1 June 2024 (see section 9 of the FOI Act).

16 Modifications relating to reports prepared by National Health Practitioner Privacy Commissioner

Clause 16 provides that a reference in the FOI Act to a report mentioned in section 30 of the AIC Act is taken to be a reference to the annual report mentioned in clause 10 of the National Law Regulation 2018. Section 93 of the FOI Act refers to the annual report, so this section is taken to refer to the annual report required under clause 10 of the National Law Regulation 2018. Consistent with section 93 of the FOI Act, clause 16(b) provides that the National Health Practitioner Privacy Commissioner may require an agency to give information to the Commissioner that the Commissioner reasonably requires to prepare the annual report.

17 Modifications relating to Administrative Appeals Tribunal

Clause 17 modifies the FOI Act so that a reference to the Administrative Appeals Tribunal in the FOI Act is a reference to a relevant tribunal, as defined in clause 3 of the National Law Regulation 2018. Clause 17(b) provides that the FOI Act is modified so that provisions of the Commonwealth *Administrative Appeals Tribunal Act 1975* do not apply. This means that, for example, section 63 of the FOI Act requires the relevant tribunal to take into account the matters set out in section 63 when considering the discretionary power to make confidentiality orders, without reference to the particular provisions of the *Administrative Appeals Tribunal Act 1975* that are referred to.

18 Modifications relating to Part VII of the FOI Act

Clause 18 provides that part VII of the FOI Act, which provides for reviews of decisions by the Information Commissioner, will commence on 1 February 2019. Part VII was inserted into the FOI Act by the *Freedom of Information Amendment (Reform) Act 2010*. Under section 18 of the National Law Regulation 2010 and National Law WA Regulation, the amendments made to the FOI Act by the *Freedom of Information Amendment (Reform) Act 2010* did not apply.

The National Health Practitioner Privacy Commissioner will undertake reviews of decisions under part VII of the FOI Act for the National Scheme. These provisions will commence from 1 February 2019, allowing a period of 3 months for the Commissioner to make arrangements for implementation including, for example, putting in place processes and resources to undertake these reviews.

19 Miscellaneous modifications

Clause 19 makes various modifications so the FOI Act applies appropriately to the National Scheme.

Clause 19(a) provides that a reference to the payment of costs by the Commonwealth is a reference to payment of costs by the National Agency (AHPRA) from the Agency Fund.

Clause 19(b) provides that the FOI Act is modified so that provisions relating to the constitution of a tribunal do not apply to the Tasmanian Magistrates Court (Administrative Appeals Division). Instead, for the purposes of a proceeding referred to in section 58B(1) of the FOI Act, the Tasmanian Magistrates Court (Administrative Appeals Division), must include a member who is a magistrate. This is because the Tasmanian Magistrates Court (Administrative Appeals Division) does not have presidential members, as referred to in section 58B of the FOI Act.

Clause 19(c) provides that part VIIB, division 3 of the FOI Act does not apply. This part provides for complaints to be made to the Ombudsman about actions taken under the FOI Act. The National Health Practitioner Privacy Commissioner remains accountable through the Ministerial Council.

Clause 19(d) provides that provisions of the FOI Act relating to the Commonwealth *Federal Court of Australia Act 1976*, a review of the operations of the FOI Act (see section 93B of the FOI Act), and provisions relating to determinations by the Federal Circuit Court do not apply.

Clause 19(e) provides that the FOI Act applies with any other modifications that are necessary.

20 Regulations

Clause 20 provides that regulations made under the FOI Act do not apply, except for provisions providing for fees and charges.

21 Transitional provision for existing right of review by Administrative Appeals Tribunal

Clause 21 is a transitional provision that will apply for the period 1 December 2018 to 1 February 2019. It provides that, if a person had a right to a review by a tribunal under section 55(3) of the FOI Act before the National Law Regulation 2018 commences, the person continues to have a right to a review by a tribunal under part VIIA of the FOI Act from 1 December 2018 to 1 February 2019. The right to a review under section 55(3) of the FOI Act relates to that provision as it applied before the amendments made by the *Freedom of Information Amendment (Reform) Act 2010* (see section 18 of the National Law Regulation 2010 and National Law WA Regulation).

22 Transitional provision for current obligation to publish information

Clause 22 is a transitional provision that requires agencies to continue to publish information required by section 15(e) of the National Law Regulation 2010 and National Law WA Regulation until 31 May 2019. From 1 June 2019, agencies will be required to comply with clause 15(d).

Part 5 Application of Ombudsman Act

23 Who is an agency service provider

Clause 23 defines the term ‘agency service provider’ for part 5 of the Regulation. The intent of the definition is to allow the National Health Practitioner Ombudsman to have jurisdiction to investigate ‘agency service providers’ in the context of their contractual dealings with the National Agency.

24 Application of Ombudsman Act

Clause 24 provides that part 5 of the Regulation sets out modifications to the Commonwealth *Ombudsman Act 1976* (Ombudsman Act) for the purposes of the National Scheme, in accordance with section 235(2)(b) of the National Law.

25 References in Ombudsman Act to particular terms

Clause 25 modifies the Ombudsman Act so terms used in the Ombudsman Act apply appropriately to the National Scheme.

Clause 25(k) provides that a reference to an arrangement or communication between a Commonwealth Minister and a Minister of a State or Territory in the Ombudsman Act, includes a reference to an arrangement or communication between Ministers of States and Territories. The term ‘includes’ has the effect that references may still refer to arrangements or communications between a Commonwealth Minister and a Minister of a State or Territory.

26 Modifications relating to National Agency and National Boards

Clause 26 modifies the application of the Ombudsman Act, as it relates to agencies, for the purposes of the National Scheme.

Clause 26(a) provides that the Ombudsman Act only applies to prescribed authorities and agency service providers. Clause 26(b) lists the prescribed authorities as the Advisory Council, National Agency (AHPRA), Agency Management Committee and each of the National Boards.

Clause 26(c) provides that the prescribed authorities and the National Health Practitioner Ombudsman are not listed entities for the purposes of the Commonwealth *Public Governance, Performance and Accountability Act 2013* (see section 4A of the Ombudsman Act which refers to the ‘finance law’ within the meaning of the *Public Governance, Performance and Accountability Act 2013*). As the prescribed authorities and National Health Practitioner Ombudsman are not Commonwealth entities, they are not required to comply with the *Public Governance, Performance and Accountability Act 2013*.

Clause 26(d) provides for the principal officer of each prescribed authority.

27 Modifications relating to appointment of National Health Practitioner Ombudsman and staff

Clause 27 modifies the Ombudsman Act in relation to the National Health Practitioner Ombudsman and its staff.

Clause 27(a) provides that provisions of the Ombudsman Act providing for the appointment of the Ombudsman and the conditions of service of the Ombudsman do not apply (see sections 21, 22, 24 and 25 of the Ombudsman Act). However, provisions of the Ombudsman Act providing for the appointment of an acting Ombudsman apply (see section 29 of the Ombudsman Act).

Clause 27(b) provides that provisions of the Ombudsman Act providing for the appointment of a deputy Ombudsman do not apply (see sections 23 and 29(1A) of the Ombudsman Act).

Clause 27(c) provides that provisions of the Ombudsman Act relating to the removal and retirement of the Ombudsman on the grounds of invalidity do not apply (see sections 28A and 28B of the Ombudsman Act). These provisions relate to Commonwealth superannuation entitlements. As the National Health Practitioner Ombudsman is not a Commonwealth employee, these entitlements do not apply and the provisions are not relevant.

Clause 27(d) provides that the National Health Practitioner Ombudsman is appointed with the remuneration and on the terms and conditions decided by the Ministerial Council.

Clause 27(e) provides that the National Health Practitioner Ombudsman may be suspended from office by the Ministerial Council without the need for a statement of the grounds of the suspension to be laid before a relevant Parliament. Also, the National Health Practitioner Ombudsman may be removed from office by the Ministerial Council on the ground of misbehaviour or physical or mental incapacity without the need for an address being presented to a relevant Parliament (see sections 28(1) and (3) of the Ombudsman Act).

Clause 27(f) provides that the National Health Practitioner Ombudsman may employ staff and engage contractors or consultants in a way the Ombudsman considers appropriate. This clause also provides the Ombudsman may enter into arrangements with another entity relating to the provision of staff or resources. As the Ombudsman may employ staff in a way the Ombudsman considers appropriate, the provisions of the Ombudsman Act relating to the hiring of staff do not apply (see section 31 of the Ombudsman Act).

Clause 27(f) also provides that the National Health Practitioner Ombudsman may delegate the Ombudsman's functions or powers to any person the Ombudsman considers appropriate. This has the effect that the delegation provisions of the Ombudsman Act do not apply (see section 34 of the Ombudsman Act).

28 Modifications about financial matters

Clause 28 modifies the Ombudsman Act relating to financial matters to require the National Health Practitioner Ombudsman's operations to be carried out efficiently, effectively, economically and with appropriate safeguards.

29 Modifications about annual report

Clause 29 sets out the requirements for an annual report to be prepared by the National Health Practitioner Ombudsman. These requirements replace provisions of the Ombudsman Act about preparing reports (see section 19 of the Ombudsman Act).

Clause 29 also requires each member of the Ministerial Council to give a copy of the annual report to each House of Parliament in the jurisdiction the member represents.

30 Miscellaneous modifications

Clause 30 makes various modifications so the Ombudsman Act applies appropriately to the National Scheme.

Clause 30(a) provides that provisions of the Ombudsman Act relating to the Integrity Commissioner do not apply.

Clause 30(b) provides that a requirement to give an annual report to the responsible Minister under section 46 of the Commonwealth *Public Governance, Performance and Accountability Act 2013* does not apply. Instead, the National Health Practitioner Ombudsman is required to comply with clause 29 to submit an annual report to the Ministerial Council.

Clause 30(c) provides that a requirement to observe confidentiality under the Ombudsman Act applies to any person performing functions under the Ombudsman Act (see section 35 of the Ombudsman Act). However, clause 30(c) also provides that this does not prevent a member of the Ministerial Council making a record of, or divulging or communicating to another member of the Ministerial Council, information acquired by the member in performing functions under the Ombudsman Act.

Clause 30(d) provides that the Ombudsman Act applies with any other modifications that are necessary.

31 Regulations

Clause 31 provides that Regulations made under the Ombudsman Act do not apply, except for provisions providing for witness expenses.

Part 6 Application of Privacy Act

32 Who is a *contracted service provider*

Clause 32 defines the term ‘contracted service provider’ for part 6 of the Regulation.

The intent of the definition is to allow the National Health Practitioner Privacy Commissioner to have jurisdiction for privacy matters of ‘contracted service providers’ in the context of their contractual dealings with the National Agency.

33 Application of Privacy Act

Clause 33 provides that part 6 of the Regulation sets out modifications to the Privacy Act for the purposes of the National Scheme, in accordance with section 213(2)(b) of the National Law.

34 References in Privacy Act to particular terms

Clause 34 modifies the Privacy Act so terms used in the Privacy Act apply appropriately to the National Scheme.

Clause 34(j) provides that a reference to arrangements or communications between a Commonwealth Minister and a Minister of a State in the Privacy Act, includes a reference to arrangements or communications between Ministers of States. The term ‘includes’ has the effect that references may still refer to arrangements or communications between a Commonwealth Minister and a Minister of a State.

35 Modifications relating to National Agency and National Boards

Clause 35 modifies the application of the Privacy Act, as it relates to agencies, for the purposes of the National Scheme.

Clause 35(a) provides that the Privacy Act only applies to agencies and contracted service providers. Clause 35(b) lists the agencies as the Advisory Council, National Agency (AHPRA), Agency Management Committee and each of the National Boards.

Clause 35(c) provides for the principal executive for each agency.

36 Modifications about financial matters

Clause 36 modifies the Privacy Act relating to financial matters to require the National Health Practitioner Privacy Commissioner's operations to be carried out efficiently, effectively, economically and with appropriate safeguards.

37 Modifications about public interest determinations

Clause 37 modifies the Privacy Act in relation to making public interest determinations under Part VI of the Privacy Act.

Clause 37(a) provides that the requirement for the National Health Practitioner Privacy Commissioner to make a public interest determination by legislative instrument does not apply. The effect of this clause is that a public interest determination is not a legislative instrument subject to the Commonwealth *Legislation Act 2003*.

Clause 37(b) provides that if the National Health Practitioner Privacy Commissioner makes a public interest determination, the Commissioner must notify the Ministerial Council in writing as soon as practicable.

Clause 37(c) provides that a public interest determination commences on the day stated in the determination or, if no day is stated, one day after the determination is registered.

Clause 37(d) provides that the National Health Practitioner Privacy Commissioner must make the register of determinations available on the Commissioner's website (see section 80E of the Privacy Act which requires the keeping of a register of determinations).

Clause 37(e) provides that the provisions of the Act providing for charging fees for making the register available to the public do not apply.

Clause 37(f) provides that an expression used in a determination that is also used in the Privacy Act has the same meaning in the determination as the expression has in the Act, unless a contrary intention appears.

Clause 37(g) provides that, except to the extent a determination is in force in Western Australia, sections 246 and 247 of the National Law apply to a public interest determination as if it were a regulation. These provisions require the public interest determination to be tabled in the Parliament of each participating jurisdiction and provide for it to be disallowed.

Clause 38(h) provides that, to the extent a public interest determination is in force in Western Australia, section 42 of the *Interpretation Act 1984* (WA) applies to the determination as if it were a regulation and the requirement in section 42(1) to lay the determination before each House of Parliament were a requirement to lay the determination before each House of Parliament within 18 sitting days of that House after the day that the determination is recorded

in the register of determinations. The effect of this clause is that, in Western Australia, a public interest determination is to be tabled in the Western Australian Parliament within 18 sitting days of it being recorded in the register of determinations, and the determination can be disallowed in accordance with section 42 of the *Interpretation Act 1984* (WA).

38 Miscellaneous modifications

Clause 38 makes various modifications so the Privacy Act applies appropriately to the National Scheme.

Clause 38(a) provides that the Privacy Act applies as if the requirement for a payment to be made by the Commonwealth were a requirement for a payment to be made by the National Agency (AHPRA) from the Agency Fund.

Clause 38(b) provides that the National Health Practitioner Privacy Commissioner's power to authorise persons to enter premises occupied by an agency and inspect documents extends to a power to authorise any person the Commissioner considers appropriate (see section 68 of the Privacy Act).

Clause 38(c) provides that the provisions of the Privacy Act providing for the following matters do not apply:

- the establishment of the Privacy Advisory Committee (see part VII of the Privacy Act)
- emergencies and disasters, tax file numbers, credit reporting and credit providers (see, for example, sections 11, 13(4), 17, 18, 26WE(1)(d), 28B(1)(d), 33C(1)(c), 49, parts IIIA and VIA of the Privacy Act)
- making guidelines about medical research, health information and genetic information (see sections 95, 95A and 95AA of the Privacy Act)
- privacy codes (see part IIIB of the Privacy Act)
- monitoring related functions (see section 28A of the Privacy Act)
- guidance related functions, except for promoting an understanding and acceptance of the Australian Privacy Principles and the objects of those principles (see section 28 of the Privacy Act, noting section 28(1)(c)(i) would apply)
- the Commonwealth *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, *Data-matching Program (Assistance and Tax) Act 1990*, *Healthcare Identifiers Act 2010* and *National Health Act 1953*.

The National Health Practitioner Privacy Commissioner has the advice-related functions in the Privacy Act because these are not excluded or modified (see section 28B(1)(a) to (c) of the Privacy Act).

Clause 38(d) provides that the Privacy Act applies with any other modifications that are necessary.

39 Regulations

Clause 39 provides that Regulations made under the Privacy Act do not apply.

Part 7 Miscellaneous

40 Transition period in relation to professional indemnity insurance arrangements for midwives practising private midwifery

Clause 40 prescribes the end date for the transition period for an exemption from professional indemnity insurance for privately practicing midwives in accordance with section 284 of the National Law. The prescribed end date for the transition period is 31 December 2019. This is the same date as provided for under section 29 of the National Law Regulation 2010 and National Law WA Regulation.

41 Prescribed participation day for registration in paramedicine

Clause 41 prescribes the participation day for section 306 of the National Law as 1 December 2018. This means paramedics will need to be registered under the National Law from 1 December 2018 in order to use the protected title ‘paramedic’.

Part 8 Transitional and Repeal

Division 1 Repeal

42 Regulations repealed

Clause 42 repeals the *Health Practitioner Regulation National Law Regulation*, as made by the Australian Health Workforce Ministerial Council on 17 June 2010 and published in the Victorian Government Gazette on 22 June 2010.

Clause 42 also repeals the *Health Practitioner Regulation National Law (WA) Regulations 2010*, as made by the Australian Health Workforce Ministerial Council on 18 November 2010 and published in the Western Australian Government Gazette on 26 November 2010.

Division 2 Transitional provisions

43 Definitions for division

Clause 43 includes definitions for part 8, division 2.

44 Transitional provision for continued Boards

Clause 44 is a transitional provision for National Boards established under the National Law and continued under clause 4 of the National Law Regulation 2018.

45 Continuation of existing appointment and employment of National Health Practitioner Privacy Commissioner

Clause 45 provides that the existing appointment of the National Health Practitioners Privacy Commissioner under the repealed Regulations, continues as the appointment of the National Health Practitioner Privacy Commissioner under the National Law Regulation 2018.

46 Continuation of existing appointment and employment of National Health Practitioner Ombudsman

Clause 46 provides that the existing appointment of the National Health Practitioners Ombudsman under the repealed Regulations, continues as the appointment of the National Health Practitioner Ombudsman under the National Law Regulation 2018.

47 Acting Commissioner under the Privacy Act

Clause 47 provides that a person who, immediately before commencement, holds an appointment as acting Commissioner under the Privacy Act, continues as the acting National Health Practitioner Privacy Commissioner under the AIC Act.

48 Applications for access to a document

Clause 48 provides that if an application was made for access to a document before commencement under the previously applied FOI Act (namely the FOI Act as it applied because the amendments in the Commonwealth *Freedom of Information Amendment (Reform) Act 2010* had not taken effect due to section 18 of the National Law Regulation 2010), and the application was not decided or withdrawn before the commencement, the application must be decided under part III of the applied FOI Act.

49 Applications for internal review of access refusal decision

Clause 49 provides that if an application was made before commencement for internal review of an access refusal decision under the previously applied FOI Act (namely the FOI Act as it applied because the amendments in the Commonwealth *Freedom of Information Amendment (Reform) Act 2010* had not taken effect due to section 18 of the National Law Regulation 2010), and the application was not decided or withdrawn before the commencement, the application must be decided under Part VI of the applied FOI Act.