



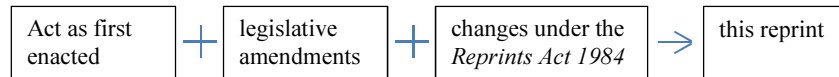
Western Australia

# **Health Practitioner Regulation National Law (WA) Act 2010**

**Reprint 1: The Act as at 23 June 2017**

## Guide for using this reprint

### *What the reprint includes*



### *Endnotes, Compilation table, and Table of provisions that have not come into operation*

1. Details about the original Act and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Validation, transitional, savings, modifying or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the Act being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

### *Notes amongst text (italicised and within square brackets)*

1. If the reprint includes a section that was inserted, or has been amended, since the Act being reprinted was passed, editorial notes at the foot of the section give some history of how the section came to be as it is. If the section replaced an earlier section, no history of the earlier section is given (the full history of the Act is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
  - removed (because it was repealed or deleted from the law); or
  - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

### *Reprint numbering and date*

1. The reprint number (in the footer of each page of the document) shows how many times the Act has been reprinted. For example, numbering a reprint as “Reprint 3” would mean that the reprint was the 3<sup>rd</sup> reprint since the Act was passed. Reprint numbering was implemented as from 1 January 2003.
2. The information in the reprint is current on the date shown as the date as at which the Act is reprinted. That date is not the date when the reprint was published by the State Law Publisher and it is probably not the date when the most recent amendment had effect.

Western Australia

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Western Australia

Reprinted under the  
*Reprints Act 1984* as  
at 23 June 2017

## **Health Practitioner Regulation National Law (WA) Act 2010**

**An Act to —**

- **provide for a national registration and accreditation scheme for health practitioners; and**
- **repeal various Acts; and**
- **make consequential amendments to various Acts<sup>2</sup>, and for related purposes.**

## Part 1 — Preliminary

### 1. Short title

This is the *Health Practitioner Regulation National Law (WA) Act 2010*<sup>1</sup>.

### 2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions<sup>1</sup>.

### 3. Terms used

- (1) For the purposes of this Act the *local application provisions of this Act* are the provisions of this Act other than the Health Practitioner Regulation National Law set out in the Schedule.
- (2) In the local application provisions of this Act —  
*Health Practitioner Regulation National Law (Western Australia)* means the provisions applying in this jurisdiction because of section 4.
- (3) If a term is given a meaning in the Health Practitioner Regulation National Law set out in the Schedule, it has the same meaning in the local application provisions of this Act.



## Part 2 — Application of Health Practitioner Regulation National Law

### 4. Application of Health Practitioner Regulation National Law

- (1) The Health Practitioner Regulation National Law set out in the Schedule, as modified to give effect to subsections (5), (6) and (7) —
  - (a) applies as a law of this jurisdiction; and
  - (b) as so applying, may be referred to as the *Health Practitioner Regulation National Law (Western Australia)*; and
  - (c) as so applying, is a part of this Act.
- (2) The power conferred by the *Health Practitioner Regulation National Law (Western Australia)* section 245 to make regulations for the purposes of that Law does not extend to making a regulation relating to the safe operation or use by a medical radiation practitioner of an electronic product, irradiating apparatus or radioactive substance as those terms are defined in the *Radiation Safety Act 1975* section 4.
- (3) The *Health Practitioner Regulation National Law (Western Australia)* sections 295 to 297 do not apply to an asset, liability, contract, property or record of the Council that relate to the management of the unincorporated Pharmaceutical Society by the Council.
- (4) In subsection (3) —

**Council** means the Pharmaceutical Council of Western Australia referred to in the *Pharmacy Act 1964* section 7(1);

**unincorporated Pharmaceutical Society** means the Pharmaceutical Society of Western Australia referred to in the *Pharmacy Act 1964* section 6(1).

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- (5) In the Schedule section 3(3)(c) delete “and are of an appropriate quality.” and insert:

consistent with best practice principles.

- (6) In the Schedule section 113 in the Table delete “medical practitioner” and insert:

medical practitioner, physician

- (7) In the Schedule after section 141(4)(c) insert:

- (da) the first health practitioner forms the reasonable belief in the course of providing health services to the second health practitioner or student; or

**5. Meaning of generic terms in *Health Practitioner Regulation National Law (Western Australia)* for purposes of this jurisdiction**

In the *Health Practitioner Regulation National Law (Western Australia)* —

***magistrate*** means a magistrate appointed under the *Magistrates Court Act 2004*;

***Magistrates Court*** means the Magistrates Court of Western Australia established under the *Magistrates Court Act 2004*;

***this jurisdiction*** means Western Australia.

**6. Responsible tribunal for *Health Practitioner Regulation National Law (Western Australia)***

The State Administrative Tribunal established under the *State Administrative Tribunal Act 2004* is declared to be the responsible tribunal for this jurisdiction for the purposes of the

*Health Practitioner Regulation National Law (Western Australia).*

**7. Exclusion of legislation of this jurisdiction**

- (1) Except as provided in subsection (2), the following Acts of this jurisdiction do not apply to the *Health Practitioner Regulation National Law (Western Australia)* or to the instruments made under that Law —
- (a) the *Auditor General Act 2006*;
  - (b) the *Financial Management Act 2006*;
  - (c) the *Freedom of Information Act 1992*;
  - (d) the *Interpretation Act 1984*;
  - (e) the *Parliamentary Commissioner Act 1971*;
  - (f) the *Public Sector Management Act 1994*.
- (2) Sections 41 and 42 of the *Interpretation Act 1984* apply to regulations made under the *Health Practitioner Regulation National Law (Western Australia)*.

### **Part 3 — Provisions specific to this jurisdiction**

**8. Transfer of certain property exempt from duty**

- (1) In this section, *dutiable property* and *dutiable transaction* have the respective meanings given in the *Duties Act 2008* section 3.
- (2) A dutiable transaction relating to the transfer of any dutiable property from a local registration authority to the National Agency in accordance with the *Health Practitioner Regulation National Law (Western Australia)* is exempt from duty under the *Duties Act 2008*.

**9. Minister's direction**

- (1) The Minister may, by written notice given to a local registration authority established under an Act repealed by section 14, direct that authority —
  - (a) to transfer any of the local registration authority's funds to the National Agency before the participation day for this jurisdiction; and
  - (b) to give information to the National Agency before the participation day for this jurisdiction; and
  - (c) to sign any documents that are required to enable transition to the proposed national registration and accreditation scheme; and
  - (d) to take any action or do any other thing required to enable transition to the national registration and accreditation scheme.
- (2) A local registration authority is to comply with any direction given by the Minister under subsection (1).

**10. Police Commissioner may give criminal history information**

- (1) In this section —

*criminal history information* means information about a person's criminal history that may be included in a written report under the *Health Practitioner Regulation National Law (Western Australia)* section 79 or 135.

- (2) The Commissioner of Police appointed under the *Police Act 1892* section 5 may give criminal history information to —
- (a) a National Board; or
  - (b) CrimTrac, or a police force or service of the Commonwealth or another State or a Territory, for the purpose of CrimTrac or the police force or service giving the criminal history information to a National Board.

**11. Review of decision by State Administrative Tribunal as responsible tribunal**

A reference in the *Health Practitioner Regulation National Law (Western Australia)* to an appeal against a decision is, for an appeal to the State Administrative Tribunal as the responsible tribunal, a reference to a review of the decision as provided under the *State Administrative Tribunal Act 2004* Part 3 Division 3.

**12. Regulations**

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

**13. Review of Act**

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after 5 years have elapsed since the Act comes into operation.
- (2) The Minister is to prepare a report based on the review carried out under subsection (1) and is to cause the report to be laid before each House of Parliament as soon as is practicable after the report is prepared, and in any event in relation to a review under subsection (1), not later than 12 months after the requirement for the review arose.

## **Part 4 — Repeals, transitional and saving provisions**

### **Division 1 — Repeals**

#### **14. Acts repealed**

These Acts are repealed:

- (a) the *Chiropractors Act 2005*;
- (b) the *Dental Act 1939*;
- (c) the *Dental Prosthetists Act 1985*;
- (d) the *Medical Practitioners Act 2008*;
- (e) the *Medical Radiation Technologists Act 2006*;
- (f) the *Nurses and Midwives Act 2006*;
- (g) the *Occupational Therapists Act 2005*;
- (h) the *Optometrists Act 2005*;
- (i) the *Osteopaths Act 2005*;
- (j) the *Pharmacy Act 1964*;
- (k) the *Physiotherapists Act 2005*;
- (l) the *Podiatrists Act 2005*;
- (m) the *Psychologists Act 2005*.

#### **15. Codes of practice, regulations and rules repealed**

(1) These Codes of Practice are repealed:

- (a) the *Nurse Practitioners Code of Practice 2004*;
- (b) the *Nurses Code of Practice 2000*;
- (c) the *Occupational Therapists Code of Practice 2009*.

(2) These regulations are repealed:

- (a) the *Chiropractors Regulations 2007*;
- (b) the *Dental Board Elections Regulations*;
- (c) the *Dental Charges Committee Regulations 1973*;
- (d) the *Dental Prosthetists Regulations 1986*;

- (e) the *Medical Practitioners Regulations 2008*;
  - (f) the *Medical Radiation Technologists Regulations 2007*;
  - (g) the *Nurses and Midwives Regulations 2007*;
  - (h) the *Occupational Therapists Regulations 2007*;
  - (i) the *Optometrists Regulations 2006*;
  - (j) the *Osteopaths Regulations 2006*;
  - (k) the *Pharmacy Act Regulations 1976*;
  - (l) the *Physiotherapists Regulations 2006*;
  - (m) the *Podiatrists Regulations 2006*;
  - (n) the *Psychologists Regulations 2007*.
- (3) The *Dental Board Rules 1973* are repealed.

### **Division 2 — Transitional and saving provisions**

#### **16. Term used: former Act**

In this Division —

*former Act* means any of the Acts repealed by section 14.

#### **17. Complaints and matters being dealt with on participation day**

- (1) Despite the *Health Practitioner Regulation National Law (Western Australia)* section 289 this section applies if immediately before the participation day —
- (a) a complaint about a person in relation to a competency matter, a disciplinary matter or an impairment matter was being dealt with under a former Act other than the *Dental Act 1939* and the *Pharmacy Act 1964*; or
  - (b) a matter was being dealt with under the *Dental Act 1939* section 30; or
  - (c) a matter was being dealt with under the *Pharmacy Act 1964* section 32(4).

- (2) If this section applies —
  - (a) the complaint or matter is to be dealt with by the National Board for the health profession of the person as if a reference to the local registration authority in the former Act were a reference to the Board; and
  - (b) the complaint or matter is to continue to be dealt with under the former Act under which it was made or dealt with; and
  - (c) any committee dealing with the complaint or matter under the former Act is to continue dealing with the complaint or matter as if any provisions of the former Act relating to its establishment or constitution had not been repealed; and
  - (d) any investigator appointed under the former Act to investigate the complaint or matter is to continue to do so as if the provision of the former Act under which he or she was appointed had not been repealed.
- (3) The National Board must give effect to a decision made in relation to a complaint or matter as if it were a decision under this Law.

**18. Annual reports for part of a year**

- (1) A local registration authority is to make and submit an annual report as required by the provision of the former Act under which it was required to make and submit an annual report, but limited to the period from the end of the period in relation to which its last annual report was made to the participation day, and that provision applies as if that period were a year.
- (2) Despite the repeal of the former Act under which it was established and the *Health Practitioner Regulation National Law (Western Australia)* Part 12, the local registration authority remains in existence for the purpose of subsection (1) and is entitled to receive from the National Agency and its staff such assistance as it may require for the purpose.



**19. School dental therapists**

Despite the *Health Practitioner Regulation National Law (Western Australia)* Part 12 Division 11, if a person immediately before the participation day held registration under the *Dental Act 1939* as a school dental therapist, from the participation day the person is taken to hold general registration under that Law in the dental therapist profession.

**20. Determination of area of need**

If, immediately before the participation day, a determination by the Minister of an area of need for the purposes of the definition of *an unmet area of need* in the *Medical Practitioners Act 2008* section 34(1) is in force, on the participation day that area of need is to be taken to be an area of need for health services in this jurisdiction as if it had been decided under the *Health Practitioner Regulation National Law (Western Australia)* section 67(5) that it is an area of need for health services in this jurisdiction in the medical profession.

**21. Transitional regulations**

- (1) If there is no sufficient provision in this Part for dealing with a transitional matter the Governor may make regulations prescribing all matters that are required, necessary or convenient to be prescribed in relation to that matter.
- (2) Regulations made under subsection (1) may provide that specific provisions of the *Health Practitioner Regulation National Law (Western Australia)* —
  - (a) do not apply; or
  - (b) apply with specific modifications,to or in relation to any matter.
- (3) If regulations made under subsection (1) provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than

**Health Practitioner Regulation National Law (WA) Act 2010**

**Part 4** Repeals, transitional and saving provisions

**Division 2** Transitional and saving provisions

**s. 21**

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the day on which section 2 commenced, the regulations have effect according to their terms.

- (4) In subsection (3) —  
***specified*** means specified or described in the regulations.
- (5) If regulations contain a provision referred to in subsection (3), the provision does not operate so as —
- (a) to affect in a manner prejudicial to any person (other than the State), the right of that person existing before the day of publication of those regulations; or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.
- (6) Regulations can only be made under this section before 1 July 2013.

*[Part 5 (s. 22-166) omitted under the Reprints Act 1984 s. 7(4)(e).]*

## Schedule — Health Practitioner Regulation National Law

[s. 4]

### Part 1 — Preliminary

**1. Short title**

This Law may be cited as the Health Practitioner Regulation National Law.

**2. Commencement**

This Law commences in a participating jurisdiction as provided by the Act of that jurisdiction that applies this Law as a law of that jurisdiction.

**3. Objectives and guiding principles**

- (1) The object of this Law is to establish a national registration and accreditation scheme for —
  - (a) the regulation of health practitioners; and
  - (b) the registration of students undertaking —
    - (i) programmes of study that provide a qualification for registration in a health profession; or
    - (ii) clinical training in a health profession.
- (2) The objectives of the national registration and accreditation scheme are —
  - (a) to provide for the protection of the public by ensuring that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered; and
  - (b) to facilitate workforce mobility across Australia by reducing the administrative burden for health practitioners wishing to move between participating jurisdictions or to practise in more than one participating jurisdiction; and
  - (c) to facilitate the provision of high quality education and training of health practitioners; and

- (d) to facilitate the rigorous and responsive assessment of overseas-trained health practitioners; and
  - (e) to facilitate access to services provided by health practitioners in accordance with the public interest; and
  - (f) to enable the continuous development of a flexible, responsive and sustainable Australian health workforce and to enable innovation in the education of, and service delivery by, health practitioners.
- (3) The guiding principles of the national registration and accreditation scheme are as follows —
- (a) the scheme is to operate in a transparent, accountable, efficient, effective and fair way;
  - (b) fees required to be paid under the scheme are to be reasonable having regard to the efficient and effective operation of the scheme;
  - (c) restrictions on the practice of a health profession are to be imposed under the scheme only if it is necessary to ensure health services are provided safely and are of an appropriate quality.

**4. How functions to be exercised**

An entity that has functions under this Law is to exercise its functions having regard to the objectives and guiding principles of the national registration and accreditation scheme set out in section 3.

**5. Terms used**

In this Law —

**accreditation authority** means —

- (a) an external accreditation entity; or
- (b) an accreditation committee;

**accreditation committee** means a committee established by a National Board to exercise an accreditation function for the health profession for which the Board is established;

**accreditation standard**, for a health profession, means a standard used to assess whether a programme of study, and the education provider

that provides the programme of study, provide persons who complete the programme with the knowledge, skills and professional attributes necessary to practise the profession in Australia;

**accredited programme of study** means a programme of study accredited under section 48 by an accreditation authority;

**adjudication body** means —

- (a) a panel; or
- (b) a responsible tribunal; or
- (c) a Court; or
- (d) an entity of a co-regulatory jurisdiction that is declared in the Act applying this Law to be an adjudication body for the purposes of this Law;

**Advisory Council** means the Australian Health Workforce Advisory Council established by section 18;

**Agency Fund** means the Australian Health Practitioner Regulation Agency Fund established by section 208;

**Agency Management Committee** means the Australian Health Practitioner Regulation Agency Management Committee established by section 29;

**appropriate professional indemnity insurance arrangements**, in relation to a registered health practitioner, means professional indemnity insurance arrangements that comply with an approved registration standard for the health profession in which the practitioner is registered;

**approved accreditation standard** means an accreditation standard —

- (a) approved by a National Board under section 47(3); and
- (b) published on the Board's website under section 47(6);

**approved area of practice**, for a health profession, means an area of practice approved under section 15 for the profession;

**approved programme of study**, for a health profession or for endorsement of registration in a health profession, means an accredited programme of study —

- (a) approved under section 49(1) by the National Board established for the health profession; and

- (b) included in the list published by the National Agency under section 49(5);

***approved qualification*** —

- (a) for a health profession, means a qualification obtained by completing an approved programme of study for the profession; and
- (b) for endorsement of registration in a health profession, means a qualification obtained by completing an approved programme of study relevant to the endorsement;

***approved registration standard*** means a registration standard —

- (a) approved by the Ministerial Council under section 12; and
- (b) published on the website of the National Board that developed the standard;

***Australian legal practitioner*** means a person who —

- (a) is admitted to the legal profession under the law of a State or Territory; and
- (b) holds a current practising certificate under a law of a State or Territory authorising the person to practise the legal profession;

***COAG Agreement*** means the agreement for a national registration and accreditation scheme for health professions, made on 26 March 2008 between the Commonwealth, the States, the Australian Capital Territory and the Northern Territory;

Note: A copy of the COAG Agreement is available on the Council of Australian Governments' website.

***co-regulatory authority***, for a co-regulatory jurisdiction, means an entity that is declared by the Act applying this Law in the co-regulatory jurisdiction to be a co-regulatory authority for the purposes of this Law;

***co-regulatory jurisdiction*** means a participating jurisdiction in which the Act applying this Law declares that the jurisdiction is not participating in the health, performance and conduct process provided by Part 8 Divisions 3 to 12;

**corresponding prior Act** means a law of a participating jurisdiction that —

- (a) was in force before the day on which the jurisdiction became a participating jurisdiction; and
- (b) established an entity having functions that included —
  - (i) the registration of persons as health practitioners; or
  - (ii) health, conduct or performance action;

**criminal history**, of a person, means the following —

- (a) every conviction of the person for an offence, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this Law;
- (b) every plea of guilty or finding of guilt by a court of the person for an offence, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this Law and whether or not a conviction is recorded for the offence;
- (c) every charge made against the person for an offence, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this Law;

**criminal history law** means a law of a participating jurisdiction that provides that spent or other convictions do not form part of a person's criminal history and prevents or does not require the disclosure of those convictions;

**CrimTrac** means the CrimTrac agency established under the *Public Service Act 1999* (Commonwealth) section 65;

**division**, of a health profession, means a part of a health profession for which a Division is included in the National Register kept for the profession;

**education provider** means —

- (a) a university; or
- (b) a tertiary education institution, or another institution or organisation, that provides vocational training; or
- (c) a specialist medical college or other health profession college;

**entity** includes a person and an unincorporated body;

*exercise* a function includes perform a duty;

*external accreditation entity* means an entity, other than a committee established by a National Board, that exercises an accreditation function;

*health assessment* means an assessment of a person to determine whether the person has an impairment and includes a medical, physical, psychiatric or psychological examination or test of the person;

*health complaints entity* means an entity —

- (a) that is established by or under an Act of a participating jurisdiction; and
- (b) whose functions include conciliating, investigating and resolving complaints made against health service providers and investigating failures in the health system;

*health, conduct or performance action* means action that —

- (a) a National Board or an adjudication body may take in relation to a registered health practitioner or student at the end of a proceeding under Part 8; or
- (b) a co-regulatory authority or an adjudication body may take in relation to a registered health practitioner or student at the end of a proceeding that, under the law of a co-regulatory jurisdiction, substantially corresponds to a proceeding under Part 8;

*health panel* means a panel established under section 181;

*health practitioner* means an individual who practises a health profession;

*health profession* means the following professions, and includes a recognised specialty in any of the following professions —

- (a) Aboriginal and Torres Strait Islander health practice;
- (b) Chinese medicine;
- (c) chiropractic;
- (d) dental (including the profession of a dentist, dental therapist, dental hygienist, dental prosthetist and oral health therapist);
- (e) medical;
- (f) medical radiation practice;



- (g) nursing and midwifery;
- (h) occupational therapy;
- (i) optometry;
- (j) osteopathy;
- (k) pharmacy;
- (l) physiotherapy;
- (m) podiatry;
- (n) psychology;

Note: See Division 15 of Part 12 which provides for a staged commencement of the application of this Law to the Aboriginal and Torres Strait Islander health practice, Chinese medicine, medical radiation practice and occupational therapy professions.

***health profession agreement*** has the meaning given by section 26;

***health programme*** means a programme providing education, prevention, early intervention, treatment or rehabilitation services relating to physical or mental impairments, disabilities, conditions or disorders, including substance abuse or dependence;

***health service*** includes the following services, whether provided as public or private services —

- (a) services provided by registered health practitioners;
- (b) hospital services;
- (c) mental health services;
- (d) pharmaceutical services;
- (e) ambulance services;
- (f) community health services;
- (g) health education services;
- (h) welfare services necessary to implement any services referred to in paragraphs (a) to (g);
- (i) services provided by dietitians, masseurs, naturopaths, social workers, speech pathologists, audiologists or audiometrists;
- (j) pathology services;

***health service provider*** means a person who provides a health service;

***impairment***, in relation to a person, means the person has a physical or mental impairment, disability, condition or disorder (including substance abuse or dependence) that detrimentally affects or is likely to detrimentally affect —

- (a) for a registered health practitioner or an applicant for registration in a health profession, the person's capacity to practise the profession; or
- (b) for a student, the student's capacity to undertake clinical training —
  - (i) as part of the approved programme of study in which the student is enrolled; or
  - (ii) arranged by an education provider;

***local registration authority*** means an entity having functions under a law of a State or Territory that include the registration of persons as health practitioners;

***mandatory notification*** means a notification an entity is required to make to the National Agency under Part 8 Division 2;

***medical practitioner*** means a person who is registered under this Law in the medical profession;

***Ministerial Council*** means the Australian Health Workforce Ministerial Council comprising Ministers of the governments of the participating jurisdictions and the Commonwealth with portfolio responsibility for health;

***National Agency*** means the Australian Health Practitioner Regulation Agency established by section 23;

***National Board*** means a National Health Practitioner Board established by section 31;

***National Register*** means the Register kept by a National Board under section 222;

***national registration and accreditation scheme*** means the scheme —

- (a) referred to in the COAG Agreement; and
- (b) established by this Law;

***notification*** means —

- (a) a mandatory notification; or
- (b) a voluntary notification;



practitioner of an equivalent level of training or experience;  
and

- (c) conduct of the practitioner, whether occurring in connection with the practice of the health practitioner's profession or not, that is inconsistent with the practitioner being a fit and proper person to hold registration in the profession;

***programme of study*** means a programme of study provided by an education provider;

***psychologist*** means a person registered under this Law in the psychology profession;

***public health facility*** includes —

- (a) a public hospital; and
- (b) a public health, teaching or research facility;

***recognised specialty*** means a specialty in a health profession that has been approved by the Ministerial Council under section 13(2);

***registered health practitioner*** means an individual who —

- (a) is registered under this Law to practise a health profession, other than as a student; or
- (b) holds non-practicing registration under this Law in a health profession;

***registration authority*** means —

- (a) a local registration authority; or
- (b) an entity of a jurisdiction outside Australia that has responsibility for registering health practitioners in that jurisdiction;

***registration standard*** means a registration standard developed by a National Board under section 38;

***registration status***, in relation to an applicant for registration, includes —

- (a) any undertakings given by the applicant to a registration authority, whether before or after the commencement of this Law; and
- (b) any conditions previously imposed on the applicant's registration by a registration authority, whether before or after the commencement of this Law; and

- (c) any decisions made by a registration authority, a tribunal, a court or another entity having functions relating to the regulation of health practitioners about the applicant's practice of the profession, whether before or after the commencement of this Law; and
- (d) any investigation commenced by a registration authority or a health complaints entity into the applicant's conduct, performance or possible impairment but not finalised at the time of the application;

**relevant action**, for Part 8 Division 10, see section 178;

**relevant fee**, for a service provided by a National Board, means the fee —

- (a) set under a health profession agreement between the Board and the National Agency for the service; and
- (b) published on the Board's website under section 26(3);

**responsible Minister** means a Minister responsible for the administration of this Law in a participating jurisdiction;

**responsible tribunal** means a tribunal or court that —

- (a) is declared, by the Act applying this Law in a participating jurisdiction, to be the responsible tribunal for that jurisdiction for the purposes of this Law as applied in that jurisdiction; or
- (b) is declared, by a law that substantially corresponds to this Law enacted in a participating jurisdiction, to be the responsible tribunal for that jurisdiction for the purposes of the law of that jurisdiction;

**review period**, for a condition or undertaking, means the period during which the condition may not be changed or removed, or the undertaking may not be changed or revoked, under section 125, 126 or 127;

**scheduled medicine** means a substance included in a Schedule to the current Poisons Standard within the meaning of the *Therapeutic Goods Act 1989* (Commonwealth);

**specialist health practitioner** means a person registered under this Law in a recognised specialty;

**specialist title**, in relation to a recognised specialty, means a title that is approved by the Ministerial Council under section 13 as being a specialist title for that recognised specialty;

**Specialists Register** means a register kept by a National Board under section 223;

**State or Territory Board** has the meaning given by section 36;

**student** means a person whose name is entered in a student register as being currently registered under this Law;

**student register**, for a health profession, means a register kept under section 229 by the National Board established for the profession;

**unprofessional conduct**, of a registered health practitioner, means professional conduct that is of a lesser standard than that which might reasonably be expected of the health practitioner by the public or the practitioner's professional peers, and includes —

- (a) a contravention by the practitioner of this Law, whether or not the practitioner has been prosecuted for, or convicted of, an offence in relation to the contravention; and
- (b) a contravention by the practitioner of —
  - (i) a condition to which the practitioner's registration was subject; or
  - (ii) an undertaking given by the practitioner to the National Board that registers the practitioner;and
- (c) the conviction of the practitioner for an offence under another Act, the nature of which may affect the practitioner's suitability to continue to practise the profession; and
- (d) providing a person with health services of a kind that are excessive, unnecessary or otherwise not reasonably required for the person's well-being; and
- (e) influencing, or attempting to influence, the conduct of another registered health practitioner in a way that may compromise patient care; and
- (f) accepting a benefit as inducement, consideration or reward for referring another person to a health service provider or recommending another person use or consult with a health service provider; and

- (g) offering or giving a person a benefit, consideration or reward in return for the person referring another person to the practitioner or recommending to another person that the person use a health service provided by the practitioner; and
- (h) referring a person to, or recommending that a person use or consult, another health service provider, health service or health product if the practitioner has a pecuniary interest in giving that referral or recommendation, unless the practitioner discloses the nature of that interest to the person before or at the time of giving the referral or recommendation;

***unsatisfactory professional performance***, of a registered health practitioner, means the knowledge, skill or judgment possessed, or care exercised by, the practitioner in the practice of the health profession in which the practitioner is registered is below the standard reasonably expected of a health practitioner of an equivalent level of training or experience;

***voluntary notification*** means a notification made under Part 8 Division 3.

**6. Interpretation generally**

Schedule 7 applies in relation to this Law.

**7. Single national entity**

- (1) It is the intention of the Parliament of this jurisdiction that this Law as applied by an Act of this jurisdiction, together with this Law as applied by Acts of the other participating jurisdictions, has the effect that an entity established by this Law is one single national entity, with functions conferred by this Law as so applied.
- (2) An entity established by this Law has power to do acts in or in relation to this jurisdiction in the exercise of a function expressed to be conferred on it by this Law as applied by Acts of each participating jurisdiction.
- (3) An entity established by this Law may exercise its functions in relation to —
  - (a) one participating jurisdiction; or

(b) 2 or more or all participating jurisdictions collectively.

- (4) In this section, a reference to this Law as applied by an Act of a jurisdiction includes a reference to a law that substantially corresponds to this Law enacted in a jurisdiction.

**8. Extraterritorial operation of Law**

It is the intention of the Parliament of this jurisdiction that the operation of this Law is to, as far as possible, include operation in relation to the following —

- (a) things situated in or outside the territorial limits of this jurisdiction;
- (b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of this jurisdiction;
- (c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Law, be governed or otherwise affected by the law of another jurisdiction.

**9. Trans-Tasman mutual recognition principle**

This Law does not affect the operation of an Act of a participating jurisdiction providing for the application of the Trans-Tasman mutual recognition principle to occupations.

**10. Law binds the State**

- (1) This Law binds the State.
- (2) In this section —

**State** means the Crown in right of this jurisdiction, and includes —

- (a) the Government of this jurisdiction; and
- (b) a Minister of the Crown in right of this jurisdiction; and
- (c) a statutory corporation, or other entity, representing the Crown in right of this jurisdiction.



**Part 2 — Ministerial Council**

**11. Policy directions**

- (1) The Ministerial Council may give directions to the National Agency about the policies to be applied by the National Agency in exercising its functions under this Law.
- (2) The Ministerial Council may give directions to a National Board about the policies to be applied by the National Board in exercising its functions under this Law.
- (3) Without limiting subsections (1) and (2), a direction under this section may relate to —
  - (a) a matter relevant to the policies of the National Agency or a National Board; or
  - (b) an administrative process of the National Agency or a National Board; or
  - (c) a procedure of the National Agency or a National Board; or
  - (d) a particular proposed accreditation standard, or a particular proposed amendment of an accreditation standard, for a health profession.
- (4) However, the Ministerial Council may give a National Board a direction under subsection (3)(d) only if —
  - (a) in the Council’s opinion, the proposed accreditation standard or amendment will have a substantive and negative impact on the recruitment or supply of health practitioners; and
  - (b) the Council has first given consideration to the potential impact of the Council’s direction on the quality and safety of health care.
- (5) A direction under this section cannot be about —
  - (a) a particular person; or
  - (b) a particular qualification; or
  - (c) a particular application, notification or proceeding.

- (6) The National Agency or a National Board must comply with a direction given to it by the Ministerial Council under this section.

**12. Approval of registration standards**

- (1) The Ministerial Council may approve a registration standard about —
- (a) the registration, or renewal of registration, of persons in a health profession; or
  - (b) the endorsement, or renewal of the endorsement, of the registration of registered health practitioners.
- (2) The Ministerial Council may approve a registration standard for a health profession only if —
- (a) its approval is recommended by the National Board established for the health profession; and
  - (b) it does not provide for a matter about which an accreditation standard may provide.

Note: An accreditation standard for a health profession is a standard used to assess whether a programme of study, and the education provider that provides the programme, provide persons who complete the programme with the knowledge, skills and professional attributes to practise the profession in Australia. Accreditation standards are developed and approved under Division 3 of Part 6.

- (3) The Ministerial Council may, at any time, ask a National Board to review an approved or proposed registration standard for the health profession for which the National Board is established.

**13. Approvals in relation to specialist registration**

- (1) The following health professions, or divisions of health professions, are health professions for which specialist recognition operates under this Law —
- (a) the medical profession;
  - (b) the dentists division of the dental profession;
  - (c) any other health profession approved by the Ministerial Council, on the recommendation of the National Board established for the profession.

- (2) If a health profession is a profession for which specialist recognition operates, the Ministerial Council may, on the recommendation of the National Board established for the profession —
  - (a) approve a list of specialties for the profession; and
  - (b) approve one or more specialist titles for each specialty in the list.
- (3) In making a recommendation to the Ministerial Council for the purposes of subsection (1)(c) or (2), a National Board established for a health profession may have regard to any relevant advice provided by —
  - (a) an accreditation authority for the profession; or
  - (b) a specialist college for the profession.
- (4) The Ministerial Council may provide guidance to a National Board established for a health profession for which specialist recognition will operate in relation to the criteria for the approval of specialties for the profession by the Council.

**14. Approval of endorsement in relation to scheduled medicines**

- (1) The Ministerial Council may, on the recommendation of a National Board, decide that the Board may endorse the registration of health practitioners practising the profession for which the Board is established as being qualified to administer, obtain, possess, prescribe, sell, supply or use a scheduled medicine or class of scheduled medicines.

Note: See section 94 which provides for the endorsement of health practitioners' registration in relation to scheduled medicines.

- (2) An approval under subsection (1) is to specify —
  - (a) the class of health practitioners registered by the Board to which the approval relates; and
  - (b) whether the National Board may endorse the registration of the class of health practitioners as being qualified in relation to a particular scheduled medicine or a class of scheduled medicines; and
  - (c) whether the National Board may endorse the registration of the class of health practitioners in relation to administering,

obtaining, possessing, prescribing, selling, supplying or using the scheduled medicine or class of scheduled medicines.

**15. Approval of areas of practice for purposes of endorsement**

The Ministerial Council may, on the recommendation of a National Board, approve an area of practice in the health profession for which the Board is established as being an area of practice for which the registration of a health practitioner registered in the profession may be endorsed.

Note: See section 98 which provides for the endorsement of health practitioners' registration in relation to approved areas of practice.

**16. How Ministerial Council exercises functions**

- (1) The Ministerial Council is to give a direction or approval, or make a recommendation, request or appointment, for the purposes of a provision of this Law by resolution of the Council passed in accordance with procedures determined by the Council.
- (2) An act or thing done by the Ministerial Council (whether by resolution, instrument or otherwise) does not cease to have effect merely because of a change in the Council's membership.

**17. Notification and publication of directions and approvals**

- (1) A copy of any direction given by the Ministerial Council to the National Agency —
  - (a) is to be given to the Chairperson of the Agency Management Committee; and
  - (b) must be published by the National Agency on its website as soon as practicable after being received by the Chairperson.
- (2) A copy of a direction or approval given by the Ministerial Council to a National Board —
  - (a) is to be given to the Chairperson of the National Board; and
  - (b) if the direction is given under section 11(3)(d), is to include reasons for the direction; and
  - (c) must be published by the National Board on its website as soon as practicable after being received by the Chairperson.



**Part 3 — Australian Health Workforce Advisory Council**

**18. Establishment of Advisory Council**

The Australian Health Workforce Advisory Council is established.

**19. Function of Advisory Council**

- (1) The function of the Advisory Council is to provide independent advice to the Ministerial Council about the following —
  - (a) any matter relating to the national registration and accreditation scheme that is referred to it by the Ministerial Council;
  - (b) if asked by the Ministerial Council, any matter relating to the national registration and accreditation scheme on which the Ministerial Council has been unable to reach a decision;
  - (c) any other matter relating to the national registration and accreditation scheme that it considers appropriate.
- (2) Advice under this section cannot be about —
  - (a) a particular person; or
  - (b) a particular qualification; or
  - (c) a particular application, notification or proceeding.

**20. Publication of advice**

- (1) The Ministerial Council is to make arrangements for the publication of advice given to it by the Advisory Council as soon as practicable after the Ministerial Council has had the opportunity to consider the advice, in accordance with the COAG Agreement.
- (2) However, the Ministerial Council may decide not to publish an advice or part of an advice if the Advisory Council recommends that the Council not publish it in the interests of protecting the privacy of any person.

**21. Powers of Advisory Council**

The Advisory Council has the powers necessary to enable it to exercise its function.



**Part 4 — Australian Health Practitioner Regulation Agency**

**Division 1 — National Agency**

**23. National Agency**

- (1) The Australian Health Practitioner Regulation Agency is established.
- (2) The National Agency —
  - (a) is a body corporate with perpetual succession; and
  - (b) has a common seal; and
  - (c) may sue and be sued in its corporate name.
- (3) The National Agency represents the State.
- (4) Schedule 3 sets out provisions relating to the National Agency.

**24. General powers of National Agency**

The National Agency has all the powers of an individual and, in particular, may —

- (a) enter into contracts; and
- (b) acquire, hold, dispose of, and deal with, real and personal property; and
- (c) do anything necessary or convenient to be done in the exercise of its functions.

**25. Functions of National Agency**

The functions of the National Agency are as follows —

- (a) to provide administrative assistance and support to the National Boards, and the Boards' committees, in exercising their functions;
- (b) in consultation with the National Boards, to develop and administer procedures for the purpose of ensuring the efficient and effective operation of the National Boards;
- (c) to establish procedures for the development of accreditation standards, registration standards and codes and guidelines approved by National Boards, for the purpose of ensuring the





**26. Health profession agreements**

- (1) The National Agency must enter into an agreement (a *health profession agreement*) with a National Board that makes provision for the following —
  - (a) the fees that will be payable under this Law by health practitioners and others in respect of the health profession for which the Board is established (including arrangements relating to refunds of fees, waivers of fees and additional fees for late payment);
  - (b) the annual budget of the National Board (including the funding arrangements for its committees and accreditation authorities);
  - (c) the services to be provided to the National Board by the National Agency to enable the National Board to carry out its functions under this Law.
- (2) If the National Agency and a National Board are unable to agree on a matter relating to a health profession agreement or a proposed health profession agreement, the Ministerial Council may give directions to the National Agency and National Board about how the dispute is to be resolved.
- (3) Each National Board must publish on its website the fees for which provision has been made in a health profession agreement between the Board and the National Agency.

**27. Cooperation with participating jurisdictions and Commonwealth**

- (1) The National Agency may exercise any of its functions in cooperation with or with the assistance of a participating jurisdiction or the Commonwealth, including in cooperation with or with the assistance of any of the following —
  - (a) a government agency of a participating jurisdiction or of the Commonwealth;
  - (b) a local registration authority;
  - (c) a co-regulatory authority;
  - (d) a health complaints entity;



- (c) at least 2 others are to be persons who are not current or former registered health practitioners and who have business or administrative expertise.
- (4) Schedule 2 sets out provisions relating to the Agency Management Committee.

**30. Functions of Agency Management Committee**

- (1) The functions of the Agency Management Committee are as follows —
  - (a) subject to any directions of the Ministerial Council, to decide the policies of the National Agency;
  - (b) to ensure that the National Agency performs its functions in a proper, effective and efficient way;
  - (c) any other function given to the Committee by or under this Law.
- (2) The affairs of the National Agency are to be controlled by the Agency Management Committee and all acts and things done in the name of, or on behalf of, the National Agency by or with the authority of the Agency Management Committee are taken to have been done by the National Agency.



<b>Name of Board</b>	<b>Health profession</b>
Optometry Board of Australia	optometry
Osteopathy Board of Australia	osteopathy
Pharmacy Board of Australia	pharmacy
Physiotherapy Board of Australia	physiotherapy
Podiatry Board of Australia	podiatry
Psychology Board of Australia	psychology

- (2) A National Board —
- (a) is a body corporate with perpetual succession; and
  - (b) has a common seal; and
  - (c) may sue and be sued in its corporate name.

- (3) A National Board represents the State.

**32. Powers of National Board**

- (1) Subject to subsection (2), a National Board has the powers necessary to enable it to exercise its functions.
- (2) A National Board does not have power to —
- (a) enter into contracts; or
  - (b) employ staff; or
  - (c) acquire, hold, dispose of, and deal with, real property.
- (3) The National Board may exercise any of its functions in cooperation with or with the assistance of a participating jurisdiction or the Commonwealth, including in cooperation with or with the assistance of any of the following —
- (a) a government agency of a participating jurisdiction or of the Commonwealth;
  - (b) a local registration authority;

- (c) a co-regulatory authority;
  - (d) a health complaints entity;
  - (e) an educational body or other body established by or under a law of a participating jurisdiction or the Commonwealth.
- (4) In particular, the National Board may —
- (a) ask an entity referred to in subsection (3) for information that the Board requires to exercise its functions under this Law; and
  - (b) use the information to exercise its functions under this Law.
- (5) An entity referred to in subsection (3) that receives a request for information from the National Board is authorised to give the information to the National Board.

**33. Membership of National Boards**

- (1) A National Board is to consist of members appointed in writing by the Ministerial Council.
- (2) Members of a National Board are to be appointed as practitioner members or community members.
- (3) Subject to this section, the Ministerial Council may decide the size and composition of a National Board.
- (4) At least half, but not more than two-thirds, of the members of a National Board must be persons appointed as practitioner members.
- (5) The practitioner members of a National Board must consist of —
  - (a) at least one member from each large participating jurisdiction; and
  - (b) at least one member from a small participating jurisdiction.
- (6) At least 2 of the members of a National Board must be persons appointed as community members.
- (7) At least one of the members of a National Board must live in a regional or rural area.
- (8) A person cannot be appointed as a member of a National Board if the person is a member of the Agency Management Committee.

- (9) One of the practitioner members of the National Board is to be appointed as Chairperson of the Board by the Ministerial Council.
- (10) Schedule 4 sets out provisions relating to a National Board.
- (11) In this section —
- large participating jurisdiction*** means any of the following States that is a participating jurisdiction —
- (a) New South Wales;
  - (b) Queensland;
  - (c) South Australia;
  - (d) Victoria;
  - (e) Western Australia;
- small participating jurisdiction*** means any of the following States or Territories that is a participating jurisdiction —
- (a) the Australian Capital Territory;
  - (b) the Northern Territory;
  - (c) Tasmania.

**34. Eligibility for appointment**

- (1) In deciding whether to appoint a person as a member of a National Board, the Ministerial Council is to have regard to the skills and experience of the person that are relevant to the Board's functions.
- (2) A person is eligible to be appointed as a practitioner member only if the person is a registered health practitioner in the health profession for which the Board is established.
- (3) A person is eligible to be appointed as a community member of a National Board only if the person —
- (a) is not a registered health practitioner in the health profession for which the Board is established; and
  - (b) has not at any time been registered as a health practitioner in the health profession under this Law or a corresponding prior Act.



- (4) A person is not eligible to be appointed as a member of a National Board if —
- (a) in the case of appointment as a practitioner member, the person has ceased to be registered as a health practitioner in the health profession for which the Board is established, whether before or after the commencement of this Law, as a result of the person's misconduct, impairment or incompetence; or
  - (b) in any case, the person has, at any time, been found guilty of an offence (whether in a participating jurisdiction or elsewhere) that, in the opinion of the Ministerial Council, renders the person unfit to hold the office of member.

**Division 2 — Functions of National Boards**

**35. Functions of National Boards**

- (1) The functions of a National Board established for a health profession are as follows —
- (a) to register suitably qualified and competent persons in the health profession and, if necessary, to impose conditions on the registration of persons in the profession;
  - (b) to decide the requirements for registration or endorsement of registration in the health profession, including the arrangements for supervised practice in the profession;
  - (c) to develop or approve standards, codes and guidelines for the health profession, including —
    - (i) the approval of accreditation standards developed and submitted to it by an accreditation authority; and
    - (ii) the development of registration standards for approval by the Ministerial Council; and
    - (iii) the development and approval of codes and guidelines that provide guidance to health practitioners registered in the profession;
  - (d) to approve accredited programmes of study as providing qualifications for registration or endorsement in the health profession;

- (e) to oversee the assessment of the knowledge and clinical skills of overseas trained applicants for registration in the health profession whose qualifications are not approved qualifications for the profession, and to determine the suitability of the applicants for registration in Australia;
- (f) to negotiate in good faith with, and attempt to come to an agreement with, the National Agency on the terms of a health profession agreement;
- (g) to oversee the receipt, assessment and investigation of notifications about persons who —
  - (i) are or were registered as health practitioners in the health profession under this Law or a corresponding prior Act; or
  - (ii) are students in the health profession;
- (h) to establish panels to conduct hearings about —
  - (i) health and performance and professional standards matters in relation to persons who are or were registered in the health profession under this Law or a corresponding prior Act; and
  - (ii) health matters in relation to students registered by the Board;
- (i) to refer matters about health practitioners who are or were registered under this Law or a corresponding prior Act to responsible tribunals for participating jurisdictions;
- (j) to oversee the management of health practitioners and students registered in the health profession, including monitoring conditions, undertaking and suspensions imposed on the registration of the practitioners or students;
- (k) to make recommendations to the Ministerial Council about the operation of specialist recognition in the health profession and the approval of specialties for the profession;
- (l) in conjunction with the National Agency, to keep up-to-date and publicly accessible national registers of registered health practitioners for the health profession;

- (m) in conjunction with the National Agency, to keep an up-to-date national register of students for the health profession;
  - (n) at the Board's discretion, to provide financial or other support for health programmes for registered health practitioners and students;
  - (o) to give advice to the Ministerial Council on issues relating to the national registration and accreditation scheme for the health profession;
  - (p) if asked by the Ministerial Council, to give to the Ministerial Council the assistance or information reasonably required by the Ministerial Council in connection with the national registration and accreditation scheme;
  - (q) to do anything else necessary or convenient for the effective and efficient operation of the national registration and accreditation scheme;
  - (r) any other function given to the Board by or under this Law.
- (2) For the purposes of subsection (1)(g) to (j), the Board's functions do not include receiving notifications and taking action referred to in those paragraphs in relation to behaviour by a registered health practitioner or student that occurred, or is reasonably believed to have occurred, in a co-regulatory jurisdiction.

**36. State and Territory Boards**

- (1) A National Board may establish a committee (a ***State or Territory Board***) for a participating jurisdiction to enable the Board to exercise its functions in the jurisdiction in a way that provides an effective and timely local response to health practitioners and other persons in the jurisdiction.
- (2) A State or Territory Board is to be known as the "[Name of participating jurisdiction for which it is established] Board" of the National Board.
- (3) The members of a State or Territory Board are to be appointed by the responsible Minister for the participating jurisdiction.

**Example:**

- (a) The Pharmacy Board of Australia decides to establish a State or Territory Board for New South Wales. The State or Territory Board will be known as the New South Wales Board of the Pharmacy Board of Australia. The members of the State or Territory Board will be appointed by the responsible Minister for New South Wales.
  - (b) The Podiatry Board of Australia decides to establish a State or Territory Board for Queensland and the Northern Territory. The State or Territory Board will be known as the Queensland and Northern Territory Board of the Podiatry Board of Australia. The members of the State or Territory Board will be appointed jointly by the responsible Ministers for Queensland and the Northern Territory.
- (4) In deciding whether to appoint a person as a member of a State or Territory Board, the responsible Minister is to have regard to the skills and experience of the person that are relevant to the Board's functions.
- (5) At least half, but not more than two-thirds, of the members of a State or Territory Board must be persons appointed as practitioner members.
- (6) At least 2 of the members of a State or Territory Board must be persons appointed as community members.
- Note: See section 299 which provides that subsections (5) and (6) do not apply to a State or Territory Board for a jurisdiction for the first 12 months after the jurisdiction becomes a participating jurisdiction.
- (7) Before a responsible Minister appoints a member of a State or Territory Board the vacancy to be filled is to be publicly advertised.
- (8) The National Agency may assist a responsible Minister in the process of appointing members of a State or Territory Board, including in the advertising of vacancies.
- (9) It is not necessary to advertise a vacancy in the membership of a State or Territory Board before appointing a person to act in the office of a member.

Note: The general interpretation provisions applicable to this Law under section 6 confer power to appoint acting members of a State or Territory Board.

- (10) This section does not limit Schedule 4 clause 11.

Note: Schedule 4 clause 11 confers power for the establishment of other committees.

**37. Delegation of functions**

- (1) A National Board may delegate any of its functions, other than this power of delegation, to —
- (a) a committee; or
  - (b) the National Agency; or
  - (c) a member of the staff of the National Agency; or
  - (d) a person engaged as a contractor by the National Agency.
- (2) The National Agency may subdelegate any function delegated to the National Agency by a National Board to a member of the staff of the National Agency.

**Division 3 — Registration standards and codes and guidelines**

**38. National Board must develop registration standards**

- (1) A National Board must develop and recommend to the Ministerial Council one or more registration standards about the following matters for the health profession for which the Board is established —
- (a) requirements for professional indemnity insurance arrangements for registered health practitioners registered in the profession;
  - (b) matters about the criminal history of applicants for registration in the profession, and registered health practitioners and students registered by the Board, including, the matters to be considered in deciding whether an individual's criminal history is relevant to the practice of the profession;
  - (c) requirements for continuing professional development for registered health practitioners registered in the profession;

- (d) requirements about the English language skills necessary for an applicant for registration in the profession to be suitable for registration in the profession;
  - (e) requirements in relation to the nature, extent, period and recency of any previous practice of the profession by applicants for registration in the profession.
- (2) Subject to subsection (3), a National Board may also develop, and recommend to the Ministerial Council, one or more registration standards about the following —
- (a) the physical and mental health of —
    - (i) applicants for registration in the profession; and
    - (ii) registered health practitioners and students;
  - (b) the scope of practice of health practitioners registered in the profession;
  - (c) any other issue relevant to the eligibility of individuals for registration in the profession or the suitability of individuals to competently and safely practise the profession.
- (3) A registration standard may not be about a matter for which an accreditation standard may provide.

**Note:** An accreditation standard for a health profession is used to assess whether a programme of study, and the education provider that provides the programme of study, provide persons who complete the programme with the knowledge, skills and professional attributes to practise the profession. Accreditation standards are developed and approved under Division 3 of Part 6.

### **39. Codes and guidelines**

A National Board may develop and approve codes and guidelines —

- (a) to provide guidance to the health practitioners it registers; and
- (b) about other matters relevant to the exercise of its functions.

**Example:** A National Board may develop guidelines about the advertising of regulated health services by health practitioners registered by the Board or other persons for the purposes of section 133.

**40. Consultation about registration standards, codes and guidelines**

- (1) If a National Board develops a registration standard or a code or guideline, it must ensure there is wide-ranging consultation about its content.
- (2) A contravention of subsection (1) does not invalidate a registration standard, code or guideline.
- (3) The following must be published on a National Board's website —
  - (a) a registration standard developed by the Board and approved by the Ministerial Council;
  - (b) a code or guideline approved by the National Board.
- (4) An approved registration standard or a code or guideline takes effect —
  - (a) on the day it is published on the National Board's website; or
  - (b) if a later day is stated in the registration standard, code or guideline, on that day.

**41. Use of registration standards, codes or guidelines in disciplinary proceedings**

An approved registration standard for a health profession, or a code or guideline approved by a National Board, is admissible in proceedings under this Law or a law of a co-regulatory jurisdiction against a health practitioner registered by the Board as evidence of what constitutes appropriate professional conduct or practice for the health profession.

## **Part 6 — Accreditation**

### **Division 1 — Preliminary**

**42. Term used: accreditation function**

In this Part —

*accreditation function* means —

- (a) developing accreditation standards for approval by a National Board; or
- (b) assessing programmes of study, and the education providers that provide the programmes of study, to determine whether the programmes meet approved accreditation standards; or
- (c) assessing authorities in other countries who conduct examinations for registration in a health profession, or accredit programmes of study relevant to registration in a health profession, to decide whether persons who successfully complete the examinations or programmes of study conducted or accredited by the authorities have the knowledge, clinical skills and professional attributes necessary to practise the profession in Australia; or
- (d) overseeing the assessment of the knowledge, clinical skills and professional attributes of overseas qualified health practitioners who are seeking registration in a health profession under this Law and whose qualifications are not approved qualifications for the health profession; or
- (e) making recommendations and giving advice to a National Board about a matter referred to in paragraph (a), (b), (c) or (d).

### **Division 2 — Accreditation authorities**

**43. Accreditation authority to be decided**

- (1) The National Board established for a health profession must decide whether an accreditation function for the health profession for which the Board is established is to be exercised by —
  - (a) an external accreditation entity; or



- (b) a committee established by the Board.

Note: See sections 253 and 301 which provide for the performance of accreditation functions for a health profession by external accreditation authorities appointed by the Ministerial Council for a period after the commencement of this Law.

- (2) The National Agency may charge an entity the relevant fee for the exercise of an accreditation function by an accreditation committee.

**44. National Agency may enter into contracts with external accreditation entities**

The National Agency may enter into a contract with an external accreditation entity for the performance by the entity of an accreditation function for a health profession only if the terms of the contract are in accordance with the health profession agreement between the National Agency and the National Board established for that profession.

**45. Accreditation processes to be published**

Each accreditation authority must publish on its website or, if the authority is an accreditation committee, the website of the National Board that established the committee, how it will exercise its accreditation function.

**Division 3 — Accreditation functions**

**46. Development of accreditation standards**

- (1) An accreditation standard for a health profession may be developed by —
- (a) an external accreditation entity for the health profession; or
  - (b) an accreditation committee established by the National Board established for the health profession.
- (2) In developing an accreditation standard for a health profession, an accreditation authority must undertake wide-ranging consultation about the content of the standard.

**47. Approval of accreditation standards**

- (1) An accreditation authority must, as soon as practicable after developing an accreditation standard for a health profession, submit it to the National Board established for the health profession.
- (2) As soon as practicable after a National Board receives an accreditation standard under subsection (1), the Board must decide to —
  - (a) approve the accreditation standard; or
  - (b) refuse to approve the accreditation standard; or
  - (c) ask the accreditation authority to review the standard.
- (3) If the National Board decides to approve the accreditation standard it must give written notice of the approval to —
  - (a) the National Agency; and
  - (b) the accreditation authority that submitted the standard to the Board.
- (4) If the National Board decides to refuse to approve the accreditation standard —
  - (a) it must give written notice of the refusal, including the reasons for the refusal, to the accreditation authority that submitted the standard; and
  - (b) the accreditation authority is entitled to publish any information or advice it gave the Board about the standard.
- (5) If the National Board decides to ask the accreditation authority to review the standard it must give the authority a written notice that —
  - (a) states that the authority is being asked to review the standard; and
  - (b) identifies the matters the authority is to address before again submitting the standard to the Board.
- (6) An accreditation standard approved by a National Board must be published on its website.
- (7) An accreditation standard takes effect —
  - (a) on the day it is published on the National Board's website; or

- (b) if a later day is stated in the standard, on that day.

**48. Accreditation of programmes of study**

- (1) An accreditation authority for a health profession may accredit a programme of study if, after assessing the programme, the authority is reasonably satisfied —
- (a) the programme of study, and the education provider that provides the programme of study, meet an approved accreditation standard for the profession; or
  - (b) the programme of study, and the education provider that provides the programme of study, substantially meet an approved accreditation standard for the profession and the imposition of conditions on the approval will ensure the programme meets the standard within a reasonable time.
- (2) If the accreditation authority decides to accredit a programme of study, with or without conditions, it must give to the National Board established for the health profession a report about the authority's accreditation of the programme.
- (3) If the accreditation authority decides to refuse to accredit a programme of study it must give written notice of the decision to the education provider that provides the programme of study.
- (4) The notice must state —
- (a) the reasons for the decision; and
  - (b) that, within 30 days after receiving the notice, the education provider may apply to the accreditation authority for an internal review of the decision; and
  - (c) how the education provider may apply for the review.
- (5) An education provider given a notice under subsection (3) may apply, as stated in the notice, for an internal review of the accreditation authority's decision to refuse to accredit the programme of study.
- (6) The internal review must not be carried out by a person who assessed the programme of study for the accreditation authority.

**49. Approval of accredited programmes of study**

- (1) If a National Board is given a report by an accreditation authority about the authority's accreditation of a programme of study, the Board may approve, or refuse to approve, the accredited programme of study as providing a qualification for the purposes of registration in the health profession for which the Board is established.
- (2) An approval under subsection (1) may be granted subject to the conditions the National Board considers necessary or desirable in the circumstances.
- (3) If the National Board decides to approve the accredited programme of study it must give written notice of the approval to —
  - (a) the National Agency for inclusion of the programme of study in the list under subsection (5); and
  - (b) the accreditation authority that submitted the programme to the Board.
- (4) If the National Board decides to refuse to approve the accredited programme of study —
  - (a) it must give written notice of the refusal, including the reasons for the refusal, to the accreditation authority that submitted the programme; and
  - (b) the accreditation authority is entitled to publish any information or advice it gave the Board about the programme.
- (5) A list of the programmes of study approved by a National Board as providing a qualification for registration in the health profession for which the Board is established must be published on the National Agency's website.
- (6) The list of approved programmes of study published under subsection (5) must include, for each programme of study, the name of the university, specialist medical or other college or other education provider that provides the approved programme of study.
- (7) An approval under subsection (1) does not take effect until the programme of study is included in the list published under subsection (5).

**50. Accreditation authority to monitor approved programmes of study**

- (1) The accreditation authority that accredited an approved programme of study must monitor the programme and the education provider that provides the programme to ensure the authority continues to be satisfied the programme and provider meet an approved accreditation standard for the health profession.
- (2) If the accreditation authority reasonably believes the programme of study and education provider no longer meet an approved accreditation standard for the health profession, the accreditation authority must —
  - (a) decide to —
    - (i) impose the conditions on the accreditation that the accreditation authority considers necessary to ensure the programme of study will meet the standard within a reasonable time; or
    - (ii) revoke the accreditation of the programme of study;
  - and
  - (b) give the National Board that approved the accredited programme of study written notice of the accreditation authority's decision.

**51. Changes to approval of programme of study**

- (1) If a National Board is given notice under section 50(2)(b) that an accreditation authority has revoked the accreditation of a programme of study approved by the Board, the Board's approval of the programme is taken to have been cancelled at the same time the accreditation was revoked.
- (2) If a National Board reasonably believes, because of a notice given to the Board under section 50(2)(b) or for any other reason, that an accredited programme of study approved by the Board no longer provides a qualification for the purposes of registration in the health profession for which the Board is established, the Board may decide to —
  - (a) impose the conditions the Board considers necessary or desirable on the approval of the accredited programme of

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study to ensure the programme provides a qualification for the purposes of registration; or

- (b) cancel its approval of the accredited programme of study.
- (3) If a National Board makes a decision under subsection (2), it must give written notice of the decision, including the reasons for the decision, to the accreditation authority that accredited the programme.



**53. Qualifications for general registration**

An individual is qualified for general registration in a health profession if —

- (a) the individual holds an approved qualification for the health profession; or
- (b) the individual holds a qualification the National Board established for the health profession considers to be substantially equivalent, or based on similar competencies, to an approved qualification; or
- (c) the individual holds a qualification, not referred to in paragraph (a) or (b), relevant to the health profession and has successfully completed an examination or other assessment required by the National Board for the purpose of general registration in the health profession; or
- (d) the individual —
  - (i) holds a qualification, not referred to in paragraph (a) or (b), that under this Law or a corresponding prior Act qualified the individual for general registration (however described) in the health profession; and
  - (ii) was previously registered under this Law or the corresponding prior Act on the basis of holding that qualification.

**54. Examination or assessment for general registration**

For the purposes of section 52(1)(b)(ii), if a National Board requires an individual to undertake an examination or assessment, the examination or assessment must be conducted by an accreditation authority for the health profession, unless the Board decides otherwise.

**55. Unsuitability to hold general registration**

- (1) A National Board may decide an individual is not a suitable person to hold general registration in a health profession if —
  - (a) in the Board's opinion, the individual has an impairment that would detrimentally affect the individual's capacity to



- practise the profession to such an extent that it would or may place the safety of the public at risk; or
- (b) having regard to the individual's criminal history to the extent that is relevant to the individual's practice of the profession, the individual is not, in the Board's opinion, an appropriate person to practise the profession or it is not in the public interest for the individual to practise the profession; or
  - (c) the individual has previously been registered under a relevant law and during the period of that registration proceedings under Part 8, or proceedings that substantially correspond to proceedings under Part 8, were started against the individual but not finalised; or
  - (d) in the Board's opinion, the individual's competency in speaking or otherwise communicating in English is not sufficient for the individual to practise the profession; or
  - (e) the individual's registration (however described) in the health profession in a jurisdiction that is not a participating jurisdiction, whether in Australia or elsewhere, is currently suspended or cancelled on a ground for which an adjudication body could suspend or cancel a health practitioner's registration in Australia; or
  - (f) the nature, extent, period and recency of any previous practice of the profession is not sufficient to meet the requirements specified in an approved registration standard relevant to general registration in the profession; or
  - (g) the individual fails to meet any other requirement in an approved registration standard for the profession about the suitability of individuals to be registered in the profession or to competently and safely practise the profession; or
  - (h) in the Board's opinion, the individual is for any other reason —
    - (i) not a fit and proper person for general registration in the profession; or
    - (ii) unable to practise the profession competently and safely.

(2) In this section —

*relevant law* means —

- (a) this Law or a corresponding prior Act; or
- (b) the law of another jurisdiction, whether in Australia or elsewhere.

**56. Period of general registration**

- (1) The period of registration that is to apply to a health practitioner granted general registration in a health profession is the period (the *registration period*), not more than 12 months, decided by the National Board established for the profession and published on the Board's website.
- (2) If the National Board decides to register a health practitioner in the health profession during a registration period, the registration —
  - (a) starts when the Board makes the decision; and
  - (b) expires at the end of the last day of the registration period.

**Division 2 — Specialist registration**

**57. Eligibility for specialist registration**

- (1) An individual is eligible for specialist registration in a recognised specialty in a health profession if —
  - (a) the individual is qualified for registration in the specialty; and
  - (b) the individual has successfully completed —
    - (i) any period of supervised practice in the specialty required by an approved registration standard for the health profession; or
    - (ii) any examination or assessment required by an approved registration standard for the health profession to assess the individual's ability to competently and safely practise the specialty;and
  - (c) the individual is a suitable person to hold registration in the health profession; and

- (d) the individual is not disqualified under this Law or a law of a co-regulatory jurisdiction from applying for registration, or being registered, in the specialty; and
  - (e) the individual meets any other requirements for registration stated in an approved registration standard for the specialty.
- (2) Without limiting subsection (1), the National Board may decide the individual is eligible for registration in the recognised specialty by imposing conditions on the registration under section 83.

**58. Qualifications for specialist registration**

An individual is qualified for specialist registration in a recognised specialty in a health profession if the individual —

- (a) holds an approved qualification for the specialty; or
- (b) holds another qualification the National Board established for the health profession considers to be substantially equivalent, or based on similar competencies, to an approved qualification for the specialty; or
- (c) holds a qualification, not referred to in paragraph (a) or (b), relevant to the specialty and has successfully completed an examination or other assessment required by the National Board for the purpose of registration in the specialty; or
- (d) the individual —
  - (i) holds a qualification, not referred to in paragraph (a) or (b), that under this Law or a corresponding prior Act qualified the individual for specialist registration (however described) in the specialty; and
  - (ii) was previously registered under this Law or the corresponding prior Act on the basis of holding that qualification for the specialty.

**59. Examination or assessment for specialist registration**

For the purposes of section 57(1)(b)(ii), if the National Board requires an individual to undertake an examination or assessment, the examination or assessment must be conducted by an accreditation authority for the health profession, unless the Board decides otherwise.

**60. Unsuitability to hold specialist registration**

- (1) Section 55 applies to the making of a decision by a National Board that an individual is not a suitable person to hold specialist registration in a recognised specialty.
- (2) For the purposes of subsection (1), a reference in section 55 to —
  - (a) general registration in the health profession is taken to be a reference to specialist registration in a recognised specialty; and
  - (b) the health profession is taken to be a reference to the recognised specialty.

**61. Period of specialist registration**

- (1) The period of registration that is to apply to a health practitioner granted specialist registration in a recognised specialty in a health profession is the period (the *registration period*), not more than 12 months, decided by the National Board established for the profession and published on the Board's website.
- (2) If the National Board decides to register a health practitioner in a recognised specialty for the health profession during a registration period, the specialist registration —
  - (a) starts when the Board makes the decision; and
  - (b) expires at the end of the last day of the registration period.

**Division 3 — Provisional registration**

**62. Eligibility for provisional registration**

- (1) An individual is eligible for provisional registration in a health profession, to enable the individual to complete a period of supervised practice that the individual requires to be eligible for general registration in the health profession, if —
  - (a) the individual is qualified for general registration in the profession; and
  - (b) the individual is a suitable person to hold provisional registration in the profession; and

- (c) the individual is not disqualified under this Law or a law of a co-regulatory jurisdiction from applying for, or being registered in, the profession; and
  - (d) the individual meets any other requirements for registration stated in an approved registration standard for the health profession.
- (2) Without limiting subsection (1), the National Board established for the health profession may decide the individual is eligible for provisional registration in the health profession by imposing conditions on the registration under section 83.

**63. Unsuitability to hold provisional registration**

- (1) Section 55 applies to a decision by a National Board that an individual is not a suitable person to hold provisional registration in a health profession.
- (2) For the purposes of subsection (1), a reference in section 55 to general registration in the health profession is taken to be a reference to provisional registration in the health profession.

**64. Period of provisional registration**

- (1) The period of registration (the *registration period*) that is to apply to a health practitioner granted provisional registration in a health profession is —
- (a) the period decided by the National Board established for the profession, but not more than 12 months, and published on the Board's website; or
  - (b) the longer period prescribed by a regulation.
- (2) If the National Board decides to register a health practitioner in the health profession during a registration period, the registration —
- (a) starts when the Board makes the decision; and
  - (b) expires at the end of the last day of the registration period.
- (3) Provisional registration may not be renewed more than twice.

Note: If an individual were not able to complete the supervised practice the individual requires for general registration in a health profession during

the period consisting of the individual's initial period of registration and 2 renewals of that registration, the individual would need to make a new application for provisional registration in the profession.

**Division 4 — Limited registration**

**65. Eligibility for limited registration**

- (1) An individual is eligible for limited registration in a health profession if —
  - (a) the individual is not qualified for general registration in the profession or specialist registration in a recognised specialty in the profession; and
  - (b) the individual is qualified under this Division for limited registration; and
  - (c) the individual is a suitable person to hold limited registration in the profession; and
  - (d) the individual is not disqualified under this Law or a law of a co-regulatory jurisdiction from applying for registration, or being registered, in the health profession; and
  - (e) the individual meets any other requirements for registration stated in an approved registration standard for the health profession.
- (2) Without limiting subsection (1), the National Board established for the health profession may decide the individual is eligible for registration in the profession by imposing conditions on the registration under section 83.

**66. Limited registration for postgraduate training or supervised practice**

- (1) An individual may apply for limited registration to enable the individual to undertake a period of postgraduate training or supervised practice in a health profession, or to undertake assessment or sit an examination, approved by the National Board established for the profession.
- (2) The individual is qualified for the limited registration applied for if the National Board is satisfied the individual has completed a

qualification that is relevant to, and suitable for, the postgraduate training, supervised practice, assessment or examination.

**67. Limited registration for area of need**

- (1) An individual may apply for limited registration to enable the individual to practise a health profession in an area of need decided by the responsible Minister under subsection (5).
- (2) The individual is qualified for the limited registration applied for if the National Board is satisfied the individual's qualifications and experience are relevant to, and suitable for, the practice of the profession in the area of need.
- (3) The National Board must consider the application but is not required to register the individual merely because there is an area of need.
- (4) If the National Board grants the individual limited registration to enable the individual to practise the profession in the area of need, the individual must not practise the profession other than in the area of need specified in the individual's certificate of registration.
- (5) A responsible Minister for a participating jurisdiction may decide there is an area of need for health services in the jurisdiction, or part of the jurisdiction, if the Minister considers there are insufficient health practitioners practising in a particular health profession in the jurisdiction or the part of the jurisdiction to provide services that meet the needs of people living in the jurisdiction or the part of the jurisdiction.
- (6) If a responsible Minister decides there is an area of need under subsection (5), the responsible Minister must give the National Board established for the health profession written notice of the decision.
- (7) A responsible Minister may delegate the Minister's power under this section to an appropriately qualified person.
- (8) In this section —

***appropriately qualified*** means having the qualifications, experience or standing appropriate to the exercise of the power;

***health services*** means the provision of services by health practitioners in a particular health profession.

**68. Limited registration in public interest**

- (1) An individual may apply for limited registration to enable the individual to practise a health profession for a limited time, or for a limited scope, in the public interest.
- (2) The individual is qualified for the limited registration applied for if the National Board established for the health profession is satisfied it is in the public interest for an individual with the individual's qualifications and experience to practise the profession for that time or scope.

**69. Limited registration for teaching or research**

- (1) An individual may apply for limited registration in a health profession to enable the individual to fill a teaching or research position.
- (2) The individual is qualified for the limited registration applied for if the National Board established for the health profession is satisfied the individual's qualifications are relevant to, and suitable for, the position.

**70. Unsuitability to hold limited registration**

- (1) Section 55 applies to a decision by a National Board that an individual is not a suitable person to hold limited registration in a health profession.
- (2) For the purposes of subsection (1), a reference in section 55 to general registration in the health profession is taken to be a reference to limited registration in the health profession.

**71. Limited registration not to be held for more than one purpose**

An individual may not hold limited registration in the same health profession for more than one purpose under this Division at the same time.

**72. Period of limited registration**

- (1) The period of registration that is to apply to a health practitioner granted limited registration in a health profession is the period (the *registration period*), not more than 12 months, decided by the





**74. Unsuitability to hold non-practicing registration**

A National Board may decide an individual is not a suitable person to hold non-practicing registration in a health profession if —

- (a) having regard to the individual's criminal history to the extent that is relevant to the individual's practice of the profession, the individual is not, in the Board's opinion, an appropriate person to hold registration in the profession or it is not in the public interest for the individual to hold registration in the profession; or
- (b) in the Board's opinion, the individual is for any other reason not a fit and proper person to hold non-practicing registration in the profession.

**75. Registered health practitioner who holds non-practicing registration must not practise the profession**

- (1) A registered health practitioner who holds non-practicing registration in a health profession must not practise the profession.
- (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.

**76. Period of non-practicing registration**

- (1) The period of registration that is to apply to a health practitioner granted non-practicing registration in a health profession is the period (the *registration period*), not more than 12 months, decided by the National Board established for the profession and published on the Board's website.
- (2) If the National Board decides to register a health practitioner in the health profession during a registration period, the registration —
  - (a) starts when the Board makes the decision; and
  - (b) expires at the end of the last day of the registration period.



**78. Power to check applicant's proof of identity**

- (1) If an applicant for registration gives a National Board a document as evidence of the applicant's identity under this section, the Board may, by written notice, ask the entity that issued the document —
  - (a) to confirm the validity of the document; or
  - (b) to give the Board other information relevant to the applicant's identity.
- (2) An entity given a notice under subsection (1) is authorised to give the National Board the information requested in the notice.

**79. Power to check applicant's criminal history**

- (1) Before deciding an application for registration, a National Board must check the applicant's criminal history.
- (2) For the purposes of checking an applicant's criminal history, a National Board may obtain a written report about the criminal history of the applicant from any of the following —
  - (a) CrimTrac;
  - (b) a police commissioner;
  - (c) an entity in a jurisdiction outside Australia that has access to records about the criminal history of persons in that jurisdiction.
- (3) A criminal history law does not apply to a report about an applicant's criminal history under subsection (2).

**80. Boards' other powers before deciding application for registration**

- (1) Before deciding an application for registration, a National Board may —
  - (a) investigate the applicant, including, for example, by asking an entity —
    - (i) to give the Board information about the applicant; or



- (4) A notice under subsection (1)(d) or (e) must state —
  - (a) the reason for the examination or assessment; and
  - (b) the name and qualifications of the person appointed by the National Board to conduct the examination or assessment; and
  - (c) the place where, and the day and time at which, the examination or assessment is to be conducted.
- (5) The applicant is taken to have withdrawn the application if, within the stated time, the applicant does not comply with a requirement under subsection (1).

**81. Applicant may make submissions about proposed refusal of application or imposition of condition**

- (1) If, after considering an application for registration, a National Board is proposing to refuse to register the applicant or to register the applicant subject to a condition, the Board must give the applicant written notice of the proposal.
- (2) The notice must —
  - (a) state the reasons for the proposal; and
  - (b) invite the applicant to make a written or verbal submission to the Board by the date stated in the notice, being not less than 30 days after the day the notice is given to the applicant, about the proposal.

**82. Decision about application**

- (1) After considering an application for registration and any submissions made in accordance with a notice under section 81, a National Board established for a health profession must —
  - (a) decide to grant the applicant the type of registration in the health profession applied for if the applicant is eligible for that type of registration under a relevant section; or
  - (b) decide to grant the applicant a type of registration in the health profession, other than the type of registration applied for, for which the applicant is eligible under a relevant section; or

- (c) decide to refuse to grant the applicant registration in the health profession if —
- (i) the applicant is ineligible for registration in the profession under a relevant section because the applicant —
    - (I) is not qualified for registration; or
    - (II) has not completed a period of supervised practice in the health profession, or an examination or assessment required by the Board to assess the individual's ability to practise the profession; or
    - (III) is not a suitable person to hold registration; or
    - (IV) is disqualified under this Law from applying for registration, or being registered, in the health profession; or
    - (V) does not meet a requirement for registration stated in an approved registration standard for the profession;
  - or
  - (ii) it would be improper to register the applicant because the applicant or someone else gave the National Board information or a document in relation to the application that was false or misleading in a material particular.

- (2) In this section —  
*relevant section* means section 52, 57, 62, 65 or 73.

**83. Conditions of registration**

- (1) If a National Board decides to register a person in the health profession for which the Board is established, the registration is subject to any condition the Board considers necessary or desirable in the circumstances.

Note: A failure by a registered health practitioner to comply with a condition of the practitioner's registration does not constitute an offence but may

constitute behaviour for which health, conduct or performance action may be taken.

- (2) If the National Board decides to register the person subject to a condition referred to in subsection (1), the Board must decide a review period for the condition.

**84. Notice to be given to applicant**

- (1) Within 30 days after making the decision under section 82, the National Board must —
- (a) give the applicant written notice of the Board's decision; and
  - (b) if the Board decides to register the applicant, give the applicant a certificate of registration.
- (2) If the Board decides not to register the applicant, or decides to register the applicant in a type of registration other than the registration applied for or subject to a condition, the notice under subsection (1)(a) must state —
- (a) the reasons for the decision; and
  - (b) that the applicant may appeal against the decision; and
  - (c) how an application for appeal may be made and the period within which the application must be made.

**85. Failure to decide application**

If a National Board fails to decide an application for registration within 90 days after its receipt, or the longer period agreed between the Board and the applicant, the failure by the Board to make a decision is taken to be a decision to refuse to register the applicant.

**Division 7 — Student registration**

**Subdivision 1 — Persons undertaking approved programmes of study**

**86. Terms used**

In this Subdivision —

*approved programme of study*, for a health profession, does not include an approved programme of study that provides a qualification



for endorsement of registration in the profession but does not qualify a person for registration in the profession;

*particulars* means particulars required to be included in the student register.

**87. National Board must register persons undertaking approved programme of study**

- (1) The National Board established for a health profession must decide whether persons who are undertaking an approved programme of study for the health profession must be registered —
  - (a) for the entire period during which the persons are enrolled in the approved programme of study; or
  - (b) for the period starting when the persons begin a particular part of the approved programme of study and ending when the persons complete, or otherwise cease to be enrolled in, the programme.
- (2) In deciding whether to register persons undertaking an approved programme of study for the entire period of the programme of study or only part of the period, the National Board must have regard to —
  - (a) the likelihood that persons undertaking the approved programme of study will, in the course of undertaking the programme, have contact with members of the public; and
  - (b) if it is likely that the persons undertaking the approved programme of study will have contact with members of the public —
    - (i) when in the approved programme of study it is likely the persons will have contact with members of the public; and
    - (ii) the potential risk that contact may pose to members of the public.

**88. National Board may ask education provider for list of persons undertaking approved programme of study**

- (1) For the purposes of registering persons as required by section 87, a National Board may, at any time by written notice given to an education provider, ask the provider for the following —
  - (a) the particulars of all persons who are undertaking an approved programme of study for the health profession for which the Board is established;
  - (b) the particulars of all persons who will be undertaking the part of the approved programme of study specified in the notice.
- (2) An education provider given a notice under subsection (1) must not fail, without reasonable excuse, to comply with the notice.
- (3) A contravention of subsection (2) does not constitute an offence.
- (4) However, if an education provider does not comply with a notice under subsection (1) —
  - (a) the National Board that gave the education provider the notice must publish details of the failure to comply with the notice on the Board's website; and
  - (b) the National Agency may, on the recommendation of the National Board, include a statement about the failure to comply with the notice in the Agency's annual report.

**89. Registration of students**

- (1) On receipt of the particulars of persons undertaking an approved programme of study, or part of an approved programme of study, under section 88 —
  - (a) the National Board may register the persons as students in the health profession by entering the persons' particulars in the student register kept by the Board; or
  - (b) the National Board may —
    - (i) by written notice given to each person, require the person to complete an application for registration as a student in the form approved by the National Board; and



- (2) Subsection (1) does not apply if the person is a registered health practitioner who is registered in the health profession in which the clinical training is being undertaken.
- (3) A notice under subsection (1) must include —
  - (a) the particulars of the person undertaking the clinical training; and
  - (b) particulars of the arrangement for the person to undertake the clinical training.
- (4) On receipt of a notice under subsection (1) —
  - (a) the National Board may register the persons as students in the health profession by entering the persons' particulars in the student register kept by the Board; or
  - (b) the National Board may —
    - (i) by written notice given to each person, require the person to complete an application for registration as a student in the form approved by the National Board; and
    - (ii) on receipt of the person's application form, register the person as a student in the health profession by entering the person's particulars in the student register kept by the Board.
- (5) As soon as practicable after registering a person as a student under subsection (4), a National Board must give written notice of the registration to the education provider that provided the student's particulars to the Board.
- (6) The National Board must not require a person to pay a fee for registration as a student.
- (7) A student's period of registration under this section —
  - (a) starts when the student is registered under subsection (4); and
  - (b) expires at the end of the day on which the person completes, or otherwise ceases to undertake, the period of clinical training.



- (3) A contravention of subsection (2) does not constitute an offence.
- (4) However, if an education provider contravenes subsection (2) —
  - (a) the National Board must publish details of the contravention on the Board’s website; and
  - (b) the National Agency may, on the recommendation of the National Board, include a statement about the contravention in the Agency’s annual report.

**Division 8 — Endorsement of registration**

**Subdivision 1 — Endorsement in relation to scheduled medicines**

**94. Endorsement for scheduled medicines**

- (1) A National Board may, in accordance with an approval given by the Ministerial Council under section 14, endorse the registration of a registered health practitioner registered by the Board as being qualified to administer, obtain, possess, prescribe, sell, supply or use a scheduled medicine or class of scheduled medicines if the practitioner —
  - (a) holds either of the following qualifications relevant to the endorsement —
    - (i) an approved qualification;
    - (ii) another qualification that, in the Board’s opinion, is substantially equivalent to, or based on similar competencies to, an approved qualification;
  - and
  - (b) complies with any approved registration standard relevant to the endorsement.

**Note:** The endorsement of a health practitioner’s registration under this section indicates the practitioner is qualified to administer, obtain, possess, prescribe, sell, supply or use the scheduled medicine or class of medicines specified in the endorsement but does not authorise the practitioner to do so. The authorisation of a health practitioner to administer, obtain, possess, prescribe, sell, supply or use scheduled medicines in a participating jurisdiction will be provided for by or under another Act of that jurisdiction.



**Subdivision 3 — Endorsement in relation to midwife practitioners**

**96. Endorsement as midwife practitioner**

- (1) The Nursing and Midwifery Board of Australia may endorse the registration of a registered health practitioner whose name is included in the Register of Midwives as being qualified to practise as a midwife practitioner if the practitioner —
  - (a) holds either of the following qualifications relevant to the endorsement —
    - (i) an approved qualification;
    - (ii) another qualification that, in the Board’s opinion, is substantially equivalent to, or based on similar competencies to, an approved qualification;
  - and
  - (b) complies with any approved registration standard relevant to the endorsement.
- (2) An endorsement under subsection (1) must state —
  - (a) that the registered health practitioner is entitled to use the title “midwife practitioner”; and
  - (b) any conditions applicable to the practice by the registered health practitioner as a midwife practitioner.

**Subdivision 4 — Endorsement in relation to acupuncture**

**97. Endorsement for acupuncture**

- (1) A National Board may endorse the registration of a registered health practitioner registered by the Board as being qualified to practise as an acupuncturist if the practitioner —
  - (a) holds either of the following qualifications relevant to the endorsement —
    - (i) an approved qualification;
    - (ii) another qualification that, in the Board’s opinion, is substantially equivalent to, or based on similar competencies to, an approved qualification;
  - and





**Subdivision 6 — Application for endorsement**

**99. Application for endorsement**

- (1) An individual may apply to a National Board for endorsement of the individual's registration.
- (2) The application must —
  - (a) be in the form approved by the National Board; and
  - (b) be accompanied by the relevant fee; and
  - (c) be accompanied by any other information reasonably required by the Board.
- (3) For the purposes of subsection (2)(c), the information a National Board may require an applicant to provide includes —
  - (a) evidence of the qualifications in the health profession the applicant believes qualifies the applicant for endorsement; and
  - (b) evidence of successful completion of any period of supervised practice required by an approved registration standard; and
  - (c) if the applicant is required to complete an examination or assessment set by or on behalf of the Board, evidence of the successful completion of the examination or assessment.

**100. Boards' other powers before deciding application for endorsement**

- (1) Before deciding an application for endorsement, a National Board may —
  - (a) investigate the applicant, including, for example, by asking an entity —
    - (i) to give the Board information about the applicant; or
    - (ii) to verify information or a document that relates to the applicant;or
  - (b) by written notice to the applicant, require the applicant to give the Board, within a reasonable time stated in the notice,

further information or a document the Board reasonably requires to decide the application; or

- (c) by written notice to the applicant, require the applicant to attend before the Board, within a reasonable time stated in the notice and at a reasonable place, to answer any questions of the Board relating to the application; or
  - (d) by written notice to the applicant, require the applicant to undergo a written, oral or practical examination, within a reasonable time stated in the notice and at a reasonable place.
- (2) The purpose of an examination under subsection (1)(d) must be to assess the applicant's ability to practise the health profession in accordance with the endorsement sought.
  - (3) The applicant is taken to have withdrawn the application if, within the stated time, the applicant does not comply with a requirement under subsection (1).

**101. Applicant may make submissions about proposed refusal of application or imposition of condition**

- (1) If, after considering an application for endorsement of a registration, a National Board is proposing to refuse to endorse the applicant's registration or to endorse the applicant's registration subject to a condition, the Board must give the applicant written notice of the proposal.
- (2) The notice must —
  - (a) state the reasons for the proposal; and
  - (b) invite the applicant to make a written or verbal submission to the Board by the date stated in the notice, being not less than 30 days after the day the notice is given to the applicant, about the proposal.

**102. Decision about application**

- (1) After considering an application for endorsement and any submissions made in accordance with a notice under section 101, a National Board must decide to endorse, or refuse to endorse, the applicant's registration as sought.

- (2) Without limiting subsection (1), a National Board may refuse to endorse an applicant's registration if —
- (a) the applicant is not qualified for the endorsement under a relevant section; or
  - (b) the Board considers the applicant is not competent to practise the health profession in accordance with the endorsement sought.

- (3) In this section —  
*relevant section* means section 94, 95, 96, 97 or 98.

**103. Conditions of endorsement**

- (1) If a National Board decides to endorse the applicant's registration under section 102, the Board may decide to impose on the endorsement the conditions the Board considers necessary or desirable in the circumstances.

Note: A failure by a registered health practitioner to comply with a condition of the practitioner's registration does not constitute an offence but may constitute behaviour for which health, conduct or performance action may be taken.

- (2) If the National Board decides to impose a condition on the endorsement, the Board must also decide a review period for the condition.

**104. Notice of decision to be given to applicant**

- (1) As soon as practicable after making the decision under section 102, the National Board must —
- (a) give the applicant written notice of the Board's decision; and
  - (b) if the Board decides to endorse the applicant's registration, give the applicant a new certificate of registration.
- (2) If the Board decides not to endorse the applicant's registration or decides to endorse the applicant's registration subject to a condition, the notice under subsection (1)(a) must state —
- (a) the reasons for the decision; and
  - (b) that the applicant may appeal against the decision; and



- (d) be accompanied by the annual statement required under section 109; and
- (e) be accompanied by any other information reasonably required by the Board.

**108. Registration taken to continue in force**

- (1) If a registered health practitioner applies under section 107 to renew the practitioner's registration, the applicant's registration, including any endorsement of the registration, is taken to continue in force from the day it would, apart from this section, have ended 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 health practitioner does not apply to renew the practitioner's registration before the practitioner's period of registration ends, the registration, including any endorsement of the registration, is taken to continue in force until —
  - (a) the end of the day that is one month after the day the period of registration would, apart from this subsection, have ended; or
  - (b) if the health practitioner applies for renewal of the registration not later than one month after the practitioner's period of registration ends, the day referred to in subsection (1)(a) or (b).
- (3) Subsection (1) or (2) does not apply if the registration is earlier cancelled under this Law.

**109. Annual statement**

- (1) An application for renewal of registration must include or be accompanied by a statement that includes the following —
  - (a) a declaration by the applicant that —
    - (i) the applicant does not have an impairment; and

- (ii) the applicant has met any recency of practice requirements stated in an approved registration standard for the health profession; and
  - (iii) the applicant has completed the continuing professional development the applicant was required by an approved registration standard to undertake during the applicant's preceding period of registration; and
  - (iv) the applicant has not practised the health profession during the preceding period of registration without appropriate professional indemnity insurance arrangements being in place in relation to the applicant; and
  - (v) if the applicant's registration is renewed the applicant will not practise the health profession unless appropriate professional indemnity insurance arrangements are in place in relation to the applicant;
- (b) details of any change in the applicant's criminal history that occurred during the applicant's preceding period of registration;

Note: See the definition of **criminal history** which applies to offences in participating jurisdictions and elsewhere, including outside Australia.

- (c) if the applicant's right to practise at a hospital or another facility at which health services are provided was withdrawn or restricted during the applicant's preceding period of registration because of the applicant's conduct, professional performance or health, details of the withdrawal or restriction of the right to practise;
- (d) if the applicant's billing privileges were withdrawn or restricted under the *Medicare Australia Act 1973*<sup>3</sup> (Commonwealth) during the applicant's preceding period of registration because of the applicant's conduct, professional performance or health, details of the withdrawal or restriction of the privileges;
- (e) details of any complaint made about the applicant to a registration authority or another entity having functions

relating to professional services provided by health practitioners or the regulation of health practitioners;

- (f) any other information required by an approved registration standard.
- (2) Subsection (1)(a)(ii), (iii) and (iv), (c) and (d) does not apply to an applicant who is applying for the renewal of non-practicing registration.

**110. National Board's powers before making decision**

Before deciding an application for renewal of registration, a National Board may exercise a power under section 80 as if the application were an application for registration made under section 77.

**111. Applicant may make submissions about proposed refusal of application for renewal or imposition of condition**

- (1) If, after considering an application for renewal of registration, a National Board is proposing to refuse to renew the applicant's registration or to renew the applicant's registration subject to a new condition, the Board must give the applicant written notice of the proposal.
- (2) The notice must —
  - (a) state the reasons for the proposal; and
  - (b) invite the applicant to make a written or verbal submission to the Board by the date stated in the notice, being not less than 30 days after the day the notice is given to the applicant, about the proposal.

**112. Decision about application for renewal**

- (1) After considering an application for renewal of registration and any submissions made in accordance with a notice under section 111, a National Board may decide to renew, or refuse to renew, the applicant's registration or the endorsement.



- (2) The National Board may refuse to renew the applicant's registration or any endorsement on the applicant's registration —
- (a) on any ground on which the Board could refuse to grant the registration or endorsement under section 82 or 102 if the application were for a grant of registration or endorsement; or
  - (b) if the applicant contravened any condition to which the applicant's previous registration or endorsement was subject; or
  - (c) if, during the applicant's previous period of registration, the applicant failed to have appropriate professional indemnity insurance arrangements or failed to complete the continuing professional development required by an approved registration standard for the profession; or
  - (d) if a statement made by the applicant in the applicant's annual statement was false or misleading in a material particular; or
  - (e) if the application is for the renewal of provisional registration and the applicant's provisional registration has previously been renewed twice; or
  - (f) if the application is for the renewal of limited application and the applicant's limited registration has previously been renewed 3 times.
- (3) If the National Board renews a registration, including any endorsement on the registration, the registration or endorsement is subject to —
- (a) any condition to which the registration was subject immediately before the renewal; and
  - (b) any condition the Board considers necessary or desirable in the circumstances.

Note: A failure by a registered health practitioner to comply with a condition of the practitioner's registration does not constitute an offence but may constitute behaviour for which health, conduct or performance action may be taken.

- (4) If the National Board decides to renew a registered health practitioner's registration or an endorsement of the registration subject

to a condition under subsection (3)(b), the Board must decide a review period for the condition.

- (5) If a National Board decides to refuse to renew an applicant's registration or the endorsement of the applicant's registration, or to renew the registration or the endorsement subject to a condition under subsection (3)(b), the Board must give the applicant a notice that states —
- (a) the decision made by the Board; and
  - (b) the reasons for the decision; and
  - (c) that the applicant may appeal against the decision; and
  - (d) how an application for appeal may be made and the period within which the application must be made.
- (6) A registration, including any endorsement of the registration, renewed under this Division —
- (a) starts on the day immediately after the applicant's previous period of registration ends or ended; and
  - (b) expires at the end of the day that is 12 months after the day it starts.

**Division 10 — Title and practice protections**

**Subdivision 1 — Title protections**

**113. Restriction on use of protected titles**

- (1) A person must not knowingly or recklessly —
- (a) take or use a title in the Table to this section, in a way that could be reasonably expected to induce a belief the person is registered under this Law in the health profession listed beside the title in the Table, unless the person is registered in the profession; or



**Health Practitioner Regulation National Law (WA) Act 2010**

**Schedule** Health Practitioner Regulation National Law

**Part 7** Registration of health practitioners

**s. 113**

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<b>Profession</b>	<b>Title</b>
Chinese Medicine	Chinese medicine practitioner, Chinese herbal dispenser, Chinese herbal medicine practitioner, Oriental medicine practitioner, acupuncturist
Chiropractic	chiropractor
Dental	dentist, dental therapist, dental hygienist, dental prosthetist, oral health therapist
Medical	medical practitioner
Medical Radiation Practice	medical radiation practitioner, diagnostic radiographer, medical imaging technologist, radiographer, nuclear medicine scientist, nuclear medicine technologist, radiation therapist
Nursing and Midwifery	nurse, registered nurse, nurse practitioner, enrolled nurse, midwife, midwife practitioner
Occupational Therapy	occupational therapist
Optometry	optometrist, optician
Osteopathy	osteopath
Pharmacy	pharmacist, pharmaceutical chemist
Physiotherapy	physiotherapist, physical therapist



- (b) the title “medical specialist” in relation to another person unless the person is registered in a recognised specialty in the medical profession; or
- (c) a specialist title for a recognised specialty in relation to another person unless the person is registered under this Law in the specialty.

Penalty:

- (a) in the case of an individual — a fine of \$30 000;
  - (b) in the case of a body corporate — a fine of \$60 000.
- (3) Subsection (1) applies whether or not the title is taken or used with or without any other words and whether in English or any other language.

**116. Claims by persons as to registration as health practitioner**

- (1) A person who is not a registered health practitioner must not knowingly or recklessly —
- (a) take or use the title of “registered health practitioner”, whether with or without any other words; or
  - (b) take or use a title, name, initial, symbol, word or description that, having regard to the circumstances in which it is taken or used, indicates or could be reasonably understood to indicate —
    - (i) the person is a health practitioner; or
    - (ii) the person is authorised or qualified to practise in a health profession;
- or
- (c) claim to be registered under this Law or hold himself or herself out as being registered under this Law; or
  - (d) claim to be qualified to practise as a health practitioner.

Penalty:

- (a) in the case of an individual — a fine of \$30 000;
- (b) in the case of a body corporate — a fine of \$60 000.



- (b) claim to be qualified to practise as a practitioner in a health profession or a division of a health profession in which the practitioner is not registered; or
  - (c) take or use any title that could be reasonably understood to induce a belief the practitioner is registered under this Law in a health profession or a division of a health profession in which the practitioner is not registered.
- (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.
- (3) A person must not knowingly or recklessly —
  - (a) claim another person is registered under this Law in a health profession or a division of a health profession in which the other person is not registered, or hold the other person out as being registered in a health profession or a division of a health profession if the other person is not registered in that health profession or division; or
  - (b) claim another person is qualified to practise as a health practitioner in a health profession or division of a health profession in which the other person is not registered; or
  - (c) take or use any title in relation to another person that could be reasonably understood to induce a belief the other person is registered under this Law in a health profession or a division of a health profession in which the person is not registered.

Penalty:

- (a) in the case of an individual — a fine of \$30 000;
- (b) in the case of a body corporate — a fine of \$60 000.

Note: A contravention of this subsection by a registered health practitioner may also constitute unprofessional conduct for which health, conduct or performance action may be taken.





- (c) claim another person is registered under this Law in a recognised specialty or hold the other person out as being registered under this Law in a recognised specialty if the other person is not registered in that recognised specialty; or
- (d) claim another person is qualified to practise as a specialist health practitioner if the person is not a specialist health practitioner.

Penalty:

- (a) in the case of an individual — a fine of \$30 000;
- (b) in the case of a body corporate — a fine of \$60 000.

Note: A contravention of this section by a registered health practitioner may also constitute unprofessional conduct for which health, conduct or performance action may be taken.

**119. Claims about type of registration or registration in recognised specialty**

- (1) A registered health practitioner must not knowingly or recklessly —
  - (a) claim to hold a type of registration or endorsement under this Law that the practitioner does not hold or hold himself or herself out as holding a type of registration or endorsement if the practitioner does not hold that type of registration; or
  - (b) claim to be qualified to hold a type of registration or endorsement the practitioner does not hold; or
  - (c) claim to hold specialist registration under this Law in a recognised specialty in which the practitioner does not hold specialist registration or hold himself or herself out as holding specialist registration in a recognised specialty if the person does not hold specialist registration in that specialty; or
  - (d) claim to be qualified to practise as a specialist health practitioner in a recognised specialty in which the practitioner is not registered.
- (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.



**Subdivision 2 — Practice protections**

**121. Restricted dental acts**

- (1) A person must not carry out a restricted dental act unless the person —
- (a) is registered in the dental profession or medical profession and carries out the restricted dental act in accordance with any requirements specified in an approved registration standard; or
  - (b) is a student who carries out the restricted dental act in the course of activities undertaken as part of —
    - (i) an approved programme of study for the dental profession or medical profession; or
    - (ii) clinical training in the dental profession or medical profession;
- or
- (c) carries out the restricted dental act in the course of carrying out technical work on the written order of a person registered in the dentists or dental prosthetists division of the dental profession; or
  - (d) is a person, or a member of a class of persons, prescribed under a regulation as being authorised to carry out the restricted dental act or restricted dental acts generally.

Penalty: a fine of \$30 000.

- (2) In this section —  
**restricted dental act** means any of the following acts —

- (a) performing any irreversible procedure on the human teeth or jaw or associated structures;
- (b) correcting malpositions of the human teeth or jaw or associated structures;
- (c) fitting or intra-orally adjusting artificial teeth or corrective or restorative dental appliances for a person;
- (d) performing any irreversible procedure on, or the giving of any treatment or advice to, a person that is preparatory to or for the purpose of fitting, inserting, adjusting, fixing,

constructing, repairing or renewing artificial dentures or a restorative dental appliance;

**technical work** means the mechanical construction or the renewal or repair of artificial dentures or restorative dental appliances.

**122. Restriction on prescription of optical appliances**

- (1) A person must not prescribe an optical appliance unless —
- (a) the person is an optometrist or medical practitioner; or
  - (b) the appliance is spectacles and the person is an orthoptist who —
    - (i) prescribes the spectacles in the course of carrying out duties at a public health facility; or
    - (ii) prescribes the spectacles under the supervision of an optometrist or medical practitioner; or
    - (iii) prescribes the spectacles, on the written referral of an optometrist or medical practitioner, to a person who has had, within the 12 months before the referral, an ocular health examination conducted by an optometrist or medical practitioner;
- or
- (c) the person is a person, or a member of a class of persons, prescribed under a regulation as being authorised to prescribe an optical appliance of that type or to prescribe optical appliances generally.

Penalty: a fine of \$30 000.

- (2) In this section —  
**optical appliance** means —

- (a) any appliance designed to correct, remedy or relieve any refractive abnormality or defect of sight, including, for example, spectacle lenses; or
- (b) contact lenses, whether or not designed to correct, remedy or relieve any refractive abnormality or defect of sight;

**optometrist** means a person registered in the optometry profession;

**orthoptist** means a person whose name is recorded in the Register of Orthoptists kept by the Australian Orthoptists Registration Body Pty Ltd (ACN 095 11 7 678).

**123. Restriction on spinal manipulation**

- (1) A person must not perform manipulation of the cervical spine unless the person —
- (a) is registered in an appropriate health profession; or
  - (b) is a student who performs manipulation of the cervical spine in the course of activities undertaken as part of —
    - (i) an approved programme of study in an appropriate health profession; or
    - (ii) clinical training in an appropriate health profession;
  - or
  - (c) is a person, or a member of a class of persons, prescribed under a regulation as being authorised to perform manipulation of the cervical spine.

Penalty: a fine of \$30 000.

- (2) In this section —

**appropriate health profession** means any of the following health professions —

- (a) chiropractic;
- (b) osteopathy;
- (c) medical;
- (d) physiotherapy;

**manipulation of the cervical spine** means moving the joints of the cervical spine beyond a person's usual physiological range of motion using a high velocity, low amplitude thrust.



- (h) any other information the Board considers appropriate.

**Subdivision 2 — Review of conditions and undertakings**

**125. Changing or removing conditions or undertaking on application by registered health practitioner or student**

- (1) A registered health practitioner or student may apply to a National Board that registered the practitioner or student —
- (a) for a registered health practitioner —
    - (i) to change or remove a condition imposed on the practitioner's registration or endorsement; or
    - (ii) to change or revoke an undertaking given by the practitioner;
  - or
  - (b) for a student —
    - (i) to change or remove a condition imposed on the student's registration; or
    - (ii) to change or revoke an undertaking given by the student to the Board.
- (2) However, the registered health practitioner or student may not make an application —
- (a) during a review period applying to the condition or undertaking, unless the practitioner or student reasonably believes there has been a material change in the practitioner's or student's circumstances; or
  - (b) for a condition imposed by an adjudication body for a co-regulatory jurisdiction, unless the adjudication body decided, when imposing the condition, that this Subdivision applied to the condition.
- (3) An application under subsection (1) must —
- (a) be in the form approved by the National Board; and
  - (b) be accompanied by any other information reasonably required by the Board.



- (4) For the purposes of deciding the application, the National Board may exercise a power under section 80 as if the application were an application for registration as a registered health practitioner.
- (5) The National Board must decide to grant the application or refuse to grant the application.
- (6) As soon as practicable after making the decision under subsection (5), the National Board must give the registered health practitioner or student written notice of the Board's decision.
- (7) If the National Board decides to refuse to grant the application, the notice must state —
  - (a) the decision made by the Board; and
  - (b) that the registered health practitioner or student may appeal against the decision; and
  - (c) how an application for appeal may be made and the period within which the application must be made.

**126. Changing conditions on Board's initiative**

- (1) This section applies if a National Board reasonably believes it is necessary to change a condition imposed on the registration of a registered health practitioner or student registered by the Board.
- (2) The National Board must give the registered health practitioner or student a written notice stating —
  - (a) that the Board proposes to change the condition; and
  - (b) how the Board proposes to change the condition; and
  - (c) the reason for the proposed change; and
  - (d) that the practitioner or student may, within 30 days after receipt of the notice, make written or verbal submissions to the Board about why the condition should not be changed.
- (3) However, the condition may not be changed —
  - (a) during a review period applying to the condition, unless the National Board reasonably believes there has been a material change in the registered health practitioner's or student's circumstances; or

- (b) if the condition was imposed by an adjudication body for a co-regulatory jurisdiction, unless the adjudication body decided, when imposing the condition, that this subdivision applied to the condition.
- (4) The registered health practitioner or student may make written or verbal submissions about the proposed change to the condition as stated in the notice.
- (5) The National Board must consider any submissions made under subsection (4) and decide whether or not to change the condition.
- (6) As soon as practicable after making its decision the National Board must give written notice of the decision to the registered health practitioner or student.
- (7) If the National Board decides to change the condition, the notice must state —
  - (a) the decision made by the Board; and
  - (b) that the registered health practitioner or student may appeal against the decision; and
  - (c) how an application for appeal may be made and the period within which the application must be made.

**127. Removal of condition or revocation of undertaking**

- (1) This section applies if a National Board reasonably believes —
  - (a) that a condition imposed on the registration of a registered health practitioner or student registered by the Board is no longer necessary; or
  - (b) that an undertaking given to the Board by a health practitioner or student registered by the Board is no longer necessary.
- (2) The National Board may decide to remove the condition or revoke the undertaking.
- (3) However, the condition or undertaking may not be removed or revoked —
  - (a) during a review period applying to the condition or undertaking, unless the National Board reasonably believes

there has been a material change in the registered health practitioner's or student's circumstances; or

- (b) for a condition imposed by an adjudication body for a co-regulatory jurisdiction, unless the adjudication body decided, when imposing the condition, that this subdivision applied to the condition.
- (4) As soon as practicable after making the decision the National Board must give notice of the decision to the registered health practitioner or student.
- (5) The decision takes effect on the date stated in the notice.

**Subdivision 3 — Obligations of registered health practitioners and students**

**128. Continuing professional development**

- (1) A registered health practitioner must undertake the continuing professional development required by an approved registration standard for the health profession in which the practitioner is registered.
- (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.
- (3) In this section —  
*registered health practitioner* does not include a registered health practitioner who holds non-practicing registration in the profession.

**129. Professional indemnity insurance arrangements**

- (1) A registered health practitioner must not practise the health profession in which the practitioner is registered unless appropriate professional indemnity insurance arrangements are in force in relation to the practitioner's practice of the profession.
- (2) A National Board may, at any time by written notice, require a registered health practitioner registered by the Board to give the Board evidence of the appropriate professional indemnity insurance arrangements that are in force in relation to the practitioner's practice of the profession.

- (3) A registered health practitioner must not, without reasonable excuse, fail to comply with a written notice given to the practitioner under subsection (2).
- (4) A contravention of subsection (1) or (3) by a registered health practitioner does not constitute an offence but may constitute behaviour for which health, conduct or performance action may be taken.
- (5) In this section —  
*registered health practitioner* does not include a registered health practitioner who holds non-practicing registration in the profession.

**130. Registered health practitioner or student to give National Board notice of certain events**

- (1) A registered health practitioner or student must, within 7 days after becoming aware that a relevant event has occurred in relation to the practitioner or student, give the National Board that registered the practitioner or student written notice of the event.
- (2) A contravention of subsection (1) by a registered health practitioner or student does not constitute an offence but may constitute behaviour for which health, conduct or performance action may be taken.
- (3) In this section —  
*relevant event* means —
  - (a) in relation to a registered health practitioner —
    - (i) the practitioner is charged, whether in a participating jurisdiction or elsewhere, with an offence punishable by 12 months imprisonment or more; or
    - (ii) the practitioner is convicted of or the subject of a finding of guilt for an offence, whether in a participating jurisdiction or elsewhere, punishable by imprisonment; or
    - (iii) appropriate professional indemnity insurance arrangements are no longer in place in relation to the practitioner's practice of the profession; or

- (iv) 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
  - (v) the practitioner's billing privileges are withdrawn or restricted under the *Medicare Australia Act 1973*<sup>3</sup> (Commonwealth) because of the practitioner's conduct, professional performance or health; or
  - (vi) 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
  - (vii) a complaint is made about the practitioner to an entity referred to in section 219(1)(a) to (e); or
  - (viii) 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;
- or
- (b) in relation to a student —
    - (i) the student is charged with an offence punishable by 12 months imprisonment or more; or
    - (ii) the student is convicted of or the subject of a finding of guilt for an offence punishable by imprisonment; or
    - (iii) the student's registration under the law of another country that provides for the registration of students has been suspended or cancelled.

**131. Change in principal place of practice, address or name**

- (1) A registered health practitioner must, within 30 days of any of the following changes happening, give the National Board that registered the practitioner written notice of the change and any evidence providing proof of the change required by the Board —
  - (a) a change in the practitioner’s principal place of practice;
  - (b) a change in the address provided by the registered health practitioner as the address the Board should use in corresponding with the practitioner;
  - (c) a change in the practitioner’s 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.

**132. National Board may ask registered health practitioner for employer’s details**

- (1) A National Board may, at any time by written notice given to a health practitioner registered by the Board, ask the practitioner to give the Board the following information —
  - (a) information about whether the practitioner is employed by another entity;
  - (b) if the practitioner is employed by another entity —
    - (i) the name of the practitioner’s employer; and
    - (ii) the address and other contact details of the practitioner’s employer.
- (2) The registered health practitioner must not, without reasonable excuse, fail to comply with the notice.
- (3) A contravention of subsection (2) by a registered health practitioner does not constitute an offence but may constitute behaviour for which health, conduct or performance action may be taken.



- (2) A requirement under subsection (1) must be made by written notice given to the registered health practitioner.
- (3) The registered health practitioner must not, without reasonable excuse, fail to comply with the notice.
- (4) A contravention of subsection (3) by a registered health practitioner does not constitute an offence but may constitute behaviour for which health, conduct or performance action may be taken.
- (5) If a registered health practitioner gives a National Board a document as evidence of the practitioner's identity under this section, the Board may, by written notice, ask the entity that issued the document —
  - (a) to confirm the validity of the document; or
  - (b) to give the Board other information relevant to the practitioner's identity.
- (6) An entity given a notice under subsection (5) is authorised to provide the information requested.

**135. Criminal history check**

- (1) A National Board may, at any time, obtain a written report about a registered health practitioner's criminal history from any of the following —
  - (a) CrimTrac;
  - (b) a police commissioner;
  - (c) an entity in a jurisdiction outside Australia that has access to records about the criminal history of persons in that jurisdiction.
- (2) Without limiting subsection (1), a report may be obtained under that subsection —
  - (a) to check a statement made by a registered health practitioner in the practitioner's application for renewal of registration; or
  - (b) as part of an audit carried out by a National Board, to check statements made by registered health practitioners.
- (3) A criminal history law does not apply to a report under subsection (1).





**Part 8 — Health, performance and conduct**

**Division 1 — Preliminary**

**138. Part applicable to persons formerly registered under this Law**

- (1) This section applies if a person was, but is no longer, registered in a health profession under this Law.
- (2) A notification may be made, and proceedings may be taken, under this Part in relation to the person's behaviour while registered as if the person were still registered under this Law by the National Board established for the health profession.
- (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.

**139. Part applicable to persons formerly registered under corresponding prior Act in certain circumstances**

- (1) This section applies if a person —
  - (a) was registered in a health profession under a corresponding prior Act; and
  - (b) is not, and has not been, registered in the health profession under this Law.
- (2) A notification may be made, and proceedings may be taken, under this Part in relation to the person's behaviour while registered under the corresponding prior Act as if the person were registered under this Law by the National Board established for the health profession.
- (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 of that type 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.



ethics or a departure from accepted standards of professional conduct and nor is any liability for defamation incurred.

- (3) A contravention of subsection (2) by a registered health practitioner does not constitute an offence but may constitute behaviour for which action may be taken under this Part.
- (4) For the purposes of subsection (1), the first health practitioner does not form the reasonable belief in the course of practising the profession if —
- (a) the first health practitioner —
    - (i) is employed or otherwise engaged by an insurer that provides professional indemnity insurance that relates to the second health practitioner or student; and
    - (ii) forms the reasonable belief the second health practitioner has behaved in a way that constitutes notifiable conduct, or the student has an impairment, as a result of a disclosure made by a person to the first health practitioner in the course of a legal proceeding or the provision of legal advice arising from the insurance policy;
- or
- (b) the first health practitioner forms the reasonable belief in the course of providing advice in relation to the notifiable conduct or impairment for the purposes of a legal proceeding or the preparation of legal advice; or
  - (c) the first health practitioner is a legal practitioner and forms the reasonable belief in the course of providing legal services to the second health practitioner or student in relation to a legal proceeding or the preparation of legal advice in which the notifiable conduct or impairment is an issue; or
  - (d) the first health practitioner —
    - (i) forms the reasonable belief in the course of exercising functions as a member of a quality assurance committee, council or other body approved or authorised under an Act of a participating jurisdiction; and



**143. Mandatory notifications by education providers**

- (1) An education provider must notify the National Agency if the provider reasonably believes —
- (a) a student enrolled in a programme of study provided by the provider has an impairment that, in the course of the student undertaking clinical training as part of the programme of study, may place the public at substantial risk of harm; or
  - (b) a student for whom the education provider has arranged clinical training has an impairment that, in the course of the student undertaking the clinical training, may place the public at substantial risk of harm.

Note: See section 237 which provides protection from civil, criminal and administrative liability for persons who make a notification under this Law. Section 237(3) provides that the making of a notification does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct and nor is any liability for defamation incurred.

- (2) A contravention of subsection (1) does not constitute an offence.
- (3) However, if an education provider does not comply with subsection (1) —
- (a) the National Board that registered the student must publish details of the failure on the Board's website; and
  - (b) the National Agency may, on the recommendation of the National Board, include a statement about the failure in the Agency's annual report.

**Division 3 — Voluntary notifications**

**144. Grounds for voluntary notification**

- (1) A voluntary notification about a registered health practitioner may be made to the National Agency on any of the following grounds —
- (a) that the practitioner's professional conduct is, or may be, of a lesser standard than that which might reasonably be expected of the practitioner by the public or the practitioner's professional peers;

- (b) that the knowledge, skill or judgment possessed, or care exercised by, the practitioner in the practice of the practitioner's health profession is, or may be, below the standard reasonably expected;
  - (c) that the practitioner is not, or may not be, a suitable person to hold registration in the health profession, including, for example, that the practitioner is not a fit and proper person to be registered in the profession;
  - (d) that the practitioner has, or may have, an impairment;
  - (e) that the practitioner has, or may have, contravened this Law;
  - (f) that the practitioner has, or may have, contravened a condition of the practitioner's registration or an undertaking given by the practitioner to a National Board;
  - (g) that the practitioner's registration was, or may have been, improperly obtained because the practitioner or someone else gave the National Board information or a document that was false or misleading in a material particular.
- (2) A voluntary notification about a student may be made to the National Agency on the grounds that —
- (a) the student has been charged with an offence, or has been convicted or found guilty of an offence, that is punishable by 12 months imprisonment or more; or
  - (b) the student has, or may have, an impairment; or
  - (c) that the student has, or may have, contravened a condition of the student's registration or an undertaking given by the student to a National Board.

**145. Who may make voluntary notification**

Any entity that believes that a ground on which a voluntary notification may be made exists in relation to a registered health practitioner or a student may notify the National Agency.

Note: See section 237 which provides protection from civil, criminal and administrative liability for persons who, in good faith, make a notification under this Law.

**Division 4 — Making a notification**

**146. How notification is made**

- (1) A notification may be made to the National Agency —
  - (a) verbally, including by telephone; or
  - (b) in writing, including by email or other electronic means.
- (2) A notification must include particulars of the basis on which it is made.
- (3) If a notification is made verbally, the National Agency must make a record of the notification.

**147. National Agency to provide reasonable assistance to notifier**

- (1) The National Agency must, if asked by an entity, give the entity reasonable assistance to make a notification about a registered health practitioner or student.
- (2) Without limiting subsection (1), the National Agency may assist an entity to make a notification if —
  - (a) the entity is not able to put the entity's notification in writing without assistance; or
  - (b) the entity needs assistance to clarify the nature of the individual's notification.

**Division 5 — Preliminary assessment**

**148. Referral of notification to National Board or co-regulatory authority**

- (1) Subject to subsections (2) and (3), the National Agency must, as soon as practicable after receiving a notification about a registered health practitioner or a student, refer the notification to the National Board that registered the health practitioner or student.
- (2) If the behaviour that is the basis for the ground for the notification occurred, or is reasonably believed to have occurred, in a co-regulatory jurisdiction, the National Agency —
  - (a) must not deal with the notification; and



- (b) must, as soon as practicable after receiving the notification, refer the notification to the co-regulatory authority for the co-regulatory jurisdiction.
- (3) If the behaviour that is the basis for the ground for the notification occurred, or is reasonably believed to have occurred, in more than one jurisdiction and one of the jurisdictions is a co-regulatory jurisdiction, the National Agency must —
  - (a) if the registered health practitioner's principal place of practice is in the co-regulatory jurisdiction, refer the notification under subsection (2); or
  - (b) otherwise, refer the notification under subsection (1).

**149. Preliminary assessment**

- (1) A National Board must, within 60 days after receipt of a notification, conduct a preliminary assessment of the notification and decide —
  - (a) whether or not the notification relates to a person who is a health practitioner or a student registered by the Board; and
  - (b) whether or not the notification relates to a matter that is a ground for notification; and
  - (c) if the notification is a notification referred to in paragraphs (a) and (b), whether or not it is a notification that could also be made to a health complaints entity.
- (2) Without limiting subsection (1)(b), the National Board may decide the notification relates to a matter that is a ground for notification under section 144 on the basis of —
  - (a) a single notification about a person; or
  - (b) a number of notifications about a person including —
    - (i) a number of notifications that suggest a pattern of conduct; and
    - (ii) notifications made to a health complaints entity.
- (3) If the National Board decides the notification relates to a person who is not registered by the Board but the Board reasonably suspects the person is registered by another National Board, the Board must refer the notification to that other Board.

**150. Relationship with health complaints entity**

- (1) If the subject matter of a notification would also provide a ground for a complaint to a health complaints entity under a law of a participating jurisdiction, the National Board that received the notification must, as soon as practicable after its receipt —
  - (a) notify the health complaints entity that the Board has received the notification; and
  - (b) give to the health complaints entity —
    - (i) a copy of the notification or, if the notification was not made in writing, a copy of the National Agency's record of the details of the notification; and
    - (ii) any other information the Board has that is relevant to the notification.
- (2) If a health complaints entity receives a complaint about a health practitioner, the health complaints entity must, as soon as practicable after its receipt —
  - (a) notify the National Board established for the practitioner's health profession that the health complaints entity has received the complaint; and
  - (b) give to the National Board —
    - (i) a copy of the complaint or, if the complaint was not made in writing, a copy of the health complaints entity's record of the details of the complaint; and
    - (ii) any other information the health complaints entity has that is relevant to the complaint.
- (3) The National Board and the health complaints entity must attempt to reach agreement about how the notification or complaint is to be dealt with, including —
  - (a) whether the Board is to deal with the notification or complaint, or part of the notification or complaint, or to decide to take no further action in relation to it; and
  - (b) if the Board is to deal with the notification or complaint or part of the notification or complaint, the action the Board is to take.

- (4) If the National Board and the health complaints entity are not able to reach agreement on how the notification or complaint, or part of the notification or complaint, is to be dealt with, the most serious action proposed by either must be taken.
- (5) If an investigation or other action, other than conciliation, taken by a health complaints entity raises issues about the health, conduct or performance of a registered health practitioner, the health complaints entity must give the National Board that registered the practitioner written notice of the issues.
- (6) If a notification, or part of a notification, received by a National Board is referred to a health complaints entity, the Board may decide to take no further action in relation to the notification or the part of the notification until the entity gives the Board written notice that the entity has finished dealing with it.
- (7) If a National Board or an adjudication body takes health, conduct or performance action in relation to a registered health practitioner, the Board that registered the practitioner must give written notice of the action to the health complaints entity for the participating jurisdiction in which the behaviour that provided the basis for the action occurred.
- (8) A written notice under subsection (5) or (7) must include —
  - (a) sufficient particulars to identify the registered health practitioner; and
  - (b) details of —
    - (i) the issues raised about the health, conduct or performance of the registered health practitioner; or
    - (ii) the health, conduct or performance action taken in relation to the registered health practitioner.

**151. When National Board may decide to take no further action**

- (1) A National Board may decide to take no further action in relation to a notification if —
  - (a) the Board reasonably believes the notification is frivolous, vexatious, misconceived or lacking in substance; or
  - (b) given the amount of time that has elapsed since the matter the subject of the notification occurred, it is not practicable for

- the Board to investigate or otherwise deal with the notification; or
- (c) the person to whom the notification relates has not been, or is no longer, registered by the Board and it is not in the public interest for the Board to investigate or otherwise deal with the notification; or
  - (d) the subject matter of the notification has already been dealt with adequately by the Board; or
  - (e) the subject matter of the notification is being dealt with, or has already been dealt with, adequately by another entity.
- (2) A decision by a National Board to decide to take no further action in relation to a notification does not prevent a National Board or adjudication body taking the notification into consideration at a later time as part of a pattern of conduct or practice by the health practitioner.
- (3) If a National Board decides to take no further action in relation to a notification it must give written notice of the decision to the notifier.
- (4) A notice under subsection (3) must state —
- (a) that the National Board has decided to take no further action in relation to the notification; and
  - (b) the reason the Board has decided to take no further action.

**152. National Board to give notice of receipt of notification**

- (1) A National Board must, as soon as practicable after receiving a notification about a registered health practitioner or student, give written notice of the notification to the practitioner or student.
- (2) The notice must advise the registered health practitioner or student of the nature of the notification.
- (3) Despite subsection (1), the National Board is not required to give the registered health practitioner or student notice of the notification if the Board reasonably believes doing so would —
  - (a) prejudice an investigation of the notification; or
  - (b) place at risk a person's health or safety or place a person at risk of intimidation or harassment.

**Division 6 — Other matters**

**153. National Board may deal with notifications about same person together**

If the National Agency receives more than one notification about a registered health practitioner or student, the National Board established for the health profession in which the practitioner or student is registered may deal with the notifications together.

**154. National Boards may deal with notifications collaboratively**

- (1) This section applies if a notification received by a National Board relates to —
- (a) a registered health practitioner who is registered in more than one health profession; or
  - (b) more than one registered health practitioner and the practitioners are registered in 2 or more different health professions; or
  - (c) a person who is registered as a student in more than one health profession; or
  - (d) more than one student and the students are registered in 2 or more different health professions.
- (2) The National Board may deal with the notification in conjunction with one or more other National Boards with whom the registered health practitioner or practitioners, or student or students, are registered.

**Division 7 — Immediate action**

**155. Term used: immediate action**

In this Division —

*immediate action*, in relation to a registered health practitioner or student, means —

- (a) the suspension, or imposition of a condition on, the health practitioner's or student's registration; or
- (b) accepting an undertaking from the health practitioner or student; or

- (c) accepting the surrender of the health practitioner's or student's registration.

**156. Power to take immediate action**

- (1) A National Board may take immediate action in relation to a registered health practitioner or student registered by the Board if —

- (a) the National Board reasonably believes that —

- (i) because of the registered health practitioner's conduct, performance or health, the practitioner poses a serious risk to persons; and
- (ii) it is necessary to take immediate action to protect public health or safety;

or

- (b) the National Board reasonably believes that —

- (i) the student poses a serious risk to persons because the student —

- (I) has been charged with an offence, or has been convicted or found guilty of an offence, that is punishable by 12 months imprisonment or more; or
- (II) has, or may have, an impairment; or
- (III) has, or may have, contravened a condition of the student's registration or an undertaking given by the student to a National Board;

and

- (ii) it is necessary to take immediate action to protect public health or safety;

or

- (c) the registered health practitioner's registration was improperly obtained because the practitioner or someone else gave the National Board information or a document that was false or misleading in a material particular; or
- (d) the registered health practitioner's or student's registration has been cancelled or suspended under the law of a

jurisdiction, whether in Australia or elsewhere, that is not a participating jurisdiction.

- (2) However, the National Board may take immediate action that consists of suspending, or imposing a condition on, the health practitioner's or student's registration only if the Board has complied with section 157.

**157. Show cause process**

- (1) If a National Board is proposing to take immediate action that consists of suspending, or imposing a condition on, a registered health practitioner's or student's registration under section 156, the Board must —
  - (a) give the practitioner or student notice of the proposed immediate action; and
  - (b) invite the practitioner or student to make a submission to the Board, within the time stated in the notice about the proposed immediate action.
- (2) A notice given to a registered health practitioner or student under subsection (1), and any submissions made by the practitioner or student in accordance with the notice, may be written or verbal.
- (3) The National Board must have regard to any submissions made by the registered health practitioner or student in accordance with this section in deciding whether to take immediate action in relation to the practitioner or student.

**158. Notice to be given to registered health practitioner or student about immediate action**

- (1) Immediately after deciding to take immediate action in relation to a registered health practitioner or student, the National Board must —
  - (a) give written notice of the Board's decision to the health practitioner or student; and
  - (b) take the further action under this Part the Board considers appropriate, including, for example, investigating the practitioner or student or requiring the practitioner or student to undergo a health or performance assessment.

- (2) The notice must state —
- (a) the immediate action the National Board has decided to take; and
  - (b) the reasons for the decision to take the immediate action; and
  - (c) the further action the National Board proposes to take under this Part in relation to the health practitioner or student; and
  - (d) that the registered health practitioner or student may appeal against the decision to take the immediate action if the action is to suspend, or impose a condition on, the practitioner's or student's registration; and
  - (e) how an application for appeal may be made and the period within which the application must be made.

**159. Period of immediate action**

- (1) The decision by the National Board to take immediate action in relation to the registered health practitioner or student takes effect on —
- (a) the day the notice is given to the practitioner or student; or
  - (b) the later day stated in the notice.
- (2) The decision continues to have effect until the earlier of the following occurs —
- (a) the decision is set aside on appeal;
  - (b) for the suspension of, or imposition of conditions on, the registered health practitioner's or student's registration, the suspension is revoked, or the conditions are removed, by the National Board;
  - (c) for an undertaking, the National Board and the registered health practitioner or student agree to end the undertaking.





- (2) The notice must advise the registered health practitioner or student of the nature of the matter being investigated.
- (3) Also, the National Board must, at not less than 3 monthly intervals, give the written notice of the progress of the investigation to —
  - (a) the registered health practitioner or student; and
  - (b) if the investigation relates to a notification made about the registered health practitioner or student, the notifier.
- (4) However, the National Board need not give the registered health practitioner or student a notice under subsection (1) or (3) if the Board reasonably believes giving the notice may —
  - (a) seriously prejudice the investigation; or
  - (b) place at risk a person's health or safety; or
  - (c) place a person at risk of harassment or intimidation.

**162. Investigation to be conducted in timely way**

The National Board must ensure an investigator it directs to conduct an investigation conducts the investigation as quickly as practicable, having regard to the nature of the matter to be investigated.

**Subdivision 2 — Investigators**

**163. Appointment of investigators**

- (1) A National Board may appoint the following persons as investigators —
  - (a) members of the National Agency's staff;
  - (b) contractors engaged by the National Agency.
- (2) An investigator holds office on the conditions stated in the instrument of appointment.
- (3) If an investigator's appointment provides for a term of appointment, the investigator ceases holding office at the end of the term.
- (4) An investigator may resign by signed notice of resignation given to the National Board which appointed the investigator.



**Subdivision 3 — Procedure after investigation**

**166. Investigator's report about investigation**

- (1) As soon as practicable after completing an investigation under this Division, an investigator must give a written report about the investigation to the National Board that directed the investigator to carry out the investigation.
- (2) The report must include —
  - (a) the investigator's findings about the investigation; and
  - (b) the investigator's recommendations about any action to be taken in relation to the health practitioner or student the subject of the investigation.

**167. Decision by National Board**

After considering the investigator's report, the National Board must decide —

- (a) to take no further action in relation to the matter; or
- (b) to do either or both of the following —
  - (i) take the action the Board considers necessary or appropriate under another Division;
  - (ii) refer the matter to another entity, including, for example, a health complaints entity, for investigation or other action.

**Division 9 — Health and performance assessments**

**168. Term used: assessment**

In this Division —

**assessment** means —

- (a) a health assessment; or
- (b) a performance assessment.

**169. Requirement for health assessment**

A National Board may require a registered health practitioner or student to undergo a health assessment if the Board reasonably

believes, because of a notification or for any other reason, that the practitioner or student has, or may have, an impairment.

**170. Requirement for performance assessment**

A National Board may require a registered health practitioner to undergo a performance assessment if the Board reasonably believes, because of a notification or for any other reason, that the way the practitioner practises the profession is or may be unsatisfactory.

**171. Appointment of assessor to carry out assessment**

- (1) If the National Board requires a registered health practitioner or student to undergo an assessment, the National Agency must appoint an assessor chosen by the Board to carry out the assessment.
- (2) The assessor must be —
  - (a) for a health assessment, a medical practitioner or psychologist who is not a member of the National Board; or
  - (b) for a performance assessment, a registered health practitioner who is a member of the health profession for which the National Board is established but is not a member of the Board.
- (3) The assessor may ask another health practitioner to assist the assessor in carrying out the assessment of the registered health practitioner or student.
- (4) The assessor's fee for carrying out the assessment is to be paid out of the National Board's budget.

**172. Notice to be given to registered health practitioner or student about assessment**

- (1) A requirement by a National Board for a registered health practitioner or student to undergo an assessment must be made by written notice given to the practitioner or student.
- (2) The written notice must state —
  - (a) that the registered health practitioner or student is required to undergo a health assessment or performance assessment; and
  - (b) the nature of the assessment to be carried out; and

- (c) the name and qualifications of the registered health practitioner who is to carry out the assessment; and
- (d) that if the registered health practitioner or student does not undergo the assessment the National Board may continue to take proceedings in relation to the practitioner or student under this Part.

**173. Assessor may require information or attendance**

For the purposes of conducting an assessment of a registered health practitioner or student, an assessor may, by written notice given to the practitioner or student, require the practitioner or student to —

- (a) give stated information to the assessor within a stated reasonable time and in a stated reasonable way; or
- (b) attend before the assessor at a stated time and a stated place to undergo the assessment.

**Example of stated place:**

The registered health practitioner's principal place of practice.

**174. Inspection of documents**

- (1) If a document is produced to an assessor, the assessor 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 assessment.
- (2) If the assessor keeps the document, the assessor 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 place decided by the assessor.

**175. Report from assessor**

The assessor must, as soon as practicable after carrying out the assessment, give to the National Board a report about the assessment.



- (c) take no further action in relation to the matter.

**Division 10 — Action by National Board**

**178. National Board may take action**

- (1) This section applies if —

- (a) a National Board reasonably believes, because of a notification or for any other reason —
- (i) the way a registered health practitioner registered by the Board practises the health profession, or the practitioner’s professional conduct, is or may be unsatisfactory; or
  - (ii) a registered health practitioner or student registered by the Board has or may have an impairment; or
  - (iii) a student has been charged with an offence, or has been convicted or found guilty of an offence, that is punishable by 12 months imprisonment or more; or
  - (iv) a student has or may have contravened a condition of the student’s registration or an undertaking given by the student to a National Board;

and

- (b) the matter is not required to be referred to a responsible tribunal under section 193; and
- (c) the Board decides it is not necessary or appropriate to refer the matter to a panel.

- (2) The National Board may decide to take one or more of the following actions (*relevant action*) in relation to the registered health practitioner or student —

- (a) caution the registered health practitioner or student;
- (b) accept an undertaking from the registered health practitioner or student;



- (c) impose conditions on the practitioner's or student's registration, including, for example, in relation to a practitioner —
    - (i) a condition requiring the practitioner to complete specified further education or training within a specified period; or
    - (ii) a condition requiring the practitioner to undertake a specified period of supervised practice; or
    - (iii) a condition requiring the practitioner to do, or refrain from doing, something in connection with the practitioner's practice; or
    - (iv) a condition requiring the practitioner to manage the practitioner's practice in a specified way; or
    - (v) a condition requiring the practitioner to report to a specified person at specified times about the practitioner's practice; or
    - (vi) a condition requiring the practitioner not to employ, engage or recommend a specified person, or class of persons;
  - (d) refer the matter to another entity, including, for example, a health complaints entity, for investigation or other action.
- (3) If the National Board decides to impose a condition on the registered health practitioner's or student's registration, the Board must also decide a review period for the condition.

**179. Show cause process**

- (1) If a National Board is proposing to take relevant action in relation to a registered health practitioner or student, the Board must —
  - (a) give the practitioner or student written notice of the proposed relevant action; and
  - (b) invite the practitioner or student to make a written or verbal submission to the Board, within the reasonable time stated in the notice, about the proposed relevant action.

- (2) After considering any submissions made by the registered health practitioner or student in accordance with this section, the National Board must decide to —
- (a) take no action in relation to the matter; or
  - (b) do either or both of the following —
    - (i) take the proposed relevant action or other relevant action;
    - (ii) refer the matter to another entity, including, for example, a health complaints entity, for investigation or other action.
- (3) This section does not apply if —
- (a) a National Board is proposing to take relevant action in relation to a registered health practitioner or student; and
  - (b) the National Board has, in relation to the matter that forms the basis for the relevant action —
    - (i) investigated the registered health practitioner or student under Division 8; or
    - (ii) conducted a health assessment or performance assessment of the registered health practitioner or student under Division 9.

**180. Notice to be given to health practitioner or student and notifier**

- (1) As soon as practicable after making a decision under section 179(2), the National Board must give written notice of the decision to —
- (a) the registered health practitioner or student; and
  - (b) if the decision was the result of a notification, the notifier.
- (2) The notice given to the notifier must include information about the decision made by the Board only to the extent the information is available on the National Board's register.



**182. Establishment of performance and professional standards panel**

- (1) A National Board may establish a performance and professional standards panel if —
  - (a) the Board reasonably believes, because of a notification or for any other reason, that —
    - (i) the way a registered health practitioner practises the health profession is or may be unsatisfactory; or
    - (ii) the registered health practitioner's professional conduct is or may be unsatisfactory;and
  - (b) the Board decides it is necessary or appropriate for the matter to be referred to a panel.
- (2) A performance and professional standards panel must consist of at least 3 members.
- (3) In choosing members of the panel, the National Board must, if possible, choose a member from the jurisdiction in which the matter the subject of the hearing occurred.
- (4) At least half, but no more than two-thirds, of the members of the panel must be persons who are registered health practitioners in the health profession for which the Board is established, and chosen from a list approved under section 183.
- (5) At least one member must be a person who represents the community and chosen from a list approved under section 183.
- (6) A person may not be appointed to the panel if the person has been involved in any proceedings relating to the matter the subject of the hearing by the panel.

**183. List of approved persons for appointment to panels**

- (1) A National Board may appoint individuals to a list of persons approved to be appointed as members of panels.



- (3) A panel may have regard to —
- (a) a report prepared by an assessor about the registered health practitioner or student; and
  - (b) any other information the panel considers relevant to the hearing of the matter.

**186. Legal representation**

- (1) At a hearing of a panel, the registered health practitioner or student the subject of the hearing may be accompanied by an Australian legal practitioner or another person.
- (2) An Australian legal practitioner or other person accompanying the registered health practitioner or student may appear on behalf of the practitioner or student only with the leave of the panel.
- (3) The panel may grant leave for an Australian legal practitioner or other person to appear on behalf of the registered health practitioner or student only if the panel considers it appropriate in the particular circumstances of the hearing.

**187. Submission by notifier**

If a matter the subject of a hearing before a panel relates to a notification, the notifier may, with the leave of the panel, make a submission to the panel about the matter.

**188. Panel may proceed in absence of registered health practitioner or student**

At a hearing, a panel may proceed in the absence of the registered health practitioner or student the subject of the proceedings if the panel reasonably believes the practitioner or student has been given notice of the hearing.

**189. Hearing not open to the public**

A hearing before a panel is not open to the public.



- (2) After hearing a matter about a student, a health panel may decide —
- (a) the student has an impairment; or
  - (b) the matter must be referred to another entity, including, for example, a health complaints entity, for investigation or other action; or
  - (c) the student has no case to answer and no further action is to be taken in relation to the matter.
- (3) If a panel decides a registered health practitioner or student has an impairment, or that a practitioner has behaved in a way that constitutes unsatisfactory professional performance or unprofessional conduct, the panel may decide to do one or more of the following —
- (a) impose conditions on the practitioner's or student's registration, including, for example, in relation to a practitioner —
    - (i) a condition requiring the practitioner to complete specified further education or training within a specified period; or
    - (ii) a condition requiring the practitioner to undertake a specified period of supervised practice; or
    - (iii) a condition requiring the practitioner to do, or refrain from doing, something in connection with the practitioner's practice; or
    - (iv) a condition requiring the practitioner to manage the practitioner's practice in a specified way; or
    - (v) a condition requiring the practitioner to report to a specified person at specified times about the practitioner's practice; or
    - (vi) a condition requiring the practitioner not to employ, engage or recommend a specified person, or class of persons;
  - (b) for a health panel, suspend the practitioner's or student's registration;
  - (c) for a performance and professional standards panel, caution or reprimand the practitioner.



- (4) If a panel decides to impose a condition on a registered health practitioner's or student's registration, the panel must also decide a review period for the condition.
- (5) A decision by a panel that a registered health practitioner has no case to answer in relation to a matter does not prevent a National Board or adjudication body taking the matter into consideration at a later time as part of a pattern of conduct or practice by the health practitioner.

**192. Notice to be given about panel's decision**

- (1) As soon as practicable after making a decision under section 191, a panel must give notice of its decision to the National Board that established it.
- (2) The National Board must, within 30 days after the panel makes its decision, give written notice of the decision to —
  - (a) the registered health practitioner or student the subject of the hearing; and
  - (b) if the hearing related to a notification, the notifier.
- (3) The notice given to the registered health practitioner or student must state —
  - (a) the decision made by the panel; and
  - (b) the reasons for the decision; and
  - (c) that the registered health practitioner or student may appeal against the decision; and
  - (d) how an application for appeal may be made and the period within which the application must be made.
- (4) The notice to the notifier must include information about the decision made by the panel but only to the extent the information is available on the National Board's register.

**Division 12 — Referring matter to responsible tribunals**

**193. Matters to be referred to responsible tribunal**

- (1) A National Board must refer a matter about a registered health practitioner or student to a responsible tribunal if —
- (a) for a registered health practitioner, the Board reasonably believes, based on a notification or for any other reason —
    - (i) the practitioner has behaved in a way that constitutes professional misconduct; or
    - (ii) the 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;
  - or
  - (b) for a registered health practitioner or student, a panel established by the Board requires the Board to refer the matter to a responsible tribunal.
- (2) The National Board must —
- (a) refer the matter to —
    - (i) the responsible tribunal for the participating jurisdiction in which the behaviour the subject of the matter occurred; or
    - (ii) if the behaviour occurred in more than one jurisdiction, the responsible tribunal for the participating jurisdiction in which the practitioner’s principal place of practice is located;
  - and
  - (b) give written notice of the referral to the registered health practitioner or student to whom the matter relates.

**194. Parties to the proceedings**

The parties to proceedings relating to a matter being heard by a responsible tribunal are —

- (a) the registered health practitioner or student who is the subject of the proceedings; and



- (ii) a condition requiring the practitioner to undertake a specified period of supervised practice; or
  - (iii) a condition requiring the practitioner to do, or refrain from doing, something in connection with the practitioner's practice; or
  - (iv) a condition requiring the practitioner to manage the practitioner's practice in a specified way; or
  - (v) a condition requiring the practitioner to report to a specified person at specified times about the practitioner's practice; or
  - (vi) a condition requiring the practitioner not to employ, engage or recommend a specified person, or class of persons;
- (c) require the practitioner to pay a fine of not more than \$30 000 to the National Board that registers the practitioner;
  - (d) suspend the practitioner's registration for a specified period;
  - (e) cancel the practitioner's registration.
- (3) If the responsible tribunal decides to impose a condition on the practitioner's registration, the tribunal must also decide a review period for the condition.
- (4) If the tribunal decides to cancel a person's registration under this Law or the person does not hold registration under this Law, the tribunal may also decide to —
- (a) disqualify the person from applying for registration as a registered health practitioner for a specified period; or
  - (b) prohibit the person from using a specified title or providing a specified health service.

**197. Decision by responsible tribunal about student**

- (1) After hearing a matter about a student, a responsible tribunal may decide —
- (a) the student has an impairment; or
  - (b) the student has no case to answer and no further action is to be taken in relation to the matter.

- (2) If the responsible tribunal decides the student has an impairment, the tribunal may decide to —
- (a) impose a condition on the student's registration; or
  - (b) suspend the student's registration.

**198. Relationship with Act establishing responsible tribunal**

This Division applies despite any provision to the contrary of the Act that establishes the responsible tribunal but does not otherwise limit that Act.

**Division 13 — Appeals**

**199. Appellable decisions**

- (1) A person who is the subject of any of the following decisions (an *appellable decision*) may appeal against the decision to the appropriate responsible tribunal for the appellable decision —
- (a) a decision by a National Board to refuse to register the person;
  - (b) a decision by a National Board to refuse to endorse the person's registration;
  - (c) a decision by a National Board to refuse to renew the person's registration;
  - (d) a decision by a National Board to refuse to renew the endorsement of the person's registration;
  - (e) a decision by a National Board to impose or change a condition on a person's registration or the endorsement of the person's registration, other than —
    - (i) a condition relating to the person's qualification for general registration in the health profession; and
    - (ii) a condition imposed by section 112(3)(a);
  - (f) a decision by a National Board to refuse to change or remove a condition imposed on the person's registration or the endorsement of the person's registration;
  - (g) a decision by a National Board to refuse to change or revoke an undertaking given by the person to the Board;

- (h) a decision by a National Board to suspend the person's registration;
  - (i) a decision by a panel to impose a condition on the person's registration;
  - (j) a decision by a health panel to suspend the person's registration;
  - (k) a decision by a performance and professional standards panel to reprimand the person.
- (2) For the purposes of subsection (1), the appropriate responsible tribunal for an appellable decision is —
- (a) for a decision to take health, conduct or performance action in relation to a registered health practitioner or student —
    - (i) the responsible tribunal for the participating jurisdiction in which the behaviour the subject of the decision occurred; or
    - (ii) if the behaviour the subject of the decision occurred in more than one jurisdiction, the responsible tribunal for the participating jurisdiction in which the practitioner's principal place of practice is located;
  - or
  - (b) for another decision in relation to a registered health practitioner, the responsible tribunal for the participating jurisdiction in which the practitioner's principal place of practice is located; or
  - (c) for another decision in relation to a student, the responsible tribunal for the participating jurisdiction in which the student is undertaking the approved programme of study or clinical training; or
  - (d) for a decision in relation to another person —
    - (i) the responsible tribunal for the participating jurisdiction in which the person lives; or
    - (ii) if the person does not live in a participating jurisdiction, the responsible tribunal for the participating jurisdiction nominated by the National Board that made the appellable decision and specified



profession, it must give written notice of the decision to the National Board established for the profession.

- (2) The notice must state —
- (a) the decision made by the adjudication body; and
  - (b) the reasons for the decision; and
  - (c) the date the decision takes effect; and
  - (d) any action the National Board must take to give effect to the decision.

**205. Implementation of decisions**

- (1) A National Board must give effect to a decision of an adjudication body unless the decision is stayed on appeal.
- (2) Without limiting subsection (1), the National Board must, if the notice given to the Board states that a health practitioner's or student's registration is cancelled, remove the practitioner's or student's name from the appropriate register kept by the Board.

**206. National Board to give notice to registered health practitioner's employer**

- (1) This section applies if —
- (a) a National Board —
    - (i) decides to take health, conduct or performance action against a registered health practitioner; or
    - (ii) receives notice from an adjudication body that the adjudication body has decided to take health, conduct or performance action against a registered health practitioner; or
    - (iii) receives notice from a co-regulatory authority that an adjudication body in the co-regulatory jurisdiction has decided to take health, conduct or performance action against a registered health practitioner;
- and
- (b) the National Board has been advised by the registered health practitioner that the practitioner is employed by another entity.



Note: Under section 132, a National Board may ask a registered health practitioner to give the Board information about whether or not the practitioner is employed by another entity and, if so, for the employer's details.

- (2) The National Board must, as soon as practicable after making the decision or receiving the notice, give written notice of the decision to take health, conduct or performance action against the registered health practitioner to the practitioner's employer.

**207. Effect of suspension**

If a person's registration as a health practitioner or student is suspended under this Law the person is taken during the period of suspension not to be registered under this Law, other than for the purposes of this Part.

**Part 9 — Finance**

**208. Australian Health Practitioner Regulation Agency Fund**

- (1) The Australian Health Practitioner Regulation Agency Fund is established.
- (2) The Agency Fund is to have a separate account for each National Board.
- (3) The Agency Fund is a fund to be administered by the National Agency.
- (4) The National Agency may establish accounts with any financial institution for money in the Agency Fund.
- (5) The Agency Fund does not form part of the consolidated fund or consolidated account of a participating jurisdiction or the Commonwealth.

**209. Payments into Agency Fund**

- (1) There is payable into the Agency Fund —
  - (a) all money appropriated by the Parliament of any participating jurisdiction or the Commonwealth for the purposes of the Fund; and
  - (b) all fees, costs and expenses paid or recovered under this Law; and
  - (c) all fines paid to, or recovered by, a National Board in accordance with an order of an adjudication body; and
  - (d) the proceeds of the investment of money in the Fund; and
  - (e) all grants, gifts and donations made to the National Agency or a National Board, but subject to any trusts declared in relation to the grants, gifts or donations; and
  - (f) all money directed or authorised to be paid into the Fund by or under this Law, any law of a participating jurisdiction or any law of the Commonwealth; and

- (g) any other money or property received by the National Agency or a National Board in connection with the exercise of its functions.
- (2) Any money paid into the Agency Fund under subsection (1) for or on behalf of a National Board must be paid into the Board's account kept within the Agency Fund.

**210. Payments out of Agency Fund**

- (1) Payments may be made from the Agency Fund for the purpose of—
  - (a) paying any costs or expenses, or discharging any liabilities, incurred in the administration or enforcement of this Law; and
  - (b) making payments to co-regulatory authorities; and
  - (c) any other payments recommended by the National Board or National Agency and approved by the Ministerial Council.
- (2) Without limiting subsection (1)(a), a payment may be made from the Agency Fund to a responsible tribunal to meet the expenses of the responsible tribunal in performing functions under this Law.
- (3) A payment under subsection (1) may be made from a National Board's account kept within the Agency Fund only if the payment is in accordance with the Board's budget or otherwise approved by the Board.

**211. Investment of money in Agency Fund**

- (1) Subject to this section, the National Agency may invest money in the Agency Fund in the way it considers appropriate.
- (2) The National Agency may invest money in a National Board's account kept within the Agency Fund only if the Agency has consulted the Board about the investment.
- (3) An investment under this section must be—
  - (a) in Australian money; and
  - (b) undertaken in Australia.

- (4) The National Agency must use its best efforts to invest money in the Agency Fund in a way it considers is most appropriate in all the circumstances.
- (5) The National Agency must keep records that show it has invested in the way most appropriate in the circumstances.
- (6) A security, safe custody acknowledgment or other document evidencing title accepted, guaranteed or issued for an investment arrangement must be held by the National Agency.

**212. Financial management duties of National Agency and National Boards**

- (1) The National Agency must —
  - (a) ensure that its operations are carried out efficiently, effectively and economically; and
  - (b) keep proper books and records in relation to the Agency Fund; and
  - (c) ensure that expenditure is made from the Agency Fund for lawful purposes only and, as far as possible, reasonable value is obtained for moneys expended from the Fund; and
  - (d) ensure that its procedures, including internal control procedures, afford adequate safeguards with respect to —
    - (i) the correctness, regularity and propriety of payments made from the Agency Fund; and
    - (ii) receiving and accounting for payments made to the Agency Fund; and
    - (iii) prevention of fraud or mistake;and
  - (e) take any action necessary to ensure the preparation of accurate financial statements in accordance with Australian Accounting Standards for inclusion in its annual report; and
  - (f) take any action necessary to facilitate the audit of those financial statements in accordance with this Law; and
  - (g) arrange for any further audit by a qualified person of the books and records kept by the National Agency in relation to

the Agency Fund, if directed to do so by the Ministerial Council.

- (2) A National Board must —
- (a) ensure that its operations are carried out efficiently, effectively and economically; and
  - (b) take any action necessary to ensure that the National Agency is able to comply with this section in relation to the funding of the National Board in exercising its functions.

## **Part 10 — Information and privacy**

### **Division 1 — Privacy**

#### **213. Application of Commonwealth Privacy Act**

- (1) The Privacy Act applies as a law of a participating jurisdiction for the purposes of the national registration and accreditation scheme.
- (2) For the purposes of subsection (1), the Privacy Act applies —
  - (a) as if a reference to the Office of the Privacy Commissioner were a reference to the Office of the National Health Practitioners Privacy Commissioner; and
  - (b) as if a reference to the Privacy Commissioner were a reference to the National Health Practitioners Privacy Commissioner; and
  - (c) with any other modifications made by the regulations.
- (3) Without limiting subsection (2)(c), the regulations may —
  - (a) provide that the Privacy Act applies under subsection (1) as if a provision of the Privacy Act specified in the regulations were omitted; or
  - (b) provide that the Privacy Act applies under subsection (1) as if an amendment to the Privacy Act made by a law of the Commonwealth, and specified in the regulations, had not taken effect; or
  - (c) confer jurisdiction on a tribunal or court of a participating jurisdiction.
- (4) In this section —

**Privacy Act** means the *Privacy Act 1988* (Commonwealth), as in force from time to time.



- (2) However, subsection (1) does not apply if—
- (a) the information is disclosed in the exercise of a function under, or for the purposes of, this Law; or
  - (b) the disclosure —
    - (i) is to a co-regulatory authority; or
    - (ii) is authorised or required by any law of a participating jurisdiction;
- or
- (c) the disclosure is otherwise required or permitted by law; or
  - (d) the disclosure is with the agreement of the person to whom the information relates; or
  - (e) the disclosure is in a form that does not identify the identity of a person; or
  - (f) the information relates to proceedings before a responsible tribunal and the proceedings are or were open to the public; or
  - (g) the information is, or has been, accessible to the public, including because it is or was recorded in a National Register; or
  - (h) the disclosure is otherwise authorised by the Ministerial Council.

**217. Disclosure of information for workforce planning**

- (1) The Ministerial Council may, by written notice given to a National Board, ask the Board for information required by the Council for planning the workforce of health practitioners, or a class of practitioners, in Australia or a part of Australia.
- (2) If a National Board receives a request under subsection (1), the Board may, by written notice given to health practitioners registered by the Board, ask the practitioners for information relevant to the request.
- (3) A registered health practitioner who is asked to provide information under subsection (2) may, but is not required to, provide the information.





**219. Disclosure of information to other Commonwealth, State and Territory entities**

- (1) A person exercising functions under this Law may disclose protected information to the following entities —
- (a) the chief executive officer under the *Medicare Australia Act 1973*<sup>3</sup> (Commonwealth);
  - (b) an entity performing functions under the *Health Insurance Act 1973* (Commonwealth);
  - (c) the Secretary within the meaning of the *National Health Act 1953* (Commonwealth);
  - (d) the Secretary to the Department in which the *Migration Act 1958* (Commonwealth) is administered;
  - (e) another Commonwealth, State or Territory entity having functions relating to professional services provided by health practitioners or the regulation of health practitioners.
- (2) However, a person may disclose protected information under subsection (1) only if the person is satisfied —
- (a) the protected information will be collected, stored and used by the entity to which it is disclosed in a way that ensures the privacy of the persons to whom it relates is protected; and
  - (b) the provision of the protected information to the entity is necessary to enable the entity to exercise its functions.

**220. Disclosure to protect health or safety of patients or other persons**

- (1) This section applies if a National Board reasonably believes that —
- (a) a registered health practitioner poses, or may pose, a risk to public health; or
  - (b) the health or safety of a patient or a class of patients is or may be at risk because of a registered health practitioner's practice as a health practitioner.
- (2) The National Board may give written notice of the risk and any relevant information about the registered health practitioner to an entity of the Commonwealth or of a State or Territory that the Board considers may be required to take action in relation to the risk.



**Health Practitioner Regulation National Law (WA) Act 2010**

**Schedule** Health Practitioner Regulation National Law

**Part 10** Information and privacy

**s. 222**

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<b>Name of Board</b>	<b>Name of public national register</b>	<b>Divisions of public national register</b>
Chiropractic Board of Australia	Register of Chiropractors	
Dental Board of Australia	Register of Dental Practitioners	Dentists, Dental therapists, Dental hygienists, Dental prosthetists, Oral health therapists
Medical Board of Australia	Register of Medical Practitioners	
Medical Radiation Practice Board of Australia	Register of Medical Radiation Practitioners	Diagnostic radiographers, Nuclear medicine technologists, Radiation therapists
Nursing and Midwifery Board of Australia	Register of Nurses	Registered nurses (Division 1), Enrolled nurses (Division 2)
	Register of Midwives	
Occupational Therapy Board of Australia	Register of Occupational Therapists	
Optometry Board of Australia	Register of Optometrists	
Osteopathy Board of Australia	Register of Osteopaths	



**225. Information to be recorded in National Register**

A National Register or Specialists Register must include the following information for each registered health practitioner whose name is included in the register —

- (a) the practitioner's sex;
- (b) the suburb and postcode of the practitioner's principal place of practice;
- (c) the registration number or code given to the practitioner by the National Board;
- (d) the date on which the practitioner was first registered in the health profession in Australia, whether under this Law or a corresponding prior Act;
- (e) the date on which the practitioner's registration expires;
- (f) the type of registration held by the practitioner;
- (g) if the register includes divisions, the division in which the practitioner is registered;
- (h) if the practitioner holds specialist registration, the recognised specialty in which the practitioner is registered;
- (i) if the practitioner holds limited registration, the purpose for which the practitioner is registered;
- (j) if the practitioner has been reprimanded, the fact that the practitioner has been reprimanded;
- (k) if a condition has been imposed on the practitioner's registration or the National Board has entered into an undertaking with the practitioner —
  - (i) if section 226(1) applies, the fact that a condition has been imposed or an undertaking accepted; or
  - (ii) otherwise, details of the condition or undertaking;
- (l) if the practitioner's registration is suspended, the fact that the practitioner's registration has been suspended and, if the suspension is for a specified period, the period during which the suspension applies;
- (m) if the practitioner's registration has been endorsed, details of the endorsement;



**227. Register about former registered health practitioners**

A register kept by a National Board under section 222(2) or 223(b) must include the following information for each health practitioner whose registration was cancelled by an adjudication body —

- (a) the fact that the practitioner's registration was cancelled by an adjudication body;
- (b) the grounds on which the practitioner's registration was cancelled;
- (c) if the adjudication body's hearing of the matter was open to the public, details of the conduct that formed the basis of the cancellation.

**228. Inspection of registers**

(1) The National Agency —

- (a) must keep each register kept by a National Board under this Division open for inspection, free of charge, by members of the public —
  - (i) at its national office and each of its local offices during ordinary office hours; and
  - (ii) on the Agency's website;and
- (b) must give a person an extract from the register on payment of the relevant fee; and
- (c) may give a person a copy of the register on payment of the relevant fee.

(2) The National Agency may give a person a copy of the register under subsection (1)(c) only if the Agency is satisfied it would be in the public interest to do so.

(3) The National Agency may waive, wholly or partly, the payment of a fee by a person under subsection (1)(b) or (c) if the Agency considers it appropriate in the circumstances.





- (l) any other information the Board considers appropriate.

**Division 5 — Other records**

**231. Other records to be kept by National Boards**

A National Board must keep a record of the following information for each health practitioner it registers —

- (a) information that identifies the practitioner;
- (b) the practitioner's contact details;
- (c) information about the practitioner's registration or endorsement;
- (d) information about any previous registration of the practitioner, whether in Australia or overseas;
- (e) information about any notification made about the practitioner and any investigation and health, conduct or performance action taken as a result of the notification;
- (f) information about the practitioner's professional indemnity insurance arrangements;
- (g) information about checks carried out by the Board about the practitioner's criminal history and identity, including the nature of the check carried out, when it was carried out and the nature of the information provided by the check.

**232. Record of adjudication decisions to be kept and made publicly available**

- (1) A National Board is to keep and publish on its website a record of decisions made by —
  - (a) panels established by the Board; and
  - (b) responsible tribunals that relate to registered health practitioners or students registered by the Board.
- (2) The record is to be kept —
  - (a) in a way that does not identify persons involved in the matter, unless the decision was made by a responsible tribunal and the hearing was open to the public; and
  - (b) otherwise in the way decided by the National Board.



**Part 11 — Miscellaneous**

**Division 1 — Provisions relating to persons exercising functions under law**

**234. General duties of persons exercising functions under this Law**

- (1) A person exercising functions under this Law must, when exercising the functions, act honestly and with integrity.
- (2) A person exercising functions under this Law must exercise the person's functions under this Law —
  - (a) in good faith; and
  - (b) in a financially responsible manner; and
  - (c) with a reasonable degree of care, diligence and skill.
- (3) A person exercising functions under this Law must not make improper use of the person's position or of information that comes to the person's knowledge in the course of, or because of, the person's exercise of the functions —
  - (a) to gain an advantage for himself or herself or another person; or
  - (b) to cause a detriment to the development, implementation or operation of the national registration and accreditation scheme.

**235. Application of Commonwealth Ombudsman Act**

- (1) The Ombudsman Act applies as a law of a participating jurisdiction for the purposes of the national registration and accreditation scheme.
- (2) For the purposes of subsection (1), the Ombudsman Act applies —
  - (a) as if a reference to the Commonwealth Ombudsman were a reference to the National Health Practitioners Ombudsman; and
  - (b) with any other modifications made by the regulations.

- (3) Without limiting subsection (2), the regulations may —
- (a) provide that the Ombudsman Act applies under subsection (1) as if a provision of the Ombudsman Act specified in the regulations were omitted; or
  - (b) provide that the Ombudsman Act applies under subsection (1) as if an amendment to the Ombudsman Act made by a law of the Commonwealth, and specified in the regulations, had not taken effect; or
  - (c) confer jurisdiction on a tribunal or court of a participating jurisdiction.
- (4) In this section —
- Ombudsman Act*** means the *Ombudsman Act 1976* (Commonwealth), as in force from time to time.

**236. Protection from personal liability for persons exercising functions**

- (1) A protected person is not personally liable for anything done or omitted to be done in good faith —
- (a) in the exercise of a function under this Law; or
  - (b) in the reasonable belief that the act or omission was the exercise of a function under this Law.
- (2) Any liability resulting from an act or omission that would, but for subsection (1), attach to a protected person attaches instead to the National Agency.
- (3) In this section —
- protected person*** means any of the following —
- (a) a member of the Advisory Council;
  - (b) a member of the Agency Management Committee;
  - (c) a member of a National Board or a committee of the National Board;
  - (d) a member of an external accreditation entity;
  - (e) a member of the staff of the National Agency;
  - (f) a consultant or contractor engaged by the National Agency;

- (g) a person appointed by the National Agency to conduct an examination or assessment for a National Board;
- (h) a person employed or engaged by an external accreditation entity to assist it with its accreditation function.

**237. Protection from liability for persons making notification or otherwise providing information**

- (1) This section applies to a person who, in good faith —
  - (a) makes a notification under this Law; or
  - (b) gives information in the course of an investigation or for another purpose under this Law to a person exercising functions under this Law.
- (2) The person is not liable, civilly, criminally or under an administrative process, for giving the information.
- (3) Without limiting subsection (2) —
  - (a) the making of the notification or giving of the information does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct; and
  - (b) no liability for defamation is incurred by the person because of the making of the notification or giving of the information.
- (4) The protection given to the person by this section extends to —
  - (a) a person who, in good faith, provided the person with any information on the basis of which the notification was made or the information was given; and
  - (b) a person who, in good faith, was otherwise concerned in the making of the notification or giving of the information.

**Division 2 — Inspectors**

**238. Functions and powers of inspectors**

- (1) An inspector has the function of conducting investigations to enforce compliance with this Law.
- (2) Schedule 6 sets out provisions relating to the powers of an inspector.

**239. Appointment of inspectors**

- (1) A National Board may appoint the following persons as inspectors —
  - (a) members of the National Agency’s staff;
  - (b) contractors engaged by the National Agency.
- (2) An inspector holds office on the conditions stated in the instrument of appointment.
- (3) If an inspector’s appointment provides for a term of appointment, the inspector ceases holding office at the end of the term.
- (4) An inspector may resign by signed notice of resignation given to the National Board that appointed the inspector.

**240. Identity card**

- (1) A National Board must give an identity card to each inspector it appoints.
- (2) The identity card must —
  - (a) contain a recent photograph of the inspector; and
  - (b) be signed by the inspector; and
  - (c) identify the person as an inspector appointed by the National Board; and
  - (d) include an expiry date.
- (3) This section does not prevent the issue of a single identity card to a person —
  - (a) if the person is appointed as an inspector for this Law by more than one National Board; or
  - (b) if the person is appointed as an inspector and investigator for this Law by a National Board; or
  - (c) for this Law and other Acts.
- (4) A person who ceases to be an inspector must give the person’s identity card to the National Board that appointed the person within 7 days after the person ceases to be an inspector, unless the person has a reasonable excuse.

**241. Display of identity card**

- (1) An inspector may exercise a power in relation to someone else (the *other person*) only if the inspector —
  - (a) first produces the inspector's identity card for the other person's inspection; or
  - (b) has the identity card displayed so it is clearly visible to the other person.
- (2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the inspector must produce the identity card for the other person's inspection at the first reasonable opportunity.

**Division 3 — Legal proceedings**

**242. Proceedings for offences**

A proceeding for an offence against this Law is to be by way of a summary proceeding before a court of summary jurisdiction.

**243. Conduct may constitute offence and be subject of disciplinary proceedings**

- (1) If a person's behaviour constitutes an offence against this Law or another Act and constitutes professional misconduct, unsatisfactory professional performance or unprofessional conduct under this Law —
  - (a) the fact that proceedings for an offence have been taken in relation to the behaviour does not prevent proceedings being taken before an adjudication body under this Law for the same behaviour; and
  - (b) the fact that proceedings have been taken before an adjudication body under this Law in relation to the conduct does not prevent proceedings for an offence being taken for the same behaviour.
- (2) If a person's behaviour may be dealt with by a health complaints entity under the law of a participating jurisdiction and constitutes



professional misconduct, unsatisfactory professional performance or unprofessional conduct under this Law —

- (a) the fact that the behaviour has been dealt with by the health complaints entity does not prevent proceedings being taken before an adjudication body under this Law for the same behaviour; and
- (b) the fact that proceedings have been taken before an adjudication body under this Law in relation to the behaviour does not prevent action being taken by the health complaints entity under the law of the participating jurisdiction for the same behaviour.

**244. Evidentiary certificates**

A certificate purporting to be signed by the chief executive officer of the National Agency and stating any of the following matters is prima facie evidence of the matter —

- (a) a stated document is one of the following things made, given, issued or kept under this Law —
  - (i) an appointment, approval or decision;
  - (ii) a notice, direction or requirement;
  - (iii) a certificate of registration;
  - (iv) a register, or an extract from a register;
  - (v) a record, or an extract from a record;
- (b) a stated document is another document kept under this Law;
- (c) a stated document is a copy of a document mentioned in paragraph (a) or (b);
- (d) on a stated day, or during a stated period, a stated person was or was not a registered health practitioner or a student;
- (e) on a stated day, or during a stated period, a registration or endorsement was or was not subject to a stated condition;
- (f) on a stated day, a registration was suspended or cancelled;
- (g) on a stated day, or during a stated period, an appointment as an investigator or inspector was, or was not, in force for a stated person;

- (h) on a stated day, a stated person was given a stated notice or direction under this Law;
- (i) on a stated day, a stated requirement was made of a stated person.

#### **Division 4 — Regulations**

##### **245. National regulations**

- (1) The Ministerial Council may make regulations for the purposes of this Law.
- (2) The regulations may provide for any matter that is necessary or convenient to be prescribed for carrying out or giving effect to this Law.
- (3) Despite section 7(1)(d) of the *Health Practitioner Regulation National Law (WA) Act 2010*, sections 41 and 42 of the *Interpretation Act 1984* apply to regulations made under subsection (1).
- (4) A regulation commences on the day or days specified in the regulation for its commencement (being not earlier than the date it is published).

##### **246. Parliamentary scrutiny of national regulations**

Note: Clause 246 of the *Health Practitioner Regulation National Law* does not form part of the *Health Practitioner Regulation National Law* in Western Australia.

##### **247. Effect of disallowance of national regulation**

Note: Clause 247 of the *Health Practitioner Regulation National Law* does not form part of the *Health Practitioner Regulation National Law* in Western Australia.

#### **Division 5 — Miscellaneous**

##### **248. Combined notice may be given**

If an entity is required under this Law to give another entity (the *recipient*) notices under more than one provision, the entity may give the recipient a combined notice for the provisions.



## **Part 12 — Transitional provisions**

### **Division 1 — Preliminary**

#### **250. Terms used**

In this Part —

*commencement day* means 1 July 2010;

*local registration authority* means an entity that had functions under a law of a participating jurisdiction that included the registration of persons as health practitioners;

*participation day*, for a participating jurisdiction, means —

- (a) for a health profession other than a relevant health profession —
  - (i) 1 July 2010; or
  - (ii) the later day on which the jurisdiction became a participating jurisdiction;

or

- (b) for a relevant health profession, 1 July 2012;

*relevant health profession* means —

- (a) Aboriginal and Torres Strait Islander health practice; or
- (b) Chinese medicine; or
- (c) medical radiation practice; or
- (d) occupational therapy;

*repealed Law* means the Health Practitioner Regulation (Administrative Arrangements) National Law set out in the Schedule to the *Health Practitioner Regulation (Administrative Arrangements) National Law Act 2008* (Queensland).

#### **251. References to registered health practitioners**

- (1) A reference in an Act of a participating jurisdiction, or another instrument, to the Health Practitioner Regulation (Administrative Arrangements) National Law may, if the context permits, be taken to be a reference to this Law.



Board established for the profession must not, before the day that is 3 years after the commencement day, end that entity's appointment.

**254. Health profession standards approved by Ministerial Council**

A health profession standard approved by the Ministerial Council under the repealed Law is taken from the commencement day to be an approved registration standard under this Law.

**255. Accreditation standards approved by National Board**

An accreditation standard approved by a National Board under the repealed Law is taken from the commencement day to be an approved accreditation standard under this Law.

**Division 3 — Advisory Council**

**256. Members of Advisory Council**

- (1) A person who was, immediately before the commencement day, a member of the Australian Health Workforce Advisory Council under the repealed Law is taken to be a member of the Advisory Council under this Law.
- (2) Without limiting subsection (1), a member of the Advisory Council continues to hold office —
  - (a) on the same terms and conditions that applied to the member's appointment under the repealed Law; and
  - (b) until the day the member's term of appointment under the repealed Law would have ended or the earlier day the member otherwise vacates office under this Law.
- (3) The person who, immediately before the commencement day, held office as Chairperson of the Australian Health Workforce Advisory Council under the repealed Law continues to hold office as Chairperson of the Advisory Council under this Law.

**Division 4 — National Agency**

**257. Health profession agreements**

From the commencement day, a health profession agreement entered into by the Australian Health Practitioner Regulation Agency and in force immediately before the commencement day is taken to be a

health profession agreement entered into by the National Agency under this Law.

**258. Service agreement**

- (1) This section applies if, immediately before the participation day for a participating jurisdiction —
  - (a) a local registration authority in that jurisdiction exercised functions in relation to related health professionals; or
  - (b) a local registration authority in that jurisdiction was a party to a service agreement for an entity to provide administrative or operational support to the authority and the entity also provided support under a service agreement to an authority that registers related health professionals.
- (2) From the participation day for the participating jurisdiction, the National Agency may enter into an agreement with the authority that is responsible for registering the related health professionals to provide services to the authority.
- (3) In this section —  
***related health professionals*** means persons who practise a profession providing health services that is not a health profession under this Law.

**Division 5 — Agency Management Committee**

**259. Members of Agency Management Committee**

- (1) A person who was, immediately before the commencement day, a member of the Australian Health Practitioner Regulation Agency Management Committee under the repealed Law is taken to be a member of the Agency Management Committee appointed under this Law.
- (2) Without limiting subsection (1), a member of the Agency Management Committee continues to hold office —
  - (a) on the same terms and conditions that applied to the person's appointment under the repealed Law; and

- (b) until the day the member's term of appointment under the repealed Law would have ended or the earlier day the member otherwise vacates office under this Law.
- (3) The person who, immediately before the commencement day, held office as Chairperson of the Australian Health Practitioner Regulation Agency Management Committee under the repealed Law continues to hold office as Chairperson of the Agency Management Committee under this Law.

**Division 6 — Staff, consultants and contractors of National Agency**

**260. Chief executive officer**

The person who, immediately before the commencement day, held office as chief executive officer of the Australian Health Practitioner Regulation Agency under the repealed Law is taken, from the commencement day, to have been appointed as the chief executive officer of the National Agency under this Law on the same terms and conditions that applied to the person's appointment under the repealed Law.

**261. Staff**

- (1) A person who, immediately before the commencement day, was employed by the Australian Health Practitioner Regulation Agency under the repealed Law is taken, from the commencement day, to have been employed by the National Agency under this Law.
- (2) A secondment arrangement in force immediately before the commencement day is taken, from the commencement day, to have been made by the National Agency under this Law.
- (3) In this section —  
*secondment arrangement* means an arrangement made under the repealed Law by the Australian Health Practitioner Regulation Agency for the services of any staff of a government agency of a participating jurisdiction or the Commonwealth.



**262.      Consultants and contractors**

A person who, immediately before the commencement day, was a consultant or contractor engaged by the Australian Health Practitioner Regulation Agency under the repealed Law is taken, from the commencement day, to have been engaged by the National Agency under this Law.

**Division 7 — Reports**

**263.      Annual report**

Sections 35 and 36 of the repealed Law continue to apply to the preparation and submission of the first annual report of the Australian Health Practitioner Regulation Agency as if this Law had not commenced.

**Division 8 — National Boards**

**264.      Members of National Boards**

- (1) A person who was, immediately before the commencement day, a member of a National Health Practitioner Board under the repealed Law is taken to be a member of the National Board of the same name under this Law.
- (2) Without limiting subsection (1), a member of a National Board holds office —
  - (a) on the same terms and conditions that applied to the person's appointment under the repealed Law; and
  - (b) until the day the member's term of appointment under the repealed Law would have ended or the earlier day the member otherwise vacates office under this Law.
- (3) A person who, immediately before the commencement day, held office as Chairperson of a National Health Practitioner Board is taken, from the commencement day, to hold office as Chairperson of the National Board of the same name.

**265. Committees**

- (1) From the commencement day, a committee established by a National Health Practitioner Board under the repealed Law and in existence immediately before the commencement day is taken to be a committee established under this Law by the National Board of the same name.
- (2) A person who, immediately before the commencement day, held office as a member of a committee established by a National Health Practitioner Board under the repealed Law is taken, from the commencement day, to hold office as a member of the committee as continued in existence under subsection (1).

**266. Delegation**

- (1) This section applies if, under the repealed Law —
  - (a) a National Health Practitioner Board had delegated any of its functions to a committee or the Australian Health Practitioner Regulation Agency and the delegation was in force immediately before the commencement day; or
  - (b) the Australian Health Practitioner Regulation Agency had subdelegated a function delegated to it by a National Health Practitioner Board to a member of the Agency's staff and the subdelegation was in force immediately before the commencement day.
- (2) From the commencement day, the delegation or subdelegation continues as if it were a delegation or subdelegation under this Law.

**Division 9 — Agency Fund**

**267. Agency Fund**

From the commencement day, the Australian Health Practitioner Regulation Agency Fund established by the repealed Law is taken to be the Agency Fund established by this Law.



(2) From the participation day, the person is taken to hold specialist registration in the recognised specialty in the health profession under this Law.

(3) In this section —

*corresponding purpose* means a purpose that is equivalent to, or substantially equivalent to, a purpose for which limited registration may be granted under this Law;

*specialist health practitioner*, in a specialty in a health profession, means a person who held specialist registration in, or was endorsed or otherwise authorised to practise, the specialty in the health profession but does not include a person who held registration to practise the profession only for a corresponding purpose.

**271. Provisional registration**

(1) This section applies to a person who, immediately before the participation day for a participating jurisdiction, held registration (however described) under a law of that jurisdiction to enable the person to complete a period of supervised practice or internship in a health profession required for the person to be eligible for general registration (however described) in the profession.

(2) From the participation day, the person is taken to hold provisional registration in the health profession under this Law.

**272. Limited registration**

(1) This section applies to a person who, immediately before the participation day for a participating jurisdiction, held a type of registration (however described) in a health profession under the law of that jurisdiction that was granted for the practice of the health profession only for a corresponding purpose.

(2) From the participation day, the person is taken to hold limited registration in the health profession for that purpose under this Law.

(3) In this section —

*corresponding purpose* means a purpose that is equivalent to, or substantially equivalent to, a purpose for which limited registration may be granted under this Law.

**273. Limited registration (public interest-occasional practice)**

- (1) This section applies to a person who, immediately before the participation day for a participating jurisdiction, held a type of registration (however described) in a health profession under the law of that jurisdiction that was granted —
  - (a) subject to the following conditions limiting the scope of the person's practice of the profession —
    - (i) the person must not practise the profession other than —
      - (I) to refer a person to another registered health practitioner; or
      - (II) to prescribe scheduled medicines in specified circumstances;
    - (ii) the person must not receive a fee or other benefit for providing a service referred to in subparagraph (i);or
  - (b) on the basis the person had indicated the person was retired from regular practice and intended only to practise on an occasional basis.
- (2) From the participation day, the person is taken to hold limited registration in the public interest under this Law for the limited scope that applied to the person's practice of the health profession immediately before the participation day.

**274. Non-practicing registration**

- (1) This section applies to a person who, immediately before the participation day for a participating jurisdiction, held a type of registration (however described) in a health profession under the law of that jurisdiction that was granted subject to the condition that the person must not practise the profession.
- (2) From the participation day, the person is taken to hold non-practicing registration in the health profession under this Law.

**275. Registration for existing registered students**

- (1) This section applies if, immediately before the participation day for a participating jurisdiction, a person held registration as a student in a health profession under the law of that jurisdiction.
- (2) From the participation day, the person is taken to hold student registration in the health profession under this Law.

**276. Registration for new students**

- (1) This section applies in relation to a person who, immediately before the participation day for a participating jurisdiction —
  - (a) was a student undertaking a programme of study, provided by an education provider located in the jurisdiction, that from the participation day is an approved programme of study for a health profession; and
  - (b) was not required under the law of that jurisdiction to be registered as a student in the health profession to undertake the programme of study or any part of the programme, including any clinical training or other practice of the profession related to undertaking the programme.
- (2) Despite Part 7 Division 7, the National Board established for the health profession is not required before 1 March 2011 to register the student in the profession.

**277. Other registrations**

- (1) This section applies if —
  - (a) immediately before the participation day for a participating jurisdiction, a class of persons held a type of registration in, or was endorsed or otherwise authorised to practise, a health profession under the law of that jurisdiction; and
  - (b) from the participation day, persons in that class are not registered, endorsed or otherwise authorised to practise the profession by another provision of this Division.
- (2) From the participation day, persons in that class are taken to hold the type of registration in the health profession that is specified for the

class of persons in the registration transition plan prepared under subsection (3) by the National Board established for that profession.

- (3) Before the participation day, each National Board must prepare a registration transition plan that includes details of the type of registration that is to be held under this Law by a class of persons referred to in subsection (1).
- (4) In preparing a registration transition plan, a National Board must —
  - (a) comply with any directions given by the Ministerial Council that are relevant to the transitional arrangements for the registration of the class of persons; and
  - (b) have regard to the principle that persons in the class are to be given the widest possible scope of practice of the profession that is consistent with —
    - (i) the authority the class of persons had to practise the profession before the participation day; and
    - (ii) the protection of the safety of the public.

**278. Endorsements**

- (1) This section applies to a person who, immediately before the participation day for a participating jurisdiction —
  - (a) held a type of registration in that jurisdiction in a health profession for a corresponding purpose; or
  - (b) held general registration in that jurisdiction in a health profession that had been endorsed for a corresponding purpose.
- (2) From the participation day, the person is taken to hold general registration in the health profession that has been endorsed under this Law for the purpose that is equivalent to, or substantially equivalent to, the corresponding purpose.
- (3) In this section —

***corresponding purpose*** means a purpose that is equivalent to, or substantially equivalent to, a purpose for which an endorsement may be granted under this Law.

**279. Conditions imposed on registration or endorsement**

- (1) This section applies if —
- (a) a person is taken to be registered under this Law, or the person's registration under this Law is taken to be endorsed, because of the person's registration or endorsement under the law of a participating jurisdiction before the participation day for the jurisdiction; and
  - (b) the person's registration or endorsement under the law of that jurisdiction was, immediately before the participation day, subject to a condition —
    - (i) whether described as a condition, restriction or otherwise; and
    - (ii) whether imposed by or under an Act of that jurisdiction.
- (2) From the participation day, the person's registration or endorsement under this Law is taken to be subject to the same condition.

**280. Expiry of registration and endorsement**

- (1) This section applies if, under this Division, a person is taken to be registered under this Law because of the person's registration or endorsement under the law of a participating jurisdiction.
- (2) The person's registration, and any endorsement of the registration, expires on —
- (a) if the person was registered in more than one participating jurisdiction, the end of the latest day on which under the law of a participating jurisdiction —
    - (i) any of the registrations would have expired; or
    - (ii) an annual registration fee for any of the registrations would have become payable;
- or
- (b) otherwise, at the end of the day on which under the law of the participating jurisdiction —
    - (i) the registration would have expired; or



- (ii) an annual registration fee for the registration would have become payable.
- (3) Subsection (2) does not prevent a National Board suspending or cancelling the person's registration under this Law.

**281. Protected titles for certain specialist health practitioners**

- (1) This section applies if —
  - (a) immediately before the participation day for a participating jurisdiction, a person held specialist registration in a health profession in that jurisdiction; and
  - (b) on the participation day the health profession is not a profession for which specialist recognition operates under this Law.
- (2) Despite section 118, the person does not commit an offence during the transition period merely because the person takes or uses —
  - (a) the title “specialist health practitioner”; or
  - (b) another title the person was entitled to use under the law of the participating jurisdiction as in force immediately before the participation day.
- (3) In this section —

***transition period*** means the period —

  - (a) starting at the beginning of the commencement day; and
  - (b) ending at the end of the day that is 3 years after the commencement day.

**282. First renewal of registration or endorsement**

- (1) This section applies if —
  - (a) a health practitioner's registration or endorsement expires under section 280; and
  - (b) the National Board decides to renew the health practitioner's registration or endorsement under section 112.
- (2) Despite section 112(6), the National Board may decide that the period for which the registration or endorsement is renewed is a period of not more than 2 years.

**283. Programmes of study**

- (1) This section applies if, immediately before the participation day for a participating jurisdiction, a programme of study provided a qualification for registration in a health profession in that jurisdiction.
- (2) From the participation day, the programme of study is taken to be an approved programme of study for that health profession as if it had been approved under this Law.
- (3) The National Agency must, as soon as practicable after the participation day, include an approved programme of study under subsection (2) in the list published under section 49(5).

**284. Exemption from requirement for professional indemnity insurance arrangements for midwives practising private midwifery**

- (1) During the transition period, a midwife does not contravene section 129(1) merely because the midwife practises private midwifery if—
  - (a) the practice occurs in a participating jurisdiction in which, immediately before the participation day for that jurisdiction, a person was not prohibited from attending homebirths in the course of practising midwifery unless professional indemnity insurance arrangements were in place; and
  - (b) informed consent has been given by the woman in relation to whom the midwife is practising private midwifery; and
  - (c) the midwife complies with any requirements set out in a code or guideline approved by the National Board under section 39 about the practice of private midwifery, including—
    - (i) any requirement in a code or guideline about reports to be provided by midwives practising private midwifery; and
    - (ii) any requirement in a code or guideline relating to the safety and quality of the practice of private midwifery.
- (2) A midwife who practises private midwifery under this section is not required to include in an annual statement under section 109 a



**Division 12 — Applications for registration and endorsement**

**285. Applications for registration**

- (1) This section applies if, immediately before the participation day for a participating jurisdiction, an application for registration or renewal of registration in a health profession had been made to a local registration authority for the jurisdiction but not decided.
- (2) From the participation day, the application is taken to have been made under this Law to the National Board for the health profession.

**286. Applications for endorsement**

- (1) This section applies if, immediately before the participation day for a participating jurisdiction, an application for endorsement or renewal of an endorsement of a registration in a health profession had been made to a local registration authority for the jurisdiction but not decided.
- (2) From the participation day, the application is taken to have been made under this Law to the National Board for the health profession.

**287. Disqualifications and conditions relevant to applications for registration**

- (1) This section applies if —
  - (a) under a corresponding prior Act or another law of a participating jurisdiction, a person's registration in a health profession had been cancelled in that jurisdiction by an entity; and
  - (b) in cancelling the person's registration the entity also made any of the following decisions —
    - (i) a decision to set a period during which the person was disqualified from applying for registration, or being registered, in a health profession in the participating jurisdiction;
    - (ii) a decision to set conditions under which the person might reapply for registration in the profession;

- (iii) a decision to set conditions that must be imposed on any future registration of the person in the profession;
  - and
  - (c) immediately before the participation day, the decision was still in force.
- (2) From the participation day, the decision continues as if it had been made under this Law by the responsible tribunal for the participating jurisdiction.

**Division 13 — Complaints, notifications and disciplinary proceedings**

**288. Complaints and notifications made but not being dealt with on participation day**

- (1) This section applies if, immediately before the participation day for a participating jurisdiction, a local registration authority for the jurisdiction had received but not started dealing with a complaint or notification about a person registered in a health profession by the authority.
- (2) From the participation day, the complaint or notification is taken to be a notification made under this Law to the National Agency.
- (3) This section does not apply to a co-regulatory jurisdiction.

**289. Complaints and notifications being dealt with on participation day**

- (1) This section applies if, immediately before the participation day for a participating jurisdiction, a local registration authority for the jurisdiction had started but not completed dealing with a complaint or notification about a person registered in a health profession by the authority.
- (2) From the participation day —
  - (a) the complaint or notification is taken to be a notification made under this Law and is to be dealt with by the National Board for the health profession; and
  - (b) the notification is to continue to be dealt with under the Act of the participating jurisdiction under which it was made, and

any proceedings or appeal relating to the notification may be dealt with, as if that Act had not been repealed.

- (3) For the purposes of this section, the Act of the participating jurisdiction applies —
  - (a) as if a reference to the local registration authority were a reference to the National Board; and
  - (b) with any other changes that are necessary or convenient.
- (4) The National Board must give effect to a decision made on an inquiry, investigation, proceeding or appeal completed under the Act of the participating jurisdiction as if it were a decision under this Law.
- (5) This section does not apply to a co-regulatory jurisdiction.

**290. Effect of suspension**

- (1) This section applies if —
  - (a) because of another provision of this Part, a person is taken to be registered under this Law; and
  - (b) immediately before the participation day for the participating jurisdiction in which the person was registered under a corresponding prior Act, the person's registration was suspended under a law of that jurisdiction.
- (2) From the participation day, the person's registration is taken to have been suspended under this Law.

**291. Undertakings and other agreements**

- (1) This section applies if, immediately before the participation day for a participating jurisdiction, an undertaking or other agreement between a person registered under a corresponding prior Act and the local registration authority for a health profession was in force.
- (2) From the participation day, the undertaking or other agreement is taken to have been entered into under this Law between the person and the National Board established for the health profession.



(ii) the later day on which the jurisdiction became a participating jurisdiction;

or

(b) for a relevant health profession, 1 July 2012.

**295. Assets and liabilities**

(1) From the transfer day for a participating jurisdiction —

- (a) the assets and liabilities of a local registration authority for a health profession in a participating jurisdiction are taken to be assets and liabilities of the National Agency and are to be paid into or out of the account kept in the Agency Fund for the National Board established for the profession; and
- (b) any contract, other than an employment contract, entered into by or on behalf of the local registration authority and all guarantees, undertakings and securities given by or on behalf of the authority, in force immediately before the participation day, are taken to have been entered into or given by or to the National Agency and may be enforced against or by the Agency; and
- (c) any property that, immediately before the participation day, was held on trust, or subject to a condition, by the local registration authority continues to be held by the National Agency on the same trust, or subject to the same condition and is to be paid into the account kept in the Agency Fund for the National Board.

(2) In this section —

***employment contract*** means either of the following under which a person is employed —

- (a) a contract of employment;
- (b) a contract for services.





- (3) Section 36(5) and (6) do not apply to the membership of a State or Territory Board for a jurisdiction for 12 months after the jurisdiction becomes a participating jurisdiction.

Note: Section 36(5) and (6) provide requirements for the number of practitioner members and community members required by a State or Territory Board.

**Division 15 — Staged commencement for certain health professions**

**300. Application of Law to relevant health profession between commencement and 1 July 2012**

- (1) This Law does not apply with respect to a relevant health profession during the period starting on the commencement day and ending on 30 June 2011.
- (2) The following Parts of this Law do not apply with respect to a relevant health profession during the period starting on 1 July 2011 and ending on 30 June 2012 —
- (a) Part 7, other than Division 10;
  - (b) Parts 8 to 11.
- (3) Despite subsection (2)(a), a person does not commit an offence against a provision of Part 7 Division 10 merely because, before 1 July 2012, the person —
- (a) takes or uses a title, name, initial, symbol, word or description that, having regard to the circumstances in which it is taken or used, indicates or could be reasonably understood to indicate that the person is authorised or qualified to practise in a relevant health profession; or
  - (b) uses a title that is listed in the Table to section 113 opposite a relevant health profession.

**301. Ministerial Council may appoint external accreditation entity**

- (1) The Ministerial Council may appoint an entity, other than a committee established by a National Board, to exercise an accreditation function for a relevant health profession.



- (b) holds a qualification or has completed training in the profession, whether in a participating jurisdiction or elsewhere, and has completed any further study, training or supervised practice in the profession required by the Board for the purposes of this section; or
- (c) has practised the profession at any time between 1 July 2002 and 30 June 2012 for a consecutive period of 5 years or for any periods which together amount to 5 years.

(2) This section applies despite section 53.

**304. Relationship with other provisions of Law**

This Division applies despite any other provision of this Law but does not affect the operation of Schedule 7 clause 30.

**Division 16 — Savings and transitional regulations**

**305. Savings and transitional regulations**

- (1) The regulations may contain provisions (*savings and transitional provisions*) of a savings or transitional nature —
  - (a) consequent on the enactment of this Law in a participating jurisdiction; or
  - (b) to otherwise allow or facilitate the change from the operation of a law of the participating jurisdiction relating to health practitioners to the operation of this Law.
- (2) Savings and transitional provisions may have retrospective operation to a day not earlier than the participation day for that participating jurisdiction.
- (3) This section and any savings and transitional provisions expire on 30 June 2015.

## **Schedule 1 — Constitution and procedure of Advisory Council**

[s. 22]

### **Part 1 — General**

#### **1. Terms used**

In this Schedule —

*Chairperson* means the Chairperson of the Advisory Council;

*member* means a member of the Advisory Council.

### **Part 2 — Constitution**

#### **2. Terms of office of members**

Subject to this Schedule, a member holds office for the period (not exceeding 3 years) specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for reappointment.

#### **3. Remuneration**

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Ministerial Council may from time to time determine with respect to the member.

#### **4. Vacancy in office of member**

(1) The office of a member becomes vacant if the member —

- (a) completes the member's term of office; or
- (b) resigns the office by instrument in writing addressed to the Chairperson of the Ministerial Council; or
- (c) is removed from office by the Chairperson of the Ministerial Council under this clause; or
- (d) dies.

(2) The Chairperson of the Ministerial Council may remove a member from office if —

- (a) the member has been found guilty of an offence (whether in a participating jurisdiction or elsewhere) that, in the opinion of

- the Chairperson of the Ministerial Council, renders the member unfit to continue to hold the office of member; or
- (b) the member ceases to be a registered health practitioner as a result of the member's misconduct, impairment or incompetence; or
  - (c) the Advisory Council recommends the removal of the member, on the basis that the member has engaged in misconduct or has failed or is unable to properly exercise the member's functions as a member.
- (3) In addition, the Chairperson of the Ministerial Council may remove the Chairperson of the Advisory Council from office as a member if the Chairperson of the Advisory Council becomes a registered health practitioner.

**5. Extension of term of office during vacancy in membership**

- (1) If the office of a member becomes vacant because the member has completed the member's term of office, the member is taken to continue to be a member during that vacancy until the date on which the vacancy is filled (whether by reappointment of the member or appointment of a successor to the member).
- (2) However, this clause ceases to apply to the member if —
  - (a) the member resigns the member's office by instrument in writing addressed to the Chairperson of the Ministerial Council; or
  - (b) the Chairperson of the Ministerial Council determines that the services of the member are no longer required.
- (3) The maximum period for which a member is taken to continue to be a member under this clause after completion of the member's term of office is 6 months.

**6. Disclosure of conflict of interest**

- (1) If —
  - (a) a member has a direct or indirect pecuniary or other interest in a matter being considered or about to be considered at a meeting of the Advisory Council; and



**8. Quorum**

The quorum for a meeting of the Advisory Council is a majority of its members for the time being.

**9. Presiding member**

The Chairperson (or, in the absence of the Chairperson, a person elected by the members of the Advisory Council who are present at a meeting of the Advisory Council) is to preside at a meeting of the Advisory Council.

**10. Transaction of business outside meetings or by telecommunication**

- (1) The Advisory Council may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Advisory Council for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Advisory Council.
- (2) The Advisory Council may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of —
  - (a) the approval of a resolution under subclause (1); or
  - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Advisory Council.
- (4) Papers may be circulated among the members for the purposes of subclause (1) by facsimile, email or other transmission of the information in the papers concerned.

**11. First meeting**

The Chairperson may call the first meeting of the Advisory Council in any manner the Chairperson thinks fit.





- (2) The Chairperson of the Ministerial Council may remove a member from office if—
- (a) the member has been found guilty of an offence (whether in a participating jurisdiction or elsewhere) that, in the opinion of the Chairperson of the Ministerial Council, renders the member unfit to continue to hold the office of member; or
  - (b) the member ceases to be a registered health practitioner as a result of the member's misconduct, impairment or incompetence; or
  - (c) the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration for their benefit; or
  - (d) the Committee recommends the removal of the member, on the basis that the member has engaged in misconduct or has failed or is unable to properly exercise the member's functions as a member.
- (3) In addition, the Chairperson of the Ministerial Council may remove the Chairperson of the Committee from office as a member if the Chairperson of the Committee becomes a registered health practitioner.

**5. Vacancies to be advertised**

- (1) Before the Ministerial Council appoints a member of the Committee, the vacancy to be filled is to be publicly advertised.
- (2) It is not necessary to advertise a vacancy in the membership of the Committee before appointing a person to act in the office of a member.

Note: The general interpretation provisions applicable to this Law under section 6 confer power to appoint acting members of the Agency Management Committee.

**6. Extension of term of office during vacancy in membership**

- (1) If the office of a member becomes vacant because the member has completed the member's term of office, the member is taken to continue to be a member during that vacancy until the date on which



- (3) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Ministerial Council or the Committee otherwise determines —
- (a) be present during any deliberation of the Committee with respect to the matter; or
  - (b) take part in any decision of the Committee with respect to the matter.
- (4) For the purposes of the making of a determination by the Committee under subclause (3), a member who has a direct or indirect pecuniary or other interest in a matter to which the disclosure relates must not —
- (a) be present during any deliberation of the Committee for the purpose of making the determination; or
  - (b) take part in the making of the determination by the Committee.
- (5) A contravention of this clause does not invalidate any decision of the Committee.

### **Part 3 — Procedure**

#### **9. General procedure**

The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings is, subject to this Law, to be as determined by the Committee.

#### **10. Quorum**

The quorum for a meeting of the Committee is a majority of its members for the time being.

#### **11. Chief executive officer may attend meetings**

The chief executive officer of the National Agency may attend meetings of the Committee and may participate in discussions of the Committee, but is not entitled to vote at a meeting.

**12. Presiding member**

- (1) The Chairperson (or, in the absence of the Chairperson, a person elected by the members of the Committee who are present at a meeting of the Committee) is to preside at a meeting of the Committee.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**13. Voting**

A decision supported by a majority of the votes cast at a meeting of the Committee at which a quorum is present is the decision of the Committee.

**14. Transaction of business outside meetings or by telecommunication**

- (1) The Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Committee for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Committee.
- (2) The Committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of —
  - (a) the approval of a resolution under subclause (1); or
  - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Committee.
- (4) Papers may be circulated among the members for the purposes of subclause (1) by facsimile, email or other transmission of the information in the papers concerned.

**15. First meeting**

The Chairperson may call the first meeting of the Committee in any manner the Chairperson thinks fit.

**16. Defects in appointment of members**

A decision of the Committee is not invalidated by any defect or irregularity in the appointment of any member (or acting member) of the Committee.

## **Schedule 3 — National Agency**

[s. 23]

### **Part 1 — Chief executive officer**

**1. Chief executive officer**

- (1) The Agency Management Committee is to appoint a person as chief executive officer of the National Agency.
- (2) The chief executive officer of the National Agency is to be appointed for a period, not more than 5 years, specified in the officer's instrument of appointment, but is eligible for reappointment.
- (3) The chief executive officer of the National Agency is taken, while holding that office, to be a member of the staff of the National Agency.

**2. Functions of chief executive officer**

- (1) The chief executive officer of the National Agency has the functions conferred on the chief executive officer by written instrument of the Agency Management Committee.
- (2) The Agency Management Committee may delegate any of the functions of the National Agency, or of the Agency Management Committee, to the chief executive officer of the National Agency, other than this power of delegation.

**3. Delegation and subdelegation by chief executive officer**

- (1) The chief executive officer of the National Agency may delegate any of the functions conferred on the officer under clause 2(1) to a member of the staff of the National Agency, other than this power of delegation.
- (2) The chief executive officer of the National Agency may subdelegate any function delegated to the officer under clause 2(2) to any member of the staff of the National Agency if the chief executive officer is authorised to do so by the Agency Management Committee.

**4. Vacancy in office**

- (1) The office of the chief executive officer of the National Agency becomes vacant if —
  - (a) the chief executive officer resigns the officer's office by written instrument addressed to the Chairperson of the Agency Management Committee; or
  - (b) the appointment of the chief executive officer is terminated by the Agency Management Committee under this clause.
- (2) The Agency Management Committee may, at any time and for any reason, terminate the appointment of the chief executive officer of the National Agency by written notice given to the chief executive officer.

**Part 2 — Staff, consultants and contractors**

**5. Staff of National Agency**

- (1) The National Agency may, for the purpose of performing its functions, employ staff.
- (2) The staff of the National Agency are to be employed on the terms and conditions decided by the National Agency from time to time.
- (3) Subclause (2) is subject to any relevant industrial award or agreement that applies to the staff.

**6. Staff seconded to National Agency**

The National Agency may make arrangements for the services of any of the following persons to be made available to the National Agency in connection with the exercise of its functions —

- (a) a person who is a member of the staff of a government agency of a participating jurisdiction or the Commonwealth;
- (b) a person who is a member of the staff of a local registration authority.

**7. Consultants and contractors**

- (1) The National Agency may engage persons with suitable qualifications and experience as consultants or contractors.



- (2) The terms and conditions of engagement of consultants or contractors are as decided by the National Agency from time to time.

**Part 3 — Reporting obligations**

**8. Annual report**

- (1) The National Agency must, within 3 months after the end of each financial year, submit an annual report for the financial year to the Ministerial Council.
- (2) The annual report must include —
- (a) a financial statement for the National Agency, and each National Board, for the period to which the report relates; and
  - (b) a report about the Agency's performance of its functions under this Law during the period to which the annual report relates.
- (3) The financial statement is to be prepared in accordance with Australian Accounting Standards.
- (4) The financial statement is to be audited by a public sector auditor and a report is to be provided by the auditor.
- (5) The Ministerial Council is to make arrangements for the tabling of the annual report of the National Agency, and the report of the public sector auditor with respect to the financial statement in the report, in the Parliament of each participating jurisdiction and the Commonwealth.
- (6) The Ministerial Council may extend, or further extend, the period for submission of an annual report to the Council by a total period of up to 3 months.
- (7) In this clause —
- public sector auditor** means —
- (a) the Auditor-General (however described) of a participating jurisdiction; or
  - (b) an auditor employed, appointed or otherwise engaged by an Auditor-General of a participating jurisdiction.

**9. Reporting by National Boards**

- (1) A National Board must, if asked by the National Agency, give the National Agency the information the National Agency requires to compile its annual report, including —
  - (a) a report about the National Board's performance of its functions under this Law during the period to which the annual report relates; and
  - (b) a statement of the income and expenditure of the National Board for the period to which the annual report relates, presented by reference to the budget of the National Board for that period.
- (2) The information provided by the National Board is to be incorporated in the relevant annual report for the National Agency.

## Schedule 4 — National Boards

[s. 33]

### Part 1 — General

**1. Terms used**

In this Schedule —

*Chairperson* means the Chairperson of a National Board;

*community member* means a member of a National Board appointed as a community member;

*member* means a member of a National Board.

### Part 2 — Constitution

**2. Terms of office of members**

Subject to this Schedule, a member holds office for the period (not exceeding 3 years) specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for reappointment.

**3. Remuneration**

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Ministerial Council may from time to time determine with respect to the member.

**4. Vacancy in office of member**

(1) The office of a member becomes vacant if the member —

- (a) completes a term of office; or
- (b) resigns the office by instrument in writing addressed to the Chairperson of the Ministerial Council; or
- (c) is removed from office by the Chairperson of the Ministerial Council under this clause; or
- (d) is absent, without leave first being granted by the Chairperson of the Board, from 3 or more consecutive meetings of the National Board of which reasonable notice has been given to the member personally or by post; or

- (e) dies.
- (2) The Chairperson of the Ministerial Council may remove a member from office if —
  - (a) the member has been found guilty of an offence (whether in a participating jurisdiction or elsewhere) that, in the opinion of the Chairperson of the Ministerial Council, renders the member unfit to continue to hold the office of member; or
  - (b) the member ceases to be a registered health practitioner as a result of the member's misconduct, impairment or incompetence; or
  - (c) the member ceases to be eligible for appointment to the office that the member holds on the National Board; or
  - (d) the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with member's creditors or makes an assignment of the member's remuneration for their benefit; or
  - (e) the National Board recommends the removal of the member, on the basis that the member has engaged in misconduct or has failed or is unable to properly exercise the member's functions as a member.

**5. Vacancies to be advertised**

- (1) Before the Ministerial Council appoints a member of a National Board, the vacancy to be filled is to be publicly advertised.
- (2) The National Agency may assist the Ministerial Council in the process of appointing members of a National Board, including in the advertising of vacancies.
- (3) It is not necessary to advertise a vacancy in the membership of a National Board before appointing a person to act in the office of a member.

Note: The general interpretation provisions applicable to this Law under section 6 confer power to appoint acting members of a National Board.

**6. Extension of term of office during vacancy in membership**

- (1) If the office of a member becomes vacant because the member has completed the member's term of office, the member is taken to continue to be a member during that vacancy until the date on which the vacancy is filled (whether by reappointment of the member or appointment of a successor to the member).
- (2) However, this clause ceases to apply to the member if —
  - (a) the member resigns the member's office by instrument in writing addressed to the Chairperson of the Ministerial Council; or
  - (b) the Chairperson of the Ministerial Council determines that the services of the member are no longer required.
- (3) The maximum period for which a member is taken to continue to be a member under this clause after completion of the member's term of office is 6 months.

**7. Members to act in public interest**

- (1) A member of a National Board is to act impartially and in the public interest in the exercise of the member's functions as a member.
- (2) Accordingly, a member of a National Board is to put the public interest before the interests of particular health practitioners or any entity that represents health practitioners.

**8. Disclosure of conflict of interest**

- (1) If —
  - (a) a member has a direct or indirect pecuniary or other interest in a matter being considered or about to be considered at a meeting of the National Board; and
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the National Board.

- (2) Particulars of any disclosure made under this clause must be recorded by the National Board in a book kept for the purpose.
- (3) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Ministerial Council or the National Board otherwise determines —
  - (a) be present during any deliberation of the National Board with respect to the matter; or
  - (b) take part in any decision of the National Board with respect to the matter.
- (4) For the purposes of the making of a determination by the National Board under subclause (3), a member who has a direct or indirect pecuniary or other interest in a matter to which the disclosure relates must not —
  - (a) be present during any deliberation of the National Board for the purpose of making the determination; or
  - (b) take part in the making of the determination by the National Board.
- (5) A contravention of this clause does not invalidate any decision of the National Board.
- (6) This clause applies to a member of a committee of a National Board and the committee in the same way as it applies to a member of the National Board and the National Board.

### **Part 3 — Functions and powers**

#### **9. Requirement to consult other National Boards**

If a National Board (the *first Board*) proposes to make a recommendation to the Ministerial Council about a matter that may reasonably be expected to be of interest to another National Board (the *other Board*), the first Board must —

- (a) consult with the other Board about the proposed recommendation; and

- (b) if the first Board makes the recommendation to the Ministerial Council, advise the Council about any contrary views expressed by the other Board about the recommendation.

**10. Boards may obtain assistance**

A National Board may, for the purposes of exercising its functions, obtain the assistance of or advice from a local registration authority or another entity having knowledge of matters relating to the health profession for which it is established.

**11. Committees**

A National Board may establish committees to do any of the following —

- (a) to develop registration standards for the health profession for which the Board is established;
- (b) to develop codes or guidelines for the health profession for which the Board is established;
- (c) to exercise any other functions of the Board or to provide assistance or advice to the Board in the exercise of its functions.

**Part 4 — Procedure**

**12. General procedure**

The procedure for the calling of meetings of the National Board and for the conduct of business at those meetings is, subject to this Law, to be as determined by the National Board.

**13. Quorum**

The quorum for a meeting of the National Board is a majority of its members for the time being, at least one of whom is a community member.

**14. Presiding member**

- (1) The Chairperson (or, in the absence of the Chairperson, a person elected by the members of the National Board who are present at a

meeting of the National Board) is to preside at a meeting of the National Board.

- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**15. Voting**

A decision supported by a majority of the votes cast at a meeting of the National Board at which a quorum is present is the decision of the National Board.

**16. Transaction of business outside meetings or by telecommunication**

- (1) The National Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the National Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the National Board.
- (2) The National Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of —
- (a) the approval of a resolution under subclause (1); or
  - (b) a meeting held in accordance with subclause (2),
- the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the National Board.
- (4) Papers may be circulated among the members for the purposes of subclause (1) by facsimile, email or other transmission of the information in the papers concerned.

**17. First meeting**

The Chairperson may call the first meeting of the National Board in any manner the Chairperson thinks fit.



**18. Defects in appointment of members**

A decision of the National Board or of a committee of the National Board is not invalidated by any defect or irregularity in the appointment of any member (or acting member) of the National Board or of a committee of the National Board.

## **Schedule 5 — Investigators**

[s. 163]

### **Part 1 — Power to obtain information**

#### **1. Powers of investigators**

For the purposes of conducting an investigation, an investigator may, by written notice given to a person, require the person to —

- (a) give stated information to the investigator within a stated reasonable time and in a stated reasonable way; or
- (b) attend before the investigator at a stated time and a stated place to answer questions or produce documents.

#### **2. Offence for failing to produce information or attend before investigator**

- (1) A person required to give stated information to an investigator under clause 1(a) must not fail, without reasonable excuse, to give the information as required by the notice.

Penalty:

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

- (2) A person given a notice to attend before an investigator must not fail, without reasonable excuse, to —

- (a) attend as required by the notice; and
- (b) continue to attend as required by the investigator until excused from further attendance; and
- (c) answer a question the person is required to answer by the investigator; and
- (d) produce a document the person is required to produce by the notice.

Penalty:

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

- (3) For the purposes of subclauses (1) and (2), it is a reasonable excuse for an individual to fail to give stated information, answer a question or to produce a document, if giving the information, answering the question or producing the document might tend to incriminate the individual.

**3. Inspection of documents**

- (1) If a document is produced to an investigator, the investigator 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 investigation.
- (2) If the investigator keeps the document, the investigator 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 place decided by the investigator.

**Part 2 — Power to enter places**

**4. Entering places**

For the purposes of conducting an investigation, an investigator may enter a place if —

- (a) its occupier consents to the entry of the place; or
- (b) it is a public place and the entry is made when it is open to the public; or
- (c) the entry is authorised by a warrant.

**5. Application for warrant**

- (1) An investigator may apply to a magistrate of a participating jurisdiction for a warrant for a place.
- (2) The investigator must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.

- (4) The magistrate may refuse to consider the application until the investigator gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

**6. Issue of warrant**

- (1) The magistrate may issue the warrant only if the magistrate is satisfied there are reasonable grounds for suspecting there is evidence about a matter being investigated by the investigator at the place.
- (2) The warrant must state —
- (a) that a stated investigator may, with necessary and reasonable help and force —
    - (i) enter the place and any other place necessary for entry; and
    - (ii) exercise the investigator's powers under this Part; and
  - (b) the matter for which the warrant is sought; and
  - (c) the evidence that may be seized under the warrant; and
  - (d) the hours of the day or night when the place may be entered; and
  - (e) the date, within 14 days after the warrant's issue, the warrant ends.

**7. Application by electronic communication**

- (1) An investigator may apply for a warrant by phone, facsimile, email, radio, video conferencing or another form of communication if the investigator considers it necessary because of —
- (a) urgent circumstances; or
  - (b) other special circumstances, including the investigator's remote location.
- (2) The application —
- (a) may not be made before the investigator prepares the written application under clause 5(2); but
  - (b) may be made before the written application is sworn.

- (3) The magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied —
- (a) it was necessary to make the application under subclause (1); and
  - (b) the way the application was made under subclause (1) was appropriate.
- (4) After the magistrate issues the original warrant —
- (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the investigator, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the investigator; or
  - (b) otherwise —
    - (i) the magistrate must tell the investigator the date and time the warrant is issued and the other terms of the warrant; and
    - (ii) the investigator must complete a form of warrant including by writing on it —
      - (I) the magistrate's name; and
      - (II) the date and time the magistrate issued the warrant; and
      - (III) the other terms of the warrant.
- (5) The copy of the warrant referred to in subclause (4)(a), or the form of warrant completed under subclause (4)(b) (in either case the *duplicate warrant*), is a duplicate of, and as effectual as, the original warrant.
- (6) The investigator must, at the first reasonable opportunity, send to the magistrate —
- (a) the written application complying with clause 5(2) and (3); and
  - (b) if the investigator completed a form of warrant under subclause (4)(b), the completed form of warrant.
- (7) The magistrate must keep the original warrant and, on receiving the documents under subclause (6), file the original warrant and documents in the court.

- (8) Despite subclause (5), if—
- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this clause; and
  - (b) the original warrant is not produced in evidence,

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.

- (9) This clause does not limit clause 5.

**8. Procedure before entry under warrant**

- (1) Before entering a place under a warrant, an investigator must do or make a reasonable attempt to do the following—
- (a) identify himself or herself to a person present at the place who is an occupier of the place by producing the investigator's identity card or another document evidencing the investigator's appointment;
  - (b) give the person a copy of the warrant;
  - (c) tell the person the investigator is permitted by the warrant to enter the place;
  - (d) give the person an opportunity to allow the investigator immediate entry to the place without using force.
- (2) However, the investigator need not comply with subclause (1) if the investigator reasonably believes that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

**9. Powers after entering places**

- (1) This clause applies if an investigator enters a place under clause 4.
- (2) The investigator may for the purposes of the investigation do the following—
- (a) search any part of the place;
  - (b) inspect, measure, test, photograph or film any part of the place or anything at the place;

- (c) take a thing, or a sample of or from a thing, at the place for analysis, measurement or testing;
  - (d) copy, or take an extract from, a document, at the place;
  - (e) take into or onto the place any person, equipment and materials the investigator reasonably requires for exercising a power under this Part;
  - (f) require the occupier of the place, or a person at the place, to give the investigator reasonable help to exercise the investigator's powers under paragraphs (a) to (e);
  - (g) require the occupier of the place, or a person at the place, to give the investigator information to help the investigator in conducting the investigation.
- (3) When making a requirement referred to in subclause (2)(f) or (g), the investigator must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.

**10. Offences for failing to comply with requirement under clause 9**

- (1) A person required to give reasonable help under clause 9(2)(f) must comply with the requirement, unless the person has a reasonable excuse.

Penalty:

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

- (2) A person of whom a requirement is made under clause 9(2)(g) must comply with the requirement, unless the person has a reasonable excuse.

Penalty:

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

- (3) It is a reasonable excuse for an individual not to comply with a requirement under clause 9(2)(f) or (g) that complying with the requirement might tend to incriminate the individual.

**11. Seizure of evidence**

- (1) An investigator who enters a public place when the place is open to the public may seize a thing at the place if the investigator reasonably believes the thing is evidence that is relevant to the investigation being conducted by the investigator.
- (2) If an investigator enters a place with the occupier's consent, the investigator may seize a thing at the place if —
  - (a) the investigator reasonably believes the thing is evidence that is relevant to the investigation being conducted by the investigator; and
  - (b) seizure of the thing is consistent with the purpose of the entry as told to the occupier when asking for the occupier's consent.
- (3) If an investigator enters a place with a warrant, the investigator may seize the evidence for which the warrant was issued.
- (4) For the purposes of subclauses (2) and (3), the investigator may also seize anything else at the place if the investigator reasonably believes —
  - (a) the thing is evidence that is relevant to the investigation; and
  - (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed.

**12. Securing seized things**

Having seized a thing, an investigator may —

- (a) move the thing from the place where it was seized; or
- (b) leave the thing at the place where it was seized but take reasonable action to restrict access to it.

**13. Receipt for seized things**

- (1) As soon as practicable after an investigator seizes a thing, the investigator must give a receipt for it to the person from whom it was seized.



- (2) However, if for any reason it is not practicable to comply with subclause (1), the investigator must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.
- (3) The receipt must describe generally the seized thing and its condition.
- (4) This clause does not apply to a thing if it is impracticable or would be unreasonable to give the receipt given the thing's nature, condition and value.

**14. Forfeiture of seized thing**

- (1) A seized thing is forfeited to the National Agency if the investigator who seized the thing —
  - (a) cannot find its owner, after making reasonable inquiries; or
  - (b) cannot return it to its owner, after making reasonable efforts.
- (2) In applying subclause (1) —
  - (a) subclause (1)(a) does not require the investigator to make inquiries if it would be unreasonable to make inquiries to find the owner; and
  - (b) subclause (1)(b) does not require the investigator to make efforts if it would be unreasonable to make efforts to return the thing to its owner.
- (3) Regard must be had to a thing's nature, condition and value in deciding —
  - (a) whether it is reasonable to make inquiries or efforts; and
  - (b) if making inquiries or efforts, what inquiries or efforts, including the period over which they are made, are reasonable.

**15. Dealing with forfeited things**

- (1) On the forfeiture of a thing to the National Agency, the thing becomes the Agency's property and may be dealt with by the Agency as the Agency considers appropriate.

- (2) Without limiting subclause (1), the National Agency may destroy or dispose of the thing.

**16. Return of seized things**

- (1) If a seized thing has not been forfeited, the investigator must return it to its owner —
- (a) at the end of 6 months; or
  - (b) if proceedings involving the thing are started within 6 months, at the end of the proceedings and any appeal from the proceedings.
- (2) Despite subclause (1), unless the thing has been forfeited, the investigator must immediately return a thing seized as evidence to its owner if the investigator is no longer satisfied its continued retention as evidence is necessary.

**17. Access to seized things**

- (1) Until a seized thing is forfeited or returned, an investigator must allow its owner to inspect it and, if it is a document, to copy it.
- (2) Subclause (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

**Part 3 — General matters**

**18. Damage to property**

- (1) This clause applies if —
- (a) an investigator damages property when exercising or purporting to exercise a power; or
  - (b) a person (the *other person*) acting under the direction of an investigator damages property.
- (2) The investigator must promptly give written notice of particulars of the damage to the person who appears to the investigator to be the owner of the property.
- (3) If the investigator believes the damage was caused by a latent defect in the property or circumstances beyond the investigator's or other person's control, the investigator must state the belief in the notice.

- (4) If, for any reason, it is impracticable to comply with subclause (2), the investigator must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.
- (5) This clause does not apply to damage the investigator reasonably believes is trivial.
- (6) In this clause —  
*owner*, of property, includes the person in possession or control of it.

**19. Compensation**

- (1) A person may claim compensation from the National Agency if the person incurs loss or expense because of the exercise or purported exercise of a power under this Schedule by the investigator.
- (2) Without limiting subclause (1), compensation may be claimed for loss or expense incurred in complying with a requirement made of the person under this Schedule.
- (3) Compensation may be claimed and ordered to be paid in a proceeding brought in a court with jurisdiction for the recovery of the amount of compensation claimed.
- (4) A court may order compensation to be paid only if it is satisfied it is fair to make the order in the circumstances of the particular case.

**20. False or misleading information**

A person must not state anything to an investigator that the person knows is false or misleading in a material particular.

Penalty:

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

**21. False or misleading documents**

- (1) A person must not give an investigator a document containing information the person knows is false or misleading in a material particular.

Penalty:

- (a) in the case of an individual — a fine of \$5 000;
  - (b) in the case of a body corporate — a fine of \$10 000.
- (2) Subclause (1) does not apply to a person who, when giving the document —
- (a) informs the investigator, to the best of the person's ability, how it is false or misleading; and
  - (b) gives the correct information to the investigator if the person has, or can reasonably obtain, the correct information.

**22. Obstructing investigators**

- (1) A person must not obstruct an investigator in the exercise of a power, unless the person has a reasonable excuse.

Penalty:

- (a) in the case of an individual — a fine of \$5 000;
  - (b) in the case of a body corporate — a fine of \$10 000.
- (2) If a person has obstructed an investigator and the investigator decides to proceed with the exercise of the power, the investigator must warn the person that —
- (a) it is an offence to obstruct the investigator, unless the person has a reasonable excuse; and
  - (b) the investigator considers the person's conduct is an obstruction.

- (3) In this clause —  
**obstruct** includes hinder and attempt to obstruct or hinder.

**23. Impersonation of investigators**

A person must not pretend to be an investigator.

Penalty: a fine of \$5 000.

## **Schedule 6 — Inspectors**

[s. 238]

### **Part 1 — Power to obtain information**

#### **1. Powers of inspectors**

- (1) This clause applies if an inspector reasonably believes —
  - (a) an offence against this Law has been committed; and
  - (b) a person may be able to give information about the offence.
- (2) The inspector may, by written notice given to a person, require the person to —
  - (a) give stated information to the inspector within a stated reasonable time and in a stated reasonable way; or
  - (b) attend before the inspector at a stated time and a stated place to answer questions or produce documents.

#### **2. Offence for failing to produce information or attend before inspector**

- (1) A person required to give stated information to an inspector under clause 1(2)(a) must not fail, without reasonable excuse, to give the information as required by the notice.

Penalty:

  - (a) in the case of an individual — a fine of \$5 000;
  - (b) in the case of a body corporate — a fine of \$10 000.
- (2) A person given a notice to attend before an inspector must not fail, without reasonable excuse, to —
  - (a) attend as required by the notice; and
  - (b) continue to attend as required by the inspector until excused from further attendance; and
  - (c) answer a question the person is required to answer by the inspector; and

- (d) produce a document the person is required to produce by the notice.

Penalty:

- (a) in the case of an individual — a fine of \$5 000;
  - (b) in the case of a body corporate — a fine of \$10 000.
- (3) For the purposes of subclauses (1) and (2), it is a reasonable excuse for an individual to fail to give stated information, answer a question or to produce a document, if giving the information, answering the question or producing the document might tend to incriminate the individual.

### **3. Inspection of documents**

- (1) If a document is produced to an inspector, the inspector 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 investigation.
- (2) If the inspector keeps the document, the inspector 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 place decided by the inspector.

## **Part 2 — Power to enter places**

### **4. Entering places**

An inspector may enter a place if —

- (a) its occupier consents to the entry of the place; or
- (b) it is a public place and the entry is made when it is open to the public; or
- (c) the entry is authorised by a warrant.

### **5. Application for warrant**

- (1) An inspector may apply to a magistrate of a participating jurisdiction for a warrant for a place.

- (2) The inspector must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

**6. Issue of warrant**

- (1) The magistrate may issue the warrant only if the magistrate is satisfied there are reasonable grounds for suspecting there is a particular thing or activity that may provide evidence of an offence against this Law at the place.
- (2) The warrant must state —
  - (a) that a stated inspector may, with necessary and reasonable help and force —
    - (i) enter the place and any other place necessary for entry; and
    - (ii) exercise the inspector's powers under this Part;and
  - (b) the matter for which the warrant is sought; and
  - (c) the evidence that may be seized under the warrant; and
  - (d) the hours of the day or night when the place may be entered; and
  - (e) the date, within 14 days after the warrant's issue, the warrant ends.

**7. Application by electronic communication**

- (1) An inspector may apply for a warrant by phone, facsimile, email, radio, video conferencing or another form of communication if the inspector considers it necessary because of —
  - (a) urgent circumstances; or
  - (b) other special circumstances, including the inspector's remote location.

- (2) The application —
- (a) may not be made before the inspector prepares the written application under clause 5(2); but
  - (b) may be made before the written application is sworn.
- (3) The magistrate may issue the warrant (the **original warrant**) only if the magistrate is satisfied —
- (a) it was necessary to make the application under subclause (1); and
  - (b) the way the application was made under subclause (1) was appropriate.
- (4) After the magistrate issues the original warrant —
- (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the inspector, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the inspector; or
  - (b) otherwise —
    - (i) the magistrate must tell the inspector the date and time the warrant is issued and the other terms of the warrant; and
    - (ii) the inspector must complete a form of warrant including by writing on it —
      - (I) the magistrate's name; and
      - (II) the date and time the magistrate issued the warrant; and
      - (III) the other terms of the warrant.
- (5) The copy of the warrant referred to in subclause (4)(a), or the form of warrant completed under subclause (4)(b) (in either case the **duplicate warrant**), is a duplicate of, and as effectual as, the original warrant.
- (6) The inspector must, at the first reasonable opportunity, send to the magistrate —
- (a) the written application complying with clause 5(2) and (3); and



(b) if the inspector completed a form of warrant under subclause (4)(b), the completed form of warrant.

(7) The magistrate must keep the original warrant and, on receiving the documents under subclause (6), file the original warrant and documents in the court.

(8) Despite subclause (5), if —

(a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this clause; and

(b) the original warrant is not produced in evidence,

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.

(9) This clause does not limit clause 5.

#### **8. Procedure before entry under warrant**

(1) Before entering a place under a warrant, an inspector must do or make a reasonable attempt to do the following —

(a) identify himself or herself to a person present at the place who is an occupier of the place by producing the inspector's identity card or another document evidencing the inspector's appointment;

(b) give the person a copy of the warrant;

(c) tell the person the inspector is permitted by the warrant to enter the place;

(d) give the person an opportunity to allow the inspector immediate entry to the place without using force.

(2) However, the inspector need not comply with subclause (1) if the inspector reasonably believes that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

#### **9. Powers after entering places**

(1) This clause applies if an inspector enters a place under clause 4.

- (2) The inspector may for the purposes of the investigation do the following —
- (a) search any part of the place;
  - (b) inspect, measure, test, photograph or film any part of the place or anything at the place;
  - (c) take a thing, or a sample of or from a thing, at the place for analysis, measurement or testing;
  - (d) copy, or take an extract from, a document, at the place;
  - (e) take into or onto the place any person, equipment and materials the inspector reasonably requires for exercising a power under this Part;
  - (f) require the occupier of the place, or a person at the place, to give the inspector reasonable help to exercise the inspector's powers under paragraphs (a) to (e);
  - (g) require the occupier of the place, or a person at the place, to give the inspector information to help the inspector ascertain whether this Law is being complied with.
- (3) When making a requirement referred to in subclause (2)(f) or (g), the inspector must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.

**10. Offences for failing to comply with requirement under clause 9**

- (1) A person required to give reasonable help under clause 9(2)(f) must comply with the requirement, unless the person has a reasonable excuse.
- Penalty:
- (a) in the case of an individual — a fine of \$5 000;
  - (b) in the case of a body corporate — a fine of \$10 000.
- (2) A person of whom a requirement is made under clause 9(2)(g) must comply with the requirement, unless the person has a reasonable excuse.
- Penalty:
- (a) in the case of an individual — a fine of \$5 000;
  - (b) in the case of a body corporate — a fine of \$10 000.

- (3) It is a reasonable excuse for an individual not to comply with a requirement under clause 9(2)(f) or (g) that complying with the requirement might tend to incriminate the individual.

**11. Seizure of evidence**

- (1) An inspector who enters a public place when the place is open to the public may seize a thing at the place if the inspector reasonably believes the thing is evidence that is relevant to the investigation being conducted by the inspector.
- (2) If an inspector enters a place with the occupier's consent, the inspector may seize a thing at the place if —
- (a) the inspector reasonably believes the thing is evidence that is relevant to the investigation being conducted by the inspector; and
  - (b) seizure of the thing is consistent with the purpose of the entry as told to the occupier when asking for the occupier's consent.
- (3) If an inspector enters a place with a warrant, the inspector may seize the evidence for which the warrant was issued.
- (4) For the purposes of subclauses (2) and (3), the inspector may also seize anything else at the place if the inspector reasonably believes —
- (a) the thing is evidence that is relevant to the investigation; and
  - (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed.

**12. Securing seized things**

Having seized a thing, an inspector may —

- (a) move the thing from the place where it was seized; or
- (b) leave the thing at the place where it was seized but take reasonable action to restrict access to it.

**13. Receipt for seized things**

- (1) As soon as practicable after an inspector seizes a thing, the inspector must give a receipt for it to the person from whom it was seized.

- (2) However, if for any reason it is not practicable to comply with subclause (1), the inspector must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.
- (3) The receipt must describe generally the seized thing and its condition.
- (4) This clause does not apply to a thing if it is impracticable or would be unreasonable to give the receipt given the thing's nature, condition and value.

**14. Forfeiture of seized thing**

- (1) A seized thing is forfeited to the National Agency if the inspector who seized the thing —
  - (a) cannot find its owner, after making reasonable inquiries; or
  - (b) cannot return it to its owner, after making reasonable efforts.
- (2) In applying subclause (1) —
  - (a) subclause (1)(a) does not require the inspector to make inquiries if it would be unreasonable to make inquiries to find the owner; and
  - (b) subclause (1)(b) does not require the inspector to make efforts if it would be unreasonable to make efforts to return the thing to its owner.
- (3) Regard must be had to a thing's nature, condition and value in deciding —
  - (a) whether it is reasonable to make inquiries or efforts; and
  - (b) if making inquiries or efforts, what inquiries or efforts, including the period over which they are made, are reasonable.

**15. Dealing with forfeited things**

- (1) On the forfeiture of a thing to the National Agency, the thing becomes the Agency's property and may be dealt with by the Agency as the Agency considers appropriate.
- (2) Without limiting subclause (1), the National Agency may destroy or dispose of the thing.

**16. Return of seized things**

- (1) If a seized thing has not been forfeited, the inspector must return it to its owner —
  - (a) at the end of 6 months; or
  - (b) if proceedings involving the thing are started within 6 months, at the end of the proceedings and any appeal from the proceedings.
- (2) Despite subclause (1), unless the thing has been forfeited, the inspector must immediately return a thing seized as evidence to its owner if the inspector is no longer satisfied its continued retention as evidence is necessary.

**17. Access to seized things**

- (1) Until a seized thing is forfeited or returned, an inspector must allow its owner to inspect it and, if it is a document, to copy it.
- (2) Subclause (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

**Part 3 — General matters**

**18. Damage to property**

- (1) This clause applies if —
  - (a) an inspector damages property when exercising or purporting to exercise a power; or
  - (b) a person (the *other person*) acting under the direction of an inspector damages property.
- (2) The inspector must promptly give written notice of particulars of the damage to the person who appears to the inspector to be the owner of the property.
- (3) If the inspector believes the damage was caused by a latent defect in the property or circumstances beyond the inspector's or other person's control, the inspector must state the belief in the notice.
- (4) If, for any reason, it is impracticable to comply with subclause (2), the inspector must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.

- (5) This clause does not apply to damage the inspector reasonably believes is trivial.
- (6) In this clause —  
*owner*, of property, includes the person in possession or control of it.

**19. Compensation**

- (1) A person may claim compensation from the National Agency if the person incurs loss or expense because of the exercise or purported exercise of a power under this Schedule by the inspector.
- (2) Without limiting subclause (1), compensation may be claimed for loss or expense incurred in complying with a requirement made of the person under this Schedule.
- (3) Compensation may be claimed and ordered to be paid in a proceeding brought in a court with jurisdiction for the recovery of the amount of compensation claimed.
- (4) A court may order compensation to be paid only if it is satisfied it is fair to make the order in the circumstances of the particular case.

**20. False or misleading information**

A person must not state anything to an inspector that the person knows is false or misleading in a material particular.

Penalty:

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

**21. False or misleading documents**

- (1) A person must not give an inspector a document containing information the person knows is false or misleading in a material particular.

Penalty:

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

- (2) Subclause (1) does not apply to a person who, when giving the document —
  - (a) informs the inspector, to the best of the person’s ability, how it is false or misleading; and
  - (b) gives the correct information to the inspector if the person has, or can reasonably obtain, the correct information.

**22. Obstructing inspectors**

- (1) A person must not obstruct an inspector in the exercise of a power, unless the person has a reasonable excuse.

Penalty:

- (a) in the case of an individual — a fine of \$5 000;
  - (b) in the case of a body corporate — a fine of \$10 000.
- (2) If a person has obstructed an inspector and the inspector decides to proceed with the exercise of the power, the inspector must warn the person that —
  - (a) it is an offence to obstruct the inspector, unless the person has a reasonable excuse; and
  - (b) the inspector considers the person’s conduct is an obstruction.
- (3) In this clause —  
**obstruct** includes hinder and attempt to obstruct or hinder.

**23. Impersonation of inspectors**

A person must not pretend to be an inspector.

Penalty: a fine of \$5 000.

**Schedule 7 — Miscellaneous provisions relating to interpretation**

[s. 6]

**Part 1 — Preliminary**

**1. Displacement of Schedule by contrary intention**

The application of this Schedule may be displaced, wholly or partly, by a contrary intention appearing in this Law.

**Part 2 — General**

**2. Law to be construed not to exceed legislative power of Legislature**

(1) This Law is to be construed as operating to the full extent of, but so as not to exceed, the legislative power of the Legislature of this jurisdiction.

(2) If a provision of this Law, or the application of a provision of this Law to a person, subject matter or circumstance, would, but for this clause, be construed as being in excess of the legislative power of the Legislature of this jurisdiction —

- (a) it is a valid provision to the extent to which it is not in excess of the power; and
- (b) the remainder of this Law, and the application of the provision to other persons, subject matters or circumstances, is not affected.

(3) This clause applies to this Law in addition to, and without limiting the effect of, any provision of this Law.

**3. Every section to be a substantive enactment**

Every section of this Law has effect as a substantive enactment without introductory words.

**4. Material that is, and is not, part of this Law**

(1) The heading to a Part, Division or Subdivision into which this Law is divided is part of this Law.

(2) A Schedule to this Law is part of this Law.





- (2) A reference in this Law to a provision of this Law or of an Act includes a reference to —
- (a) the provision as originally enacted, and as amended from time to time since its original enactment; and
  - (b) if the provision has been omitted and re-enacted (with or without modification) since the enactment of the reference — the provision as re-enacted, and as amended from time to time since its re-enactment.
- (3) Subclauses (1) and (2) apply to a reference in this Law to a law of the Commonwealth or another jurisdiction as they apply to a reference in this Law to an Act and to a provision of an Act.

**7. Interpretation best achieving Law's purpose**

- (1) In the interpretation of a provision of this Law, the interpretation that will best achieve the purpose or object of this Law is to be preferred to any other interpretation.
- (2) Subclause (1) applies whether or not the purpose is expressly stated in this Law.

**8. Use of extrinsic material in interpretation**

- (1) In this clause —
- extrinsic material* means relevant material not forming part of this Law, including, for example —
- (a) material that is set out in the document containing the text of this Law as printed by the Government Printer; and
  - (b) a relevant report of a Royal Commission, Law Reform Commission, commission or committee of inquiry, or a similar body, that was laid before the Parliament of this jurisdiction before the provision concerned was enacted; and
  - (c) a relevant report of a committee of the Parliament of this jurisdiction that was made to the Parliament before the provision was enacted; and
  - (d) a treaty or other international agreement that is mentioned in this Law; and



**9. Effect of change of drafting practice and use of examples**

If —

- (a) a provision of this Law expresses an idea in particular words; and
- (b) a provision enacted later appears to express the same idea in different words for the purpose of implementing a different legislative drafting practice, including, for example —
  - (i) the use of a clearer or simpler style; or
  - (ii) the use of gender-neutral language,the ideas must not be taken to be different merely because different words are used.

**10. Use of examples**

If this Law includes an example of the operation of a provision —

- (a) the example is not exhaustive; and
- (b) the example does not limit, but may extend, the meaning of the provision; and
- (c) the example and the provision are to be read in the context of each other and the other provisions of this Law, but, if the example and the provision so read are inconsistent, the provision prevails.

**11. Compliance with forms**

- (1) If a form is prescribed or approved by or for the purpose of this Law, strict compliance with the form is not necessary and substantial compliance is sufficient.
- (2) If a form prescribed or approved by or for the purpose of this Law requires —
  - (a) the form to be completed in a specified way; or
  - (b) specified information or documents to be included in, attached to or given with the form; or



**Commonwealth** means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory;

**confer**, in relation to a function, includes impose;

**contravene** includes fail to comply with;

**country** includes —

- (a) a federation; or
- (b) a state, province or other part of a federation;

**date of assent**, in relation to an Act, means the day on which the Act receives the Royal Assent;

**definition** means a provision of this Law (however expressed) that —

- (a) gives a meaning to a word or expression; or
- (b) limits or extends the meaning of a word or expression;

**document** includes —

- (a) any paper or other material on which there is writing; or
- (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for a person qualified to interpret them; or
- (c) any disk, tape or other article or any material from which sounds, images, writings or messages are capable of being reproduced (with or without the aid of another article or device);

**electronic communication** means —

- (a) a communication of information in the form of data, text or images by means of guided or unguided electromagnetic energy, or both; or
- (b) a communication of information in the form of sound by means of guided or unguided electromagnetic energy, or both, where the sound is processed at its destination by an automated voice recognition system;

**estate** includes easement, charge, right, title, claim, demand, lien or encumbrance, whether at law or in equity;

**expire** includes lapse or otherwise cease to have effect;

*external Territory* means a Territory, other than an internal Territory, for the government of which as a Territory provision is made by a Commonwealth Act;

*fail* includes refuse;

*financial year* means a period of 12 months beginning on 1 July;

*foreign country* means a country (whether or not an independent sovereign State) outside Australia and the external Territories;

*function* includes a power, authority or duty;

*Gazette* means the *Government Gazette* of this jurisdiction;

*Gazette notice* means notice published in the *Gazette*;

*gazetted* means published in the *Gazette*;

*Government Printer* means the Government Printer of this jurisdiction, and includes any other person authorised by the Government of this jurisdiction to print an Act or instrument;

*individual* means a natural person;

*information system* means a system for generating, sending, receiving, storing or otherwise processing electronic communications;

*insert*, in relation to a provision of this Law, includes substitute;

*instrument* includes a statutory instrument;

*interest*, in relation to land or other property, means —

- (a) a legal or equitable estate in the land or other property; or
- (b) a right, power or privilege over, or in relation to, the land or other property;

*internal Territory* means the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory;

*Jervis Bay Territory* means the Territory mentioned in the *Jervis Bay Territory Acceptance Act 1915* (Commonwealth);

*make* includes issue or grant;

*minor* means an individual who is under 18 years;

*modification* includes addition, omission or substitution;

*month* means a calendar month;

*named month* means one of the 12 months of the year;

*Northern Territory* means the Northern Territory of Australia;

**number** means —

- (a) a number expressed in figures or words; or
- (b) a letter; or
- (c) a combination of a number so expressed and a letter;

**oath**, in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration or promise;

**office** includes position;

**omit**, in relation to a provision of this Law or an Act, includes repeal;

**party** includes an individual or a body politic or corporate;

**penalty** includes forfeiture or punishment;

**person** includes an individual or a body politic or corporate;

**power** includes authority;

**prescribed** means prescribed by, or by regulations made or in force for the purposes of or under, this Law;

**printed** includes typewritten, lithographed or reproduced by any mechanical means;

**proceeding** means a legal or other action or proceeding;

**property** means any legal or equitable estate or interest (whether present or future, vested or contingent, or tangible or intangible) in real or personal property of any description (including money), and includes things in action;

**provision**, in relation to this Law or an Act, means words or other matter that form or forms part of this Law or the Act, and includes —

- (a) a Chapter, Part, Division, Subdivision, section, subsection, paragraph, subparagraph, sub-subparagraph or Schedule of or to this Law or the Act; or
- (b) a section, clause, subclause, item, column, table or form of or in a Schedule to this Law or the Act; or
- (c) the long title and any preamble to the Act;

**record** includes information stored or recorded by means of a computer;

**repeal** includes —

- (a) revoke or rescind; or



- (b) repeal by implication; or
- (c) abrogate or limit the effect of this Law or instrument concerned; or
- (d) exclude from, or include in, the application of this Law or instrument concerned any person, subject matter or circumstance;

***sign*** includes the affixing of a seal or the making of a mark;

***statutory declaration*** means a declaration made under an Act, or under a Commonwealth Act or an Act of another jurisdiction, that authorises a declaration to be made otherwise than in the course of a judicial proceeding;

***statutory instrument*** means an instrument (including a regulation) made or in force under or for the purposes of this Law, and includes an instrument made or in force under any such instrument;

***swear***, in relation to a person allowed by law to affirm, declare or promise, includes affirm, declare or promise;

***word*** includes any symbol, figure or drawing;

***writing*** includes any mode of representing or reproducing words in a visible form.

- (2) In a statutory instrument —  
***the Law*** means this Law.

**13. Provisions relating to defined terms and gender and number**

- (1) If this Law defines a word or expression, other parts of speech and grammatical forms of the word or expression have corresponding meanings.
- (2) Definitions in or applicable to this Law apply except so far as the context or subject matter otherwise indicates or requires.
- (3) In this Law, words indicating a gender include each other gender.
- (4) In this Law —
  - (a) words in the singular include the plural; and
  - (b) words in the plural include the singular.

**14. Meaning of “may” and “must” etc.**

- (1) In this Law, the word *may*, or a similar word or expression, used in relation to a power indicates that the power may be exercised or not exercised, at discretion.
- (2) In this Law, the word *must*, or a similar word or expression, used in relation to a power indicates that the power is required to be exercised.
- (3) This clause has effect despite any rule of construction to the contrary.

**15. Words and expressions used in statutory instruments**

- (1) Words and expressions used in a statutory instrument have the same meanings as they have, from time to time, in this Law, or relevant provisions of this Law, under or for the purposes of which the instrument is made or in force.
- (2) This clause has effect in relation to an instrument except so far as the contrary intention appears in the instrument.

**16. Effect of express references to bodies corporate and individuals**

In this Law, a reference to a person generally (whether the expression “person”, “party”, “someone”, “anyone”, “no-one”, “one”, “another” or “whoever” or another expression is used) —

- (a) does not exclude a reference to a body corporate or an individual merely because elsewhere in this Law there is particular reference to a body corporate (however expressed); and
- (b) does not exclude a reference to a body corporate or an individual merely because elsewhere in this Law there is particular reference to an individual (however expressed).

**17. Production of records kept in computers etc.**

If a person who keeps a record of information by means of a mechanical, electronic or other device is required by or under this Law —

- (a) to produce the information or a document containing the information to a court, tribunal or person; or



column, table or form by a number and without reference to this Law — the reference is a reference to —

- (i) the Division, designated by the number, of the Part in which the reference occurs; and
- (ii) the Subdivision, designated by the number, of the Division in which the reference occurs; and
- (iii) the subsection, designated by the number, of the section in which the reference occurs; and
- (iv) the paragraph, designated by the number, of the section, subsection, Schedule or other provision in which the reference occurs; and
- (v) the paragraph, designated by the number, of the clause, subclause, item, column, table or form of or in the Schedule in which the reference occurs; and
- (vi) the subparagraph, designated by the number, of the paragraph in which the reference occurs; and
- (vii) the sub-subparagraph, designated by the number, of the subparagraph in which the reference occurs; and
- (viii) the section, clause, subclause, item, column, table or form, designated by the number, of or in the Schedule in which the reference occurs,

as the case requires.

**21. Reference to provisions of this Law or an Act is inclusive**

In this Law, a reference to a portion of this Law or an Act includes —

- (a) a reference to the Chapter, Part, Division, Subdivision, section, subsection or other provision of this Law or the Act referred to that forms the beginning of the portion; and
- (b) a reference to the Chapter, Part, Division, Subdivision, section, subsection or other provision of this Law or the Act referred to that forms the end of the portion.

**Example:** A reference to “sections 5 to 9” includes both section 5 and section 9.

It is not necessary to refer to “sections 5 to 9 (both inclusive)” to ensure that the reference is given an inclusive interpretation.



the provisions as in force from time to time, unless the statutory instrument otherwise expressly provides.

- (3) A statutory instrument may —
  - (a) apply generally throughout this jurisdiction or be limited in its application to a particular part of this jurisdiction; or
  - (b) apply generally to all persons, matters or things or be limited in its application to —
    - (i) particular persons, matters or things; or
    - (ii) particular classes of persons, matters or things;or
  - (c) otherwise apply generally or be limited in its application by reference to specified exceptions or factors.
- (4) A statutory instrument may —
  - (a) apply differently according to different specified factors; or
  - (b) otherwise make different provision in relation to —
    - (i) different persons, matters or things; or
    - (ii) different classes of persons, matters or things.
- (5) A statutory instrument may authorise a matter or thing to be from time to time determined, applied or regulated by a specified person or body.
- (6) If this Law authorises or requires a matter to be regulated by statutory instrument, the power may be exercised by prohibiting by statutory instrument the matter or any aspect of the matter.
- (7) If this Law authorises or requires provision to be made with respect to a matter by statutory instrument, a statutory instrument made under this Law may make provision with respect to a particular aspect of the matter despite the fact that provision is made by this Law in relation to another aspect of the matter or in relation to another matter.
- (8) A statutory instrument may provide for the review of, or a right of appeal against, a decision made under the statutory instrument, or this Law, and may, for that purpose, confer jurisdiction on any court, tribunal, person or body.



- (2) The appointment may be expressed to have effect only in the circumstances specified in the instrument of appointment.
- (3) The appointer may —
  - (a) determine the terms and conditions of the appointment, including remuneration and allowances; and
  - (b) terminate the appointment at any time.
- (4) The appointment, or the termination of the appointment, must be in, or evidenced by, writing signed by the appointer.
- (5) The appointee must not act for more than one year during a vacancy in the office.
- (6) If the appointee is acting in the office otherwise than because of a vacancy in the office and the office becomes vacant, then, subject to subclause (2), the appointee may continue to act until —
  - (a) the appointer otherwise directs; or
  - (b) the vacancy is filled; or
  - (c) the end of a year from the day of the vacancy,whichever happens first.
- (7) The appointment ceases to have effect if the appointee resigns by writing signed and delivered to the appointer.
- (8) While the appointee is acting in the office —
  - (a) the appointee has all the powers and functions of the holder of the office; and
  - (b) this Law and other laws apply to the appointee as if the appointee were the holder of the office.
- (9) Anything done by or in relation to a person purporting to act in the office is not invalid merely because —
  - (a) the occasion for the appointment had not arisen; or
  - (b) the appointment had ceased to have effect; or
  - (c) the occasion for the person to act had not arisen or had ceased.





**29. Delegation of functions**

- (1) If this Law authorises a person or body to delegate a function, the person or body may, in accordance with this Law and any other applicable law, delegate the function to —
  - (a) a person or body by name; or
  - (b) a specified officer, or the holder of a specified office, by reference to the title of the office concerned.
- (2) The delegation may be —
  - (a) general or limited; and
  - (b) made from time to time; and
  - (c) revoked, wholly or partly, by the delegator.
- (3) The delegation, or a revocation of the delegation, must be in, or evidenced by, writing signed by the delegator or, if the delegator is a body, by a person authorised by the body for the purpose.
- (4) A delegated function may be exercised only in accordance with any conditions to which the delegation is subject.
- (5) The delegate may, in the performance of a delegated function, do anything that is incidental to the delegated function.
- (6) A delegated function that purports to have been exercised by the delegate is taken to have been properly exercised by the delegate unless the contrary is proved.
- (7) A delegated function that is properly exercised by the delegate is taken to have been exercised by the delegator.
- (8) If, when exercised by the delegator, a function is dependent on the delegator's opinion, belief or state of mind, then, when exercised by the delegate, the function is dependent on the delegate's opinion, belief or state of mind.
- (9) If —
  - (a) the delegator is a specified officer or the holder of a specified office; and

- (b) the person who was the specified officer or holder of the specified office when the delegation was made ceases to be the holder of the office,

then —

- (c) the delegation continues in force; and
- (d) the person for the time being occupying or acting in the office concerned is taken to be the delegator for the purposes of this section.

(10) If —

- (a) the delegator is a body; and
- (b) there is a change in the membership of the body,

then —

- (c) the delegation continues in force; and
- (d) the body as constituted for the time being is taken to be the delegator for the purposes of this section.

(11) If a function is delegated to a specified officer or the holder of a specified office —

- (a) the delegation does not cease to have effect merely because the person who was the specified officer or the holder of the specified office when the function was delegated ceases to be the officer or the holder of the office; and
- (b) the function may be exercised by the person for the time being occupying or acting in the office concerned.

(12) A function that has been delegated may, despite the delegation, be exercised by the delegator.

(13) The delegation of a function does not relieve the delegator of the delegator's obligation to ensure that the function is properly exercised.

(14) Subject to subsection (15), this clause applies to a subdelegation of a function in the same way as it applies to a delegation of a function.

- (15) If this Law authorises the delegation of a function, the function may be subdelegated only if the Law expressly authorises the function to be subdelegated.

**30. Exercise of powers between enactment and commencement**

- (1) If a provision of this Law (the *empowering provision*) that does not commence on its enactment would, had it commenced, confer a power —

- (a) to make an appointment; or
- (b) to make a statutory instrument of a legislative or administrative character; or
- (c) to do another thing,

then —

- (d) the power may be exercised; and
- (e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect,

before the empowering provision commences.

- (2) If a provision of an Act (the *empowering provision*) that does not commence on its enactment would, had it commenced, amend a provision of this Law so that it would confer a power —

- (a) to make an appointment; or
- (b) to make a statutory instrument of a legislative or administrative character; or
- (c) to do another thing,

then —

- (d) the power may be exercised; and
- (e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect,

before the empowering provision commences.

(3) If —

- (a) this Law has commenced and confers a power to make a statutory instrument (the *basic instrument-making power*); and
- (b) a provision of an Act that does not commence on its enactment would, had it commenced, amend this Law so as to confer additional power to make a statutory instrument (the *additional instrument-making power*),

then —

- (c) the basic instrument-making power and the additional instrument-making power may be exercised by making a single instrument; and
- (d) any provision of the instrument that required an exercise of the additional instrument-making power is to be treated as made under subclause (2).

(4) If an instrument, or a provision of an instrument, is made under subclause (1) or (2) that is necessary for the purpose of —

- (a) enabling the exercise of a power mentioned in the subclause; or
- (b) bringing an appointment, instrument or other thing made or done under such a power into effect,

the instrument or provision takes effect —

- (c) on the making of the instrument; or
- (d) on such later day (if any) on which, or at such later time (if any) at which, the instrument or provision is expressed to take effect.

(5) If —

- (a) an appointment is made under subclause (1) or (2); or
- (b) an instrument, or a provision of an instrument, made under subclause (1) or (2) is not necessary for a purpose mentioned in subclause (4),

the appointment, instrument or provision takes effect —

- (c) on the commencement of the relevant empowering provision; or

- (d) on such later day (if any) on which, or at such later time (if any) at which, the appointment, instrument or provision is expressed to take effect.
- (6) Anything done under subclause (1) or (2) does not confer a right, or impose a liability, on a person before the relevant empowering provision commences.
- (7) After the enactment of a provision mentioned in subclause (2) but before the provision's commencement, this clause applies as if the references in subclauses (2) and (5) to the commencement of the empowering provision were references to the commencement of the provision mentioned in subclause (2) as amended by the empowering provision.
- (8) In the application of this clause to a statutory instrument, a reference to the enactment of the instrument is a reference to the making of the instrument.

**Part 5 — Distance, time and age**

**31. Matters relating to distance, time and age**

- (1) In the measurement of distance for the purposes of this Law, the distance is to be measured along the shortest road ordinarily used for travelling.
- (2) If a period beginning on a given day, act or event is provided or allowed for a purpose by this Law, the period is to be calculated by excluding the day, or the day of the act or event, and —
  - (a) if the period is expressed to be a specified number of clear days or at least a specified number of days — by excluding the day on which the purpose is to be fulfilled; and
  - (b) in any other case — by including the day on which the purpose is to be fulfilled.
- (3) If the last day of a period provided or allowed by this Law for doing anything is not a business day in the place in which the thing is to be or may be done, the thing may be done on the next business day in the place.



- (b) affect the previous operation of the provision or anything suffered, done or begun under the provision; or
  - (c) affect a right, privilege or liability acquired, accrued or incurred under the provision; or
  - (d) affect a penalty incurred in relation to an offence arising under the provision; or
  - (e) affect an investigation, proceeding or remedy in relation to such a right, privilege, liability or penalty.
- (2) Any such penalty may be imposed and enforced, and any such investigation, proceeding or remedy may be begun, continued or enforced, as if the provision had not been repealed or amended or had not expired.

**35. Continuance of repealed provisions**

If an Act repeals some provisions of this Law and enacts new provisions in substitution for the repealed provisions, the repealed provisions continue in force until the new provisions commence.

**36. Law and amending Acts to be read as one**

This Law and all Acts amending this Law are to be read as one.

**Part 7 — Instruments under Law**

**37. Schedule applies to statutory instruments**

- (1) This Schedule applies to a statutory instrument, and to things that may be done or are required to be done under a statutory instrument, in the same way as it applies to this Law, and things that may be done or are required to be done under this Law, except so far as the context or subject matter otherwise indicates or requires.
- (2) The fact that a provision of this Schedule refers to this Law and not also to a statutory instrument does not, by itself, indicate that the provision is intended to apply only to this Law.



**Part 8 — Application to coastal sea**

**38. Application**

This Law has effect in and relation to the coastal sea of this jurisdiction as if that coastal sea were part of this jurisdiction.

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### Notes

- <sup>1</sup> This reprint is a compilation as at 23 June 2017 of the *Health Practitioner Regulation National Law (WA) Act 2010*. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Health Practitioner Regulation National Law (WA) Act 2010</i>	35 of 2010	30 Aug 2010	s. 1 and 2: 30 Aug 2010 (see s. 2(a)); s. 3, 4 (and the Sch.), s. 5-13, 14(a)-(d), (f) and (h)-(m), 15(1)(a) and (b), (2)(a)-(e), (g), (i)-(n) and (3), 16-40, 41(1), 42, 43, 44(2)-(6), (8) and (10)-(15), 45-77, 78(1), 79-90, 91(1)-(3), 92-111, 112(1), 113-142, 146, 147(1), 150-156, 157(1) and (2) and 158-166: 18 Oct 2010 (see s. 2(b) and <i>Gazette</i> 1 Oct 2010 p. 5075-6); s. 14(e) and (g), 15(1)(c), (2)(f) and (h), 41(2), 44(1), (7) and (9), 78(2), 91(4) and (5), 112(2), 143-145, 147(2)-(4), 148-149 and 157(3): 1 Jul 2012 (see s. 2(b) and <i>Gazette</i> 19 Jun 2012 p. 2631)

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- <sup>2</sup> The provisions in this Act amending those Acts have been omitted under the *Reprints Act 1984* s. 7(4)(e).
- <sup>3</sup> The short title of this Act was changed to the *Human Services (Medicare) Act 1973* by the *Human Services Legislation Amendment Act 2011* (Cwlth) Sch. 1 Pt. 1 cl. 2.

## Defined terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
accreditation authority .....	Sch. s. 5
accreditation committee .....	Sch. s. 5
accreditation function .....	Sch. s. 42
accreditation standard .....	Sch. s. 5
accredited programme of study .....	Sch. s. 5
Act .....	Sch. 7 cl. 12(1)
additional instrument-making power .....	Sch. 7 cl. 30(3)(b)
adjudication body .....	Sch. s. 5 and 292(3)
adult .....	Sch. 7 cl. 12(1)
Advisory Council .....	Sch. s. 5
affidavit .....	Sch. 7 cl. 12(1)
Agency Fund .....	Sch. s. 5
Agency Management Committee .....	Sch. s. 5
amend .....	Sch. 7 cl. 12(1)
appellable decision .....	Sch. s. 199(1)
appoint .....	Sch. 7 cl. 12(1)
appropriate health profession .....	Sch. s. 123(2)
appropriately qualified .....	Sch. s. 67(8)
appropriate professional indemnity insurance arrangements .....	Sch. s. 5
approved accreditation standard .....	Sch. s. 5
approved area of practice .....	Sch. s. 5
approved programme of study .....	Sch. s. 5 and 86
approved qualification .....	Sch. s. 5
approved registration standard .....	Sch. s. 5
assessment .....	Sch. s. 168
Australia .....	Sch. 7 cl. 12(1)
Australian legal practitioner .....	Sch. s. 5
basic instrument-making power .....	Sch. 7 cl. 30(3)(a)
business day .....	Sch. 7 cl. 12(1)
calendar month .....	Sch. 7 cl. 12(1)
calendar year .....	Sch. 7 cl. 12(1)
Chairperson .....	Sch. 1 cl. 1, Sch. 2 cl. 1, Sch. 4 cl. 1
COAG Agreement .....	Sch. s. 5
commencement .....	Sch. 7 cl. 12(1)
commencement day .....	Sch. s. 250
Committee .....	Sch. 2 cl. 1
Commonwealth .....	Sch. 7 cl. 12(1)
community member .....	Sch. 4 cl. 1
confer .....	Sch. 7 cl. 12(1)
contravene .....	Sch. 7 cl. 12(1)

**Defined terms**

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co-regulatory authority .....	Sch. s. 5
co-regulatory jurisdiction.....	Sch. s. 5
corresponding prior Act.....	Sch. s. 5
corresponding purpose .....	Sch. cl. 270(3), 272(3) and 278(3)
Council.....	4(4)
country .....	Sch. 7 cl. 12(1)
criminal history .....	Sch. s. 5
criminal history information .....	10(1)
criminal history law .....	Sch. s. 5
CrimTrac.....	Sch. s. 5
date of assent.....	Sch. 7 cl. 12(1)
definition.....	Sch. 7 cl. 12(1)
division .....	Sch. s. 5
document.....	Sch. 7 cl. 12(1)
duplicate warrant.....	Sch. 5 cl. 7(5), Sch. 6 cl. 7(5)
dutiable property .....	8(1)
dutiable transaction .....	8(1)
education provider .....	Sch. s. 5
electronic communication.....	Sch. 7 cl. 12(1)
employer .....	Sch. s. 142(4)
employment contract.....	Sch. s. 295(2)
empowering provision .....	Sch. 7 cl. 30(1) and (2)
entity .....	Sch. s. 5
estate .....	Sch. 7 cl. 12(1)
exercise .....	Sch. s. 5
expire .....	Sch. 7 cl. 12(1)
external accreditation entity .....	Sch. s. 5
external Territory .....	Sch. 7 cl. 12(1)
extrinsic material.....	Sch. 7 cl. 8(1)
fail.....	Sch. 7 cl. 12(1)
financial year .....	Sch. 7 cl. 12(1)
first Board.....	Sch. 4 cl. 9
first health practitioner.....	Sch. s. 141(1)
FOI Act .....	Sch. s. 215(4)
foreign country.....	Sch. 7 cl. 12(1)
former Act.....	16
function .....	Sch. 7 cl. 12(1)
Gazette .....	Sch. 7 cl. 12(1)
gazetted .....	Sch. 7 cl. 12(1)
Gazette notice .....	Sch. 7 cl. 12(1)
general registration .....	Sch. s. 269(3)
Government Printer.....	Sch. 7 cl. 12(1)
health assessment.....	Sch. s. 5
health complaints entity .....	Sch. s. 5
health, conduct or performance action.....	Sch. s. 5

health panel .....	Sch. s. 5
health practitioner .....	Sch. s. 5
Health Practitioner Regulation National Law (Western Australia) .....	3(2)
health profession .....	Sch. s. 5
health profession agreement .....	Sch. s. 5 and 26(1)
health programme .....	Sch. s. 5
health service .....	Sch. s. 5
health service provider .....	Sch. s. 5
health services .....	Sch. s. 67(8)
homebirth .....	Sch. s. 284(5)
immediate action .....	Sch. s. 155
impairment .....	Sch. s. 5
individual .....	Sch. 7 cl. 12(1)
information management agency .....	Sch. s. 218(4)
information system .....	Sch. 7 cl. 12(1)
informed consent .....	Sch. s. 284(5)
insert .....	Sch. 7 cl. 12(1)
instrument .....	Sch. 7 cl. 12(1)
interest .....	Sch. 7 cl. 12(1)
internal Territory .....	Sch. 7 cl. 12(1)
Jervis Bay Territory .....	Sch. 7 cl. 12(1)
large participating jurisdiction .....	Sch. s. 33(11)
licensing authority .....	Sch. s. 142(4)
local application provisions of this Act .....	3(1)
local registration authority .....	Sch. s. 5 and 250
magistrate .....	5
Magistrates Court .....	5
make .....	Sch. 7 cl. 12(1)
mandatory notification .....	Sch. s. 5
manipulation of the cervical spine .....	Sch. s. 123(2)
may .....	Sch. 7 cl. 14(1)
medical practitioner .....	Sch. s. 5
member .....	Sch. 1 cl. 1, Sch. 2 cl. 1, Sch. 4 cl. 1
midwife .....	Sch. s. 284(5)
Ministerial Council .....	Sch. s. 5
minor .....	Sch. 7 cl. 12(1)
modification .....	Sch. 7 cl. 12(1)
month .....	Sch. 7 cl. 12(1)
must .....	Sch. 7 cl. 14(2)
named month .....	Sch. 7 cl. 12(1)
National Agency .....	Sch. s. 5
National Board .....	Sch. s. 5 and 284(5)
National Register .....	Sch. s. 5
national registration and accreditation scheme .....	Sch. s. 5
Northern Territory .....	Sch. 7 cl. 12(1)

**Defined terms**

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notifiable conduct .....	Sch. s. 140
notification .....	Sch. s. 5
notifier.....	Sch. s. 5
number .....	Sch. 7 cl. 12(1)
oath .....	Sch. 7 cl. 12(1)
obstruct .....	Sch. 5 cl. 22(3), Sch. 6 cl. 22(3)
office .....	Sch. 7 cl. 12(1)
Ombudsman Act .....	Sch. s. 235(4)
omit.....	Sch. 7 cl. 12(1)
optical appliance .....	Sch. s. 122(2)
optometrist .....	Sch. s. 122(2)
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