South Australia

Health Practitioner Regulation National Law (South Australia) Act 2010

An Act to make provision for a national legislative scheme for the regulation of health practitioners; to make provision for local matters associated with the regulation of health practitioners, the registration of pharmacy premises and pharmacy depots and the supply of optical appliances; to repeal certain Acts associated with the regulation of health professions; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Health Practitioner Regulation National Law (South Australia) Act 2010*.

3—Definitions

(1) In this Act—

Chief Executive means the Chief Executive of the Department and includes a person for the time being acting in that position;

the Department means the administrative unit of the Public Service that is, under the Minister, responsible for the administration of this Act;

Health Practitioner Regulation National Law (South Australia) means the provisions applying in this jurisdiction because of section 4;

representative body means a body that is declared by the regulations to be a representative body for the purposes of this Act;

Tribunal means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*.

(2) Terms used in this Act and also in the *Health Practitioner Regulation National Law* set out in the schedule to the *Health Practitioner Regulation National Law Act 2009* of Queensland have the same meanings in this Act as they have in that Law.

Part 2—Adoption of *Health Practitioner Regulation National Law*

4—Application of *Health Practitioner Regulation National Law*

(1) In this section—

South Australian Health Practitioner Regulation National Law text means—

(a) until a regulation is made under subsection (3)—the text set out in the schedule to the *Health Practitioner Regulation National Law Act 2009* of Queensland as in force on 1 July 2010;

(b) thereafter—the *Health Practitioner Regulation National Law (South Australia)* set out in the Schedule inserted under subsection (3) (as in force for the time being).

(2) The South Australian Health Practitioner Regulation National Law text—

(a) applies as a law of South Australia; and

(b) as so applying may be referred to as the ***Health Practitioner Regulation National Law (South Australia)***; and

(c) as so applying, forms a part of this Act.

(3) In connection with the operation of subsections (1) and (2), the Governor may, by regulation, insert a Schedule into this Act that sets out the *Health Practitioner Regulation National Law (South Australia)*.

(4) If, after the commencement of this section, the Parliament of Queensland enacts a provision to make an amendment to the schedule to the *Health Practitioner Regulation National Law Act 2009* of Queensland, the amendment does not apply in South Australia but the Governor may, by regulation, modify the *Health Practitioner Regulation National Law (South Australia)* text to give effect to that amendment as a law of South Australia.

(5) The Governor may, as part of any regulation made under subsection (4), make any additional provision (including so as to modify the terms of an amendment that has been made by the Parliament of Queensland or to provide for related or transitional matters) considered by the Governor to be necessary to ensure that the amendment made by the Parliament of Queensland has proper effect under the law of South Australia.

(6) A regulation made under this section may, if the regulation so provides, take effect from the day of the commencement of an amendment made by the Parliament of Queensland in that State (including a day that is earlier than the day of the regulation's publication in the Gazette).

(7) Section 10 of the *Subordinate Legislation Act 1978* does not apply to a regulation made under subsection (3) (but will apply to any subsequent regulation making a modification under this section).

5—Meaning of generic terms in *Health Practitioner Regulation National Law* for the purposes of this jurisdiction

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

magistrate means a person holding office as a magistrate under the *Magistrates Act 1983*;

magistrates court means the Magistrates Court of South Australia;

this jurisdiction means South Australia.

6—Responsible tribunal for *Health Practitioner Regulation National Law*

The South Australian Civil and Administrative Tribunal is declared to be the responsible tribunal of this jurisdiction for the purposes of the *Health Practitioner Regulation National Law (South Australia)*.

6A—Review of appellable decisions by Tribunal

(1) A person who is the subject of an appellable decision under section 199 of the *Health Practitioner Regulation National Law (South Australia)* may appeal against that decision by applying to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of the appellable decision.

(2) For the purposes of section 199 of the *Health Practitioner Regulation National Law (South Australia)*, an application under subsection (1) must be made within 28 days after—

(a) the person making the application was given notice of the appellable decision; or

(b) the person making the application was given reasons for the appellable decision,

whichever is the later.

(3) The Tribunal may, in its discretion, extend the time fixed under subsection (2) for making an application under subsection (1), even if the time for making the application has ended.

6B—No internal review by Tribunal

(1) A decision of the Tribunal under section 196 or 197 of the *Health Practitioner Regulation National Law (South Australia)* may not be the subject of an application for an internal review under section 70 of the *South Australian Civil and Administrative Tribunal Act 2013*.

(2) Section 71(2), (2a) and (3a) of the *South Australian Civil and Administrative Tribunal Act 2013* do not apply in relation to an appeal against a decision of the Tribunal under section 196 or 197 of the *Health Practitioner Regulation National Law (South Australia)*.

7—Exclusion of legislation of this jurisdiction

(1) The following Acts of this jurisdiction do not apply to the *Health Practitioner Regulation National Law (South Australia)* or to instruments made under that Law:

(a) the *Acts Interpretation Act 1915*;

(b) the *Freedom of Information Act 1991*;

(c) the *Ombudsman Act 1972*;

(d) the *Public Finance and Audit Act 1987*;

(e) the *Public Sector Act 2009*;

(f) the *Public Sector (Honesty and Accountability) Act 1995*;

(g) the *Subordinate Legislation Act 1978*.

(2) To avoid doubt, subsection (1)(g) does not apply to a regulation made under section 4(4), (5) or (6).

Part 3—Tribunal proceedings and powers

8—Interpretation

In this Part—

relevant authority means—

(a) a member of the Tribunal; or

(b) the Registrar of the Tribunal; or

(c) any other officer authorised under section 40(5)(c) of the *South Australian Civil and Administrative Tribunal Act 2013* to issue summonses.

9—Participation of assessors on Tribunal

(1) For the purposes of section 22 of the *South Australian Civil and Administrative Tribunal Act 2013*, there will be—

(a) a panel of assessors consisting of persons from the health professions under the *Health Practitioner Regulation National Law*; and

(b) a panel of assessors consisting of persons who are not members of the health professions under the *Health Practitioner Regulation National Law* and who are qualified, by reason of their knowledge, expertise and experience, to represent the interests of a broad range of consumers of health services.

(2) In exercising its powers for the purposes of this Act, the Tribunal will, if the President of the Tribunal so determines, be constituted by 3 members of whom—

(a) 2 will be selected from the panel of assessors constituted under subsection (1)(a); or

(b) —

(i) 1 will be selected from the panel of assessors constituted under subsection (1)(a); and

(ii) 1 will be selected from the panel of assessors constituted under subsection (1)(b).

(3) In selecting members from the panel constituted under subsection (1)(a), the President must select 1 person who is a member of the same health profession under the *Health Practitioner Regulation National Law* as the person in relation to whom the relevant matter relates.

(4) For the purposes of proceedings before the Tribunal under this Act, the person presiding over the proceedings may, sitting alone—

(a) deal with—

(i) preliminary, interlocutory or procedural matters; or

(ii) questions of costs; or

(iii) questions of law; or

(b) enter consent orders; or

(c) perform any other function or exercise any other power of a prescribed kind,

and may, for that purpose or as a consequence, while sitting alone, make any determination or order (including a final order) that the member considers appropriate.

10—Interim power to suspend or impose conditions

(1) The Tribunal may, in connection with proceedings before the Tribunal under this Act, if of the opinion that it is desirable to do so in the public interest, and in accordance with any process or procedure determined by the Tribunal—

(a) suspend the registration of the person the subject of the proceedings; or

(b) impose conditions on the person's registration restricting the person's right to provide health services,

pending hearing and determination of the proceedings.

(2) A suspension or condition imposed under subsection (1)—

(a) will have effect for a period, not exceeding 30 days, determined by the Tribunal; and

(b) may be extended from time to time for a further period or periods, not exceeding 30 days, determined by the Tribunal.

(3) In addition, if a National Board, or a panel of a National Board, has exercised its power to suspend the registration of the person the subject of the proceedings or imposed conditions on the person's registration, the Tribunal may revoke or vary the suspension or conditions so imposed.

(4) Without limiting any other provision or any other law, the person the subject of the proceedings and the relevant National Board are entitled to appear and make submissions at any proceedings under subsection (1) or (2)(b).

11—Tribunal proceedings

(1) Without limiting any other provision or any other Act or law, the Tribunal may adopt procedures under which a member of the Tribunal participates in the proceedings of the Tribunal by means of an audio visual link or an audio link.

(2) In the course of any proceedings, the Tribunal may—

(a) receive in evidence a transcript of evidence taken in proceedings before a court, tribunal or other body constituted under the law of South Australia or of any other State or a Territory of Australia, of the Commonwealth or of another country, and draw any conclusions of fact from the evidence that it considers proper; and

(b) adopt, as in its discretion it considers proper, any findings, decision, judgment, or reasons for judgment, of any such court, tribunal or body that may be relevant to the proceedings.

12—Failure to comply with a summons

(1) In connection with the issuing of a summons under section 40 of the *South Australian Civil and Administrative Tribunal Act 2013*, if a person summoned by the Tribunal for the purposes of proceedings under this Act—

(a) fails to produce evidentiary material as required by the summons; or

(b) fails to appear before the Tribunal as required by the summons; or

(c) having appeared, refuses to be sworn or to affirm, or to answer a relevant question when required to do so by the Tribunal,

a certificate of the failure or refusal, signed by the relevant authority, may be filed in the Supreme Court.

(2) If a certificate has been filed under subsection (1), a party or, in the case of a summons issued by the Tribunal on its own initiative, the Registrar of the Tribunal, may apply to the Supreme Court for an order directing the person summoned by the Tribunal—

(a) to produce the evidentiary material; or

(b) to appear, or be sworn or affirm, or answer questions, before the Tribunal,

(as the case may require) and on that application the Court may make such orders as it thinks fit (including orders for costs).

(3) The Supreme Court may require that notice be given of an application under subsection (2) to the person against whom the order is sought or any other person (but an order may be made, if the Court thinks fit, although no notice has been given of the application).

13—Request to submit to medical examination at request of another party

(1) A party whose medical condition is in issue in proceedings before the Tribunal must, at the request of another party to the proceedings, submit to a medical examination, at the cost of the party making the request, by a medical expert nominated by that party.

(2) If a party has been requested to submit to a medical examination after the proceedings have been referred to the substantive hearing, the party is not required to comply with the request unless the Tribunal authorises the request.

(3) A party who requests another to submit to a medical examination must, at the request of that other party, pay to the other party a reasonable sum to cover the cost of travelling expenses and loss of earnings from attendance at the medical examination.

(4) A medical practitioner who carries out a medical examination at the request of a party must prepare a written report setting out the results of the examination.

(5) A party who requests another party to submit to a medical examination under this section must give the other parties to the action a copy of the report obtained on the examination.

(6) If the party undergoing the examination does not receive a copy of the medical expert's report for the examination within 14 calendar days after the date of the examination, that party may ask the medical practitioner for a copy of the report.

14—Non-compliance with request to submit to medical examination

(1) If a party fails to comply with a request to submit to a medical examination under section 13, the party that requested the examination may make an application to the Tribunal seeking an order—

(a) confirming that the relevant party's medical condition is in issue in the proceedings; and

(b) that the party whose medical condition is in issue must submit to a medical examination.

(2) If the Tribunal makes an order under subsection (1)(b) that a party must submit to a medical examination and the party does not comply with the order, a certificate of the non-compliance, signed by the relevant authority, may be filed in the Supreme Court.

(3) If a certificate has been filed under subsection (2), a party may apply to the Supreme Court for an order directing the other party to comply with the Tribunal's order that the party must submit to a medical examination and on that application the Court may stay the proceedings before the Tribunal until the relevant party complies with the requirement.

15—Fine recovery

A fine payable to a National Board under Part 8 Division 12 of the *Health Practitioner Regulation National Law (South Australia)* may be recovered as a debt due to that National Board.

Part 4—Pharmacy practice

Division 1—Interpretation

26—Interpretation

(1) In this Part, unless the contrary intention appears—

authorised officer means a person appointed to be an authorised officer under Division 7;

Authority means the Pharmacy Regulation Authority SA constituted under this Part;

dentist means a person registered under the *Health Practitioner Regulation National Law*—

(a) to practise in the dental profession as a dentist (other than as a student); and

(b) in the dentists division of that profession;

director of a body corporate means a member of the board or committee of management of the body corporate, whether validly appointed or not;

domestic partner means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

friendly society means a company that is a friendly society under the *Corporations Act 2001* of the Commonwealth and that—

(a) provides mutual benefits to its members; and

(b) is a non-profit organisation; and

(c) has at least 100 members; and

(d) has a constitution that provides that the main object of the company is to carry on the business of pharmacy;

Friendly Society Medical Association Limited means the friendly society registered under the *Corporations Act 2001* of the Commonwealth as a public company under the name Friendly Society Medical Association Limited (ACN 088 347 602);

General Manager means the General Manager of the Authority and includes a person for the time being acting in that position;

medical practitioner means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

Metropolitan Adelaide has the same meaning as in the *Development Act 1993*;

pharmacist means a person registered under the *Health Practitioner Regulation National Law* in the pharmacy profession (other than as a student);

pharmacist controlled company means a company within the meaning of the *Corporations Act 2001* of the Commonwealth—

(a) in which—

(i) at least 1 director is a pharmacist; and

(ii) every director is either a pharmacist or a prescribed relative of a pharmacist; and

(b) where each holder of shares, or of a beneficial or legal interest in shares, in the company is—

(i) a pharmacist or a prescribed relative of a pharmacist; or

(ii) a recognised corporate pharmacy services provider; or

(iii) a recognised trustee pharmacy services provider; and

(c) in which a pharmacist is, or pharmacists are, entitled to control the exercise of at least 50% of the voting power—

(i) at meetings of the directors of the company; or

(ii) attached to voting shares issued by the company;

pharmacist controlled trust means a trust where each trustee is—

(a) a pharmacist; or

(b) a prescribed relative of a pharmacist as long as at least 1 other trustee is a pharmacist; or

(c) a pharmacist controlled company; or

(d) a person of a prescribed class;

pharmacy, in relation to premises, means premises registered on the register of pharmacies kept under this Part;

pharmacy business means a business consisting of or involving the provision of pharmacy services;

pharmacy depot means premises (other than a pharmacy) at which—

(a) prescriptions for drugs or medicines are left for dispensing by a pharmacist; or

(b) drugs or medicines dispensed by a pharmacist on prescription are left for collection by or on behalf of the person for whom the drugs or medicines are prescribed;

pharmacy services or ***pharmacy*** means—

(a) restricted pharmacy services; or

(b) other health services (including the supply of goods and the provision of advice) provided in the course of practice by a pharmacist or a person who holds himself or herself out, or is held out by another, as a pharmacist;

pharmacy services provider means—

(a) any person who holds a proprietary interest in a pharmacy business; or

(b) any person referred to in section 51(2);

prescribed relative, in relation to a person, means a parent, spouse, domestic partner, child, grandchild, brother or sister of the person;

proprietary interest, in relation to a pharmacy business, means a legal or beneficial interest, and includes an interest as—

(a) a sole proprietor; or

(b) a partner; or

(c) a director, member or shareholder of a company, as defined in the *Corporations Act 2001* of the Commonwealth; or

(d) a trustee or beneficiary of a trust,

and has the meaning affected by subsection (2);

provide, in relation to pharmacy services, means provide services personally or through the instrumentality of another, and includes offer to provide;

related body corporate has the same meaning as in the *Corporations Act 2001* of the Commonwealth;

repealed Act means the *Pharmacy Practice Act 2007*;

restricted pharmacy services means—

(a) dispensing drugs or medicines on the prescription of a medical practitioner, dentist, veterinary surgeon or other person authorised to prescribe the drugs or medicines; or

(b) other services declared by the regulations to be restricted pharmacy services;

spouse—a person is a spouse of another if they are legally married;

unprofessional conduct includes—

(a) improper or unethical conduct in relation to professional practice; and

(b) incompetence or negligence in relation to the provision of pharmacy services; and

(c) a contravention of or failure to comply with—

(i) a provision of this Act or the *Health Practitioner Regulation National Law*; or

(ii) a code of conduct prepared or endorsed by the Authority under this Act; and

(d) conduct that constitutes an offence punishable by imprisonment for 1 year or more under some other Act or law;

veterinary surgeon means a person who is registered as a veterinary surgeon under the law of this State.

(2) Without limiting the generality of the expression, a person will be taken to hold a proprietary interest in a pharmacy business if—

(a) the person is a party to an arrangement of a kind prescribed by the regulations; or

(b) the person, in the course of carrying on a business, provides a benefit to another for which the person is entitled to receive the profits or income, or a share in the profits or income, of a pharmacy business; or

(c) the person has, under a franchise or other commercial arrangement, a right to receive consideration that varies according to the profits or income of a pharmacy business.

(3) For the purposes of this Part, each of the following is a ***recognised corporate pharmacy services provider***:

(a) a pharmacist controlled company;

(b) a friendly society;

(c) a company that carried on a pharmacy business on 1 August 1942 and has continued to do so since that date other than—

(i) Friendly Society Medical Association Limited; or

(ii) The Mount Gambier United Friendly Societies Dispensary Limited.

(4) For the purposes of this Part, a ***recognised trustee pharmacy services provider*** is any pharmacist controlled trust.

(5) For the purposes of this Part, a person occupies a ***position of authority*** in a recognised corporate pharmacy services provider if the person—

(a) is a director of the body corporate; or

(b) exercises, or is in a position to exercise, control or substantial influence over the body corporate in the conduct of its affairs; or

(c) manages, or is to manage, the business of the body corporate insofar as that business consists of the provision of pharmacy services; or

(d) where the body corporate is a proprietary company—is a shareholder in the body corporate.

(6) For the purposes of this Part, a person who holds more than 10% of the issued share capital of a public company will be regarded as a person occupying a ***position of authority*** in that company.

(7) For the purposes of this Part, a person occupies a ***position of authority*** in a recognised trustee pharmacy services provider if the person is a trustee or beneficiary of the trust.

(8) However—

(a) a minor who is a shareholder in a proprietary company, or a beneficiary under a trust, is not, for that reason, to be regarded as a person occupying a ***position of authority***; and

(b) a charitable organisation that is a beneficiary of a trust is not, for that reason, to be regarded as occupying a ***position of authority***; and

(c) a reference in a preceding provision to a beneficiary of a trust is a reference to a beneficiary who receives distributions from the trust.

Division 2—Pharmacy Regulation Authority SA

Subdivision 1—Establishment of Authority

27—Establishment of Authority

(1) *Pharmacy Regulation Authority SA* is established.

(2) The Authority—

(a) is a body corporate; and

(b) has perpetual succession and a common seal; and

(c) is capable of suing and being sued in its corporate name; and

(d) has all the powers of a natural person that are capable of being exercised by a body corporate; and

(e) has the functions and powers assigned or conferred by or under this or any other Act.

(3) If a document appears to bear the common seal of the Authority, it will be presumed, in the absence of proof to the contrary, that the common seal of the Authority was duly affixed to the document.

Subdivision 2—Authority's membership

28—Composition of Authority

(1) The Authority consists of 5 members appointed by the Governor on the nomination of the Minister of whom—

(a) 1 will be an officer of the Department who has responsibility in relation to the administration of pharmacy services; and

(b) 1 will be selected from a panel of 3 pharmacists nominated by The Pharmacy Guild of Australia (SA Branch); and

(c) 1 will be selected from a panel of 3 pharmacists nominated by the Pharmaceutical Society of Australia (South Australian Branch) Incorporated; and

(d) 1 will be selected from a panel of 3 pharmacists involved in the operation of pharmacies in South Australia, nominated by the Australian Friendly Societies Pharmacies Association; and

(e) 1 will be a person who, in the opinion of the Minister, is qualified by reason of their expertise and experience to represent the interests of the public.

(2) At least 1 of the members of the Authority must be a woman and 1 must be a man.

(3) The Governor may appoint a person to be a deputy of a member and a person so appointed may act as a member of the Authority in the absence of the member.

(4) The requirements of qualification and nomination (if applicable) made by this section in relation to the appointment of a member extend to the appointment of the deputy of that member.

29—Terms and conditions of membership

(1) A member of the Authority will be appointed on conditions determined by the Governor and for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.

(2) The Governor may remove a member of the Authority from office—

(a) for breach of, or non-compliance with, a condition of appointment; or

(b) for misconduct; or

(c) for failure or incapacity to carry out official duties satisfactorily.

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

(a) dies; or

(b) completes a term of office and is not reappointed; or

(c) resigns by written notice to the Minister; or

(d) ceases to satisfy the qualification by virtue of which the member was eligible for appointment to the Authority; or

(e) is disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; or

(f) is removed from office under subsection (2).

(4) If a member of the Authority is a member constituting the Authority for the purposes of any proceedings under Division 6 and the member's term of office expires, or the member resigns, before those proceedings are completed, the member may, for the purpose of continuing and completing those proceedings, continue to act as a member of the Authority.

30—Presiding member and deputy

The Minister must, after consultation with the Authority, appoint a member who is a pharmacist (the ***presiding member***) to preside at meetings of the Authority and another member who is a pharmacist (the ***deputy presiding member***) to preside at meetings of the Authority in the absence of the presiding member.

31—Vacancies or defects in appointment of members

An act or proceeding of the Authority is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

32—Remuneration of members

A member of the Authority is entitled to such remuneration, allowances and expenses as the Governor may from time to time determine.

Subdivision 3—General Manager and staff

33—General Manager and staff

(1) There will be a General Manager of the Authority.

(2) The General Manager will be appointed by the Authority on terms and conditions determined by the Authority.

(3) There will be such other staff of the Authority as the Authority thinks necessary for the proper performance of its functions.

(4) A member of the staff of the Authority is not, as such, a member of the Public Service, but the Authority may employ a person who is on leave from employment in the Public Service or with an instrumentality or agency of the Crown.

(5) The Authority may, with the approval of the Minister administering an administrative unit of the Public Service, make use of the services, facilities or officers of that unit.

Subdivision 4—General functions and powers

34—Functions of Authority

(1) The functions of the Authority are:

(a) to determine, after consultation with authorities considered appropriate by the Authority, the requirements for registration of premises under this Part;

(b) to ensure that the registers contemplated by this Part are established and maintained;

(c) to prepare or endorse, subject to the approval of the Minister, codes of conduct for pharmacy services providers;

(d) to establish administrative processes for handling complaints received against pharmacy services providers or persons who occupy positions of authority in recognised corporate pharmacy services providers or recognised trustee pharmacy services providers (which may include processes under which the provider or person who occupies the position voluntarily enters into an undertaking);

(e) to provide advice to the Minister as the Authority considers appropriate;

(f) to carry out other functions assigned to the Authority by or under this or any other Act, or by the Minister.

(2) The Authority must perform its functions under this Act with the object of protecting the health and safety of the public by achieving and maintaining high professional standards in the provision of pharmacy services in this State.

(3) If the Minister approves a code of conduct prepared or endorsed by the Authority, the Authority must—

(a) cause a copy of the code to be published in the Gazette; and

(b) take reasonable steps to send a copy of the code to each pharmacy services provider to whom it applies; and

(c) ensure that a copy of the code is published on the Internet and kept available for public inspection without charge during normal office hours at the principal office of the Authority,

(although proof of compliance with paragraphs (a), (b) and (c) is not necessary for the purpose of any proceedings that involve an alleged contravention of or failure to comply with the code).

(4) The administrative processes established by the Authority for handling complaints received against pharmacy services providers or persons who occupy positions of authority in recognised corporate pharmacy services providers or recognised trustee pharmacy services providers must be designed—

(a) to be fair to both the aggrieved person and the respondent; and

(b) to keep both the aggrieved person and the respondent properly informed about the steps taken by the Authority in response to the complaint; and

(c) to provide, where appropriate, opportunities for the clarification of any misapprehension or misunderstanding between the aggrieved person and the respondent; and

(d) to keep both the aggrieved person and the respondent properly informed about the outcome of the processes; and

(e) to take into account the needs of particular classes of persons who may otherwise suffer disadvantage in the conduct of those processes.

35—Delegations

(1) The Authority may delegate a function or power conferred on the Authority—

(a) to a specified person or body; or

(b) to a person occupying or acting in a specified office or position.

(2) The General Manager may delegate a function or power conferred on the General Manager under this Act—

(a) to a specified person or body; or

(b) to a person occupying or acting in a specified office or position.

(3) A delegation—

(a) may be made subject to conditions or limitations specified in the instrument of delegation; and

(b) if the instrument of delegation so provides, may be further delegated by the delegate; and

(c) is revocable at will and does not prevent the delegator from acting personally in a matter.

Subdivision 5—Authority's procedures

36—Authority's procedures

(1) Subject to this Act, 3 members constitute a quorum of the Authority.

(2) A meeting of the Authority (other than for the purposes of hearing and determining proceedings under Division 6) will be chaired by the presiding member or, in his or her absence, by the deputy presiding member and, in the absence of both the presiding member and the deputy presiding member, the members present at a meeting of the Authority must choose 1 of their number to preside at the meeting.

(3) A decision carried by a majority of the votes cast by members of the Authority at a meeting is a decision of the Authority.

(4) Each member present at a meeting of the Authority has 1 vote on any question arising for decision and, except in hearing and determining proceedings under Division 6, the member presiding at the meeting may exercise a casting vote if the votes are equal.

(5) A conference by telephone or other electronic means between the members of the Authority will, for the purposes of this section, be taken to be a meeting of the Authority at which the participating members are present if—

(a) notice of the conference is given to all members in the manner determined by the Authority for the purpose; and

(b) each participating member is capable of communicating with every other participating member during the conference.

(6) A proposed resolution of the Authority becomes a valid decision of the Authority despite the fact that it is not voted on at a meeting of the Authority if—

(a) notice of the proposed resolution is given to all members of the Authority in accordance with procedures determined by the Authority; and

(b) a majority of the members express concurrence in the proposed resolution by letter, telegram, telefax, fax, email or other written communication setting out the terms of the resolution.

(7) However, subsections (5) and (6) do not apply in relation to the hearing and determination of proceedings under Division 6 by the Authority as constituted for the purposes of proceedings under that Division.

(8) The Authority must have accurate minutes kept of its meetings.

(9) Subject to this Act, the Authority may determine its own procedures.

37—Conflict of interest etc under Public Sector provisions

A member of the Authority will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* by reason only of the fact that the member has an interest in the matter that is shared in common with pharmacists generally or a substantial section of pharmacists in this State.

Subdivision 6—Accounts, audit and annual report

38—Accounts and audit

(1) The Authority must keep proper accounting records in relation to its financial affairs, and must have annual statements of account prepared in respect of each financial year.

(2) The accounts must be audited at least once in every year by an auditor approved by the Auditor-General and appointed by the Authority.

(3) The Auditor-General may at any time audit the accounts of the Authority.

39—Annual report

(1) The Authority must, on or before 30 September in each year, deliver to the Minister a report on the administration of this Act and the work of the Authority during the financial year ending on the preceding 30 June.

(2) The report must incorporate the audited accounts of the Authority for the relevant financial year.

(3) The Minister must, within 12 sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

Division 3—Registration of pharmacies and depots

40—Registers

(1) The General Manager must keep the following registers on behalf of the Authority:

(a) a register of pharmacies;

(b) a register of pharmacy depots.

(2) The register of pharmacies must include, in relation to each premises on the register—

(a) the address of the premises; and

(b) the full name and nominated contact address of the person who carries on a pharmacy business at the premises; and

(c) information prescribed by the regulations,

and may include such other information as the Authority thinks fit.

(3) The register of pharmacy depots must include, in relation to each premises on the register—

(a) the address of the premises; and

(b) information prescribed by the regulations,

and may include such other information as the Authority thinks fit.

(4) A person must, within 1 month after ceasing to carry on a pharmacy business at a pharmacy, inform the General Manager in writing of that fact.

Maximum penalty: $5 000.

(5) The General Manager is responsible to the Authority for the form and maintenance of the registers.

(6) The General Manager must correct an entry in a register that is not, or has ceased to be, correct.

(7) The registers must be kept available for inspection by any person during ordinary office hours at the principal office of the Authority and the registers or extracts from the registers may be made available to the public by electronic means.

(8) A person may, on payment of the prescribed fee, obtain a copy of any part of a register under this section.

41—Registration of premises as pharmacy

(1) A person must not provide restricted pharmacy services except at premises registered as a pharmacy under this section.

Maximum penalty: $50 000.

(1a) A person must not own, or hold a proprietary interest in, a pharmacy business unless the business is carried on at premises registered as a pharmacy under this section.

Maximum penalty: $50 000.

(2) The registered premises must incorporate areas used for any business carried on in association with the provision of pharmacy services.

(3) If, on application made to the Authority for the registration of premises as a pharmacy, the Authority is satisfied that the premises and its location comply with—

(a) the requirements of the regulations; and

(b) the requirements determined by the Authority to be necessary for the registration of the premises as a pharmacy,

the Authority must, subject to subsection (5), register the premises.

(4) Registration under this section remains in force until 30 September next ensuing after the grant of registration and may from time to time be renewed for successive periods of 1 year expiring on 30 September.

(5) The Authority must not register, or renew the registration of, premises as a pharmacy unless satisfied that members of the public cannot directly access the premises from within the premises of a supermarket.

(6) The Authority may refuse to renew the registration of premises as a pharmacy if not satisfied that the premises and its location comply with the requirements of the regulations or the requirements determined by the Authority to be necessary for the registration of the premises as a pharmacy.

(7) An application for registration or renewal of registration under this section must—

(a) be made to the Authority in the manner and form approved by the Authority; and

(b) be accompanied by the registration fee prescribed under the regulations.

(8) An applicant for registration or renewal of registration must, if the Authority so requires, provide the Authority with specified information to enable the Authority to determine the application.

(9) This section does not apply in relation to the dispensing of drugs or medicines by a medical practitioner in the ordinary course of his or her profession.

(10) In this section—

supermarket has the meaning assigned by the regulations.

42—Restriction on number of pharmacies

(1) Friendly Society Medical Association Limited must not provide pharmacy services at more than 40 pharmacies in this State.

Maximum penalty: $50 000.

(2) A person other than a friendly society must not provide pharmacy services at more than 6 pharmacies in this State.

Maximum penalty: $50 000.

(3) A friendly society other than Friendly Society Medical Association Limited must not commence to provide pharmacy services at a pharmacy if friendly societies other than Friendly Society Medical Association Limited already provide pharmacy services at 9 pharmacies in this State or, if another number of pharmacies is prescribed, that number (as recorded on the register of pharmacies).

Maximum penalty: $50 000.

(4) In determining the number of pharmacies at which a natural person provides pharmacy services, pharmacies at which the person provides pharmacy services as a natural person and pharmacies at which any body corporate or trust in which the person occupies a position of authority provides pharmacy services must be taken into account.

43—Supervision of pharmacies by pharmacists

(1) A person who carries on a pharmacy business must ensure that a pharmacist is in attendance and available for consultation by members of the public at each pharmacy at which the business is carried on while the pharmacy is open to the public.

Maximum penalty: $50 000.

(1a) Subsection (1) does not to apply to a person who carries on a pharmacy business in circumstances where—

(a) the person is authorised by the Authority to operate the pharmacy business without a pharmacist being physically in attendance at the pharmacy; and

(b) a pharmacist is, by means of Internet or other electronic communication (other than communication of a kind specified by the Authority), in attendance during any period the pharmacy business is operating and is available for consultation by members of the public.

(1b) The Authority may only grant an authorisation under subsection (1a)(a) in respect of a pharmacy if—

(a) the pharmacy is located within a prescribed area; and

(b) the authorisation is reasonably necessary to ensure that pharmacy services are available to persons who would not otherwise have direct and timely access to such services; and

(c) the Authority is satisfied that a pharmacy services provider, who is proposed to provide pharmacy services as part of the operation of the pharmacy business without a pharmacist being physically in attendance at the pharmacy, has taken all reasonable steps to ensure that the provider will comply with a code of conduct applying to the provider under this Act in respect of such operation.

(1c) An authorisation granted under subsection (1a)(a) will be subject to the following conditions:

(a) any conditions prescribed by the regulations;

(b) any conditions imposed by the Authority.

(1d) A condition of an authorisation under subsection (1c) may, without limitation—

(a) specify a pharmacy service, or pharmacy services of a class, which may not be provided while a pharmacist is not physically in attendance at the pharmacy pursuant to the authorisation; or

(b) require the physical attendance of a pharmacist at the pharmacy at specified intervals; or

(c) specify staffing requirements (including staff qualifications) for a pharmacy while a pharmacist is not physically in attendance at the pharmacy pursuant to the authorisation; or

(d) otherwise limit or restrict the circumstances or manner in which pharmacy services may be provided while a pharmacist is not physically in attendance at the pharmacy pursuant to the authorisation.

(1e) The Authority may, by notice in writing to a person holding an authorisation under subsection (1a)(a)—

(a) vary or revoke a condition imposed under subsection (1c)(b); or

(b) impose a new condition in relation to the authorisation; or

(c) revoke the authorisation.

(1f) A person must not contravene or fail to comply with a condition applying in relation to an authorisation granted under subsection (1a)(a).

Maximum penalty: $50 000.

(1g) Subsection (1b)(a) does not apply in circumstances determined by the Authority to be circumstances of an emergency.

(2) A person is not in breach of subsection (1) on account of a failure to have a pharmacist in attendance in the manner required by that subsection if—

(a) restricted pharmacy services or prescribed pharmacy services are not, while a pharmacist is not in attendance, offered to members of the public; and

(b) access to those areas of the pharmacy used for the provision of restricted pharmacy services or prescribed pharmacy services is physically prevented; and

(c) the person who carries on the pharmacy business at the premises can prove—

(i) that the person has taken reasonable steps to consider the interests of members of the public who might be interested in accessing the pharmacy business; and

(ii) that any period when a pharmacist would not be in attendance was published in advance in accordance with any requirements prescribed by the regulations; and

(iii) that during the period referred to in subparagraph (ii) the staff at the pharmacy had reasonable on-call access to a pharmacist or a medical practitioner.

(3) In addition, it is a defence to an alleged breach of subsection (1) to prove that the pharmacist who would usually be available for the purposes of that subsection was absent due to an exceptional and unforeseen circumstance.

(4) In this section—

emergency includes an event (whether occurring in the State, outside the State or in and outside the State) that causes, or threatens to cause—

(a) the death of, or injury or other damage to the health of, any person; or

(b) the destruction of, or damage to, any property; or

(c) a disruption to essential services or to services usually enjoyed by the community; or

(d) harm to the environment, or to flora or fauna;

Note—

This is not limited to naturally occurring events (such as earthquakes, floods or storms) but would, for example, include fires, explosions, accidents, epidemics, pandemics, emissions of poisons, radiation or other hazardous agents, hijacks, sieges, riots, acts of terrorism and hostilities directed by an enemy against Australia.

pharmacist means a person who holds a general registration under the *Health Practitioner Regulation National Law* to practise in the pharmacy profession.

44—Certain other businesses not to be carried on at pharmacy

A person must not, at a pharmacy, carry on a business consisting of or involving—

(a) the sale of alcohol or tobacco products; or

(b) the sale of animals; or

(c) the preparation of food or beverages for sale or consumption; or

(d) a prescribed activity.

Maximum penalty: $50 000.

45—Registration of premises as pharmacy depot

(1) A person must not use premises outside Metropolitan Adelaide as a pharmacy depot unless the premises are registered as a pharmacy depot under this section.

Maximum penalty: $50 000.

(2) If, on application made to the Authority for the registration of premises as a pharmacy depot, the Authority is satisfied that—

(a) the premises comply with the regulations; and

(b) the premises comply with the requirements determined by the Minister to be necessary for the registration of premises as a pharmacy depot,

the Authority must register the premises.

(3) Registration under this section remains in force until 30 September next ensuing after the grant of registration and may from time to time be renewed for successive periods of 1 year expiring on 30 September.

(4) The Authority may refuse to renew the registration of premises as a pharmacy depot if not satisfied that the premises comply with the regulations or the requirements determined by the Authority to be necessary for the registration of the premises as a pharmacy depot.

(5) An application for registration or renewal of registration under this section must—

(a) be made to the Authority in the manner and form approved by the Authority; and

(b) be accompanied by the registration fee prescribed under the regulations.

(6) An applicant for registration or renewal of registration must, if the Authority so requires, provide the Authority with specified information to enable the Authority to determine the application.

46—Conditions

(1) The registration of a pharmacy or pharmacy depot under this Division will be subject to any condition—

(a) imposed by the Authority in relation to the registration; or

(b) prescribed by the regulations.

(2) The Authority may, if the Authority considers it appropriate to do so, by notice in writing to the person holding the registration, vary a condition to which a registration is subject.

(3) A person who holds a registration may, on application to the Authority in writing, request the variation of a condition to which the registration is subject and the Authority may, as the Authority thinks fit—

(a) grant the variation; or

(b) refuse to grant the variation.

(4) The condition of a registration may be varied by the addition, substitution or deletion of 1 or more conditions.

(5) A person must not contravene or fail to comply with a condition of a registration.

Maximum penalty: $50 000.

(6) A condition of the registration of a pharmacy that is inconsistent with section 43(1a) will, to the extent of the inconsistency, be taken to be modified to give effect to that section.

47—Notices

(1) An authorised officer may issue a notice under this section for the purpose of securing compliance with—

(a) a condition of a registration under this Division; or

(b) a requirement imposed in relation to registration under this Division.

(2) A notice under this section—

(a) must be in the form of a written notice served on the person to whom it is issued; and

(b) must specify the person to whom it is issued (whether by name or by a description sufficient to identify the person); and

(c) must state the purpose for which the notice is issued and give notice of the condition or requirement to which it relates; and

(d) may impose any requirement reasonably required for the purpose for which the notice is issued including 1 or more of the following:

(i) a requirement that the person discontinue a specified activity until further notice from an authorised officer or the General Manager;

(ii) a requirement that the person not carry on a specified activity except subject to specified conditions;

(iii) a requirement that the person comply with a specified requirement under this Act;

(iv) a requirement that the person furnish to the General Manager specified reports; and

(e) must state that the person may, within 28 days, seek a review by the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* of the decision to issue the notice.

(3) An authorised officer may, by written notice served on a person to whom a notice under this section has been issued, vary or revoke the notice.

(4) A person to whom a notice is issued under this section must not, without reasonable excuse, fail to comply with the notice.

Maximum penalty: $10 000.

(5) A person must not hinder or obstruct a person complying with a notice under this section.

Maximum penalty: $10 000.

(6) Without limiting subsection (4), if a person to whom a notice is issued under this section fails to comply with the notice, the General Manager may, after due inquiry, suspend or cancel the registration of premises as a pharmacy or pharmacy depot (as the case may be) under this Division.

48—Reviewable decisions

(1) The following are ***reviewable decisions*** for the purposes of this Division:

(a) a refusal by the Authority to register, or renew the registration of, premises as a pharmacy or pharmacy depot under this Division;

(b) a decision by an authorised officer to issue a notice under section 47;

(c) a decision by the Authority to suspend or cancel the registration of premises as a pharmacy or pharmacy depot under this Division.

(2) A person may apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of a reviewable decision.

(3) An application for review must be made to the Tribunal within 28 days after the making of the relevant decision (or such longer period as the Tribunal may allow).

Division 4—Registration of pharmacy services providers

49—Registers

(1) The General Manager must keep the following registers on behalf of the Authority:

(a) a register of pharmacy services providers;

(b) a register of former pharmacy services providers—

(i) whose registration has been cancelled by disciplinary action under the repealed Act or the *Health Practitioner Regulation National Law (South Australia)*; or

(ii) who have been prohibited from being a pharmacy services provider or from occupying a position of authority in a body corporate or trust by disciplinary action under the repealed Act or this Act,

(and who have not been reinstated to the register under paragraph (a)).

(2) The register of pharmacy services providers must include, in relation to each person on the register—

(a) the full name and nominated contact address of the pharmacy services provider; and

(b) in the case of a recognised corporate pharmacy services provider or recognised trustee pharmacy services provider—the full names and addresses of all persons who occupy a position of authority in the provider; and

(c) information prescribed by the regulations,

and may include such other information as the Authority thinks fit.

(3) The register of former pharmacy services providers must include, in relation to each person on the register, information prescribed by the regulations and may include such other information as the Authority thinks fit.

(4) The General Manager is responsible to the Authority for the form and maintenance of the registers.

(5) The General Manager must correct an entry in a register that is not, or has ceased to be, correct.

(6) The registers must be kept available for inspection by any person during ordinary office hours at the principal office of the Authority and the registers or extracts from the registers may be made available to the public by electronic means.

(7) A person may, on payment of the prescribed fee, obtain a copy of any part of a register under this section.

50—Registration of pharmacy services providers

(1) A person must not be a pharmacy services provider unless registered under this Division.

Maximum penalty: $10 000.

(2) Registration remains in force until 30 September next ensuing after the grant of registration and may from time to time be renewed for successive periods of 1 year expiring on 30 September.

(3) An application for registration or renewal of registration must—

(a) be made to the Authority in the manner and form approved by the Authority; and

(b) be accompanied by the registration fee prescribed under the regulations.

(4) A pharmacy services provider must, within 30 days of any change occurring in the particulars required to be given under this section in relation to registration, inform the General Manager in writing of the change.

Maximum penalty: $10 000.

Division 5—Restrictions relating to provision of pharmacy services

51—Restrictions relating to provision of pharmacy services

(1) A person must not provide a restricted pharmacy service unless—

(a) in the case of a natural person—

(i) he or she is a qualified person and provides the service personally or through the instrumentality of a natural person who is a qualified person; or

(ii) he or she is a pharmacist who does not hold a current authorisation to practise and provides the service through the instrumentality of a natural person who is a qualified person;

(b) in the case of a body corporate—

(i) the body corporate is a recognised corporate pharmacy services provider; and

(ii) the body corporate provides the service through the instrumentality of a natural person who is a qualified person;

(c) in the case of a trust (however constituted)—

(i) the trust is a recognised trustee pharmacy services provider; and

(ii) the trust provides the service through the instrumentality of a natural person who is a qualified person.

Maximum penalty: $50 000 or imprisonment for 6 months.

(1a) A person must not own, or hold a proprietary interest in, a pharmacy business unless that person is—

(a) a pharmacist; or

(b) a prescribed relative of a pharmacist who holds a proprietary interest in the pharmacy business; or

(c) a recognised corporate pharmacy services provider; or

(d) a recognised trustee pharmacy services provider; or

(e) a partner in a partnership that carries on the business and in which every partner is either—

(i) a pharmacist; or

(ii) a prescribed relative of a partner who is a pharmacist; or

(iii) a recognised corporate pharmacy services provider; or

(iv) a recognised trustee pharmacy services provider.

Maximum penalty: $50 000 or imprisonment for 6 months.

(2) Subsections (1) and (1a) do not apply in relation to—

(a) a restricted pharmacy service provided by a natural person who is an unqualified person if—

(i) the person carried on a pharmacy business before 20 April 1972 and has continued to do so since that date; and

(ii) the service is provided through the instrumentality of a natural person who is a qualified person; or

(b) a restricted pharmacy service provided by the personal representative of a deceased pharmacist or person referred to in paragraph (a) if—

(i) the service is provided for a period of not more than 1 year (or such longer period as the Authority may allow); and

(ii) the service is provided through the instrumentality of a natural person who is a qualified person; or

(c) a restricted pharmacy service provided by the official receiver of a bankrupt or insolvent pharmacist if—

(i) the service is provided for a period of not more than 1 year (or such longer period as the Authority may allow); and

(ii) the service is provided through the instrumentality of a natural person who is a qualified person; or

(d) a restricted pharmacy service provided by a person vested by law with power to administer the affairs of a recognised corporate pharmacy services provider that is being wound up or is under administration, receivership or official management if—

(i) the service is provided for a period of not more than 1 year (or such longer period as the Authority may allow); and

(ii) the service is provided through the instrumentality of a natural person who is a qualified person.

(3) Subsection (1) does not apply in relation to a restricted pharmacy service provided by—

(a) an unqualified person in prescribed circumstances; or

(b) a person pursuant to an exemption under subsection (4).

(4) The Minister may, by notice in the Gazette, exempt a person from subsection (1) if of the opinion that good reason exists for doing so in the particular circumstances of the case.

(5) An exemption under subsection (4) may be subject to such conditions as the Minister thinks fit and specifies in the notice.

(6) A person who contravenes, or fails to comply with, a condition of an exemption under this section is guilty of an offence.

Maximum penalty: $50 000.

(7) The Minister may, by further notice in the Gazette, vary or revoke a notice under subsection (4).

(8) In this section—

qualified person, in relation to a restricted pharmacy service, means—

(a) a person who holds a general registration under the *Health Practitioner Regulation National Law* to practise in the pharmacy profession; or

(b) a person authorised by or under another Act to provide such a service.

Division 6—Disciplinary proceedings

52—Preliminary

(1) In this Division—

(a) a reference to ***occupier of a position of authority*** includes a reference to a person who is not but who was, at the relevant time, the occupier of a position of authority;

(b) a reference to ***pharmacy services provider*** includes a reference to a person who is not but who was, at the relevant time, a pharmacy services provider.

(2) The Authority and the National Agency or a National Board, or all 3 entities, may agree on protocols that relate to—

(a) the handling of disciplinary proceedings under this Act and the handling of disciplinary proceedings under the *Health Practitioner Regulation National Law*;

(b) the handling of disciplinary proceedings under this Act that relate to matters that are (or may be) relevant to criminal proceedings under the *Health Practitioner Regulation National Law*.

(3) Without limiting subsection (2), the Authority may decide not to proceed (or not to proceed further) with proceedings under this Act on account of proceedings under the *Health Practitioner Regulation National Law*.

53—Cause for disciplinary action

(1) There is proper cause for disciplinary action against a pharmacy services provider if—

(a) the provider has contravened or failed to comply with a provision of this Act; or

(b) there has been, in connection with the provision of pharmacy services in which the provider has an interest, a contravention or failure to comply with a code of conduct under this Act applying to the provider; or

(c) the provider or any person employed or engaged by the provider has, in connection with the provision of pharmacy services, engaged in conduct that would, if the person were a pharmacist, constitute unprofessional conduct; or

(d) the provider is for any reason not a fit and proper person to be a pharmacy services provider; or

(e) in the case of a recognised corporate pharmacy services provider or a recognised trustee pharmacy services provider, an occupier of a position of authority in the provider—

(i) has contravened or failed to comply with a provision of this Act; or

(ii) has, in connection with the provision of pharmacy services by the provider, engaged in conduct that would, if the person were a pharmacist, constitute unprofessional conduct; or

(iii) is for any reason not a fit and proper person to occupy a position of authority in the provider.

(2) There is proper cause for disciplinary action against the occupier of a position of authority in a recognised corporate pharmacy services provider or a recognised trustee pharmacy services provider if—

(a) the person has contravened or failed to comply with a provision of this Act; or

(b) the person has, in connection with the provision of pharmacy services by the provider, engaged in conduct that would, if the person were a pharmacist, constitute unprofessional conduct; or

(c) the person is for any reason not a fit and proper person to occupy a position of authority in the provider; or

(d) —

(i) the provider has contravened or failed to comply with a provision of this Act; or

(ii) there has been, in connection with the provision of pharmacy services by the provider, a contravention or failure to comply with a code of conduct under this Act applying to the provider; or

(iii) the provider, or any person employed or engaged by the provider, has, in connection with the provision of pharmacy services by the provider, engaged in conduct that would, if the provider or the person were a pharmacist, constitute unprofessional conduct,

unless it is proved that the person could not, by the exercise of reasonable care, have prevented the contravention, failure to comply or conduct.

54—Inquiries as to matters constituting grounds for disciplinary action

(1) A complaint setting out matters that are alleged to constitute grounds for disciplinary action against a person may be laid before the Authority (in a manner and form approved by the Authority) by—

(a) the General Manager; or

(b) the Minister; or

(c) a representative body; or

(d) a person who is aggrieved by conduct of the person or, if the person aggrieved is a child or is suffering from a mental or physical incapacity, by a person acting on his or her behalf.

(2) If a complaint is laid under this section, the Authority must inquire into the subject matter of the complaint unless—

(a) the Authority considers that the matter should be dealt with under the *Health Practitioner Regulation National Law (South Australia)*; or

(b) the Authority considers that the complaint is frivolous or vexatious.

(3) If a complaint has been laid under this section by or on behalf of an aggrieved person and the Authority is satisfied that the complaint arose from a misapprehension on the part of the complainant or from a misunderstanding between the parties, it may, before proceeding further with the hearing of the complaint, require the parties to attend before the General Manager in order to clarify the misapprehension or misunderstanding.

(4) If, after conducting an inquiry under this section, the Authority is satisfied on the balance of probabilities that there is proper cause for disciplinary action against the respondent, the Authority may, by order, do 1 or more of the following:

(a) censure the respondent;

(b) require the respondent to pay to the Authority a fine not exceeding $10 000;

(c) prohibit the respondent from being a pharmacy services provider;

(d) prohibit the respondent from occupying a position of authority in a recognised corporate pharmacy services provider or a recognised trustee pharmacy services provider.

(5) The Authority may—

(a) stipulate that a prohibition under subsection (4) is to apply—

(i) permanently; or

(ii) for a specified period; or

(iii) until the fulfilment of specified conditions; or

(iv) until further order;

(b) stipulate that an order relating to a person is to have effect at a specified future time and impose conditions as to the conduct of the person or the person's business until that time.

(6) If—

(a) a person has been found guilty of an offence; and

(b) the circumstances of the offence form, in whole or in part, the subject matter of the complaint,

the person is not liable to a fine under this section in respect of conduct giving rise to the offence.

(7) The Authority may—

(a) fix a period within which a fine imposed under this section must be paid;

(b) on application by a person liable to pay a fine imposed under this section, extend the period within which the fine must be paid.

(8) A fine imposed under this section is recoverable by the Authority as a debt.

(9) If the Authority makes an order under subsection (4)(c) in relation to a pharmacist registered under the *Health Practitioner Regulation National Law*, the General Manager must give written notice of the order to the National Board established for pharmacy.

55—Contravention of prohibition order

(1) If a person carries on business as a pharmacy services provider in contravention of an order of the Authority, the person is guilty of an offence.

Maximum penalty: $75 000 or imprisonment for 6 months.

(2) If a person occupies a position of authority in a recognised corporate pharmacy services provider or a recognised trustee pharmacy services provider in contravention of an order of the Authority, the person and the provider are each guilty of an offence.

Maximum penalty: $75 000 or imprisonment for 6 months.

(3) If a person contravenes or fails to comply with a condition imposed by the Authority as to the conduct of the person or the person's business, the person is guilty of an offence.

Maximum penalty: $75 000 or imprisonment for 6 months.

56—Constitution of Authority for purpose of proceedings

(1) The Authority will, for the purpose of hearing and determining proceedings under this Division, be constituted of 3 members, of whom—

(a) 1 will be a legal practitioner appointed by the Minister for the purpose of constituting the Authority under this Division; and

(b) 1 will be a member who is a pharmacist.

(2) An appointment under subsection (1)(a) will be on terms and conditions determined by the Minister.

(3) The member referred to in subsection (1)(a) will preside over the proceedings.

(4) The members of the Authority, other than the legal practitioner, will, for the purposes of any particular proceedings, be selected by the presiding member of the Authority or, in the absence of the presiding member, the deputy presiding member.

(5) If a member of the Authority as constituted under this section (other than the member presiding over the proceedings) dies or is for any other reason unable to continue with the proceedings, the Authority constituted of the remaining members may, if the member presiding over the proceedings so determines, continue and complete the proceedings.

(6) Any questions of law or procedure arising before the Authority will be determined by the member presiding over the proceedings and any other questions by unanimous or majority decision of the members.

(7) The Authority constituted of the member presiding over the proceedings may, sitting alone—

(a) deal with—

(i) preliminary, interlocutory or procedural matters; or

(ii) questions of costs; or

(iii) questions of law; or

(b) enter consent orders; or

(c) perform any other function or exercise any other power of a prescribed kind,

and may, for that purpose or as a consequence, while sitting alone, make any determination or order (including a final order) that the member considers appropriate.

57—Provisions as to proceedings before Authority

(1) Subject to this Act, the Authority must give to all of the parties to proceedings before the Authority under this Division at least 14 days written notice of the time and place at which it intends to conduct the proceedings, and must afford to the parties a reasonable opportunity to call and give evidence, to examine or cross-examine witnesses, and to make submissions to the Authority.

(2) However—

(a) the Authority may, if it thinks special reasons exist for doing so, give a lesser period of written notice under subsection (1); and

(b) the Authority may, if of the opinion that it is desirable to do so in the public interest—

(i) suspend the registration of the person the subject of the proceedings; or

(ii) impose conditions on the person's registration restricting the person's right to provide pharmacy services,

pending hearing and determination of the proceedings.

(3) The requirement to give written notice under subsection (1) does not extend to adjournments.

(4) If a party to whom notice has been given under subsection (1) does not attend at the time and place fixed by the notice, the Authority may proceed to hear and determine the matter in the absence of that party.

(5) A person who is aggrieved by conduct that is the subject-matter of proceedings before the Authority under this Division is, subject to any direction of the Authority to the contrary, entitled to be present at the hearing of the proceedings.

(6) In the course of proceedings before the Authority under this Division, the Authority may—

(a) receive in evidence a transcript of evidence taken in proceedings before a court, tribunal or other body constituted under the law of South Australia or of any other State or a Territory of Australia, of the Commonwealth or of another country, and draw any conclusions of fact from the evidence that it considers proper;

(b) adopt, as in its discretion it considers proper, any findings, decision, judgment, or reasons for judgment, of any such court, tribunal or body that may be relevant to the proceedings.

(7) The Authority should conduct proceedings under this Division as expeditiously as possible.

(8) If the Authority takes action under subsection (2)(b) in relation to a pharmacist registered under the *Health Practitioner Regulation National Law*, the General Manager must give written notice of the action that has been taken to the National Board established for pharmacy.

58—Powers of Authority in relation to witnesses etc

(1) For the purposes of proceedings before the Authority under this Division, the Authority may—

(a) by summons signed on behalf of the Authority by a member of the Authority or the General Manager, require the attendance before the Authority of a person whom the Authority thinks fit to call before it; or

(b) by summons signed on behalf of the Authority by a member of the Authority or the General Manager, require the production of relevant documents, records or equipment and, in the case of a document or record that is not in the English language—

(i) a written translation of the document or record into English; and

(ii) a certificate signed by a translator approved by the Authority certifying that the translation accurately reproduces in English the contents of the document or record; or

(c) inspect documents, records or equipment produced before it, and retain them for such reasonable period as it thinks fit, and make copies of the documents or records or their contents; or

(d) require a person to make an oath or affirmation (which may be administered by a member of the Authority) to answer truthfully questions put by a member of the Authority or a person appearing before the Authority; or

(e) require a person appearing before the Authority (whether summoned to appear or not) to answer questions put by a member of the Authority or by a person appearing before the Authority.

(2) On the receipt of an application for the issue of a summons under this section, a member or the General Manager may, without referring the matter to the Authority, issue a summons on behalf of the Authority.

(3) A person who—

(a) fails without reasonable excuse to comply with a summons issued to attend, or to produce documents, records or equipment, before the Authority; or

(b) having been served with a summons to produce—

(i) a written translation of the document or record into English; and

(ii) a certificate signed by a translator approved by the Authority certifying that the translation accurately reproduces in English the contents of the document or record,

fails, without reasonable excuse, to comply with the summons; or

(c) misbehaves before the Authority, wilfully insults the Authority or 1 or more of the members in the exercise of the member's official duties, or wilfully interrupts the proceedings of the Authority; or

(d) refuses to be sworn or to affirm, or refuses or fails to answer truthfully a relevant question when required to do so by the Authority,

is guilty of an offence.

Maximum penalty: $10 000 or imprisonment for 6 months.

(4) A person who appears as a witness before the Authority has the same protection as a witness in proceedings before the Supreme Court.

59—Principles governing proceedings

(1) In proceedings before the Authority under this Division, the Authority—

(a) is not bound by the rules of evidence and may inform itself on any matter as it thinks fit; and

(b) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

(2) In proceedings before the Authority, the Authority must keep the parties to the proceedings properly informed as to the progress and outcome of the proceedings.

60—Representation at proceedings before Authority

A party to proceedings before the Authority is entitled to be represented at the hearing of those proceedings.

61—Costs

(1) The Authority may award such costs against a party to proceedings before it as the Authority considers just and reasonable.

(2) A party who is dissatisfied with the amount of the costs awarded by the Authority may request a Master of the District Court to tax the costs and, after taxing the costs, the Master may confirm or vary the amount of the costs awarded by the Authority.

(3) Costs awarded by the Authority under this section may be recovered as a debt.

62—Review by Tribunal

(1) A right of review lies from a decision of the Authority in proceedings under this Division to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013*.

(2) An application for review under subsection (1) of a decision—

(a) may be made by the complainant or the respondent in the proceedings in which the decision was made; and

(b) must be instituted within 1 month of the date of the decision (or such longer period as the Tribunal may allow).

63—Operation of order may be suspended

(1) If an order has been made by the Authority, and the Authority or the Tribunal is satisfied that an application for review of the decision has been made, or is intended, the Authority or the Tribunal (as the case requires) may suspend the operation of the order until the determination of the review.

(2) If the Authority has suspended the operation of an order under subsection (1), the Authority may terminate the suspension, and if the Tribunal has done so, the Tribunal may terminate the suspension.

63A—Variation or revocation of conditions imposed by Tribunal

(1) Subject to subsection (2), if the Tribunal imposed a condition on a practitioner's registration under the *Health Practitioner Regulation National Law (South Australia)*, the Tribunal may, on application by a party to those proceedings, vary or revoke the condition.

(2) An application by a party under subsection (1) may not be made—

(a) within 1 month of the imposition of the condition; or

(b) within 12 months of a previous application under subsection (1) by the party to vary or revoke a condition,

unless leave is granted by the Tribunal.

(3) A National Board, a panel or the Minister are entitled to appear and be heard on an application under this section.

Division 7—Related provisions

64—Authorised officers

(1) The Minister may, on the recommendation of the Authority, appoint a suitably qualified person to be an authorised officer for the purposes of this Part.

(2) An appointment under this section may be made subject to such conditions or limitations as the Minister thinks fit.

(3) An authorised officer (other than the General Manager if appointed as an authorised officer) is subject to direction by the General Manager.

(4) The Minister may vary or revoke an appointment at any time.

(5) An authorised officer may investigate any matter relevant to the operation, administration or enforcement of this Part.

(6) For the purposes of an investigation, an authorised officer may—

(a) at any reasonable time, enter and inspect registered premises or premises on which the authorised officer reasonably suspects an offence against this Part has been or is being committed; or

(b) with the authority of a warrant issued by a magistrate or in circumstances in which the authorised officer reasonably believes that immediate action is required, use reasonable force to break into or open any part of, or anything in or on any premises referred to in paragraph (a); or

(c) while on premises entered under paragraph (a) or (b), seize and retain anything found on the premises that the authorised officer reasonably believes may afford evidence relevant to the matters under investigation; or

(d) require any person who has possession of documents or records relevant to the matters under investigation to produce those documents or records for inspection, including written records that reproduce in a readily understandable form information kept by computer, microfilm or other process; or

(e) inspect any documents or records produced to the authorised officer and retain them for such reasonable period as the authorised officer thinks fit, and make copies of the documents or records; or

(f) require any person who is in a position to provide information relevant to the matters under investigation to answer any question put by the authorised officer in relation to those matters; or

(g) take photographs, films or video or audio recordings; or

(h) if the authorised officer reasonably suspects that an offence against this Part has been or is being committed, require the suspected offender to state his or her full name and address.

(7) An authorised officer must not exercise the power conferred by subsection (6)(a) in relation to any residential premises except with the permission of the occupier of the premises or on the authority of a warrant issued by a magistrate.

(8) A magistrate must not issue a warrant under this section unless satisfied, by information given on oath, that the warrant is reasonably required in the circumstances.

(9) The person in charge of premises at the relevant time must give an authorised officer such assistance and provide such facilities as are necessary to enable the powers conferred by this section to be exercised.

Maximum penalty: $5 000.

(10) A person who—

(a) hinders or obstructs an authorised officer in the exercise of powers conferred by this section; or

(b) uses abusive, threatening or insulting language to an authorised officer; or

(c) refuses or fails to comply with a requirement of an authorised officer under this section; or

(d) when required by an authorised officer to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief; or

(e) falsely represents, by words or conduct, that he or she is an authorised officer,

is guilty of an offence.

Maximum penalty: $5 000.

(11) If a person is required to provide information or to produce a document, record or equipment under this section and the information, document, record or equipment would tend to incriminate the person or make the person liable to a penalty, the person must nevertheless provide the information or produce the document, record or equipment, but the information, document, record or equipment so provided or produced will not be admissible in evidence against the person in proceedings for an offence, other than an offence against this or any other Act relating to the provision of false or misleading information.

65—False or misleading statement

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided under this Part.

Maximum penalty: $20 000.

66—Disclosure of information

(1) The Authority may disclose any information obtained by the Authority while acting under this Part to the National Agency or to a National Board if the disclosure is reasonably required in connection with any aspect of the administration or operation of the *Health Practitioner Regulation National Law* (including any disciplinary or criminal proceedings under that Law).

(2) The Authority may act under subsection (1) even if the information was obtained by the Authority in confidence.

67—Use of word "pharmacy"

A person must not, in the course of carrying on a business, use the word "pharmacy" to describe premises that are not registered as a pharmacy or pharmacy depot under this Part.

Maximum penalty: $50 000.

68—Providers of pharmacy services to be indemnified against loss

(1) A person must not, unless exempt by the Authority, provide pharmacy services unless insured or indemnified in a manner and to the extent approved by the Authority against civil liabilities that might be incurred by the person in connection with the provision of pharmacy services.

Maximum penalty: $50 000.

(1a) A person who holds a proprietary interest in a pharmacy business under section 26(2) will be taken to provide pharmacy services under subsection (1).

(2) The Authority may, subject to such conditions as it thinks fit, exempt a person, or a class of persons, from the requirements of this section and may, whenever it thinks fit, revoke an exemption or revoke or vary the conditions under which an exemption operates.

69—Information relating to claims

If a person has claimed damages or other compensation from a person for alleged negligence committed by the person in connection with the provision of pharmacy services, the person must—

(a) within 30 days after the claim is made; and

(b) within 30 days after any order is made by a court to pay damages or other compensation in respect of that claim or any agreement has been entered into for payment of a sum of money in settlement of that claim (whether with or without a denial of liability),

provide the Authority with prescribed information relating to the claim.

Maximum penalty: $10 000.

70—Punishment of conduct that constitutes an offence

If conduct constitutes an offence and is also a ground for disciplinary action under this Part, the taking of disciplinary action under this Part is not a bar to conviction and punishment for the offence, nor is conviction and punishment for the offence a bar to disciplinary action under this Part.

71—Evidentiary provision

In proceedings for an offence against this Part, an allegation in a complaint—

(a) that premises specified in the complaint are or are not, or were or were not, on a specified date, registered on the register of pharmacies or the register of pharmacy depots;

(b) that a person named in the complaint is, or was on a specified date, a pharmacy services provider;

(c) that the person named in the complaint is, or was on a specified date, occupying a position of authority in a recognised corporate pharmacy services provider or a recognised trustee pharmacy services provider,

must be accepted as proved in the absence of proof to the contrary.

72—Vicarious liability for offences

(1) If a body corporate is guilty of a prescribed offence, each person occupying a position of authority in the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence when committed by an individual unless the person occupying the position of authority proves that he or she could not by the exercise of due diligence have prevented the commission of the offence.

(2) If a body corporate is guilty of any other offence against this Act (other than an offence against the regulations), each person occupying a position of authority in the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence if the prosecution proves that—

(a) the person knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed; and

(b) the person was in a position to influence the conduct of the body corporate in relation to the commission of such an offence; and

(c) the person failed to exercise due diligence to prevent the commission of the offence.

(3) Subsection (2) does not apply if the principal offence is an offence against section 42, 44, 45, 47, 50(4), 58, 64, 65 or 69.

(4) The regulations may make provision in relation to the criminal liability of a person occupying a position of authority in a body corporate that is guilty of an offence against the regulations.

(5) In this section—

prescribed offence means an offence against section 50(1), 51, 55 or 67.

Part 5—Optometry practice

73—Interpretation

In this Part—

medical practitioner means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

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 under the *Health Practitioner Regulation National Law* to practise in the optometry profession (other than as a student);

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).

74—Unauthorised dispensing of optical appliances

(1) Subject to subsection (2), a person must not sell an optical appliance by retail unless the appliance has been prescribed for the purchaser by an optometrist or orthoptist or a medical practitioner.

Maximum penalty: $30 000.

(2) Subsection (1) does not apply to the sale of glasses if—

(a) the glasses are designed only to alleviate the effects of presbyopia; and

(b) the glasses comprise 2 lenses of the same power, being a power of +1 dioptre or more but not exceeding +3 dioptres; and

(c) the glasses are manufactured to the prescribed standard; and

(d) a prescribed warning is attached to the glasses in the prescribed manner at the time of sale.

75—Dispensing expired prescription

(1) A person must not dispense an optical appliance pursuant to an expired prescription.

Maximum penalty: $15 000.

(2) For the purposes of subsection (1)—

(a) a prescription for contact lenses expires—

(i) unless subparagraph (ii) expires—18 months after the date on which it is written;

(ii) if the person who issues the prescription indicates a shorter period—at the end of that shorter period;

(b) a prescription for an optical appliance other than a contact lens expires—

(i) unless subparagraph (ii) applies—3 years after the date on which it is written;

(ii) if the person who issues the prescription indicates a shorter period—at the end of that shorter period.

76—Failure to give free prescription on request

(1) Subject to subsection (2), an optometrist or orthoptist or a medical practitioner who prescribes an optical appliance for a person must give the person a free copy of the prescription on request.

Maximum penalty: $5 000.

(2) In the case of a contact lens, an obligation under subsection (1) does not arise until after the relevant person has finished prescribing and fitting the lens.

(3) A person who dispenses an optical appliance for a person on and in accordance with the prescription of an optometrist, orthoptist or medical practitioner must give the person a free copy of the prescription on request.

Maximum penalty: $5 000.

(4) A prescription provided under subsection (1) or (3) must contain all information required to fabricate accurately the relevant optical appliance, as specified by the Optometry Board of Australia from time to time.

77—Authorised officers

(1) The Minister may appoint a suitably qualified person to be an authorised officer for the purposes of this Part.

(2) An appointment under this section may be made subject to such conditions or limitations as the Minister thinks fit.

(3) An authorised officer is subject to direction by the Chief Executive.

(4) The Minister may vary or revoke an appointment at any time.

(5) An authorised officer may investigate any matter relevant to the operation, administration or enforcement of this Part.

(6) For the purposes of an investigation, an authorised officer may—

(a) at any reasonable time, enter and inspect premises on which the authorised officer reasonably suspects an offence against this Part has been or is being committed; or

(b) with the authority of a warrant issued by a magistrate or in circumstances in which the authorised officer reasonably believes that immediate action is required, use reasonable force to break into or open any part of, or anything in or on any premises referred to in paragraph (a); or

(c) while on premises entered under paragraph (a) or (b), seize and retain anything found on the premises that the authorised officer reasonably believes may afford evidence relevant to the matters under investigation; or

(d) require any person who has possession of documents or records relevant to the matters under investigation to produce those documents or records for inspection, including written records that reproduce in a readily understandable form information kept by computer, microfilm or other process; or

(e) inspect any documents or records produced to the authorised officer and retain them for such reasonable period as the authorised officer thinks fit, and make copies of the documents or records; or

(f) require any person who is in a position to provide information relevant to the matters under investigation to answer any question put by the authorised officer in relation to those matters; or

(g) take photographs, films or video or audio recordings; or

(h) if the authorised officer reasonably suspects that an offence against this Part has been or is being committed, require the suspected offender to state his or her full name and address.

(7) An authorised officer must not exercise the power conferred by subsection (6)(a) in relation to any residential premises except with the permission of the occupier of the premises or on the authority of a warrant issued by a magistrate.

(8) A magistrate must not issue a warrant under this section unless satisfied, by information given on oath, that the warrant is reasonably required in the circumstances.

(9) The person in charge of premises at the relevant time must give an authorised officer such assistance and provide such facilities as are necessary to enable the powers conferred by this section to be exercised.

Maximum penalty: $5 000.

(10) A person who—

(a) hinders or obstructs an authorised officer in the exercise of powers conferred by this section; or

(b) uses abusive, threatening or insulting language to an authorised officer; or

(c) refuses or fails to comply with a requirement of an authorised officer under this section; or

(d) when required by an authorised officer to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief; or

(e) falsely represents, by words or conduct, that he or she is an authorised officer,

is guilty of an offence.

Maximum penalty: $5 000.

(11) If a person is required to provide information or to produce a document, record or equipment under this section and the information, document, record or equipment would tend to incriminate the person or make the person liable to a penalty, the person must nevertheless provide the information or produce the document, record or equipment, but the information, document, record or equipment so provided or produced will not be admissible in evidence against the person in proceedings for an offence, other than an offence against this or any other Act relating to the provision of false or misleading information.

Part 5A—Restrictions on single person attendances in remote areas

Division 1—Preliminary

77A—Interpretation

(1) In this Part—

callout to which Division 2 applies—see section 77C(2);

health practitioner means—

(a) a health practitioner within the meaning of the *Health Practitioner Regulation National Law (South Australia)*; and

(b) any other person declared by the regulations to be included in the ambit of this definition for the purposes of this Act;

health service means—

(a) a health service within the meaning of the *Health Practitioner Regulation National Law (South Australia)*; and

(b) any other service or activity declared by the regulations to be included in the ambit of this definition for the purposes of this Act;

out of hours callout means a request for the attendance of a health practitioner at a specified place made by or on behalf of a person where—

(a) the attendance occurs, or is to occur—

(i) between the hours of 5 pm on one day and 8 am on the next day; or

(ii) on a Saturday or Sunday; or

(iii) on a public holiday; and

(b) the place at which a health practitioner is to attend pursuant to the request is in a remote area,

but does not include a request of a kind declared by the regulations not to be included in the ambit of this definition;

remote area—see subsection (2);

second responder means a person engaged as a second responder in accordance with section 77D;

State authority means—

(a) a public sector agency; or

Note—

This includes, for example, entities such as incorporated hospitals under the *Health Care Act 2008*.

(b) a local council constituted under the *Local Government Act 1999*; or

(c) any other person or body declared by the regulations to be a State authority for the purposes of this Part,

but does not include a person or body declared by the regulations to be excluded from the ambit of this definition;

unscheduled callout means a request for the attendance of a health practitioner made by or on behalf of a person where—

(a) the attendance is, or is requested, to occur within 24 hours of the making of the request; and

(b) the place at which a health practitioner is to attend pursuant to the request is in a remote area,

but does not include a request for attendance of a kind declared by the regulations not to be included in the ambit of this definition.

(2) For the purposes of this Part, a reference to a ***remote area*** will be taken to be a reference to the following areas of the State:

(a) the lands within the meaning of the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*;

(b) the lands within the meaning of the *Maralinga Tjarutja Land Rights Act 1984*;

(c) an area outside of a council area under the *Local Government Act 1999*;

(d) any other area declared by the regulations to be included in the ambit of this definition,

but does not include an area declared by the regulations to be excluded from the ambit of this definition.

(3) For the purposes of this Part, a reference to ***attending a callout*** will be taken to be a reference to attending a specified place in response to a callout to which Division 2 applies.

77B—Interaction with other Acts

This Part is in addition to, and does not derogate from, the provisions of any other Act or law.

Division 2—Restrictions on single person attendances in remote areas

77C—Application of Division

(1) This Division applies to the following health practitioners:

(a) a health practitioner employed by a State authority;

(b) a health practitioner who provides health services for, or on behalf of, a State authority pursuant to a contract for services or other agreement;

(c) a health practitioner who provides health services in a remote area (being health services that are wholly or partly funded under a law of the State);

(d) a health practitioner, or health practitioner of a class, prescribed by the regulations for the purposes of this subsection,

but does not apply to a health practitioner, or health practitioner of a class, declared by the regulations not to be included in the ambit of this subsection.

(2) This Division applies to callouts of the following kinds:

(a) out of hours callouts;

(b) unscheduled callouts;

(c) any other callout of a class prescribed by the regulations for the purposes of this subsection.

77D—Second responders

(1) A health practitioner engages a second responder by taking such action as may be required by the regulations.

(2) Before engaging a second responder, a health practitioner must be satisfied on reasonable grounds that the second responder satisfies any requirements set out in the regulations for the purposes of this subsection.

(3) A person will be taken to be a second responder in respect of a particular callout—

(a) from the time that the person is engaged to act as second responder in respect of the callout; and

(b) until the time that the callout is completed,

(both determined in accordance with the regulations).

(4) The regulations may make further provision in relation to second responders.

(5) Without limiting the generality of subsection (4), the regulations may—

(a) prohibit a specified person, or a person of a specified class, from being engaged as a second responder;

(b) limit the circumstances in which a specified person, or a person of a specified class, may be engaged as a second responder;

(c) provide for, or limit, entitlements accrued by, and the terms and conditions of engagement of, second responders;

(d) limit the civil liability of second responders;

(e) modify the operation of a specified Act or law as it applies to second responders.

77E—Health practitioner to be accompanied by second responder

(1) Subject to this section, a health practitioner to whom this Division applies must not attend a callout to which this Division applies unless the health practitioner is accompanied by a second responder.

(2) A second responder need not accompany a health practitioner attending a callout to which this Division applies during the journey to the place at which health services are to be provided in relation to the callout.

(3) Subsection (1) does not apply—

(a) if the place at which health services are to be provided in relation to the callout is prescribed premises; or

(b) in any other circumstances prescribed by the regulations for the purposes of this subsection.

(4) For the purposes of subsection (1), a second responder accompanies a health practitioner attending a callout—

(a) by being physically present with the health practitioner at any time the health practitioner is in the proximity of the person to whom health services are to be, are being, or have been, provided in relation to the callout; or

(b) by taking action of a kind prescribed by the regulations for the purposes of this paragraph.

(5) For the purposes of this section, a second responder will be taken to be accompanying a health practitioner during the provision of health services to a person despite not being physically present with the health practitioner if—

(a) the health practitioner is of the opinion that, having regard to the nature of the health services and the privacy of the patient, it is not appropriate for the second responder to be physically present during the provision of the health services; and

(b) the second responder remains in the same premises as, and within the hearing of, the health practitioner during the provision of the health services.

77F—Limitation of liability

(1) Despite any other Act or law, no liability attaches to the Crown for any loss or damage arising out of the operation of this Part.

(2) A health practitioner or other person who complies with the requirements of this Part (including, to avoid doubt, a health practitioner who refuses to attend a callout to which Division 2 applies in the absence of a second responder)—

(a) cannot, by virtue of doing so, be held to have breached any code of professional etiquette or ethics, or to have departed from any accepted form of professional conduct; and

(b) to the extent that the health practitioner or person has acted in good faith and without negligence, incurs no civil liability in respect of such compliance (including, to avoid doubt, liability arising under disciplinary or similar proceedings).

(3) For the purposes of section 74 of the *Public Sector Act 2009*, a second responder, in relation to their role as a second responder—

(a) will be taken to be a person to whom that section applies; and

(b) will be taken to be exercising official powers or functions.

Division 3—Providers of health services in remote areas to have policies and procedures to ensure safety and security of health practitioners

77G—Application of Division

This Division applies to the following persons and bodies:

(a) a State authority who provides or may provide health services in a remote area, or on whose behalf such health services are provided;

(b) a person or body who provides, or is to provide, health services in a remote area for, or on behalf of, a State authority pursuant to a contract for services or other agreement;

(c) a person or body who provides, or is to provide, health services in a remote area that are wholly or partly funded under a law of the State;

(d) any other person or body, or person or body of a class, prescribed by the regulations for the purposes of this section,

but does not apply to a person or body, or person or body of a class, declared by the regulations not to be included in the ambit of this section.

77H—Providers of health services in remote areas to prepare or adopt policies and procedures for the safety and security of health practitioners

(1) Each person or body to whom this Division applies must, in accordance with any requirements set out in the regulations, prepare or adopt policies and procedures designed to ensure the safety and security of health practitioners providing health services in remote areas for or on behalf of the person or body.

(2) Without limiting the matters that may be included in the policies and procedures required under this section, those policies and procedures must contain—

(a) a provision expressly preventing any person from directing or requiring (however described) a health practitioner to whom Division 2 applies to attend a callout in contravention of section 77E(1); and

(b) provisions ensuring the compliance of the person or body to whom this Division applies, and any person employed by or on behalf of the person or body, with the requirements of Division 2; and

(c) any other provision, or provision of a kind, required by the regulations.

(3) A person or body to whom this Division applies may, in accordance with any requirements set out in the regulations, from time to time vary or substitute a policy or procedure required under this section.

(4) A person or body to whom this Division applies must, if required to do so by the Minister, provide to the Minister a copy of each policy and procedure prepared or adopted under this section, as in force from time to time.

77I—Policies and procedures to be reviewed

A person or body to whom this Division applies must, in accordance with any requirement set out in the regulations, review the policies and procedures prepared or adopted by the person or body under section 77H at least once in every 5 year period.

77J—State authorities not to contract etc with non-compliant providers

(1) Despite any other Act or law, a State authority must not enter a contract or agreement (however described) relating to the provision of health services in remote areas unless—

(a) the provider of those services has complied with this Division; and

(b) the contract or agreement contains provisions ensuring that the provision of health services pursuant to the contract or agreement will comply with any requirements under Division 2.

(2) Without limiting subsection (1), a term of a contract or agreement that is inconsistent with this section is, to the extent of the inconsistency, void and of no effect.

77K—Power of Minister on refusal etc to comply with Division

(1) If a State authority refuses or fails to comply with a requirement under this Division, the Minister may, after consultation with the State authority—

(a) report the refusal or failure to the Minister responsible for the State authority (if any); and

(b) direct the State authority to comply with the requirement.

(2) If after directing a State authority to comply with a requirement the Minister is not satisfied that the State authority has done so, the Minister must prepare a report to Parliament setting out—

(a) the fact of the State authority's refusal or failure to comply with the requirement; and

(b) the reasons (if any) given by the State authority for the refusal or failure to comply with the requirement; and

(c) any other information required by the regulations.

(3) The Minister must, within 6 sitting days after completing a report under subsection (2), cause a copy of the report to be laid before both Houses of Parliament.

Division 4—Miscellaneous

77L—Exemption

(1) The Minister may, by notice in writing, exempt a specified person, or a specified class of persons, from the operation of a provision or provisions of this Part.

(2) An exemption may be conditional or unconditional.

(3) The Minister may, by notice in writing, vary or revoke an exemption for any reason the Minister thinks fit.

77M—Review of Part

(1) The Minister must cause a review of the operation of this Part to be conducted and a report on the review to be prepared and submitted to the Minister.

(2) The review and the report must be completed after the second, but before the third, anniversary of the commencement of this Part.

(3) The Minister must cause a copy of the report submitted under subsection (1) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

Part 6—Miscellaneous

78—Delegations

(1) The Minister may delegate a function or power conferred on the Minister under this Act—

(a) to a specified person or body; or

(b) to a person occupying or acting in a specified office or position.

(2) The Chief Executive may delegate a function or power conferred on the Chief Executive under this Act—

(a) to a specified person or body; or

(b) to a person occupying or acting in a specified office or position.

(3) A delegation—

(a) may be made subject to conditions or limitations specified in the instrument of delegation; and

(b) if the instrument of delegation so provides, may be further delegated by the delegate; and

(c) is revocable at will and does not prevent the delegator from acting personally in a matter.

79—Commissioner of Police may give criminal history information

(1) The Commissioner of Police may give criminal history information to—

(a) a National Board; or

(b) the ACC, or a police force or service of the Commonwealth or another State, for the purpose of the ACC or the police force or service giving the criminal history information to the National Board.

(2) In this section—

ACC means the Australian Crime Commission established under the *Australian Crime Commission Act 2002* of the Commonwealth;

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*.

80—Application of fines

(1) A fine imposed for an offence against this Act (other than Part 3 or 4) must be paid to the Minister.

(2) A fine imposed for an offence against Part 3 must be paid to the Attorney-General.

(3) A fine imposed for an offence against Part 4 must be paid to the Pharmacy Regulation Authority SA.

81—Investigators and inspectors

(1) A National Board may, in addition to the persons referred to in section 163 of the *Health Practitioner Regulation National Law (South Australia)*, appoint a person employed in the Public Service of the State, or by an agency or instrumentality of the Crown, as an investigator under that Law.

(2) A National Board may, in addition to the persons referred to in section 239 of the *Health Practitioner Regulation National Law (South Australia)*, appoint a person employed in the Public Service of the State, or by an agency or instrumentality of the Crown, as an inspector under that Law.

82—Regulations

(1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

(2) Without limiting the generality of subsection (1), the regulations may—

(a) prescribe fees or charges for the purposes of this Act, or empower—

(i) the Minister; or

(ii) in relation to Part 4—Pharmacy Regulation Authority SA,

to fix fees or charges, and provide for the recovery of a fee or charge so prescribed or fixed;

(b) require the provision of any report or other form of information relating to—

(i) pharmacy services, any pharmacy business or any premises constituting a pharmacy or pharmacy depot; or

(ii) the sale of optical appliances; or

(iii) the provision of other health services within the State;

(c) prohibit or regulate the use of specified names or names of a specified class in connection with a pharmacy or pharmacy business;

(d) make any provision with respect to the keeping of a register;

(e) exempt any person or class of persons from the obligation to pay a fee or charge so prescribed;

(f) prescribe penalties, not exceeding $5 000, for breach of, or non-compliance with, a regulation.

(3) The regulations may—

(a) be of general or limited application; and

(b) make different provision according to the persons, things or circumstances to which they are expressed to apply; and

(c) refer to or incorporate, wholly or partially and with or without modification, a code, standard or other document prepared or published by a prescribed body, either as in force at the time the regulations are made or as in force from time to time; and

(d) provide that a specified provision of this Act does not apply, or applies with prescribed variations, to any person, circumstance or situation (or person, circumstance or situation of a prescribed class) specified by the regulations, subject to any condition to which the regulations are expressed to be subject; and

(e) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister or another prescribed authority.

(4) If a code, standard or other document is referred to or incorporated in the regulations—

(a) a copy of the code, standard or other document must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified in the regulations; and

(b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.

83—Review of Part 3

(1) The Minister must, as soon as practicable after the third anniversary of the commencement of this Act, cause a review to be carried out on the operation of Part 3.

(2) The review must be completed within 6 months after it is initiated.

(3) The Minister must, within 12 sitting days after receiving a report on the outcome of the review, have copies of the report laid before both Houses of Parliament.

Schedule 1—Repeals and transitional provisions

Part 17—Repeal of certain South Australian Acts

28—Repeal of certain South Australian Acts

The following Acts are repealed:

(a) the *Chiropractic and Osteopathy Practice Act 2005*;

(b) the *Dental Practice Act 2001*;

(c) the *Medical Practice Act 2004*;

(d) the *Nursing and Midwifery Practice Act 2008*;

(da) the *Occupational Therapy Practice Act 2005*;

(e) the *Optometry Practice Act 2007*;

(f) the *Pharmacy Practice Act 2007*;

(g) the *Physiotherapy Practice Act 2005*;

(h) the *Podiatry Practice Act 2005*;

(i) the *Psychological Practices Act 1973*.

Part 18—Saving and transitional provisions

Division 1—Interpretation

29—Interpretation

In this Part—

asset means tangible or intangible real or personal property of any description and includes—

(a) a present, future or contingent legal or equitable interest in real or personal property;

(b) a chose in action;

(c) a right, power, privilege or immunity;

(d) goodwill;

(e) a security;

(f) money;

(g) documents;

(h) information (including data and records) in any form;

liability means a monetary or non-monetary obligation and includes a future or contingent obligation;

National Agency means the Australian Health Practitioner Regulation Agency;

national body means a body established under—

(a) the *Health Practitioner Regulation (Administrative Arrangements) National Law Act 2008* of Queensland; or

(b) the *Health Practitioner Regulation National Law*;

participation day has the same meaning as under Part 12 of the *Health Practitioner Regulation National Law (South Australia)*;

prescribed body means any of the following:

(a) the Chiropractic and Osteopathy Board of South Australia;

(b) the Dental Board of South Australia;

(c) the Medical Board of South Australia;

(d) the Nursing and Midwifery Board of South Australia;

(da) the Occupational Therapy Board of South Australia;

(e) the Optometry Board of South Australia;

(f) the Pharmacy Board of South Australia;

(g) the Physiotherapy Board of South Australia;

(h) the Podiatry Board of South Australia;

(i) the South Australian Psychological Board;

(j) a body brought within the ambit of this definition by the regulations;

property includes intellectual property;

repealed Act means an Act that is repealed under Part 17;

responsible tribunal means the responsible tribunal for the purposes of the *Health Practitioner Regulation National Law (South Australia)*.

Division 2—Transfer of assets and liabilities

30—Ministerial orders

(1) The Minister may, by instrument in writing (an ***allocation order***), transfer—

(a) specified assets or liabilities of a prescribed body to the National Agency or the Minister;

(b) specified classes of assets or liabilities of a prescribed body to the National Agency or the Minister;

(c) all assets and liabilities of a prescribed body, other than specified classes of assets or liabilities, to the National Agency or the Minister;

(d) all assets and liabilities of a prescribed body, or all remaining assets or liabilities of a prescribed body, to the National Agency or the Minister.

(2) The Minister may, by further instrument in writing (an ***allocation order***), transfer any asset or liability acquired or assumed by the Minister under subclause (1) to another person or body.

(3) However, the Minister must not transfer an asset or liability under subclause (2) to a person or body who or that is not an agency or instrumentality of the Crown without the consent or concurrence of that person or body.

(4) An allocation order takes effect from a date (which may be earlier than the date of the order) specified in the order.

(5) The Minister may make an allocation order in relation to assets or liabilities situated outside South Australia.

(6) An allocation order may be made on conditions specified in the order.

31—Effect of allocation order

(1) On the date that an allocation order takes effect, assets and liabilities vest in the transferee named in the allocation order in accordance with the order.

(2) If an allocation order provides for the transfer of a prescribed body's interest in an agreement—

(a) the transferee becomes, on the date that the order takes effect, a party to the agreement in place of the prescribed body; and

(b) on and after the date that the order takes effect, the agreement has effect as if the transferee had always been a party to that agreement.

32—Continued effect of certain acts by a prescribed body

Anything done, or omitted to be done, by a prescribed body in relation to assets or liabilities transferred by an allocation order is, if it continues to have effect as at the date of the transfer, taken to be the transferee's act or omission.

33—Continuation of proceedings

Proceedings commenced before the date of transfer by or against a prescribed body in relation to an asset or liability transferred by an allocation order may be continued and completed by or against the transferee.

34—Evidence of transfer

A written notice signed by the Minister stating that a specific transfer of assets or liabilities has been made under this Division is conclusive evidence of the transfer.

35—References

(1) A reference in an instrument or other document to a prescribed body in connection with an asset or liability transferred under this Division is, from the date of transfer, taken to be a reference to the transferee.

(2) Subclause (1) does not apply to any instrument or document, or instrument or document of a specified class, excluded from the operation of that subclause by the Minister by notice in the Gazette.

36—Substitution of relevant entity

(1) Any contract entered into by or on behalf of a prescribed body, and all guarantees, undertakings and securities given by or on behalf of a prescribed body, that are subject to the operation of this Division will, after any relevant transfer under this Division, be taken to have been entered into or given by the transferee.

(2) Subclause (1) does not apply in relation to any contract, guarantee, undertaking or security, or contract, guarantee, security or undertaking of a specified class, excluded by the operation of that subclause by the Minister by notice in the Gazette.

Division 3—Staff

37—Staff

(1) A qualifying member of the staff of a prescribed body (other than the Occupational Therapy Board of South Australia) who, on the commencement of this subclause, has not gained employment with the National Agency (either by commencing employment with the National Agency by that commencement or by accepting an offer of employment with the National Agency by that commencement) will be incorporated into the Department as a redeployee by force of this clause.

(2) A qualifying member of the staff of a prescribed body (other than the Occupational Therapy Board of South Australia)—

(a) who, on the commencement of this subclause, has gained employment with the National Agency (either by commencing employment with the National Agency by that commencement or by accepting an offer of employment with the National Agency by that commencement); and

(b) who, within the period of 2 years after the commencement of this subclause, is determined by the National Agency to be excess to the requirements of the National Agency,

may, by notice furnished to the Chief Executive within the designated period in a manner and form determined by the Chief Executive, elect to be incorporated into the Department as a redeployee (and will then be so incorporated by force of this clause).

(2a) A qualifying member of the staff of the Occupational Therapy Board of South Australia who, on the commencement of this subclause, has not gained employment with the National Agency (either by commencing employment with the National Agency by that commencement or by accepting an offer of employment with the National Agency by that commencement) will be incorporated into the Department as a redeployee by force of this clause.

(2b) A qualifying member of the staff of the Occupational Therapy Board of South Australia—

(a) who, on the commencement of this subclause, has gained employment with the National Agency (either by commencing employment with the National Agency by that commencement or by accepting an offer of employment with the National Agency by that commencement); and

(b) who, within the period of 2 years after the commencement of this subclause, is determined by the National Agency to be excess to the requirements of the National Agency,

may, by notice furnished to the Chief Executive within the designated period in a manner and form determined by the Chief Executive, elect to be incorporated into the Department as a redeployee (and will then be so incorporated by force of this clause).

(3) If a person is incorporated into the Department under a preceding subclause—

(a) the person will be incorporated into the Department on a date to be determined by the Chief Executive; and

(b) the person's existing and accruing rights immediately before cessation of the person's employment with a prescribed body or the National Agency in respect of recreation leave, sick leave and long service leave continue in full force and effect as if his or her previous employment with a prescribed body or the National Agency were employment with the Department (and the person is not entitled to payment in lieu of those rights) and the person will be taken to have continuity of employment without a termination of the person's service.

(4) In this clause—

designated period means a period prescribed by the regulations for the purposes of this definition;

qualifying member of the staff of a prescribed body means a person who, on a date prescribed by the regulations for the purposes of this definition in relation to the particular prescribed body (which may be a date that precedes the commencement of this clause)—

(a) is employed on a permanent basis by a prescribed body—

(i) on a salary not exceeding $120 000; or

(ii) on a salary package valued at an amount not exceeding $120 000 (and for the purposes of this subparagraph a salary package is to be valued in accordance with any principles prescribed by the regulations); or

(b) is employed or engaged by a prescribed body and is brought within the ambit of this paragraph by proclamation.

Division 4—Provision of information and assistance

38—Provision of information and assistance

(1) Despite any other Act or law, a prescribed body is authorised, on its own initiative or at the request of the national body—

(a) to provide a national body, or a person nominated by a national body, with such documents and other information (including data and records and including information given in confidence) in the possession or control of the prescribed body that is reasonably required in connection with the performance or exercise of a function or power of the national body; and

(b) to provide a national body, or a person nominated by a national body, with such assistance as is reasonably required in connection with the performance or exercise of a function or power of the national body.

(2) Despite any other Act or law, a prescribed body or the Minister may authorise a national body, or a person nominated by a national body, to disclose information provided under subclause (1) even if the information was given to a prescribed body in confidence.

Division 5—References

39—References to members of professions

(1) Unless the contrary intention appears or the context requires a different interpretation, a reference within an Act or another instrument within the ambit of column 1 of the following table will have effect as if it were the corresponding reference in column 2 of the table.

Table

Column 1	Column 2
chiropractor	a person registered under the *Health Practitioner Regulation National Law* to practise in the chiropractic profession (other than as a student)
dental practitioner	a person registered under the *Health Practitioner Regulation National Law* to practise in the dental profession (including, if appropriate, a dental therapist, dental hygienist, dental prosthetist or oral health therapist but not including a student)
dentist	a person registered under the *Health Practitioner Regulation National Law*— (a) to practise in the dental profession as a dentist (other than as a student); and (b) in the dentists division of that profession
enrolled nurse	a person registered under the *Health Practitioner Regulation National Law*— (a) to practise in the nursing profession as a nurse (other than as a student); and (b) in the enrolled nurses division of that profession
legally qualified medical practitioner	a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student)
medical practitioner	a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student)
midwife	a person registered under the *Health Practitioner Regulation National Law* to practise in the midwifery profession as a midwife (other than as a student)

Column 1	Column 2
nurse	a person registered under the *Health Practitioner Regulation National Law* to practise in the nursing profession as a nurse (other than as a student)
occupational therapist	a person registered under the *Health Practitioner Regulation National Law* to practise in the occupational therapy profession (other than as a student)
optometrist	a person registered under the *Health Practitioner Regulation National Law* to practise in the optometry profession (other than as a student)
osteopath	a person registered under the *Health Practitioner Regulation National Law* to practise in the osteopathy profession (other than as a student)
pharmacist	a person registered under the *Health Practitioner Regulation National Law* to practise in the pharmacy profession (other than as a student)
physiotherapist	a person registered under the *Health Practitioner Regulation National Law* to practise in the physiotherapy profession (other than as a student)
podiatrist	a person registered under the *Health Practitioner Regulation National Law* to practise in the podiatry profession (other than as a student)
psychologist	a person registered under the *Health Practitioner Regulation National Law* to practise in the psychology profession (other than as a student)
registered nurse	a person registered under the *Health Practitioner Regulation National Law*— (a) to practise in the nursing profession as a nurse (other than as a student); and (b) in the registered nurses division of that profession

(2) Unless the contrary intention appears or the context requires a different interpretation, a reference in an Act or another instrument to a registered health practitioner will have effect as if it were a reference to a health practitioner registered in the relevant health profession under the *Health Practitioner Regulation National Law*.

Division 6—Complaints, notifications and disciplinary proceedings

40—Extended application of disciplinary proceedings

Part 8 of the *Health Practitioner Regulation National Law (South Australia)* extends to any conduct, behaviour, event, situation, condition (including medical condition or impairment) or other circumstance occurring, arising or existing before the participation day for this jurisdiction (and the definitions of ***impairment***, ***professional misconduct***, ***unprofessional conduct*** and ***unsatisfactory professional performance*** are to be interpreted as so extending).

41—Proceedings before boards

(1) If—

(a) a matter is, immediately before the participation day for this jurisdiction, the subject of an investigation or other form of consideration by a prescribed body (or the Registrar of a prescribed body), in circumstances where no formal complaint has been laid; and

(b) the matter is of a nature that it could be the subject of a notification under the *Health Practitioner Regulation National Law (South Australia)*,

that matter will, from the participation day, be taken to be the subject of a notification under Part 8 of the *Health Practitioner Regulation National Law (South Australia)*.

(2) All matters falling within the ambit of subclause (1) are to be taken to be within the ambit of section 288 of the *Health Practitioner Regulation National Law (South Australia)* and clause 289 of that Law will have no application to those matters.

(3) A national body may, in connection with any matter before the national body by virtue of the operation of this Division or Division 13 of Part 12 of the *Health Practitioner Regulation National Law (South Australia)*—

(a) adopt, as in its discretion it considers proper, any step, determination, decision, finding or other act of a prescribed body; and

(b) as in its discretion it considers proper—

(i) initiate any investigation; or

(ii) take over or assume any investigation being undertaken by, or on behalf of, a prescribed body;

(iii) receive any report as a result of any investigation (including an investigation initiated by a prescribed body),

and take any action on account of the results of any such investigation; and

(c) dispense with any step or requirement that might otherwise need to be taken or apply under the *Health Practitioner Regulation National Law (South Australia)*.

42—Proceedings initiated by complaint

(1) If, immediately before the participation day for this jurisdiction—

(a) —

(i) a formal complaint has been laid before a prescribed body under a relevant Act by the Registrar of that prescribed body; or

(ii) a prescribed body has laid a complaint before a prescribed Tribunal; and

(b) the prescribed body or the prescribed Tribunal (as the case may be) has commenced but not completed the substantive hearing and determination of the complaint (that is, the complaint is part-heard),

the proceedings will continue and be completed in all respects under the relevant Act as if that Act had not been repealed (and the relevant Act will also continue to operate as if it had not been repealed for the purposes of exercising any right of review or appeal).

(2) A right of review or appeal—

(a) existing, or the subject of proceedings, before the participation day for this jurisdiction; or

(b) arising under subclause (1),

may be exercised, or will continue to be subject to any proceedings, (as the case requires) under the relevant Act as if that Act had not been repealed.

(3) A decision arising out of any proceedings under subclause (1) or (2) will take effect as if it were a decision under the *Health Practitioner Regulation National Law (South Australia)* (and the National Board for the relevant health profession will give effect to the decision accordingly).

(4) If, immediately before the participation day for this jurisdiction—

(a) —

(i) a formal complaint has been laid before a prescribed body under a relevant Act by the Registrar of that prescribed body; or

(ii) a prescribed body has laid a complaint before a prescribed Tribunal; and

(b) the prescribed body or the prescribed Tribunal (as the case may be) has not commenced the substantive hearing and determination of the complaint (that is, the complaint is not part-heard),

the proceedings will be taken to be within the ambit of section 289 of the *Health Practitioner Regulation National Law (South Australia)* and are to be dealt with in all respects under the relevant Act as if that Act had not been repealed, but with the following modifications:

(c) the proceedings are to proceed before the responsible tribunal;

(d) the National Board for the relevant profession is to have the carriage as complainant of the proceedings before the responsible tribunal;

(e) the relevant Act is to be applied as if a reference to the prescribed body or the prescribed Tribunal (as the case may be) were a reference to the responsible tribunal;

(f) in respect of a complaint laid before the Dental Board of South Australia or the Medical Board of South Australia, the responsible tribunal may impose any disciplinary sanction that could have been imposed by the Dental Professional Conduct Tribunal or the Medical Professional Conduct Tribunal (as the case may be) in respect of a complaint laid before that Tribunal.

(5) This clause applies despite any contrary provision in the *Health Practitioner Regulation National Law (South Australia)*.

(6) In this clause—

prescribed Tribunal means a tribunal constituted under an Act being repealed by this Act;

relevant Act, in relation to any proceedings, means an Act to be repealed by this Act, being the Act under which the proceedings arise (despite its repeal under this Act).

43—Complaints being dealt with on participation day

For the purposes of proceedings under section 289 of the *Health Practitioner Regulation National Law (South Australia)*, the responsible tribunal may deal with a matter as if it were a tribunal or other adjudication authority under a repealed Act (and section 289 will be modified accordingly).

Division 7—Other matters

44—Actions with respect to immunity

An action that would lie against a prescribed body under section 74(3) of the *Public Sector Act 2009* but for the dissolution of that body will lie instead against the Crown.

45—Pharmacies and pharmacy depots

(1) Premises registered as a pharmacy under the *Pharmacy Practice Act 2007* immediately before the commencement of this clause will, on that commencement, be taken to be registered as a pharmacy under this Act.

(2) Premises registered as a pharmacy depot under the *Pharmacy Practice Act 2007* immediately before the commencement of this clause will, on that commencement, be taken to be registered as a pharmacy depot under this Act.

46—Pharmacy services providers

A person who is recorded by the Pharmacy Board of South Australia as a pharmacy services provider for the purposes of section 42(4) of the *Pharmacy Practice Act 2007* immediately before the commencement of this clause will, on that commencement, be taken to be registered as a pharmacy services provider under this Act.

47—Areas of special need

A determination of the Minister and the Medical Board of South Australia in force for the purposes of section 33(2)(d)(iii) of the *Medical Practice Act 2004* immediately before the commencement of this clause will, on that commencement, be taken to be an equivalent decision with respect to an area of need under section 67 of the *Health Practitioner Regulation National Law (South Australia)* (and will, until revoked by the Minister, have effect for the purposes of that Law without further notice to the National Board).

48—References to Registrars

(1) For the purposes of any proceedings under a repealed Act after the commencement of this clause—

(a) a reference in any such Act to a Registrar will be taken to be a reference to the National Board for the relevant health profession; and

(b) a reference in any such Act to a prescribed body will, in the case of proceedings commenced before a prescribed Tribunal, be taken to be a reference to the National Board for the relevant health profession.

(2) Unless the context requires a different interpretation, a reference to a Registrar in an instrument (including an undertaking given to a prescribed body or to the Registrar of a prescribed body), or in a condition of registration, will be taken to be a reference to a person holding or acting in an office designated by the Minister by notice in the Gazette under this subclause.

(3) In this clause—

prescribed Tribunal means a tribunal constituted under an Act being repealed by this Act.

49—FOI applications

(1) If, in relation to an application under the FOI Act, the relevant agency under that Act would, apart from this clause, be a prescribed body, the National Agency, or a National Board nominated by the National Agency for the purposes of the application, will be taken to be the agency under that Act for the purposes of dealing with the application.

(2) In connection with subclause (1), the regulations may provide that the FOI Act applies to applications within the ambit of that subclause with such modifications as may be prescribed (and any such regulation will then have effect according to its terms).

(3) In this clause—

FOI Act means the *Freedom of Information Act 1991*.

50—Fees

(1) If a member of a designated health profession is due to pay a registration or reinstatement fee by the designated date for that profession, but that fee has not been paid by that date, the period for the payment of the fee will be taken to have been extended by a period of 1 month from the designated date.

(2) In this clause—

designated date means a date designated for the purposes of this definition by the Minister by notice in the Gazette;

designated health profession is a health profession designated for the purposes of this clause by the Minister by notice in the Gazette.

(3) Different dates may be designated for different health professions.

51—Regulations

(1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on—

(a) the enactment of this Act; or

(b) the transition from a scheme established by an Act repealed by this Act to the scheme established under the *Health Practitioner Regulation National Law*.

(2) A provision of a regulation made under subclause (1) may, if the regulation so provides, take effect from the commencement of this Act or from a later day.

(3) To the extent to which a provision takes effect under subclause (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—

(a) decreasing the person's rights; or

(b) imposing liabilities on the person.

52—Validity and effect of steps

(1) Nothing done under this Schedule or under Part 12 of the *Health Practitioner Regulation National Law (South Australia)*—

(a) is to be regarded as placing any person in breach of contract or confidence or as otherwise making any person guilty of a civil wrong; or

(b) is to be regarded as placing any person in breach of, or as constituting a default under, any Act or other law or obligation or any provision in any agreement, arrangement or understanding including, but not limited to, any provision or obligation prohibiting, restricting or regulating the assignment, transfer, sale or disposal of any property or the disclosure of any information; or

(c) is to be regarded as fulfilling any condition that allows a person to exercise a power, right of remedy in respect of or to terminate any agreement or obligation; or

(d) is to be regarded as giving rise to any remedy for a party to a contract or an instrument or as causing or permitting the termination of any contract or instrument because of a change in the beneficial or legal ownership of any relevant property; or

(e) is to be regarded as causing any contract or instrument to be void or otherwise unenforceable; or

(f) is to be regarded as frustrating any contract; or

(g) releases any surety or other obligor wholly or in part from any obligation; or

(h) gives rise to any right or entitlement to damages or compensation.

(2) The Registrar-General or another authority required or authorised under a law of the State to register or record transactions affecting assets or liabilities, or documents relating to such transactions, must, on application under this subclause, register or record in an appropriate manner a vesting under this Schedule.

(3) No fee is payable in respect of an application under subclause (2).

Schedule 2—Health Practitioner Regulation National Law

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

(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) programs 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

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

3A—Guiding principles

(1) The main guiding principle of the national registration and accreditation scheme is that the following are paramount—

(a) protection of the public;

(b) public confidence in the safety of services provided by registered health practitioners and students.

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

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

(ii) contributes to the elimination of racism in the provision of health services;

Example—

Codes and guidelines developed and approved by National Boards undersection 39 may provide guidance to health practitioners about the provision of culturally safe and respectful health care.

(c) fees required to be paid under the scheme are to be reasonable having regard to the efficient and effective operation of the scheme;

(d) 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 sections 3 and 3A.

5—Definitions

In this Law—

ACC means the Australian Crime Commission established under section 7 of the *Australian Crime Commission Act 2002* of the Commonwealth.

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 a health profession for which the Board is established.

accreditation standard, for a health profession, means a standard used to assess whether a program of study, and the education provider that provides the program of study, provide persons who complete the program with the knowledge, skills and professional attributes necessary to practise the profession in Australia.

accredited program of study means a program 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.

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

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

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 program of study, for a health profession or for endorsement of registration in a health profession, means an accredited program 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 program of study for the profession; and

(b) for endorsement of registration in a health profession, means a qualification obtained by completing an approved program 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 National Agency's 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 Division 3 to Division 12 of Part 8.

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.

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) midwifery;

(ga) nursing;

(h) occupational therapy;

(i) optometry;

(j) osteopathy;

(ja) paramedicine;

(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 program means a program 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 program 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 Division 2 of Part 8.

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

Ministerial Council means the COAG Health Council, or a successor of the Council by whatever name called, constituted by 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 continued or established by regulations made under 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.

notifier means a person who makes a notification.

panel means—

(a) a health panel; or

(b) a performance and professional standards panel.

participating jurisdiction means a State or Territory—

(a) that is a party to the COAG Agreement; and

(b) in which—

(i) this Law applies as a law of the State or Territory; or

(ii) a law that substantially corresponds to the provisions of this Law has been enacted.

performance and professional standards panel means a panel established under section 182.

performance assessment means an assessment of the knowledge, skill or judgment possessed, or care exercised by, a registered health practitioner in the practice of the health profession in which the practitioner is registered.

police commissioner means the commissioner of the police force or police service of a participating jurisdiction or the Commonwealth.

principal place of practice, for a registered health practitioner, means the address declared by the practitioner to be the address—

(a) at which the practitioner is predominantly practising the profession; or

(b) if the practitioner is not practising the profession or is not practising the profession predominantly at one address, that is the practitioner's principal place of residence.

professional misconduct, of a registered health practitioner, includes—

(a) unprofessional conduct by the practitioner that amounts to conduct that is substantially below the standard reasonably expected of a registered health practitioner of an equivalent level of training or experience; and

(b) more than one instance of unprofessional conduct that, when considered together, amounts to conduct that is substantially below the standard reasonably expected of a registered health 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.

program of study means a program of study provided by an education provider.

prohibition order means—

(a) a decision by a responsible tribunal of this jurisdiction under section 196(4)(b); or

(b) a decision by a responsible tribunal of another participating jurisdiction under section 196(4)(b) as it applies in the other jurisdiction; or

(c) a prohibition order under section 149C(5) of the *Health Practitioner Regulation National Law* (NSW); or

(d) a decision under section 107(4)(b) of the *Health Ombudsman Act 2013* of Queensland.

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-practising 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 Division 10 of Part 8, 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* of the Commonwealth.

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

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

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.

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 Division 3 of Part 8.

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 or under this Law is one single national entity, with functions conferred by this Law as so applied.

(2) An entity established by or under 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 or under 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 program of study, and the education provider that provides the program, provide persons who complete the program 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 a 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 a 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 Board; 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.

(3) A copy of a direction or approval given by the Ministerial Council to the National Agency or to a National Board is to be published in the annual report of the National Agency.

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 national registration and accreditation scheme operates in accordance with good regulatory practice;

(d) to negotiate in good faith with, and attempt to come to an agreement with, each National Board on the terms of a health profession agreement;

(e) to establish and administer an efficient procedure for receiving and dealing with applications for registration as a health practitioner and other matters relating to the registration of registered health practitioners;

(f) in conjunction with the National Boards, to keep up-to-date and publicly accessible national registers of registered health practitioners for each health profession;

(g) in conjunction with the National Boards, to keep up-to-date national registers of students for each health profession;

(h) to keep an up-to-date and publicly accessible list of approved programs of study for each health profession;

(i) to establish an efficient procedure for receiving and dealing with notifications against persons who are or were registered health practitioners and persons who are students, including by establishing a national process for receiving notifications about registered health practitioners in all professions;

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

(k) 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 administration of the national registration and accreditation scheme;

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

(l) any other function given to the National Agency by or under this Law.

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 a 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—Co-operation with participating jurisdictions and Commonwealth

(1) The National Agency may exercise any of its functions in co-operation with or with the assistance of a participating jurisdiction or the Commonwealth, including in co-operation 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.

(2) In particular, the National Agency may—

(a) ask an entity referred to in subsection (1) for information that the Agency requires to exercise its functions under this Law; and

(b) use the information to exercise its functions under this Law.

(3) An entity referred to in subsection (1) that receives a request for information from the National Agency is authorised to give the information to the National Agency.

28—Office of National Agency

(1) The National Agency is to establish a national office.

(2) The National Agency is also to establish at least one local office in each participating jurisdiction.

Division 2—Agency Board

29—Agency Board

(1) The Australian Health Practitioner Regulation Agency Board is established.

(2) The Agency Board is to consist of at least 5 members appointed by the Ministerial Council.

(3) Of the members—

(a) one is to be a person appointed by the Ministerial Council as Chairperson, being a person who—

(i) is not a registered health practitioner; and

(ii) has not been registered as a health practitioner under this Law or a corresponding prior Act within the last 5 years; and

(b) at least 2 others are to be persons who have expertise in health, or education and training, or both; and

(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 Board.

30—Functions of Agency Board

(1) The functions of the Agency Board 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 Board by or under this Law.

(2) The affairs of the National Agency are to be controlled by the Agency Board 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 Board are taken to have been done by the National Agency.

Part 5—National Boards

Division 1—National Boards

31—Regulations must provide for National Boards

(1) The regulations must provide for a National Health Practitioner Board for each health profession.

(2) The regulations may—

(a) continue an existing Board for a health profession; or

(b) establish a Board for a health profession or for 2 or more health professions; or

(c) dissolve a Board for a health profession (the ***dissolved Board***) if another Board is established for that health profession (the ***replacement Board***).

(3) The regulations may provide for anything for which it is necessary or convenient to make provision to allow, facilitate or provide for the following—

(a) the continuation, establishment or dissolution of a Board under subsection (2);

(b) the completion of a matter started by the existing Board before the commencement;

(c) the effect of anything done by an existing Board before the commencement;

(d) the transfer of matters from a dissolved Board to a replacement Board.

(4) Before a regulation is made under subsection (2)(b) or (c), the Ministers comprising the Ministerial Council must undertake public consultation on the proposed regulation.

(5) However, failure to comply with subsection (4) does not affect the validity of the regulation.

(6) In this section—

existing Board means a National Health Practitioner Board in existence immediately before the commencement.

31A—Status of National Board

(1) 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.

(2) 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 co-operation with or with the assistance of a participating jurisdiction or the Commonwealth, including in co-operation 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; and

(c) if the National Board is established for 2 or more health professions—at least one member of each health profession for which the Board is established.

(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 Board.

(9) One of the practitioner members of the National Board is to be appointed as Chairperson of the Board by the Ministerial Council.

(9A) The regulations may prescribe matters relating to the composition of practitioner members for a National Board established for 2 or more health professions.

(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 a health profession for which the Board is established.

(3) A person is eligible to be appointed as a community member only if the person is not, and has not at any time been, a health practitioner in a health profession for which the Board is established.

(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, whether before or after the commencement of this Law, as a result of the person's misconduct, impairment or incompetence, ceased to be registered as a health practitioner in a health profession for which the Board is established; 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 programs 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, undertakings 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 programs 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)—(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 clause 11 of Schedule 4.

Note—

Clause 11 of Schedule 4 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 a 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 in a health profession for which the Board is established, 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 program of study, and the education provider that provides the program of study, provide persons who complete the program 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.

Examples—

1 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.

2 To assist a health practitioner in providing practice information under section 132, a National Board may develop guidelines about the information that must be provided to the Board.

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 in a health profession for which the Board is established as evidence of what constitutes appropriate professional conduct or practice for the health profession.

Part 6—Accreditation

Division 1—Preliminary

42—Definition

In this Part—

accreditation function means—

(a) developing accreditation standards for approval by a National Board; or

(b) assessing programs of study, and the education providers that provide the programs of study, to determine whether the programs meet approved accreditation standards; or

(c) assessing authorities in other countries who conduct examinations for registration in a health profession, or accredit programs of study relevant to registration in a health profession, to decide whether persons who successfully complete the examinations or programs 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 programs of study

(1) An accreditation authority for a health profession may accredit a program of study if, after assessing the program, the authority is reasonably satisfied—

(a) the program of study, and the education provider that provides the program of study, meet an approved accreditation standard for the profession; or

(b) the program of study, and the education provider that provides the program of study, substantially meet an approved accreditation standard for the profession and the imposition of conditions on the approval will ensure the program meets the standard within a reasonable time.

(2) If the accreditation authority decides to accredit a program 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 program.

(3) If the accreditation authority decides to refuse to accredit a program of study it must give written notice of the decision to the education provider that provides the program 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 program of study.

(6) The internal review must not be carried out by a person who assessed the program of study for the accreditation authority.

49—Approval of accredited programs of study

(1) If a National Board is given a report by an accreditation authority about the authority's accreditation of a program of study, the Board may approve, or refuse to approve, the accredited program of study as providing a qualification for the purposes of registration in a 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 program of study it must give written notice of the approval to—

(a) the National Agency for inclusion of the program of study in the list under subsection (5); and

(b) the accreditation authority that submitted the program to the Board.

(4) If the National Board decides to refuse to approve the accredited program of study—

(a) it must give written notice of the refusal, including the reasons for the refusal, to the accreditation authority that submitted the program; and

(b) the accreditation authority is entitled to publish any information or advice it gave the Board about the program.

(5) A list of the programs of study approved by a National Board as providing a qualification for registration in a health profession for which the Board is established must be published on the National Agency's website.

(6) The list of approved programs of study published under subsection (5) must include, for each program of study, the name of the university, specialist medical or other college or other education provider that provides the approved program of study.

(7) An approval under subsection (1) does not take effect until the program of study is included in the list published under subsection (5).

50—Accreditation authority to monitor approved programs of study

(1) The accreditation authority that accredited an approved program of study must monitor the program and the education provider that provides the program to ensure the authority continues to be satisfied the program and provider meet an approved accreditation standard for the health profession.

(2) If the accreditation authority reasonably believes the program 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 program of study will meet the standard within a reasonable time; or

(ii) revoke the accreditation of the program of study; and

(b) give the National Board that approved the accredited program of study written notice of the accreditation authority's decision.

51—Changes to approval of program 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 program of study approved by the Board, the Board's approval of the program 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 program of study approved by the Board no longer provides a qualification for the purposes of registration in a 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 program of study to ensure the program provides a qualification for the purposes of registration; or

(b) cancel its approval of the accredited program 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 program.

Part 7—Registration of health practitioners

Division 1—General registration

52—Eligibility for general registration

(1) An individual is eligible for general registration in a health profession if—

(a) the individual is qualified for general registration in the health profession; and

(b) the individual has successfully completed—

(i) any period of supervised practice in the health profession 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 profession; and

(c) the individual is a suitable person to hold general 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 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 general registration in the profession by imposing conditions on the registration under section 83.

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—

(i) when the Board makes the decision; or

(ii) on the later day stated by the Board, not more than 90 days after the day 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 speciality 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.

(1a) Subsection (1b) applies if—

(a) an individual is registered in a health profession for which divisions are included in the National Register kept for the profession; and

(b) the individual holds general or limited registration in a division.

(1b) Despite subsection (1)(a) and (b), the individual is eligible for limited registration in another division of the profession if the individual—

(a) is not qualified for general registration under the other division; and

(b) is qualified under this Division for limited registration under the other division.

(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

(1) Subsection (2) applies to a health profession for which a division is not included in the National Register kept for the profession.

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

(3) Subsection (4) applies to a health profession for which divisions are included in the National Register kept for the profession.

(4) An individual registered in the health profession may not hold limited registration in the same division of the 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 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.

(3) Limited registration may not be renewed more than 3 times.

Note—

If an individual had been granted limited registration in a health profession for a purpose under this Division, had subsequently renewed the registration in the profession for that purpose 3 times and at the end of the period wished to continue holding limited registration in the profession for that purpose, the individual would need to make a new application for limited registration in the profession for that purpose.

Division 5—Non-practising registration

73—Eligibility for non-practising registration

An individual is eligible for non-practising registration in a health profession if—

(a) the individual—

(i) holds or has held general registration in the health profession under this Law; or

(ii) holds or has held specialist registration in a recognised speciality in the health profession under this Law; or

(iii) held registration in the health profession under a corresponding prior Act that was equivalent to general registration or specialist registration in the health profession under this Law;

(b) the individual is a suitable person to hold non-practising registration in the profession.

74—Unsuitability to hold non-practising registration

A National Board may decide an individual is not a suitable person to hold non-practising 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 practise 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-practising registration in the profession.

75—Registered health practitioner who holds non-practising registration must not practise the profession

(1) A registered health practitioner who holds non-practising 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-practising registration

(1) The period of registration that is to apply to a health practitioner granted non-practising 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 6—Application for registration

77—Application for registration

(1) An individual may apply to a National Board for registration in a health profession for which the Board is established.

(2) An 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 proof of the applicant's identity; and

(d) be accompanied by any other information reasonably required by the Board.

(3) Without limiting subsection (2)(a), a form approved by a National Board for the purposes of that subsection must require an applicant—

(a) to provide a declaration about—

(i) the address at which the applicant will predominantly practise the profession; or

(ii) if the applicant will not be practising the profession or will not predominantly practise the profession at one address, the address that is the applicant's principal place of residence; and

(b) to provide an address to be used by the Board in corresponding with the applicant; and

(c) to disclose the applicant's criminal history; and

(d) to authorise the Board to obtain the applicant's criminal history.

Note—

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

(4) A criminal history law does not apply to the requirement under subsection (3)(c) for the applicant to disclose the applicant's criminal history.

(5) Information in the application must, if the approved form requires, be verified by a statutory declaration.

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) ACC;

(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

(ii) to verify information or a document that relates to the applicant;

Examples—

If the applicant is or has been registered by another registration authority, the National Board may ask the registration authority for information about the applicant's registration status.

The National Board may ask an entity that issued qualifications that the applicant believes qualifies the applicant for registration for confirmation that the qualification was issued to the applicant.

(b) by written notice given 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; and

(c) by written notice given 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; and

(d) by written notice given to the applicant, require the applicant to undergo an examination or assessment, within a reasonable time stated in the notice and at a reasonable place, to assess the applicant's ability to practise the health profession in which registration is sought; and

(e) by written notice given to the applicant, require the applicant to undergo a health assessment, within a reasonable time stated in the notice and at a reasonable place.

(2) The National Board may require the information or document referred to in subsection (1)(b) to be verified by a statutory declaration.

(3) If the National Board requires an applicant to undertake an examination or assessment under subsection (1)(d) to assess the applicant's ability to practise the health profession—

(a) the examination or assessment must be conducted by an accreditation authority for the health profession, unless the Board decides otherwise; and

(b) the National Agency may require the applicant to pay the relevant fee.

(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—

(A) is not qualified for registration; or

(B) 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

(C) is not a suitable person to hold registration; or

(D) is disqualified under this Law from applying for registration, or being registered, in the health profession; or

(E) 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 a 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 programs of study

86—Definitions

In this Subdivision—

approved program of study, for a health profession, does not include an approved program 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 program of study

(1) The National Board established for a health profession must decide whether persons who are undertaking an approved program of study for the health profession must be registered—

(a) for the entire period during which the persons are enrolled in the approved program of study; or

(b) for the period starting when the persons begin a particular part of the approved program of study and ending when the persons complete, or otherwise cease to be enrolled in, the program.

(2) In deciding whether to register persons undertaking an approved program of study for the entire period of the program of study or only part of the period, the National Board must have regard to—

(a) the likelihood that persons undertaking the approved program of study will, in the course of undertaking the program, have contact with members of the public; and

(b) if it is likely that the persons undertaking the approved program of study will have contact with members of the public—

(i) when in the approved program 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 program 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 program of study for a health profession for which the Board is established;

(b) the particulars of all persons who will be undertaking the part of the approved program 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 program of study, or part of an approved program 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

(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.

(2) The National Board must not register a person as a student if the person is undertaking an approved program of study for a health profession in which the person already holds registration under Division 6.

(3) The National Board must not require a person to pay a fee for registration as a student.

(4) As soon as practicable after registering a person as a student, a National Board must give written notice of the registration to—

(a) the education provider that provided the student's particulars to the Board; and

(b) if the Board required the person to complete an application form for registration, the student.

(5) As soon as practicable after receiving notice that a student has been registered under subsection (1)(a), the education provider must give written notice of the registration to the student.

90—Period of student registration

The period of registration for a student—

(a) starts when the student is registered under section 89; and

(b) expires at the end of the day on which the student completes, or otherwise ceases to be enrolled in, the approved program of study.

Subdivision 2—Other persons to be registered as students

91—Education provider to provide lists of persons

(1) If an education provider arranges clinical training in a health profession for a person who is not enrolled in an approved program of study for the profession, the education provider must give the National Board established for the profession written notice about the arrangement.

(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.

Subdivision 3—General provisions applicable to students

92—Notice to be given if student registration suspended or conditions imposed

(1) This section applies if, at any time, any of the following events occurs—

(a) a person's registration as a student under this Law is suspended;

(b) a condition is imposed on a person's registration as a student under this Law or a condition to which a person's registration is subject is changed or removed;

(c) a National Board accepts an undertaking from a person who is a student.

(2) The National Board established for the person's health profession must, as soon as practicable after the event occurs, give written notice of the event to the education provider with which the person is undertaking the approved program of study.

(3) If an education provider is given a notice under subsection (2) about a person, the education provider must, as soon as practicable after receiving the notice, give notice of the event to any entity with whom the person is undertaking training as part of the approved program of study.

93—Report to National Board of cessation of status as student

(1) This section applies if—

(a) a student completes, or otherwise ceases to be enrolled in, an approved program of study for a health profession provided by an education provider; or

(b) a student completes, or otherwise ceases to undertake, clinical training in a health profession arranged by an education provider.

(2) The education provider must give written notice of the student ceasing to be enrolled in the program of study, or to undertake the clinical training, to the National Board established for the health profession within 60 days of it occurring.

(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 in a health 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 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.

Health practitioners registered in certain health professions will be authorised to administer, obtain, possess, prescribe, sell, supply or use scheduled medicines by or under an Act of a participating jurisdiction without the need for the health practitioners to hold an endorsement under this Law.

(2) An endorsement under subsection (1) must state—

(a) the scheduled medicine or class of scheduled medicines to which the endorsement relates; and

(b) whether the registered health practitioner is qualified to administer, obtain, possess, prescribe, sell, supply or use the scheduled medicine or class of scheduled medicines; and

(c) if the endorsement is for a limited period, the date the endorsement expires.

Subdivision 2—Endorsement in relation to nurse practitioners

95—Endorsement as nurse practitioner

(1) The National Board for the nursing profession may endorse the registration of a registered health practitioner whose name is included in the Register of Nurses as being qualified to practise as a nurse 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 "nurse practitioner"; and

(b) any conditions applicable to the practice by the registered health practitioner as a nurse 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 in a health profession for which the Board is established 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

(b) complies with an 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 "acupuncturist"; and

(b) any conditions applicable to the practice of acupuncture by the registered health practitioner.

Subdivision 5—Endorsements in relation to approved areas of practice

98—Endorsement for approved area of practice

(1) A National Board established for a health profession may, in accordance with an approval given by the Ministerial Council under section 15, endorse the registration of a registered health practitioner registered in a health profession for which the Board is established as being qualified to practise in an approved area of practice for the health profession 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 an approved registration standard relevant to the endorsement.

(2) An endorsement under subsection (1) must state—

(a) the approved area of practice to which the endorsement relates; and

(b) any conditions applicable to the practice by the registered health practitioner in the approved area of practice.

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, 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

(c) how an application for appeal may be made and the period within which the application must be made.

105—Period of endorsement

If a National Board decides to endorse a registered health practitioner's registration, the endorsement—

(a) starts when the Board makes the decision; and

(b) expires when the practitioner's registration ends.

106—Failure to decide application for endorsement

If a National Board fails to decide an application for endorsement 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 endorse the applicant's registration.

Division 9—Renewal of registration

107—Application for renewal of registration or endorsement

(1) A registered health practitioner may apply to the National Board established for the practitioner's health profession for renewal of the health practitioner's registration.

(2) An application for renewal of a registered health practitioner's registration must be made not later than one month after the practitioner's period of registration ends.

(3) If the registered health practitioner's registration has been endorsed by the National Board, the application for renewal of the practitioner's registration is taken to also be an application for a renewal of the endorsement.

(4) The application for renewal of registration must—

(a) be in the form approved by the National Board; and

(b) be accompanied by the relevant fee; and

(c) if the application for renewal is made after the registered health practitioner's period of registration ends, be accompanied by the relevant fee for a late application; 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* of the 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-practising 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

(b) take or use a prescribed title for a health profession, in a way that could be reasonably expected to induce a belief the person is registered under this Law in the profession, unless the person is registered in the profession.

Maximum penalty:

(a) in the case of an individual—$60 000 or 3 years imprisonment or both; or

(b) in the case of a body corporate—$120 000.

(2) A person must not knowingly or recklessly—

(a) take or use a title in the Table in relation to another person (the ***second person***), in a way that could be reasonably expected to induce a belief the second person is registered under this Law in the health profession listed beside the title in the Table, unless the second person is registered in the profession; or

(b) take or use a prescribed title for a health profession in relation to another person (the ***second person***), in a way that could be reasonably expected to induce a belief the second person is registered under this Law in the profession, unless the second person is registered in the profession.

Maximum penalty:

(a) in the case of an individual—$60 000 or 3 years imprisonment or both; or

(b) in the case of a body corporate—$120 000.

(3) Subsections (1) and (2) apply whether or not the title is taken or used with or without any other words and whether in English or any other language.

Table—Protected titles

Profession	Title
Aboriginal and Torres Strait Islander Health Practice	Aboriginal and Torres Strait Islander health practitioner, Aboriginal health practitioner, Torres Strait Islander health practitioner
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
Midwifery	midwife, midwife practitioner
Nursing	nurse, registered nurse, nurse practitioner, enrolled nurse
Occupational Therapy	occupational therapist
Optometry	optometrist, optician

Profession	Title
Osteopathy	osteopath
Paramedicine	paramedic
Pharmacy	pharmacist, pharmaceutical chemist
Physiotherapy	physiotherapist, physical therapist
Podiatry	podiatrist, chiropodist
Psychology	psychologist

114—Use of title "acupuncturist"

(1) A registered health practitioner whose registration is endorsed under section 97 by a National Board as being qualified to practise as an acupuncturist does not commit an offence against section 113(1)(a) merely because the individual takes or uses the title "acupuncturist".

(2) A person does not commit an offence against section 113(2)(a) merely because the person takes or uses the title "acupuncturist" in relation to another person who is a registered health practitioner whose registration is endorsed under section 97 by a National Board as being qualified to practise as an acupuncturist.

115—Restriction on use of specialist titles

(1) A person must not knowingly or recklessly take or use—

(a) the title "dental specialist" unless the person is registered under this Law in a recognised specialty in the dentists division of the dental profession; or

(b) the title "medical specialist" unless the person is registered in a recognised specialty in the medical profession; or

(c) a specialist title for a recognised specialty unless the person is registered under this Law in the specialty.

Maximum penalty:

(a) in the case of an individual—$60 000 or 3 years imprisonment or both; or

(b) in the case of a body corporate—$120 000.

(2) A person must not knowingly or recklessly take or use—

(a) the title "dental specialist" in relation to another person unless the other person is registered under this Law in a recognised specialty in the dentists division of the dental profession; or

(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.

Maximum penalty:

(a) in the case of an individual—$60 000 or 3 years imprisonment or both; or

(b) in the case of a body corporate—$120 000.

(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.

Maximum penalty:

(a) in the case of an individual—$60 000 or 3 years imprisonment or both; or

(b) in the case of a body corporate—$120 000.

(2) A person must not knowingly or recklessly—

(a) take or use the title of "registered health practitioner", whether with or without any other words, in relation to another person who is not a registered health practitioner; 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) another person is a health practitioner if the other person is not a health practitioner; or

(ii) another person is authorised or qualified to practise in a health profession if the other person is not a registered health practitioner in that health profession; or

(c) claim another person is registered under this Law, or hold the other person out as being registered under this Law, if the other person is not registered under this Law; or

(d) claim another person is qualified to practise as a health practitioner if the other person is not a registered health practitioner.

Maximum penalty:

(a) in the case of an individual—$60 000 or 3 years imprisonment or both; or

(b) in the case of a body corporate—$120 000.

117—Claims by persons as to registration in particular profession or division

(1) A registered health practitioner must not knowingly or recklessly—

(a) claim to be registered under this Law in a health profession or a division of a health profession in which the practitioner is not registered, or hold himself or herself out as being registered in a health profession or a division of a health profession if the person is not registered in that health profession or division; or

(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.

Maximum penalty:

(a) in the case of an individual—$60 000 or 3 years imprisonment or both; or

(b) in the case of a body corporate—$120 000.

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.

118—Claims by persons as to specialist registration

(1) A person who is not a specialist health practitioner must not knowingly or recklessly—

(a) take or use the title of "specialist 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 specialist health practitioner; or

(ii) the person is authorised or qualified to practise in a recognised specialty; or

(c) claim to be registered under this Law in a recognised specialty or hold himself or herself out as being registered under this Law in a recognised specialty; or

(d) claim to be qualified to practise as a specialist health practitioner.

Maximum penalty:

(a) in the case of an individual—$60 000 or 3 years imprisonment or both; or

(b) in the case of a body corporate—$120 000.

(2) A person must not knowingly or recklessly—

(a) take or use the title of "specialist health practitioner", whether with or without any other words, in relation to another person who is not a specialist health practitioner; or

(b) take or use a title, name, initial, symbol, word or description in relation to another person who is not a specialist health practitioner that, having regard to the circumstances in which it is taken or used, indicates or could be reasonably understood to indicate—

(i) the other person is a specialist health practitioner; or

(ii) the other person is authorised or qualified to practise in a recognised specialty; or

(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.

Maximum penalty:

(a) in the case of an individual—$60 000 or 3 years imprisonment or both; or

(b) in the case of a body corporate—$120 000.

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.

(3) A person must not knowingly or recklessly—

(a) claim another person holds a type of registration or endorsement under this Law that the other person does not hold or hold the other person out as holding a type of registration or endorsement if the practitioner does not hold that type of registration or endorsement; or

(b) claim another person is qualified to hold a type of registration or endorsement that the other person does not hold; or

(c) claim another person holds specialist registration under this Law in a recognised specialty which the other person does not hold or hold the other person out as holding specialist registration in a recognised specialty if the other person does not hold specialist registration in that specialty; or

(d) claim another person is qualified to practise in a recognised specialty in which the other person is not registered.

Maximum penalty:

(a) in the case of an individual—$60 000 or 3 years imprisonment or both; or

(b) in the case of a body corporate—$120 000.

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.

120—Registered health practitioner registered on conditions

(1) A registered health practitioner who is registered on conditions must not knowingly or recklessly claim, or hold himself or herself out, to be registered without the conditions or any conditions.

(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 program 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.

Maximum penalty: $60 000 or 3 years imprisonment or both.

(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.

Maximum penalty: $60 000 or 3 years imprisonment or both.

(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 program 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.

Maximum penalty: $60 000 or 3 years imprisonment or both.

(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.

123A—Restricted birthing practices

(1) A person must not carry out a restricted birthing practice unless the person—

(a) is a medical practitioner; or

(b) is a midwife; or

(c) is a student who carries out the restricted birthing practice in the course of activities undertaken as part of—

(i) an approved program of study for the medical profession or the midwifery profession; or

(ii) clinical training in the medical profession or the midwifery profession; or

(d) is acting under the supervision of a medical practitioner or midwife and is acting in accordance with any standards, codes or guidelines issued by the National Board established for the relevant profession; or

(e) without limiting a preceding paragraph—is acting under a form of delegated authority transferred or conferred by a midwife that is recognised by the National Board established for the midwifery profession and is made in accordance with any standards, codes or guidelines issued by that National Board; or

(f) is rendering assistance to a woman who is in labour or giving birth to a child, or who has given birth to a child, where the assistance is provided in an emergency.

Maximum penalty: $30 000 or imprisonment for 12 months.

(2) In this section—

midwife means a person registered under this Law in the midwifery profession;

restricted birthing practice means an act that involves undertaking the care of a woman by managing the 3 stages (or any part of these stages) of labour or child birth and, for the purposes of this definition, the Minister may from time to time, on the joint advice of the Medical Board of Australia and the National Board established for the midwifery profession, by notice in the Gazette, specify activities that will be conclusively taken to constitute the management of any part of 1 or more of these stages of labour or child birth.

Division 11—Miscellaneous

Subdivision 1—Certificates of registration

124—Issue of certificate of registration

(1) This section applies if—

(a) a National Board decides to register an individual in a health profession for which the Board is established; or

(b) a National Board decides to renew an individual's registration in a health profession for which the Board is established; or

(c) a National Board or an adjudication body decides to impose, change or remove a condition on a registered health practitioner's registration or otherwise change the practitioner's registration in a material way; or

(d) a National Board or an adjudication body decides to accept an undertaking from a registered health practitioner or to change or revoke an undertaking given by the practitioner; or

(e) a National Board decides to endorse a health practitioner's registration.

(2) The National Board must, as soon as practicable after the decision is made, give the registered health practitioner a certificate of registration in the form decided by the Board.

(3) A certificate of registration must include the following—

(a) the name of the registered health practitioner;

(b) the type of registration granted and, if the registration is endorsed, the type of endorsement granted;

(c) the date the registration or endorsement was granted;

(d) the division of the register, if any, in which the practitioner is registered;

(e) any condition to which the registration or endorsement is subject;

(f) any undertaking given by the practitioner to the National Board;

(g) the date the registration expires;

(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 established for the practitioner's or student's health profession—

(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 or at a later time, 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) If the National Board's decision results in the registration or endorsement being subject to a condition, or an undertaking is still in place, the Board may decide a review period for the condition or undertaking.

(6A) As soon as practicable after making the decision under subsection (5), the National Board must give written notice to the registered health practitioner or student of—

(a) the decision; and

(b) if the Board has decided a review period for a condition or undertaking—details of the review period.

(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 in a health profession for which the Board is established.

(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 or at a later time, 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) If the National Board's decision results in the registration being subject to a condition, the Board may decide a review period for the condition.

(6A) As soon as practicable after making the decision under subsection (5), the National Board must give written notice to the registered health practitioner or student of—

(a) the decision; and

(b) if the Board has decided a review period for a condition—details of the review period.

(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 in a health profession for which the Board is established is no longer necessary; or

(b) that an undertaking given to the Board by a health practitioner or student registered in a health profession for which the Board is established 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.

127A—When matters under this Subdivision may be decided by review body of a co-regulatory jurisdiction

(1) This section applies if—

(a) a condition has been imposed on a registered health practitioner's or student's registration or endorsement, or an undertaking has been given by the practitioner or student; and

(b) a change or removal of the condition, or change or revocation of the undertaking, would usually be decided under this Subdivision; and

(c) the National Board that imposed the condition, or to which the undertaking was given, considers the change or removal, or change or revocation, should be decided by a review body of a co-regulatory jurisdiction.

(2) The National Board may—

(a) decide that any change or removal, or change or revocation, may be decided by the review body of a co-regulatory jurisdiction; and

(b) give any relevant documents or information held by the Board to the review body.

(3) If a review body of a co-regulatory jurisdiction agrees to decide a matter instead of the Board, the review body must decide the matter under the laws of that jurisdiction.

(4) In this section—

review body means an entity declared by an Act or regulation of a co-regulatory jurisdiction to be a review body for this section.

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-practising 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 in a health profession for which the Board is established 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-practising 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 established for the practitioner's or student's health profession 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* of the 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 established for the practitioner's health profession 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 practice information

(1) A National Board may, at any time by written notice given to a health practitioner registered in a health profession for which the Board is established, ask the practitioner to give the Board a written notice containing practice information for the practitioner.

(2) The registered health practitioner must not, without reasonable excuse, fail to comply with the notice from the Board.

(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.

(4) In this section—

practice information, for a registered health practitioner practising in the health profession for which the practitioner is registered, means each of the following if it applies to the practitioner—

(a) if the practitioner is self-employed and shares premises with other registered health practitioners with whom the practitioner shares the cost of the premises—

(i) that the practitioner is self-employed; and

(ii) the address of each of the premises at which the practitioner practises; and

(iii) if the practitioner practises under a business name or names, each business name; and

(iv) the names of the other registered health practitioners with whom the practitioner shares premises;

(b) if the practitioner is self-employed and paragraph (a) does not apply—that the practitioner is self-employed, the address of each of the premises at which the practitioner practises and, if the practitioner practises under a business name or names, each business name;

(c) if the practitioner is engaged by one or more entities under a contract of employment, contract for services or any other arrangement or agreement—the name, address and contact details of each entity;

(d) if the practitioner is providing services for or on the behalf of one or more entities, whether in an honorary capacity, as a volunteer or otherwise, and whether or not the practitioner receives payment from an entity for the services—the name, address and contact details of each entity;

Example for paragraph (d)—

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

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

premises at which the practitioner practises does not include the residential premises of a patient of the practitioner.

Subdivision 4—Advertising

133—Advertising

(1) A person must not advertise a regulated health service, or a business that provides a regulated health service, in a way that—

(a) is false, misleading or deceptive or is likely to be misleading or deceptive; or

(b) offers a gift, discount or other inducement to attract a person to use the service or the business, unless the advertisement also states the terms and conditions of the offer; or

(c) uses testimonials or purported testimonials about the service or business; or

(d) creates an unreasonable expectation of beneficial treatment; or

(e) directly or indirectly encourages the indiscriminate or unnecessary use of regulated health services.

Maximum penalty:

(a) in the case of an individual—$60 000; or

(b) in the case of a body corporate—$120 000.

(2) A person does not commit an offence against subsection (1) merely because the person, as part of the person's business, prints or publishes an advertisement for another person.

(3) In proceedings for an offence against this section, a court may have regard to a guideline approved by a National Board about the advertising of regulated health services.

(4) In this section—

regulated health service means a service provided by, or usually provided by, a health practitioner.

Subdivision 5—Board's powers to check identity and criminal history

134—Evidence of identity

(1) A National Board may, at any time, require a registered health practitioner to provide evidence of the practitioner's identity.

(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) ACC;

(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).

Subdivision 6—General

136—Directing or inciting unprofessional conduct or professional misconduct

(1) A person must not direct or incite a registered health practitioner to do anything, in the course of the practitioner's practice of the health profession, that amounts to unprofessional conduct or professional misconduct.

Maximum penalty:

(a) in the case of an individual—$60 000; or

(b) in the case of a body corporate—$120 000.

(2) Subsection (1) does not apply to a person who is the owner or operator of a public health facility.

137—Surrender of registration

(1) A registered health practitioner may, by written notice given to the National Board established for the practitioner's health profession, surrender the practitioner's registration.

(2) The surrender of the registration takes effect on—

(a) the day the National Board receives the notice under subsection (1); or

(b) the later day stated in the notice.

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 Division 2 and Division 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 Division 2 and Division 7) applies, with any necessary changes, to the person as if a reference to a registered health practitioner included that person.

Division 2—Mandatory notifications

140—Definition of notifiable conduct

In this Division—

notifiable conduct, in relation to a registered health practitioner, means—

(a) practising the practitioner's profession while intoxicated by alcohol or drugs; or

(b) engaging in sexual misconduct in connection with the practice of the practitioner's profession; or

(c) placing the public at risk of substantial harm in the practitioner's practice of the profession because the practitioner has an impairment; or

(d) placing the public at risk of harm by practising the profession in a way that constitutes a significant departure from accepted professional standards.

141—Mandatory notifications by health practitioners other than treating practitioners

(1) This section applies to a registered health practitioner (the ***first health practitioner***) who, in the course of practising the first health practitioner's profession, forms a reasonable belief that—

(a) another registered health practitioner (the ***second health practitioner***) has behaved in a way that constitutes notifiable conduct; or

(b) a student has an impairment that, in the course of the student undertaking clinical training, may place the public at substantial risk of harm.

(2) The first health practitioner must, as soon as practicable after forming the reasonable belief, notify the National Agency of the second health practitioner's notifiable conduct or the student's impairment.

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. 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.

(2A) However, subsection (2) does not apply if the first health practitioner forms the reasonable belief in the course of providing a health service to the second health practitioner or student.

(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

(ii) is unable to disclose the information that forms the basis of the reasonable belief because a provision of that Act prohibits the disclosure of the information; or

(e) the first health practitioner knows, or reasonably believes, the National Agency has been notified of the notifiable conduct or impairment that forms the basis of the reasonable belief.

141A—Mandatory notifications by treating practitioners of sexual misconduct

(1) This section applies to a registered health practitioner (the ***treating practitioner***) who, in the course of providing a health service to another registered health practitioner (the ***second health practitioner***), forms a reasonable belief that the second health practitioner has engaged, is engaging, or is at risk of engaging, in sexual misconduct in connection with the practice of the practitioner's profession.

(2) The treating practitioner must, as soon as practicable after forming the reasonable belief, notify the National Agency of the second health practitioner's conduct that forms the basis of the reasonable belief.

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.

(3) A contravention of subsection (2) by the treating practitioner does not constitute an offence but may constitute behaviour for which action may be taken under this Part.

(4) This section applies subject to section 141C.

141B—Mandatory notifications by treating practitioners of substantial risk of harm to public

(1) Subsection (2) applies to a registered health practitioner (the ***treating practitioner***) who, in the course of providing a health service to another registered health practitioner (the ***second health practitioner***), forms a reasonable belief that the second health practitioner is placing the public at substantial risk of harm by practising the profession—

(a) while the practitioner has an impairment; or

(b) while intoxicated by alcohol or drugs; or

(c) in a way that constitutes a significant departure from accepted professional standards.

(2) The treating practitioner must, as soon as practicable after forming the reasonable belief, notify the National Agency of the second health practitioner's conduct that forms the basis of the reasonable belief.

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.

(3) Subsection (4) applies to a registered health practitioner (also the ***treating practitioner***) who, in the course of providing a health service to a student, forms a reasonable belief that the student has an impairment that, in the course of the student undertaking clinical training, may place the public at substantial risk of harm.

(4) The treating practitioner must, as soon as practicable after forming the reasonable belief, notify the National Agency of the student's impairment.

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.

(5) In considering whether the public is being, or may be, placed at substantial risk of harm, the treating practitioner may consider the following matters relating to an impairment of the second health practitioner or student—

(a) the nature, extent and severity of the impairment;

(b) the extent to which the second health practitioner or student is taking, or is willing to take, steps to manage the impairment;

(c) the extent to which the impairment can be managed with appropriate treatment;

(d) any other matter the treating practitioner considers is relevant to the risk of harm the impairment poses to the public.

(6) A contravention of subsection (2) or (4) by the treating practitioner does not constitute an offence but may constitute behaviour for which action may be taken under this Part.

(7) This section applies subject to section 141C.

141C—When practitioner does not form reasonable belief in course of providing health service

(1) This section applies if a registered health practitioner (the ***first health practitioner***) forms a reasonable belief about—

(a) a matter, relating to another registered health practitioner (the ***second health practitioner***), mentioned in section 141A(1) or 141B(1); or

(b) a matter, relating to a student, mentioned in section 141B(3).

(2) For this Division, the first health practitioner is taken not to form the reasonable belief in the course of providing a health service to the second health practitioner or student 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 about the matter 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 matter 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 matter 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

(ii) is unable to disclose the information that forms the basis of the reasonable belief because a provision of that Act prohibits the disclosure of the information; or

(e) the first health practitioner knows, or reasonably believes, the National Agency has been notified of the matter that forms the basis of the reasonable belief.

142—Mandatory notifications by employers

(1) If an employer of a registered health practitioner reasonably believes the health practitioner has behaved in a way that constitutes notifiable conduct, the employer must notify the National Agency of the notifiable conduct.

Example—

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

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.
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) If the National Agency becomes aware that an employer of a registered health practitioner has failed to notify the Agency of notifiable conduct as required by subsection (1), the Agency must give a written report about the failure to the responsible Minister for the participating jurisdiction in which the notifiable conduct occurred.

(3) As soon as practicable after receiving a report under subsection (2), the responsible Minister must report the employer's failure to notify the Agency of the notifiable conduct to a health complaints entity, the employer's licensing authority or another appropriate entity in that participating jurisdiction.

(4) In this section—

employer, of a registered health practitioner, means an entity that employs the health practitioner under a contract of employment or a contract for services.

licensing authority, of an employer, means an entity that under a law of a participating jurisdiction is responsible for licensing, registering or authorising the employer to conduct the employer's business.

143—Mandatory notification by education providers

(1) An education provider must notify the National Agency if the provider reasonably believes—

(a) a student enrolled in a program of study provided by the provider has an impairment that, in the course of the student undertaking clinical training as part of the program 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 established for the student's health profession 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 established for the practitioner's or student's health profession.

(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 in a health profession for which the Board is established; 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 in a health profession for which the Board is established but the Board reasonably suspects the person is registered in a health profession for which another National Board is established, 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, conciliation or other action 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 established for the practitioner's health profession 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 established for the practitioner's health profession 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 in a health profession for which the Board is established 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—

(i) is being dealt with, or has already been dealt with, by another entity; or

(ii) has been referred by the Board to another entity to be dealt with by that entity; or

(f) the health practitioner to whom the notification relates has taken appropriate steps to remedy the matter the subject of the notification and the Board reasonably believes no further action is required in relation to the notification.

(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—Definition

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; or

(d) if immediate action has previously been taken suspending a health practitioner's or student's registration—the revocation of the suspension and the imposition of a condition on the registration; or

(e) if immediate action has previously been taken imposing a condition on a health practitioner's or student's registration—the suspension of the registration instead of the condition.

156—Power to take immediate action

(1) A National Board may take immediate action in relation to a registered health practitioner or student registered in a health profession for which the Board is established if—

(a) the National Board reasonably believes that—

(i) because of the registered health practitioner's health, conduct or performance, 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—

(A) 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) has, or may have, an impairment; or

(C) 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; or

(e) the National Board reasonably believes the action is otherwise in the public interest.

Example of when action may be taken in the public interest—

A registered health practitioner is charged with a serious criminal offence, unrelated to the practitioner's practice, for which immediate action is required to be taken to maintain public confidence in the provision of services by health practitioners.

(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; or

(c) for an undertaking, the National Board and the registered health practitioner or student agree to end the undertaking.

159A—Board may give information to notifier about immediate action

(1) This section applies if a notification about a registered health practitioner or student results in immediate action by a National Board under this division in relation to the practitioner or student.

(2) After deciding to take the immediate action, the National Board may inform the notifier who made the notification of the decision and the reasons for the decision.

Division 8—Investigations

Subdivision 1—Preliminary

160—When investigation may be conducted

(1) A National Board may investigate a registered health practitioner or student registered in a health profession for which the Board is established if it decides it is necessary or appropriate—

(a) because the Board has received a notification about the practitioner or student; or

(b) because the Board for any other reason believes—

(i) the practitioner or student has or may have an impairment; or

(ii) for a practitioner—

(A) the way the practitioner practises the profession is or may be unsatisfactory; or

(B) the practitioner's conduct is or may be unsatisfactory; or

(c) to ensure the practitioner or student—

(i) is complying with conditions imposed on the practitioner's or student's registration; or

(ii) an undertaking given by the practitioner or student to the Board.

(2) If a National Board decides to investigate a registered health practitioner or student it must direct an appropriate investigator to conduct the investigation.

161—Registered health practitioner or student to be given notice of investigation

(1) A National Board that decides to investigate a registered health practitioner or student must, as soon as practicable after making the decision, give the practitioner or student written notice about the investigation.

(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.

(5) Schedule 5 sets out provisions relating to the powers of an investigator.

164—Identity card

(1) A National Board must give an identity card to each investigator it appoints.

(2) The identity card must—

(a) contain a recent photograph of the investigator; and

(b) be signed by the investigator; and

(c) identify the person as an investigator 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 investigator for this Law by more than one National Board; or

(b) for this Law and other Acts.

(4) A person who ceases to be an investigator 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 investigator, unless the person has a reasonable excuse.

165—Display of identity card

(1) An investigator may exercise a power in relation to someone else (the ***other person***) only if the investigator—

(a) first produces the investigator'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 investigator must produce the identity card for the other person's inspection at the first reasonable opportunity.

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.

167A—Board may give information to notifier about result of investigation

(1) This section applies if a notification about a registered health practitioner or student results in a decision by a National Board under section 167 in relation to the practitioner or student.

(2) After making the decision, the National Board may inform the notifier who made the notification of the decision and the reasons for the decision.

Division 9—Health and performance assessments

168—Definition

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—

(i) is a member of the same health profession as the registered health practitioner or student undergoing assessment; but

(ii) is not a member of the National Board established for that profession.

(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.

176—Copy of report to be given to health practitioner or student

(1) The National Board must, as soon as practicable after receiving the assessor's report, give a copy of the report to—

(a) the registered health practitioner or student to whom it relates; or

(b) if the report contains information the Board considers may, if disclosed to the practitioner or student, be prejudicial to the practitioner's or student's physical or mental health or wellbeing, to a medical practitioner or psychologist nominated by the practitioner or student.

(2) If a medical practitioner or psychologist is given a copy of a report about a registered health practitioner or student under subsection (1)(b), the medical practitioner or psychologist must give a copy of the report to the practitioner or student as soon as it will no longer be prejudicial to the practitioner's or student's health or wellbeing.

(3) After the registered health practitioner or student has been given a copy of the report under subsection (1)(a) or (2), a person nominated by the Board must—

(a) discuss the report with the practitioner or student; and

(b) if the report makes an adverse finding about the practitioner's practice of the profession or states that the assessor finds the practitioner has an impairment, discuss with the practitioner ways of dealing with the finding, including, for a practitioner, whether the practitioner is prepared to alter the way the practitioner practises the health profession.

177—Decision by National Board

After considering the assessor's report and the discussions held with the registered health practitioner or student under section 176(3), the National Board may decide to—

(a) take the action the Board considers necessary or appropriate under another Division; or

(b) refer the matter to another entity, including, for example, a health complaints entity, for investigation or other action; or

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

177A—Board may give information to notifier about decision following assessor's report

(1) This section applies if a notification about a registered health practitioner or student results in a decision by a National Board under section 177 in relation to the practitioner or student.

(2) After making the decision, the National Board may inform the notifier who made the notification of the decision and the reasons for the decision.

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 in a health profession for which the Board is established practises the health profession, or the practitioner's professional conduct, is or may be unsatisfactory; or

(ii) a registered health practitioner or student registered in a health profession for which the Board is established 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) or 178(2), if section 179 does not apply, 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) A notice under subsection (1)(b) may also include the reasons for the decision.

Division 11—Panels

181—Establishment of health panel

(1) A National Board may establish a health panel if—

(a) the Board reasonably believes, because of a notification or for any other reason, that a registered health practitioner or student has or may have an impairment; and

(b) the Board decides it is necessary or appropriate for the matter to be referred to a panel.

(1A) Also, a National Board must establish a health panel if the suspension of a practitioner's or student's registration is to be reconsidered under section 191(4A) or 191A(2)(c).

(2) A health panel must consist of the following members chosen from a list referred to in section 183—

(a) at least one member who is a registered health practitioner in the same health profession as the registered health practitioner or student the subject of the hearing;

(b) at least one member who is a medical practitioner with expertise relevant to the matter the subject of the hearing;

(c) at least one member who is not, and has not been, a registered health practitioner in the same health profession as the registered health practitioner or student the subject of the hearing.

(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) No more than half of the members of the panel may be registered health practitioners in the same health profession as the registered health practitioner or student the subject of the hearing.

(5) However, for subsection (4), if the subject of the hearing is a registered health practitioner who is a medical practitioner, a member of the panel referred to in subsection (2)(b) is not to be considered to be registered in the same health profession as the registered health practitioner the subject of the hearing.

(6) A person cannot 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.

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—

(a) registered health practitioners in the same health profession as the registered health practitioner the subject of the hearing; and

(b) 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.

(2) To the extent practicable, individuals appointed under subsection (1) should not—

(a) for registered health practitioners, be individuals whose principal place of practice is in a co-regulatory jurisdiction; or

(b) otherwise, be individuals who live in a co-regulatory jurisdiction.

184—Notice to be given to registered practitioner or student

(1) A panel must give notice of its hearing of a matter to the registered health practitioner or student the subject of the hearing.

(2) The notice must state—

(a) the day, time and place at which the hearing is to be held; and

(b) the nature of the hearing and the matters to be considered at the hearing; and

(c) that the registered health practitioner or student is required to attend the hearing; and

(d) that the registered health practitioner may be accompanied at the hearing by an Australian legal practitioner or other person; and

(e) that if the registered health practitioner or student fails to attend the hearing the hearing may continue, and the panel may make a decision, in the practitioner's or student's absence; and

(f) the types of decision the panel may make at the end of the hearing.

(3) For a panel established under section 181(1A), the panel—

(a) may decide the hearing may be decided entirely on the basis of documents, without parties, their representatives or witnesses appearing at the hearing; and

(b) if the hearing is to be decided entirely on the basis of documents—must give written notice of the decision to the registered health practitioner or student the subject of the hearing.

(4) The health practitioner or student may within 14 days after receiving the notice under subsection (3)(b) give a written notice to the panel—

(a) requesting a hearing; and

(b) undertaking to be available to attend the hearing within 28 days after giving the notice.

(5) If the health practitioner or student gives a notice under subsection (4), the panel must give the health practitioner or student notice under subsection (1) stating a day for the hearing that is not more than 28 days after the practitioner's or student's notice was given.

(6) Subsection (1) does not apply if—

(a) the panel makes a decision under subsection (3); and

(b) the health practitioner or student does not give notice under subsection (4).

185—Procedure of panel

(1) Subject to this Division, a panel may decide its own procedures.

(2) A panel is required to observe the principles of natural justice but is not bound by the rules of evidence.

(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.

190—Referral to responsible tribunal

A panel must stop hearing a matter and require the National Board that established the panel to refer the matter to a responsible tribunal under section 193 if, at any time—

(a) the practitioner or student the subject of the hearing asks the panel for the matter to be referred to a responsible tribunal under section 193; or

(b) if the subject of the hearing is a registered health practitioner—

(i) the panel reasonably believes the evidence demonstrates the practitioner may have behaved in a way that constitutes professional misconduct; or

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

191—Decision of panel

(1) After hearing a matter about a registered health practitioner, a panel may decide—

(a) the practitioner has no case to answer and no further action is to be taken in relation to the matter; or

(b) one or more of the following—

(i) the practitioner has behaved in a way that constitutes unsatisfactory professional performance;

(ii) the practitioner has behaved in a way that constitutes unprofessional conduct;

(iii) the practitioner has an impairment;

(iv) the matter must be referred to a responsible tribunal under section 193;

(v) the matter must be referred to another entity, including, for example, a health complaints entity, for investigation or other action.

(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.

(4A) If a panel suspends a health practitioner's or student's registration, the panel must decide a date (the ***reconsideration date***) by which the suspension must be reconsidered by a panel established under section 181(1A).

(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.

191A—Decision of panel after reconsideration of suspension

(1) This section applies if the suspension of a health practitioner's or student's registration is reconsidered by a panel established under section 181(1A).

(2) The panel may—

(a) revoke the suspension; or

(b) revoke the suspension, impose conditions under section 191(3)(a) and decide a review period for the conditions under section 191(4); or

(c) not revoke the suspension and decide a new reconsideration date.

191B—Change of reconsideration date for suspension of registration

(1) This section applies if the suspension of a health practitioner's or student's registration is to be reconsidered by a panel established under section 181(1A) on a reconsideration date.

(2) The panel may decide an earlier reconsideration date if—

(a) the health practitioner or student advises the panel of a material change in the practitioner's or student's circumstances and requests an earlier reconsideration date because of the change; and

(b) the panel is reasonably satisfied an earlier reconsideration date is necessary because of the change in circumstances.

(3) For subsection (2), the panel must give the practitioner or student written notice of—

(a) if the panel decides an earlier reconsideration date—the earlier date; or

(b) if the panel decides to refuse the request for an earlier reconsideration date—the panel's decision and the reasons for the decision.

(4) The panel may decide a later reconsideration date if the panel is reasonably satisfied it is necessary to enable the panel to reconsider the suspension.

Examples of when the panel may be reasonably satisfied a later reconsideration date may be decided—

(a) the health practitioner or student is required for a hearing and cannot attend because of illness;

(b) the panel requires extra time to consider further evidence supplied by the health practitioner or student;

(c) extra time is required to appoint a panel member for a panel member who is ill.

(5) For subsection (4), the panel must give the health practitioner or student written notice of the later reconsideration date and the reasons for the decision.

(6) The suspension of the health practitioner's or student's registration remains in force until the panel makes a decision to revoke the suspension.

192—Notice to be given about panel's decision

(1) As soon as practicable after making a decision under section 191 or 191A, 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) A notice under subsection (2)(b) may also include the reasons for the decision.

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

(b) the National Board that referred the matter to the tribunal.

195—Costs

The responsible tribunal may make any order about costs it considers appropriate for the proceedings.

196—Decision by responsible tribunal about registered health practitioner

(1) After hearing a matter about a registered health practitioner, a responsible tribunal may decide—

(a) the practitioner has no case to answer and no further action is to be taken in relation to the matter; or

(b) one or more of the following—

(i) the practitioner has behaved in a way that constitutes unsatisfactory professional performance;

(ii) the practitioner has behaved in a way that constitutes unprofessional conduct;

(iii) the practitioner has behaved in a way that constitutes professional misconduct;

(iv) the practitioner has an impairment;

(v) the practitioner's registration was improperly obtained because the practitioner or someone else gave the National Board established for the practitioner's health profession information or a document that was false or misleading in a material particular.

(2) If a responsible tribunal makes a decision referred to in subsection (1)(b), the tribunal may decide to do one or more of the following—

(a) caution or reprimand the practitioner;

(b) impose a condition on the practitioner's registration, including, for example—

(i) a condition requiring the practitioner to complete specified further education or training, or to undergo counselling, 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;

(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, either permanently or for a stated period, from doing either or both of the following—

(i) providing any health service or a specified health service;

(ii) using any title or a specified title.

196A—Offences relating to prohibition orders

(1) A person must not contravene a prohibition order.

Maximum penalty: $60 000 or 3 years imprisonment or both.

(2) A person who is subject to a prohibition order (the ***prohibited person***) must, before providing a health service, give written notice of the order to the following persons—

(a) the person to whom the prohibited person intends to provide the health service or, if that person is under 16 years of age or under guardianship, a parent or guardian of the person;

(b) if the health service is to be provided by the prohibited person as an employee—the person's employer;

(c) if the health service is to be provided by the prohibited person under a contract for services or any other arrangement with an entity—that entity;

(d) if the health service is to be provided by the prohibited person as a volunteer for or on behalf of an entity—that entity.

Maximum penalty: $5 000.

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

Maximum penalty:

(a) in the case of an individual—$5 000; or

(b) in the case of a body corporate—$10 000.

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—

(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;

(ja) a decision by a health panel not to revoke a suspension;

(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 program 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 in the notice given to the person of the appellable decision.

200—Parties to the proceedings

The parties to proceedings relating to an appellable decision being heard by a responsible tribunal are—

(a) the person who is the subject of the appellable decision; and

(b) the National Board that—

(i) made the appellable decision; or

(ii) established the panel that made the appellable decision.

201—Costs

The responsible tribunal may make any order about costs it considers appropriate for the proceedings.

202—Decision

(1) After hearing the matter, the responsible tribunal may—

(a) confirm the appellable decision; or

(b) amend the appellable decision; or

(c) substitute another decision for the appellable decision.

(2) In substituting another decision for the appellable decision, the responsible tribunal has the same powers as the entity that made the appellable decision.

203—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 14—Miscellaneous

204—Notice from adjudication body

(1) If an adjudication body, other than a court, makes a decision in relation to a health practitioner or student registered in a health 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 and other entities

(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 given practice information under section 132 or becomes aware of practice information it should have been given under that section.

(2) The National Board, as soon as practicable after making the decision or receiving the notice—

(a) if the practice information given to the Board, or of which the Board becomes aware, is information referred to in section 132(4)(a) and includes the names of other registered health practitioners—may give written notice to each of those practitioners of the decision to take health, conduct or performance action against the registered health practitioner; or

(b) if the practice information given to the Board, or of which the Board becomes aware, is information referred to in section 132(4)(c) or (d) and includes the name of an entity—must give written notice to the entity of the decision to take health, conduct or performance action against the registered health practitioner.

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 1A—Australian Information Commissioner

212A—Application of Commonwealth AIC Act

(1) The AIC 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 AIC Act applies—

(a) as if a reference to the Office of the Australian Information Commissioner were a reference to the Office of the National Health Practitioner Privacy Commissioner; and

(b) as if a reference to the Information Commissioner were a reference to the National Health Practitioner 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 AIC Act applies under subsection (1) as if a provision of the AIC Act specified in the regulations were omitted; or

(b) provide that the AIC Act applies under subsection (1) as if an amendment to the AIC 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—

AIC Act means the *Australian Information Commissioner Act 2010* of the Commonwealth, as in force from time to time.

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 Commissioner were a reference to the National Health Practitioner Privacy Commissioner; and

(b) with any other modifications made by the regulations.

(3) Without limiting subsection (2)(b), 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* of the Commonwealth, as in force from time to time.

Division 2—Disclosure of information and confidentiality

214—Definition

In this Division—

protected information means information that comes to a person's knowledge in the course of, or because of, the person exercising functions under this Law.

215—Application of Commonwealth FOI Act

(1) The FOI 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 FOI Act applies—

(a) as if a reference to the Office of the Australian Information Commissioner were a reference to the Office of the National Health Practitioner Privacy Commissioner; and

(b) as if a reference to the Information Commissioner were a reference to the National Health Practitioner 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 FOI Act applies under subsection (1) as if a provision of the FOI Act specified in the regulations were omitted; or

(b) provide that the FOI Act applies under subsection (1) as if an amendment to the FOI 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—

FOI Act means the *Freedom of Information Act* of the Commonwealth, as in force from time to time.

216—Duty of confidentiality

(1) A person who is, or has been, a person exercising functions under this Law must not disclose to another person protected information.

Maximum penalty:

(a) in the case of an individual—$5 000; or

(b) in the case of a body corporate—$10 000.

(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 in a health profession for which the Board is established, 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.

(4) The National Board—

(a) must give information received from a registered health practitioner to the Ministerial Council in a way that does not identify any registered health practitioner; and

(b) must not use information received under this section that identifies a registered health practitioner for any other purpose.

(5) The Ministerial Council must publish information it receives under this section in a way that is timely and ensures it is accessible to the public.

218—Disclosure of information for information management and communication purposes

(1) A person may disclose protected information to an information management agency if the disclosure is in accordance with an authorisation given by the Ministerial Council under subsection (2).

(2) The Ministerial Council may authorise the disclosure of protected information to an information management agency if the Council is satisfied—

(a) the protected information will be collected, stored and used by the information management agency 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 information management agency is necessary to enable the agency to exercise its functions.

(3) An authorisation under subsection (2)—

(a) may apply to protected information generally or a class of protected information; and

(b) may be subject to conditions.

(4) In this section—

information management agency means a Commonwealth, State or Territory agency that has functions relating to the identification of health practitioners for information management and communication purposes, including, for example, the National E-health Transition Authority.

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 Medicare under the *Human Services (Medicare) Act 1973* of the Commonwealth;

(b) an entity performing functions under the *Health Insurance Act 1973* of the Commonwealth;

(c) the Secretary within the meaning of the *National Health Act 1953* of the Commonwealth;

(d) the Secretary to the Department in which the *Migration Act 1958* of the 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) either of the following poses, or may pose, a risk to public health—

(i) a registered health practitioner;

(ii) a person who provides a health service but is not a registered health practitioner; or

(b) the health or safety of a patient or class of patients is or may be at risk because of—

(i) a registered health practitioner's practice as a health practitioner; or

(ii) the provision of a health service by a person who is not a registered health practitioner.

(2) The National Board may give written notice of the risk and any relevant information about a person mentioned in subsection (1)(a) or (b) to an entity of the Commonwealth or a State or Territory that the Board considers may be required to take action in relation to the risk.

221—Disclosure to registration authorities

A person exercising functions under this Law may disclose protected information to a registration authority if the disclosure is necessary for the authority to exercise its functions.

Division 3—Registers in relation to registered health practitioner

222—Public national registers

(1) A public national register, with the name listed in column 1 of the following table, is to be kept for each health profession.

(2) A public national register for a health profession is to include the names of all health practitioners (other than specialist health practitioners) currently registered in the profession.

(3) If divisions are listed beside the public national register in column 2 of the table, the register is to be kept in a way that ensures it includes those divisions.

(4) In addition, a public national register for a health profession is to include—

(a) the names of all health practitioners (other than specialist health practitioners) whose registration has been cancelled by an adjudication body; and

(b) the names of all persons (other than specialist health practitioners or persons who were previously specialist health practitioners) subject to a prohibition order.

(5) A public national register required to be kept under this section is to be kept by the National Board prescribed by the regulations for the register, in conjunction with the National Agency.

Table—Public national registers

Name of public national register	Divisions of public national register
Register of Aboriginal and Torres Strait Islander Health Practitioners	
Register of Chinese Medicine Practitioners	Acupuncturists, Chinese herbal medicine practitioners, Chinese herbal dispensers
Register of Chiropractors	
Register of Dental Practitioners	Dentists, Dental therapists, Dental hygienists, Dental prosthetists, Oral health therapists
Register of Medical Practitioners	
Register of Medical Radiation Practitioners	Diagnostic radiographers, Nuclear medicine technologists, Radiation therapists
Register of Midwives	
Register of Nurses	Registered nurses (Division 1), Enrolled nurses (Division 2)
Register of Occupational Therapists	
Register of Optometrists	
Register of Osteopaths	
Register of Paramedics	
Register of Pharmacists	
Register of Physiotherapists	
Register of Podiatrists	
Register of Psychologists	

223—Specialists Registers

The National Board established for a health profession for which specialist recognition operates under this Law must, in conjunction with the National Agency, keep—

(a) a public national specialists register that includes the names of all specialist health practitioners currently registered in a health profession for which the Board is established; and

(b) a public national register that includes the names of all—

(i) specialist health practitioners whose registration has been cancelled by an adjudication body; and

(ii) persons who are subject to a prohibition order.

224—Way registers are to be kept

Subject to this Division, a register a National Board is required to keep under this Division must be kept—

(a) in a way that ensures it is up-to-date and accurate; and

(b) otherwise in the way the National Agency considers appropriate.

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;

(n) details of any qualifications relied on by the practitioner to obtain registration or to have the practitioner's registration endorsed;

(o) if the practitioner has advised the National Board the practitioner fluently speaks a language other than English, details of the other language spoken;

(p) any other information the National Board considers appropriate.

226—National Board may decide not to include or to remove certain information in register

(1) A National Board may decide that a condition imposed on a registered health practitioner's registration, or the details of an undertaking accepted from a registered health practitioner, because the practitioner has an impairment is not to be recorded in a National Register or Specialists Register in which the practitioner's name is included if—

(a) it is necessary to protect the practitioner's privacy; and

(b) there is no overriding public interest for the condition or the details of the undertaking to be recorded.

(2) A National Board may decide that information relating to a registered health practitioner is not to be recorded in a National Register or Specialists Register in which the practitioner's name is included if—

(a) the practitioner asks the Board not to include the information in the register; and

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

(3) A National Board may decide to remove information that a registered health practitioner has been reprimanded from a National Register or Specialists Register in which the practitioner's name is included if it considers it is no longer necessary or appropriate for the information to be recorded on the Register.

227—Register about former registered health practitioners

A register kept by a National Board under section 222 or 223(b) must include the following—

(a) for each health practitioner whose registration was cancelled by an adjudication body—

(i) the fact the practitioner's registration was cancelled by an adjudication body; and

(ii) the grounds on which the practitioner's registration was cancelled; and

(iii) if the adjudication body's hearing was open to the public, details of the conduct that formed the basis of the adjudication;

(b) for each person subject to a prohibition order, a copy of the order.

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.

Division 4—Student registers

229—Student registers

(1) Each National Board must, in conjunction with the National Agency, keep a student register that includes the name of all persons currently registered as students by the Board.

(2) A student register is not to be open to inspection by the public.

230—Information to be recorded in student register

(1) Subject to this Division, a student register kept by a National Board must be kept in the way the National Agency considers appropriate.

(2) A student register kept by a National Board must include the following information for each student whose name is included in the register—

(a) the student's name;

(b) the student's date of birth;

(c) the student's sex;

(d) the student's mailing address and any other contact details;

(e) the name of the education provider that is providing the approved program of study being undertaken by the student;

(f) the date on which the student was first registered, whether under this law or a corresponding prior Act;

(g) the date on which the student started the approved program of study;

(h) the date on which the student is expected to complete the approved program of study;

(i) if the student has completed or otherwise ceased to be enrolled in the approved program of study, the date of the completion or cessation;

(j) if a condition has been imposed on the student's registration, details of the condition;

(k) if the Board accepts an undertaking from the student, details of the undertaking;

(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 in a health profession for which the Board is established.

(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.

Division 6—Unique identifier

233—Unique identifier to be given to each registered health practitioner

(1) This section applies if—

(a) a National Board registers a person in a health profession for which the Board is established; and

(b) the person has not previously been registered by that Board or any other National Board.

(2) The National Board must, at the time of registering the person, give the person an identifying number or code (a ***unique identifier***) that is unique to the person.

(3) The National Board must keep a record of the unique identifier given to the person.

(4) If the person is subsequently registered by the National Board or another Board the person is to continue to be identified by the unique identifier given to the person under subsection (2).

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 Practitioner 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* of the 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—

(b) a member of the Agency Board;

(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

241A—Proceedings for indictable offences

(1) An offence against Part 7 Division 10 or section 196A(1) is an indictable offence.

(2) Despite subsection (1), an offence against Part 7 Division 10 or section 196A(1) may be prosecuted as an indictable offence or a summary offence at the discretion of the prosecutor but, if prosecuted as a summary offence, the maximum penalty that may be imposed is a fine not exceeding $60 000 or imprisonment for 2 years.

242—Proceedings for other offences

A proceeding for an offence against this Law, other than an offence mentioned in section 241A(1), 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) The regulations are to be published by the Victorian Government Printer in accordance with the arrangements for the publication of the making of regulations in Victoria.

(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).

(5) In this section—

Victorian Government Printer means the person appointed to be the Government Printer for Victoria under section 72 of the *Constitution Act 1975* of Victoria.

246—Parliamentary scrutiny of national regulations

(1) A regulation made under this Law must be tabled in, or notice of its making given to, the Parliament of each participating jurisdiction—

(a) if a regulation made under an Act of that jurisdiction must be tabled in the Parliament of that jurisdiction—in the same way a regulation must be tabled in that jurisdiction; or

(b) if notice of the making of a regulation made under an Act of that jurisdiction must be given to the Parliament of that jurisdiction—in the same way notice must be given in that jurisdiction.

(1a) However, failure to comply with subsection (1) does not affect the validity of the regulation.

(1b) The regulation may be disallowed in a participating jurisdiction by a House of the Parliament of that jurisdiction in the same way that a regulation made under an Act of that jurisdiction may be disallowed.

(1c) However, subsection (1d) applies if—

(a) a regulation is not tabled in accordance with the law of a participating jurisdiction; and

(b) under the law of that jurisdiction a regulation may be disallowed only after its tabling.

(1d) The regulation is taken to be have been tabled in the Parliament of that jurisdiction on the first sitting day after the regulation was required to be tabled under the law of the jurisdiction.

(2) A regulation disallowed under subsection (1) does not cease to have effect in the participating jurisdiction, or any other participating jurisdiction, unless the regulation is disallowed in a majority of the participating jurisdictions.

(3) If a regulation is disallowed in a majority of the participating jurisdictions, it ceases to have effect in all participating jurisdictions on the date of its disallowance in the last of the jurisdictions forming the majority.

(4) In this section—

regulation includes a provision of a regulation.

247—Effect of disallowance of national regulation

(1) The disallowance of a regulation in a majority of jurisdictions has the same effect as a repeal of the regulation.

(2) If a regulation ceases to have effect under section 246 any law or provision of a law repealed or amended by the regulation is revived as if the disallowed regulation had not been made.

(3) The restoration or revival of a law under subsection (2) takes effect at the beginning of the day on which the disallowed regulation by which it was amended or repealed ceases to have effect.

(4) In this section—

regulation includes a provision of a regulation.

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.

249—Fees

The National Agency may, in accordance with a health profession agreement entered into with a National Board—

(a) refund a relevant fee paid into the Board's account kept in the Agency Fund; or

(b) waive, in whole or in part, a relevant fee payable for a service provided by the Board; or

(c) require a person who pays a relevant fee late to pay an additional fee.

Part 12—Transitional provisions

Division 1—Preliminary

250—Definitions

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* of 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.

(2) A reference in an Act of a participating jurisdiction, or another instrument, to a health practitioner registered in a health profession under a corresponding prior Act may, if the context permits, be taken after the participation day to be a reference to a health practitioner registered in the health profession under this Law.

Division 2—Ministerial Council

252—Directions given by Ministerial council

A direction given by the Ministerial Council to the National Agency or a National Board under the repealed Law, and in force immediately before the commencement day, is taken from the commencement day to be a direction given by the Ministerial Council under this Law.

253—Accreditation functions exercised by existing accreditation entities

(1) This section applies to an entity that, immediately before the commencement day, was an entity appointed by the Ministerial Council under the repealed Law to exercise functions with respect to accreditation for a health profession under the national registration and accreditation scheme.

(2) From the commencement day, the entity is taken to have been appointed under this Law to exercise the functions for the health profession.

(3) An accreditation standard approved by the entity for a health profession, and in force immediately before the commencement day, is taken to be an approved accreditation standard for the health profession under this Law.

(4) The National Board established for the health profession must, not later than 3 years after the commencement day, review the arrangements for the exercise of accreditation functions for the health profession.

(5) The National Board must ensure the process for the review includes wide-ranging consultation about the arrangements for the exercise of the accreditation functions.

(6) If an entity is taken under subsection (2) to have been appointed to exercise an accreditation function for a health profession, the National 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.

Division 10—Offences

268—Offences

Proceedings for an offence against the repealed Law may be started or continued as if this Law had not commenced.

Division 11—Registration

269—General registration

(1) This section applies to a person who, immediately before the participation day for a participating jurisdiction, held general registration (however described) in a health profession under the law of that jurisdiction.

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

(3) In this section—

general registration includes—

(a) full registration, unconditional registration and registration without conditions; and

(b) enrolment, unconditional enrolment and enrolment without conditions.

270—Specialist registration

(1) This section applies if—

(a) immediately before the participation day for a participating jurisdiction, a person was a specialist health practitioner in a specialty in a health profession under the law of that jurisdiction; and

(b) from the participation day—

(i) the specialty is a recognised specialty in the health profession under this Law; or

(ii) a recognised specialty in the health profession under this Law includes, or is equivalent to, the specialty.

(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 practise of the profession—

(i) the person must not practise the profession other than—

(A) to refer a person to another registered health practitioner; or

(B) to prescribe scheduled medicines in specified circumstances; and

(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 practise 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 practise of the health profession immediately before the participation day.

274—Non-practising 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-practising 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 program of study, provided by an education provider located in the jurisdiction, that from the participation day is an approved program 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 program of study or any part of the program, including any clinical training or other practice of the profession related to undertaking the program.

(2) Despite Division 7 of Part 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—Programs of study

(1) This section applies if, immediately before the participation day for a participating jurisdiction, a program of study provided a qualification for registration in a health profession in that jurisdiction.

(2) From the participation day, the program of study is taken to be an approved program 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 program 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 practise 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 practise 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 practise 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 declaration required by subsection (1)(a)(iv) and (v) of that section in relation to the midwife's practise of private midwifery during a period of registration that is within the transition period.

(3) For the purposes of this section, the transition period—

(a) starts on 1 July 2010; and

(b) ends on the prescribed day.

(4) If the National Board decides appropriate professional indemnity arrangements are available in relation to the practice of private midwifery, the Board may recommend to the Ministerial Council that the transition period, and the exemption provided by this section during the transition period, should end.

(5) In this section—

homebirth means a birth in which the mother gives birth at her own home or another person's home.

informed consent means written consent given by a woman after she has been given a written statement by a midwife that includes—

(a) a statement that appropriate professional indemnity insurance arrangements will not be in force in relation to the midwife's practise of private midwifery; and

(b) any other information required by the National Board.

midwife means a person whose name is included in the Register of Midwives kept by the National Board.

National Board means the National Board for midwifery.

private midwifery means practising the midwifery profession—

(a) in the course of attending a homebirth; and

(b) without appropriate professional indemnity insurance arrangements being in force in relation to that practise; and

(c) other than as an employee of an entity.

transition period means the period referred to in subsection (3).

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.

292—Orders

(1) This section applies if—

(a) under a corresponding prior Act of a participating jurisdiction, an adjudication body had, at the end of a proceeding before the adjudication body about a health practitioner's practice or conduct, ordered the health practitioner to do, or refrain from doing, something; and

(b) immediately before the participation day, the order was still in force.

(2) From the participation day, the order continues in force as if it had been made under this Law.

(3) In this section—

adjudication body means a court, tribunal, panel or local registration authority.

293—List of approved persons

(1) This section applies if, immediately before the participation day for a participating jurisdiction, a person was appointed as a member of a list of persons approved to be appointed as members of a body that exercised functions that correspond to a panel for a health profession.

(2) From the participation day, the person is taken to have been appointed by the National Board established for the health profession to the list kept by that Board under section 183.

Division 14—Local registration authority

294—Definition

In this Division—

transfer 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.

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.

296—Records relating to registration and accreditation

(1) This section applies to a record of a local registration authority for a health profession in a participating jurisdiction that relates to the authority's functions in relation to the following—

(a) the registration of individuals;

(b) complaints and notifications about, and proceedings against, individuals who are or were registered;

(c) accreditation of courses that qualify individuals for registration.

(2) From the transfer day for the participating jurisdiction, the record is taken to be a record of the National Board for the health profession.

297—Financial and administrative records

(1) This section applies to a record of a local registration authority in a participating jurisdiction that relates to the authority's financial or administrative functions.

(2) From the transfer day for the participating jurisdiction, the record is taken to be a record of the National Agency.

298—Pharmacy businesses and premises

Sections 295 to 297 do not apply to an asset, liability, contract, property or record of a local registration authority that relates to the regulation of a pharmacy business, pharmacy premises, a pharmacy department or any other pharmacy-related entity that is not an individual.

299—Members of local registration authority

(1) This section applies if, in anticipation of a jurisdiction becoming a participating jurisdiction, a National Board established for a health profession establishes a State or Territory Board for the jurisdiction.

(2) A person who, immediately before the State or Territory Board was established, was a member of the local registration authority for the profession in the participating jurisdiction is taken to be a member of the State or Territory Board.

(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) Part 8 to Part 11.

(3) Despite subsection (2)(a), a person does not commit an offence against a provision of Division 10 of Part 7 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.

(2) Without limiting subsection (1), an entity that accredited courses for the purposes of registration in a relevant health profession under a corresponding prior Act may be appointed to exercise an accreditation function for the profession under this Law.

(3) The National Board established for the health profession must, not later than 1 July 2015, review the arrangements for the exercise of the accreditation functions for the health profession.

(4) The National Board must ensure the process for the review includes wide-ranging consultation about the arrangements for the exercise of the accreditation functions.

(5) If an entity is appointed under subsection (1) to exercise an accreditation function for a health profession, the National Board established for the profession must not, before 1 July 2015, end that entity's appointment.

302—Application of Law to appointment of first National Board for relevant professions

Despite section 34(2), a person is eligible for appointment as a practitioner member of the first National Board for a relevant health profession if the person—

(a) is registered in the profession under a law of a participating jurisdiction; or

(b) holds a qualification that entitles the person to registration in the profession under a law of a participating jurisdiction; or

(c) is otherwise eligible to apply for or hold registration in the profession under the law of a participating jurisdiction.

303—Qualifications for general registration in relevant profession

(1) For the purposes of section 52(1)(a), an individual who applies for registration in a relevant health profession before 1 July 2015 is qualified for general registration in the profession if the individual—

(a) holds a qualification or has completed training in the profession, whether in a participating jurisdiction or elsewhere, that the National Board established for the profession considers is adequate for the purposes of practising the profession; or

(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 clause 30 of Schedule 7.

Part 13—Transitional and other provisions for *Health Practitioner Regulation National Law (South Australia) (Amendment of Law) Regulations 2017*

Division 1—Paramedicine Board and registration of paramedics

306—Definitions

In this Division—

Ambulance Service of New South Wales, for the issue of a Diploma of Paramedical Science, includes another entity prescribed by regulation for issuing the diploma;

Diploma of Paramedical Science—see section 312(5);

Paramedicine Board means—

(a) the Paramedicine Board of Australia established under section 307; or

(b) the Board continued in force on the participation day by a regulation made under section 31; or

(c) if, after the participation day, the Paramedicine Board is dissolved and replaced by another Board established for the health profession of paramedicine by a regulation made under section 31—the other Board;

participation day means a day prescribed by regulation after which an individual may be registered in paramedicine under this Law;

relevant day means the day that is 3 years after the participation day.

307—Establishment of Paramedicine Board

(1) The Paramedicine Board of Australia is established as a National Health Practitioner Board for the health profession of paramedicine.

(2) The 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) The Board represents the State.

(4) This section applies until the Board is continued in force by a regulation made under section 31.

308—Powers and functions of Paramedicine Board

(1) Sections 32, 33, 34, 37, 40, 234 and Schedule 4 apply to the Paramedicine Board until the participation day.

(2) However, for section 34, the Ministerial Council may, until the participation day, appoint as practitioner members persons who the Council is satisfied have skills and experience in paramedicine relevant to the Board's functions.

(3) The Paramedicine Board may perform the following functions until the participation day—

(a) develop and recommend one or more registration standards to the Ministerial Council under section 38 for its approval under section 12;

(b) develop and approve codes and guidelines under section 39;

(c) decide the day after which individuals may apply for registration in paramedicine;

(d) do anything under Part 6 in relation to accreditation for paramedicine;

(e) do anything under Part 7 to register individuals in paramedicine;

(f) anything else the Board may do under this Division.

309—Paramedicine Board taken to be a National Board for stated matters

The Paramedicine Board is taken to be a National Board for the following provisions of this Law until the participation day—

(a) Part 2;

(b) Part 4;

(c) Part 9;

(d) Part 10, except for Division 3;

(e) section 236.

310—CAA accredited programs of study

(1) The Paramedicine Board may, until the relevant day, approve, or refuse to approve, a CAA accredited program of study as providing a qualification for the purposes of registration in paramedicine.

(2) An approval of a program of study under subsection (1)—

(a) may be granted subject to the conditions the Board considers necessary or desirable in the circumstances; and

(b) does not take effect until the program is included in the list published under subsection (3).

(3) A program of study approved by the Board under subsection (1) must—

(a) be published in a list on the National Agency's website; and

(b) include, for each program of study, the name of the education provider that provides the program.

(4) A program of study approved under this section is taken to be an approved program of study for this Law.

(5) This section applies despite section 49(1).

(6) In this section—

CAA accredited program of study means a program of study accredited by the Council of Ambulance Authorities Inc. and published on the Council's website—

(a) immediately before the commencement; or

(b) between the commencement and the participation day.

311—Qualifications for general registration in paramedicine for a limited period

(1) For the purposes of section 52(1)(a), an individual who applies for registration in paramedicine before the relevant day is qualified for general registration in paramedicine if the individual—

(a) holds a qualification or has completed training in paramedicine, whether in a participating jurisdiction or elsewhere, that the Paramedicine Board considers is adequate for the purposes of practising the profession; or

(b) holds a qualification or has completed training in paramedicine, whether in a participating jurisdiction or elsewhere, and has completed any further study, training or supervised practice in the profession required by the Paramedicine Board for the purposes of this section; or

(c) has practised paramedicine during the 10 years before the participation day for a consecutive period of 5 years or for any periods which together amount to 5 years and satisfies the Paramedicine Board that he or she is competent to practise paramedicine.

(2) This section applies despite section 53.

312—Accepted qualification for general registration in paramedicine

(1) This section applies to an individual who holds a Diploma of Paramedical Science issued by the Ambulance Service of New South Wales.

(2) The individual is qualified for general registration in paramedicine for the purposes of section 52(1)(a).

(3) This section applies despite section 53.

(4) Nothing in this section makes a Diploma of Paramedical Science issued by the Ambulance Service of New South Wales an approved qualification for section 53(b).

(5) In this section—

Diploma of Paramedical Science means any of the following:

(a) a Diploma of Paramedical Science;

(b) a Diploma of Paramedical Science (Ambulance) or an Advanced Diploma of Paramedical Science (Ambulance);

(c) a Diploma in Paramedical Science (Pre-Hospital Care) or an Advanced Diploma Paramedical Sciences (Pre-Hospital Care);

(d) a qualification—

(i) that has replaced the diploma mentioned in paragraph (a) and is prescribed by regulation; and

(ii) issued by the Ambulance Service of New South Wales.

313—Provisions that apply to student registration for Diploma of Paramedical Science

A Diploma of Paramedical Science issued by the Ambulance Service of New South Wales is taken to be an approved program of study for Part 7, Division 7, Subdivisions 1 and 3.

314—Applications for registration in paramedicine and period of registration

(1) An individual may apply to the Paramedicine Board for registration in paramedicine—

(a) before the participation day; and

(b) after the day decided by the Board under section 308(3)(c).

(2) Subsection (3) applies if an individual applies for registration in paramedicine under subsection (1) and the Board grants the application under Part 7.

(3) Despite section 56, the registration period—

(a) does not start until the participation day; and

(b) may be a period of not more than 2 years decided by the Board.

315—Applications for registration in paramedicine made but not decided before participation day

(1) This section applies if—

(a) before the participation day an individual applies to the Paramedicine Board for registration in paramedicine; and

(b) the application is not decided by the Board by the participation day; and

(c) while the application for registration is being decided, the individual takes or uses a title, or does anything else, relating to paramedicine, that would contravene section 113 or 116.

(2) The individual does not commit an offence against section 113 or 116 while the application is being decided.

Note—

See section 85 for when an application not decided by a National Board is taken to be a decision to refuse the application.

316—Period after participation day during which an individual does not commit an offence under sections 113 and 116

(1) This section applies if an individual eligible for registration in paramedicine—

(a) has not applied to the Paramedicine Board for registration in paramedicine before the participation day; and

(b) takes or uses a title, or does anything else, relating to paramedicine, that would contravene section 113 or 116.

Note—

An individual may be qualified for general registration in paramedicine under section 311 or 312.

(2) The individual does not commit an offence against section 113 or 116 during the period of 90 days after the participation day.

317—Application of sections 113 and 116 to individual temporarily practising paramedicine in another jurisdiction

(1) This section applies to an individual who—

(a) usually practises paramedicine in a participating jurisdiction that has yet to enact a law that substantially corresponds with the provisions of this Law about paramedicine; and

(b) temporarily takes or uses a title or does anything else, relating to paramedicine in another jurisdiction, that would contravene section 113 or 116; and

(c) complies with any regulation made under this Law about temporarily taking or using a title or doing anything else, relating to paramedicine in another jurisdiction.

(2) The individual does not commit an offence against section 113 or 116.

(3) In this section—

another jurisdiction means a participating jurisdiction in which the provisions of this Law about paramedicine apply.

Division 2—Other transitional provisions

318—Deciding review period for decision on application made under section 125 before commencement

(1) This section applies if—

(a) before the commencement, a registered health practitioner or student applied to a National Board under section 125 to change or remove a condition or change or revoke an undertaking; and

(b) immediately before the commencement, the application had not been decided by the Board; and

(c) after the commencement, the Board's decision results in a registration or endorsement being subject to a condition, or an undertaking is still in place.

(2) The National Board may decide a review period for the condition or undertaking under section 125(6) and give the registered health practitioner or student notice under section 125(6A).

319—Deciding review period for decision after notice given under section 126 before commencement

(1) This section applies if—

(a) before the commencement, a National Board had given notice to a registered health practitioner or student under section 126 about changing a condition on the practitioner's or student's registration; and

(b) immediately before the commencement the Board had not made a decision in relation to the matter; and

(c) after the commencement, the Board's decision results in the practitioner's or student's registration being subject to a condition.

(2) The National Board may decide a review period for the condition under section 126(6) and give the registered health practitioner or student notice under section 126(6A).

320—Membership of continued National Boards

(1) This section applies if—

(a) a person holds office as a member of a National Board immediately before the commencement; and

(b) the Board is continued in force after the commencement (the ***continued Board***) by a regulation made under section 31.

(2) The person continues to hold office as a member of the continued Board after the commencement—

(a) on the terms and conditions that applied to the person's appointment before commencement; and

(b) until the office of the member becomes vacant under this Law.

(3) Also, a person who is Chairperson of a National Board immediately before the commencement continues to hold office as Chairperson of the continued Board after the commencement.

(4) Subsection (5) applies if the process for appointing a person as a member of a National Board is started but not completed before the commencement.

(5) The process may continue after the commencement and the person may be appointed as a member of the continued Board.

321—Offences relating to prohibition orders made before commencement

Section 196A also applies to a prohibition order made before the commencement.

322—Register to include prohibition orders made before commencement

(1) For section 222(4)(b) and section 223(b), a National Board may also record in the register the names of persons subject to a prohibition order made before the commencement.

(2) Also, for section 227(b), a National Board may also include in the register copies of prohibition orders made before the commencement.

323—Public national registers

(1) This section applies to a register kept under section 222 or 223 immediately before the commencement.

(2) The register continues in force immediately after the commencement.

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

324—Renaming of Agency Management Committee

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

(2) In this section—

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

325—Saving of endorsement of midwife practitioner

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

(a) if the practitioner continues to comply with any approved registration standard relevant to the endorsement—continue to hold and renew the endorsement, subject to any conditions stated in the endorsement;

(b) while holding the endorsement, use the title "midwife practitioner" or otherwise hold themself out as holding the endorsement.

(2) Section 119 continues to apply in relation to a claim by any other registered health practitioner to hold, or to be qualified to hold, an endorsement as a midwife practitioner as if section 96 had not been repealed.

Schedule 2—Agency Board

(Section 29)

Part 1—General

1—Definitions

In this Schedule—

Chairperson means the Chairperson of the Agency Board.

member means a member of the Agency 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 Agency Board, from 3 or more consecutive meetings of the Agency 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, as a result of the member's misconduct, impairment or incompetence—

(i) ceases to be a registered health practitioner; or

(ii) if the member is registered in more than one health profession—ceases to be registered in either or any of the health professions; 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 Agency 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.

(3) In addition, the Chairperson of the Ministerial Council may remove the Chairperson of the Agency Board from office as a member if the Chairperson of the Agency Board becomes a registered health practitioner.

5—Vacancies to be advertised

(1) Before the Ministerial Council appoints a member of the Agency Board, the vacancy to be filled is to be publicly advertised.

(2) It is not necessary to advertise a vacancy in the membership of the Agency 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 the Agency 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 the Agency 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 the Agency Board is to put the public interest before the interests of particular health practitioners or any body or organisation 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 Agency 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 Agency Board.

(2) Particulars of any disclosure made under this clause must be recorded by the Agency 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 Agency Board otherwise determines—

(a) be present during any deliberation of the Agency Board with respect to the matter; or

(b) take part in any decision of the Agency Board with respect to the matter.

(4) For the purposes of the making of a determination by the Agency 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 Agency Board for the purpose of making the determination; or

(b) take part in the making of the determination by the Agency Board.

(5) A contravention of this clause does not invalidate any decision of the Agency Board.

Part 3—Procedure

9—General procedure

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

10—Quorum

The quorum for a meeting of the Agency Board 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 Agency Board and may participate in discussions of the Agency Board, 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 Agency Board who are present at a meeting of the Agency Board) is to preside at a meeting of the Agency Board.

(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 Agency Board at which a quorum is present is the decision of the Agency Board.

14—Transaction of business outside meetings or by telecommunication

(1) The Agency Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Agency 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 Agency Board.

(2) The Agency 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 Agency 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.

15—First meeting

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

16—Defects in appointment of members

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

Schedule 3—National Agency

(Section 23)

Part 1—Chief executive officer

1—Chief executive officer

(1) The Agency Board 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 Board.

(2) The Agency Board may delegate any of the functions of the National Agency, or of the Agency Board, 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 Board.

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 Board; or

(b) the appointment of the chief executive officer is terminated by the Agency Board under this clause.

(2) The Agency Board 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

(Section 33)

Part 1—General

1—Definitions

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

(1) 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.

(2) However, a member's term of office ends if the National Board to which the member was appointed is dissolved by a regulation made under section 31.

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, as a result of the member's misconduct, impairment or incompetence—

(i) ceases to be a registered health practitioner; or

(ii) if the member is registered in more than one health profession—ceases to be registered in either or any of the health professions; 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 a 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 a health profession for which the Board is established;

(b) to develop codes or guidelines for a 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

(Section 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.

Maximum penalty:

(a) in the case of an individual—$5 000; or

(b) in the case of a body corporate—$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.

Maximum penalty:

(a) in the case of an individual—$5 000; or

(b) in the case of a body corporate—$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—

(A) the magistrate's name; and

(B) the date and time the magistrate issued the warrant; and

(C) 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.

Maximum penalty:

(a) in the case of an individual—$5 000; or

(b) in the case of a body corporate—$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.

Maximum penalty:

(a) in the case of an individual—$5 000; or

(b) in the case of a body corporate—$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.

Maximum penalty:

(a) in the case of an individual—$5 000; or

(b) in the case of a body corporate—$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.

Maximum penalty:

(a) in the case of an individual—$5 000; or

(b) in the case of a body corporate—$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.

Maximum penalty:

(a) in the case of an individual—$5 000; or

(b) in the case of a body corporate—$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.

Maximum penalty: $5 000.

Schedule 6—Inspectors

(Section 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.

Maximum penalty:

(a) in the case of an individual—$5 000; or

(b) in the case of a body corporate—$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.

Maximum penalty:

(a) in the case of an individual—$5 000; or

(b) in the case of a body corporate—$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—

(A) the magistrate's name; and

(B) the date and time the magistrate issued the warrant; and

(C) 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.

Maximum penalty:

(a) in the case of an individual—$5 000; or

(b) in the case of a body corporate—$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.

Maximum penalty:

(a) in the case of an individual—$5 000; or

(b) in the case of a body corporate—$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) if proceedings involving the thing are started within 6 months after the thing is seized—at the end of the proceedings and any appeal from the proceedings; or

(b) otherwise—

(i) 6 months after the thing is seized; or

(ii) at the end of any longer time for which the thing may be kept under subclause (3).

(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.

(3) If the seized thing is a document, the inspector may keep it while the inspector is satisfied it is needed, or may be needed, for the purposes of—

(a) a proceeding for an offence against this Law that is likely to be started or that has been started but not completed; or

(b) an appeal from a decision in a proceeding for an offence against this Law.

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 or take an extract from it.

(2) Subclause (1) does not apply if it is impracticable or would be unreasonable to allow the inspection, copying or taking of an extract.

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.

Maximum penalty:

(a) in the case of an individual—$5 000; or

(b) in the case of a body corporate—$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.

Maximum penalty:

(a) in the case of an individual—$5 000; or

(b) in the case of a body corporate—$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.

Maximum penalty:

(a) in the case of an individual—$5 000; or

(b) in the case of a body corporate—$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.

Maximum penalty: $5 000.

Schedule 7—Miscellaneous provisions relating to interpretation

(Section 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.

(3) Punctuation in this Law is part of this Law.

(4) A heading to a section or subsection of this Law does not form part of this Law.

(5) Notes included in this Law (including footnotes and endnotes) do not form part of this Law.

5—References to particular Acts and to enactments

In this Law—

(a) an Act of this jurisdiction may be cited—

(i) by its short title; or

(ii) by reference to the year in which it was passed and its number; and

(b) a Commonwealth Act may be cited—

(i) by its short title; or

(ii) in another way sufficient in a Commonwealth Act for the citation of such an Act;

together with a reference to the Commonwealth; and

(c) an Act of another jurisdiction may be cited—

(i) by its short title; or

(ii) in another way sufficient in an Act of the jurisdiction for the citation of such an Act;

together with a reference to the jurisdiction.

6—References taken to be included in Act or Law citation etc

(1) A reference in this Law to an Act includes a reference to—

(a) the Act as originally enacted, and as amended from time to time since its original enactment; and

(b) if the Act has been repealed and re-enacted (with or without modification) since the enactment of the reference—the Act as re-enacted, and as amended from time to time since its re-enactment.

(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

(e) an explanatory note or memorandum relating to the Bill that contained the provision, or any relevant document, that was laid before, or given to the members of, the Parliament of this jurisdiction by the member bringing in the Bill before the provision was enacted; and

(f) the speech made to the Parliament of this jurisdiction by the member in moving a motion that the Bill be read a second time; and

(g) material in the Votes and Proceedings of the Parliament of this jurisdiction or in any official record of debates in the Parliament of this jurisdiction; and

(h) a document that is declared by this Law to be a relevant document for the purposes of this clause.

ordinary meaning means the ordinary meaning conveyed by a provision having regard to its context in this Law and to the purpose of this Law.

(2) Subject to subclause (3), in the interpretation of a provision of this Law, consideration may be given to extrinsic material capable of assisting in the interpretation—

(a) if the provision is ambiguous or obscure—to provide an interpretation of it; or

(b) if the ordinary meaning of the provision leads to a result that is manifestly absurd or is unreasonable—to provide an interpretation that avoids such a result; or

(c) in any other case—to confirm the interpretation conveyed by the ordinary meaning of the provision.

(3) In determining whether consideration should be given to extrinsic material, and in determining the weight to be given to extrinsic material, regard is to be had to—

(a) the desirability of a provision being interpreted as having its ordinary meaning; and

(b) the undesirability of prolonging proceedings without compensating advantage; and

(c) other relevant matters.

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

(c) the form, or information or documents included in, attached to or given with the form, to be verified in a specified way,

the form is not properly completed unless the requirement is complied with.

Part 3—Terms and references

12—Definitions

(1) In this Law—

Act means an Act of the Legislature of this jurisdiction.

adult means an individual who is 18 or more.

affidavit, in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration and promise.

amend includes—

(a) omit or omit and substitute; or

(b) alter or vary; or

(c) amend by implication.

appoint includes reappoint.

Australia means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory.

business day means a day that is not—

(a) a Saturday or Sunday; or

(b) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done.

calendar month means a period starting at the beginning of any day of one of the 12 named months and ending—

(a) immediately before the beginning of the corresponding day of the next named month; or

(b) if there is no such corresponding day—at the end of the next named month.

calendar year means a period of 12 months beginning on 1 January.

commencement, in relation to this Law or an Act or a provision of this Law or an Act, means the time at which this Law, the Act or provision comes into operation.

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 disc, 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.

gazetted means published in the Gazette.

Gazette notice means notice 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.

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* (Cwlth).

make includes issue or grant.

minor means an individual who is under 18.

modification includes addition, omission or substitution.

month means a calendar month.

named month means 1 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

(b) to make a document containing the information available for inspection by a court, tribunal or person;

then, unless the court, tribunal or person otherwise directs—

(c) the requirement obliges the person to produce or make available for inspection, as the case may be, a document that reproduces the information in a form capable of being understood by the court, tribunal or person; and

(d) the production to the court, tribunal or person of the document in that form complies with the requirement.

18—References to this jurisdiction to be implied

In this Law—

(a) a reference to an officer, office or statutory body is a reference to such an officer, office or statutory body in and for this jurisdiction; and

(b) a reference to a locality or other matter or thing is a reference to such a locality or other matter or thing in and of this jurisdiction.

19—References to officers and holders of offices

In this Law, a reference to a particular officer, or to the holder of a particular office, includes a reference to the person for the time being occupying or acting in the office concerned.

20—Reference to certain provisions of Law

If a provision of this Law refers—

(a) to a Part, section or Schedule by a number and without reference to this Law—the reference is a reference to the Part, section or Schedule, designated by the number, of or to this Law; or

(b) to a Schedule without reference to it by a number and without reference to this Law—the reference, if there is only one Schedule to this Law, is a reference to the Schedule; or

(c) to a Division, Subdivision, subsection, paragraph, subparagraph, sub-subparagraph, clause, subclause, item, 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.

Part 4—Functions and powers

22—Performance of statutory functions

(1) If this Law confers a function or power on a person or body, the function may be performed, or the power may be exercised, from time to time as occasion requires.

(2) If this Law confers a function or power on a particular officer or the holder of a particular office, the function may be performed, or the power may be exercised, by the person for the time being occupying or acting in the office concerned.

(3) If this Law confers a function or power on a body (whether or not incorporated), the performance of the function, or the exercise of the power, is not affected merely because of vacancies in the membership of the body.

23—Power to make instrument or decision includes power to amend or repeal

If this Law authorises or requires the making of an instrument or decision—

(a) the power includes power to amend or repeal the instrument or decision; and

(b) the power to amend or repeal the instrument or decision is exercisable in the same way, and subject to the same conditions, as the power to make the instrument or decision.

24—Matters for which statutory instruments may make provision

(1) If this Law authorises or requires the making of a statutory instrument in relation to a matter, a statutory instrument made under this Law may make provision for the matter by applying, adopting or incorporating (with or without modification) the provisions of—

(a) an Act or statutory instrument; or

(b) another document (whether of the same or a different kind);

as in force at a particular time or as in force from time to time.

(2) If a statutory instrument applies, adopts or incorporates the provisions of a document, the statutory instrument applies, adopts or incorporates 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.

(9) A statutory instrument may require a form prescribed by or under the statutory instrument, or information or documents included in, attached to or given with the form, to be verified by statutory declaration.

25—Presumption of validity and power to make

(1) All conditions and preliminary steps required for the making of a statutory instrument are presumed to have been satisfied and performed in the absence of evidence to the contrary.

(2) A statutory instrument is taken to be made under all powers under which it may be made, even though it purports to be made under this Law or a particular provision of this Law.

26—Appointments may be made by name or office

(1) If this Law authorises or requires a person or body—

(a) to appoint a person to an office; or

(b) to appoint a person or body to exercise a power; or

(c) to appoint a person or body to do another thing;

the person or body may make the appointment by—

(d) appointing a person or body by name; or

(e) appointing a particular officer, or the holder of a particular office, by reference to the title of the office concerned.

(2) An appointment of a particular officer, or the holder of a particular office, is taken to be the appointment of the person for the time being occupying or acting in the office concerned.

27—Acting appointments

(1) If this Law authorises a person or body to appoint a person to act in an office, the person or body may, in accordance with this Law, appoint—

(a) a person by name; or

(b) a particular officer, or the holder of a particular office, by reference to the title of the office concerned;

to act in the office.

(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 1 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.

(10) If this Law authorises the appointer to appoint a person to act during a vacancy in the office, an appointment to act in the office may be made by the appointer whether or not an appointment has previously been made to the office.

28—Powers of appointment imply certain incidental powers

(1) If this Law authorises or requires a person or body to appoint a person to an office—

(a) the power may be exercised from time to time as occasion requires; and

(b) the power includes—

(i) power to remove or suspend, at any time, a person appointed to the office; and

(ii) power to appoint another person to act in the office if a person appointed to the office is removed or suspended; and

(iii) power to reinstate or reappoint a person removed or suspended; and

(iv) power to appoint a person to act in the office if it is vacant (whether or not the office has ever been filled); and

(v) power to appoint a person to act in the office if the person appointed to the office is absent or is unable to discharge the functions of the office (whether because of illness or otherwise).

(2) The power to remove or suspend a person under subclause (1)(b) may be exercised even if this Law provides that the holder of the office to which the person was appointed is to hold office for a specified period.

(3) The power to make an appointment under subclause (1)(b) may be exercised from time to time as occasion requires.

(4) An appointment under subclause (1)(b) may be expressed to have effect only in the circumstances specified in the instrument of appointment.

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 a Queensland 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 a Queensland 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.

(4) If the last day of a period provided or allowed by this Law for the filing or registration of a document is a day on which the office is closed where the filing or registration is to be or may be done, the document may be filed or registered at the office on the next day that the office is open.

(5) If no time is provided or allowed for doing anything, the thing is to be done as soon as possible, and as often as the prescribed occasion happens.

(6) If, in this Law, there is a reference to time, the reference is, in relation to the doing of anything in a jurisdiction, a reference to the legal time in the jurisdiction.

(7) For the purposes of this Law, a person attains an age in years at the beginning of the person's birthday for the age.

Part 6—Effect of repeal, amendment or expiration

32—Time of Law ceasing to have effect

If a provision of this Law is expressed—

(a) to expire on a specified day; or

(b) to remain or continue in force, or otherwise have effect, until a specified day;

this provision has effect until the last moment of the specified day.

33—Repealed Law provisions not revived

If a provision of this Law is repealed or amended by a Queensland Act, or a provision of a Queensland Act, the provision is not revived merely because the Queensland Act or the provision of the Queensland Act—

(a) is later repealed or amended; or

(b) later expires.

34—Saving of operation of repealed Law provisions

(1) The repeal, amendment or expiry of a provision of this Law does not—

(a) revive anything not in force or existing at the time the repeal, amendment or expiry takes effect; or

(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 a Queensland 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 Queensland 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 in relation to the coastal sea of this jurisdiction as if that coastal sea were part of this jurisdiction.

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation amended by principal Act

The *Health Practitioner Regulation National Law (South Australia) Act 2010* amended the following:

Acts Interpretation Act 1915

Births, Deaths and Marriages Registration Act 1996

Boxing and Martial Arts Act 2000

Consent to Medical Treatment and Palliative Care Act 1995

Controlled Substances Act 1984

Coroners Act 2003

Cremation Act 2000

Criminal Law Consolidation Act 1935

Health and Community Services Complaints Act 2004

Health Professionals (Special Events Exemption) Act 2000

Landlord and Tenant Act 1936

Mental Health Act 2009

Rail Safety Act 2007

Road Traffic Act 1961

Summary Offences Act 1953

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2010	5	*Health Practitioner Regulation National Law (South Australia) Act 2010*	1.7.2010	1.7.2010 (*Gazette 1.7.2010 p3338*)

2010	(189)	*Health Practitioner Regulation National Law (South Australia) (Amendment of Act) Regulations 2010* (*Gazette 12.8.2010 p4101*)	—	12.8.2010: r 2
2012	31	*Health Practitioner Regulation National Law (South Australia) (Miscellaneous) Amendment Act 2012*	13.9.2012	1.10.2012 (*Gazette 27.9.2012 p4523*)
2013	16	*Statutes Amendment (Directors' Liability) Act 2013*	23.5.2013	Pt 25 (s 49)—17.6.2013 (*Gazette 6.6.2013 p2498*)
2013	62	*Health Practitioner Regulation National Law (South Australia) (Restricted Birthing Practices) Amendment Act 2013*	21.11.2013	Pt 2 (s 4)—1.2.2014 (*Gazette 23.1.2014 p344*)
2013	68	*Health Practitioner Regulation National Law (South Australia) (Protection of Title—Paramedics) Amendment Act 2013*	21.11.2013	1.9.2014 (*Gazette 14.8.2014 p4027*)
2017	56	*Health Practitioner Regulation National Law (South Australia) (Remote Area Attendance) Amendment Act 2017*	12.12.2017	1.7.2019 (*Gazette 16.5.2019 p1288*)
2017	(344)	*Health Practitioner Regulation National Law (South Australia) (Amendment of Law) Regulations 2017* (*Gazette 19.12.2017 p5158*)	—	13.9.2017 except rr 4(4), 14, 18—16.1.2018: r 2
2018	(48)	*Health Practitioner Regulation National Law (South Australia) (Amendment of Law) Regulations 2018* (*Gazette 13.2.2018 p800*)	—	1.3.2018: r 2
2018	(170)	*Health Practitioner Regulation National Law (South Australia) (Amendment of Law) (No 2) Regulations 2018* (*Gazette 28.6.2018 p2622*)	—	1.8.2018: r 2
2018	(229)	*Health Practitioner Regulation National Law (South Australia) (Amendment of Law) (No 3) Regulations 2018* (*Gazette 29.11.2018 p4077*)	—	Pt 2 (rr 4 to 64) & Sch 1 (cl 1)—1.12.2018: r 2
2019	(168)	*Health Practitioner Regulation National Law (South Australia) (Amendment of Law) Regulations 2019* (*Gazette 27.6.2019 p2365*)	—	1.7.2019: r 2
2019	14	*Statutes Amendment (SACAT) Act 2019*	11.7.2019	Pt 16 (ss 105 to 112)—9.8.2019 (*Gazette 9.8.2019 p2948*)

2020	(20)	*Health Practitioner Regulation National Law (South Australia) (Amendment of Law) Regulations 2020* (*Gazette 27.2.2020 p454*)	—	1.3.2020: r 2
2021	41	*Health Practitioner Regulation National Law (South Australia) (Telepharmacy) Amendment Act 2021*	4.11.2021	1.12.2021 (*Gazette 25.11.2021 p4128*)
2022	**(108)**	***Health Practitioner Regulation National Law (South Australia) (Amendment of Law) Regulations 2022* (*Gazette 1.12.2022 p6758*)**	**—**	**21.10.2022: r 2**

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under *Legislation Revision and Publication Act 2002*	12.8.2010
Pt 1		
s 2	*omitted under Legislation Revision and Publication Act 2002*	*12.8.2010*
s 3		
s 3(1)		
District Court	*deleted by 14/2019 s 105(1)*	*9.8.2019*
Tribunal	amended by 14/2019 s 105(2)	9.8.2019
Pt 2		
s 6	amended by 14/2019 s 106	9.8.2019
s 6A	inserted by 31/2012 s 4	1.10.2012
	substituted by 14/2019 s 107	9.8.2019
s 6B	inserted by 14/2019 s 107	9.8.2019
Pt 3	substituted by 14/2019 s 108	9.8.2019
Pt 4		
Pt 4 Div 1		
s 26		
s 26(1)		
friendly society	inserted by 31/2012 s 5(1)	1.10.2012
pharmacist controlled company	inserted by 31/2012 s 5(2)	1.10.2012
pharmacist controlled trust	inserted by 31/2012 s 5(2)	1.10.2012
pharmacy services provider	substituted by 31/2012 s 5(3)	1.10.2012

proprietary interest	inserted by 31/2012 s 5(4)	1.10.2012
s 26(2)—(8)	substituted by 31/2012 s 5(5)	1.10.2012
s 26(9)—(11)	*deleted by 31/2012 s 5(5)*	*1.10.2012*
Pt 4 Div 2		
s 34		
s 34(1)	amended by 31/2012 s 6(1)	1.10.2012
s 34(4)	amended by 31/2012 s 6(2)	1.10.2012
Pt 4 Div 3		
s 41		
s 41(1a)	inserted by 31/2012 s 7	1.10.2012
s 43		
s 43(1a)—(1g)	inserted by 41/2021 s 4(1)	1.12.2021
s 43(4)		
emergency	inserted by 41/2021 s 4(2)	1.12.2021
pharmacist	substituted by 31/2012 s 8	1.10.2012
s 46		
s 46(6)	inserted by 41/2021 s 5	1.12.2021
s 47		
s 47(2)	amended by 14/2019 s 109	9.8.2019
s 48	substituted by 14/2019 s 110	9.8.2019
Pt 4 Div 4		
s 49		
s 49(1)	amended by 31/2012 s 9(1)	1.10.2012
s 49(2)	amended by 31/2012 s 9(2)	1.10.2012
s 50		
s 50(1)	amended by 31/2012 s 10	1.10.2012
Pt 4 Div 5		
s 51		
s 51(1)	amended by 31/2012 s 11(1), (2)	1.10.2012
s 51(1a)	inserted by 31/2012 s 11(3)	1.10.2012
s 51(2)	amended by 31/2012 s 11(4), (5)	1.10.2012
s 51(4)	amended by 31/2012 s 11(6)	1.10.2012
s 51(5)	amended by 31/2012 s 11(7), (8)	1.10.2012
s 51(7)	substituted by 31/2012 s 11(9)	1.10.2012
s 51(8)		
qualified person	amended by 31/2012 s 11(10)	1.10.2012
Pt 4 Div 6		
s 53		
s 53(1)	amended by 31/2012 s 12(1)—(4)	1.10.2012
s 53(2)	amended by 31/2012 s 12(5), (6)	1.10.2012
s 54		
s 54(4)	amended by 31/2012 s 13(1), (2)	1.10.2012

s 55		
s 55(2)	amended by 31/2012 s 14	1.10.2012
ss 62 & 63	substituted by 14/2019 s 111	9.8.2019
s 63A	inserted by 14/2019 s 111	9.8.2019
Pt 4 Div 7		
s 68		
s 68(1)	substituted by 31/2012 s 15	1.10.2012
s 68(1a)	inserted by 31/2012 s 15	1.10.2012
s 69	amended by 31/2012 s 16	1.10.2012
s 71	amended by 31/2012 s 17	1.10.2012
s 72	substituted by 16/2013 s 49	17.6.2013
Pt 5A	inserted by 56/2017 s 4	1.7.2019
Pt 6		
s 79		
s 79(1)	amended by 344/2017 Sch 1 cl 1(1)	13.9.2017
s 79(2)		
ACC	inserted by 344/2017 Sch 1 cl 1(2)	13.9.2017
s 82		
s 82(2)	amended by 31/2012 s 18	1.10.2012
Sch 1		
Pts 1—16	*omitted under Legislation Revision and Publication Act 2002*	*12.8.2010*
Pt 17		
cl 28	amended by 31/2012 s 19(1)	1.10.2012
Pt 18		
cl 29		
prescribed body	amended by 31/2012 s 19(2)	1.10.2012
cl 37		
cl 37(1)	amended by 31/2012 s 19(3)	1.10.2012
cl 37(2)	amended by 31/2012 s 19(4)	1.10.2012
cl 37(2a) and (2b)	inserted by 31/2012 s 19(5)	1.10.2012
cl 37(3)	amended by 31/2012 s 19(6)	1.10.2012
cl 39		
cl 39(1)	amended by 31/2012 s 19(7), (8)	1.10.2012
	amended by 229/2018 Sch 1 cl 1(1)—(4)	1.12.2018
Sch 2—National Law	inserted by 189/2010 r 3	12.8.2010
Pt 1		
s 3		
heading	**amended by 108/2022 r 4(1)**	**21.10.2022**
s 3(2)	**amended by 108/2022 r 4(2)**	**21.10.2022**
s 3(3)	***deleted by 108/2022 r 4(3)***	***21.10.2022***
s 3A	**inserted by 108/2022 r 5**	**21.10.2022**

s 4	**amended by 108/2022 r 6**	**21.10.2022**
s 5		
ACC	inserted by 344/2017 r 4(1)	13.9.2017
accreditation committee	amended by 229/2018 r 4(1)	1.12.2018
Advisory Council	***deleted by 108/2022 r 7(1)***	***21.10.2022***
Agency Board	**inserted by 108/2022 r 7(2)**	**21.10.2022**
Agency Management Committee	***deleted by 108/2022 r 7(3)***	***21.10.2022***
COAG Agreement	**amended by 108/2022 r 7(4)**	**21.10.2022**
CrimTrac	*deleted by 344/2017 r 4(2)*	*13.9.2017*
health profession	amended by 229/2018 r 4(2), (3)	1.12.2018
Ministerial Council	substituted by 344/2017 r 4(3)	13.9.2017
National Board	amended by 229/2018 r 4(4)	1.12.2018
prohibition order	inserted by 344/2017 r 4(4)	16.1.2018
s 7		
s 7(1)—(3)	amended by 229/2018 r 5	1.12.2018
Pt 2		
s 14		
s 14(1)	amended by 229/2018 r 6	1.12.2018
s 15	amended by 229/2018 r 7	1.12.2018
s 17		
s 17(1)	**amended by 108/2022 r 8**	**21.10.2022**
Pt 3	***deleted by 108/2022 r 9***	***21.10.2022***
Pt 4		
Pt 4 Div 1		
s 25	**amended by 108/2022 r 10(1), (2)**	**21.10.2022**
s 26		
s 26(1)	amended by 229/2018 r 8	1.12.2018
Pt 4 Div 2		
heading	**substituted by 108/2022 r 11**	**21.10.2022**
s 29		
heading	**amended by 108/2022 r 12(1)**	**21.10.2022**
s 29(1)	**amended by 108/2022 r 12(2)**	**21.10.2022**
s 29(2)	**amended by 108/2022 r 12(3)**	**21.10.2022**
s 29(4)	**amended by 108/2022 r 12(4)**	**21.10.2022**
s 30		
heading	**amended by 108/2022 r 13(1)**	**21.10.2022**
s 30(1)	**amended by 108/2022 r 13(2), (3)**	**21.10.2022**

s 30(2)	**amended by 108/2022 r 13(4)**	**21.10.2022**
Pt 5		
s 31	substituted by 229/2018 r 9	1.12.2018
s 31A	inserted by 229/2018 r 9	1.12.2018
s 33		
s 33(5)	amended by 229/2018 r 10(1)	1.12.2018
s 33(8)	**amended by 108/2022 r 14**	**21.10.2022**
s 33(9A)	inserted by 229/2018 r 10(2)	1.12.2018
s 34		
s 34(2) and (3)	substituted by 229/2018 r 11(1)	1.12.2018
s 34(4)	amended by 229/2018 r 11(2)	1.12.2018
s 35		
s 35(1)	**amended by 108/2022 r 15**	**21.10.2022**
s 38		
s 38(1)	amended by 229/2018 r 12(1), (2)	1.12.2018
s 39	amended by 170/2018 r 4	1.8.2018
s 41	amended by 229/2018 r 13	1.12.2018
Pt 6		
s 49		
s 49(1)	amended by 229/2018 r 14(1)	1.12.2018
s 49(5)	amended by 229/2018 r 14(2)	1.12.2018
s 51		
s 51(2)	amended by 229/2018 r 15	1.12.2018
Pt 7		
Pt 7 Div 1		
s 56		
s 56(2)	amended by 48/2018 r 4	1.3.2018
Pt 7 Div 4		
s 65		
s 65(1a) and (1b)	inserted by 344/2017 r 5	13.9.2017
s 71	substituted by 344/2017 r 6	13.9.2017
Pt 7 Div 6		
s 77		
s 77(1)	amended by 229/2018 r 16	1.12.2018
s 79		
s 79(2)	amended by 344/2017 r 7	13.9.2017
s 83		
s 83(1)	amended by 229/2018 r 17	1.12.2018
Pt 7 Div 7		
s 88		
s 88(1)	amended by 229/2018 r 18	1.12.2018
s 92		

s 92(2)	amended by 229/2018 r 19	1.12.2018
Pt 7 Div 8		
Pt 7 Div 8 Subdiv 1		
s 94		
94(1)	amended by 229/2018 r 20	1.12.2018
Pt 7 Div 8 Subdiv 2		
s 95		
s 95(1)	amended by 229/2018 r 21	1.12.2018
Pt 7 Div 8 Subdiv 3 before deletion by 108/2022		
s 96		
s 96(1)	*amended by 229/2018 r 22*	*1.12.2018*
Pt 7 Div 8 Subdiv 3	***deleted by 108/2022 r 16***	***21.10.2022***
Pt 7 Div 8 Subdiv 4		
s 97		
s 97(1)	amended by 229/2018 r 23	1.12.2018
Pt 7 Div 8 Subdiv 5		
s 98		
s 98(1)	amended by 229/2018 r 24	1.12.2018
Pt 7 Div 8 Subdiv 6		
s 102		
s 102(3)		
relevant section	**amended by 108/2022 r 17**	**21.10.2022**
Pt 7 Div 9		
s 107		
s 107(1)	amended by 229/2018 r 25	1.12.2018
Pt 7 Div 10		
s 113		
s 113(1)	amended by 168/2019 r 4(1)	1.7.2019
s 113(2)	amended by 168/2019 r 4(2)	1.7.2019
s 113(3)	amended by 229/2018 r 26(1), (2)	1.12.2018
s 115		
s 115(1)	amended by 168/2019 r 5(1)	1.7.2019
s 115(2)	amended by 168/2019 r 5(2)	1.7.2019
s 116		
s 116(1)	amended by 168/2019 r 6(1)	1.7.2019
s 116(2)	amended by 168/2019 r 6(2)	1.7.2019
s 117		
s 117(3)	amended by 168/2019 r 7	1.7.2019
s 118		
s 118(1)	amended by 168/2019 r 8(1)	1.7.2019
s 118(2)	amended by 344/2017 r 8	13.9.2017

	amended by 168/2019 r 8(2)	1.7.2019
s 119		
s 119(3)	amended by 168/2019 r 9	1.7.2019
s 120A	*inserted by 68/2013 s 4*	*1.9.2014*
	deleted by 229/2018 r 27	*1.12.2018*
s 121		
s 121(1)	amended by 168/2019 r 10	1.7.2019
s 122		
s 122(1)	amended by 168/2019 r 11	1.7.2019
s 123		
s 123(1)	amended by 168/2019 r 12	1.7.2019
s 123A	inserted by 62/2013 s 4	1.2.2014
s 123A(1)	amended by 229/2018 r 28(1), (2)	1.12.2018
s 123A(2)		
midwife	substituted by 229/2018 r 28(3)	1.12.2018
restricted birthing practice	amended by 229/2018 r 28(4)	1.12.2018
Pt 7 Div 11		
s 124		
s 124(1)	amended by 229/2018 r 29(1), (2)	1.12.2018
s 125		
s 125(1)	amended by 229/2018 r 30	1.12.2018
s 125(2)	amended by 344/2017 r 9	13.9.2017
s 125(6)	substituted by 48/2018 r 5	1.3.2018
s 125(6A)	inserted by 48/2018 r 5	1.3.2018
s 126		
s 126(1)	amended by 229/2018 r 31	1.12.2018
s 126(3)	amended by 344/2017 r 10	13.9.2017
s 126(6)	substituted by 48/2018 r 6	1.3.2018
s 126(6A)	inserted by 48/2018 r 6	1.3.2018
s 127		
s 127(1)	amended by 229/2018 r 32	1.12.2018
s 127A	inserted by 48/2018 r 7	1.3.2018
s 127A(3)	**amended by 108/2022 r 18**	**21.10.2022**
s 129		
s 129(2)	amended by 229/2018 r 33	1.12.2018
s 130		
s 130(1)	amended by 229/2018 r 34	1.12.2018
s 131		
s 131(1)	amended by 229/2018 r 35	1.12.2018
s 132	substituted by 170/2018 r 5	1.8.2018
s 133		

s 133(1)	**amended by 108/2022 r 19**	**21.10.2022**
s 135		
s 135(1)	amended by 344/2017 r 11	13.9.2017
s 136		
s 136(1)	**amended by 108/2022 r 20**	**21.10.2022**
s 137		
s 137(1)	amended by 229/2018 r 36	1.12.2018
Pt 8		
s 140		
notifiable conduct	amended by 20/2020 r 4(1)—(5)	1.3.2020
s 141		
s 141(2A)	inserted by 20/2020 r 5	1.3.2020
ss 141A—141C	inserted by 20/2020 r 6	1.3.2020
s 142		
s 142(1)	**amended by 108/2022 r 21**	**21.10.2022**
s 143		
s 143(3)	amended by 229/2018 r 37	1.12.2018
s 148		
s 148(1)	amended by 229/2018 r 38	1.12.2018
s 149		
s 149(1)	amended by 229/2018 r 39(1)	1.12.2018
s 149(3)	amended by 229/2018 r 39(2)	1.12.2018
s 150		
s 150(5)	amended by 229/2018 r 40(1)	1.12.2018
s 150(7)	amended by 229/2018 r 40(2)	1.12.2018
s 151		
s 151(1)	amended by 344/2017 r 12(1)	13.9.2017
	amended by 229/2018 r 41	1.12.2018
s 155		
immediate action	amended by 48/2018 r 8	1.3.2018
s 156		
s 156(1)	amended by 48/2018 r 9	1.3.2018
	amended by 229/2018 r 42	1.12.2018
	amended by 108/2022 r 22	**21.10.2022**
s 159A	inserted by 170/2018 r 6	1.8.2018
s 160		
s 160(1)	amended by 229/2018 r 43	1.12.2018
s 161		
s 161(1)	**amended by 108/2022 r 23**	**21.10.2022**
s 167A	inserted by 170/2018 r 7	1.8.2018
s 171		

s 171(2)	amended by 229/2018 r 44	1.12.2018
s 177A	inserted by 170/2018 r 8	1.8.2018
s 178		
s 178(1)	amended by 229/2018 r 45	1.12.2018
s 180	substituted by 170/2018 r 9	1.8.2018
s 181		
s 181(1A)	inserted by 48/2018 r 10	1.3.2018
s 181(2)	substituted by 229/2018 r 46(1)	1.12.2018
s 181(4) and (5)	substituted by 229/2018 r 46(2)	1.12.2018
s 182		
s 182(4)	substituted by 229/2018 r 47	1.12.2018
s 184		
s 184(3)—(6)	inserted by 48/2018 r 11	1.3.2018
s 191		
s 191(4A)	inserted by 48/2018 r 12	1.3.2018
ss 191A and 191B	inserted by 48/2018 r 13	1.3.2018
s 192		
s 192(1)	amended by 48/2018 r 14	1.3.2018
s 192(4)	substituted by 170/2018 r 10	1.8.2018
s 196		
s 196(1)	substituted by 229/2018 r 48	1.12.2018
s 196(4)	amended by 344/2017 r 13	13.9.2017
	amended by 108/2022 r 24(1), (2)	**21.10.2022**
s 196A	inserted by 344/2017 r 14	16.1.2018
s 196A(1)	amended by 168/2019 r 13	1.7.2019
s 199		
s 199(1)	amended by 48/2018 r 15	1.3.2018
s 206		
s 206(1)	amended by 170/2018 r 11(1)	1.8.2018
s 206(2)	substituted by 170/2018 r 11(2)	1.8.2018
Pt 10		
Pt 10 Div 1A		
s 212A	inserted by 229/2018 r 49	1.12.2018
Pt 10 Div 1		
s 213		
s 213(2)	substituted by 229/2018 r 50(1)	1.12.2018
s 213(3)	amended by 229/2018 r 50(2)	1.12.2018
Pt 10 Div 2		
s 215		
s 215(2)	substituted by 229/2018 r 51(1)	1.12.2018
s 215(3)	amended by 229/2018 r 51(2)	1.12.2018
s 217		
s 217(2)	amended by 229/2018 r 52	1.12.2018

s 219		
s 219(1)	**amended by 108/2022 r 25**	**21.10.2022**
Pt 10 Div 3		
s 222	substituted by 229/2018 r 53	1.12.2018
s 223	amended by 229/2018 r 54(1), (2)	1.12.2018
s 226		
s 226(1)	amended by 229/2018 r 55(1)	1.12.2018
s 226(2)	amended by 229/2018 r 55(2)	1.12.2018
s 226(3)	amended by 229/2018 r 55(3)	1.12.2018
s 227	substituted by 229/2018 r 56	1.12.2018
Pt 10 Div 5		
s 232		
s 232(1)	amended by 229/2018 r 57	1.12.2018
Pt 10 Div 6		
s 233		
s 233(1)	amended by 229/2018 r 58	1.12.2018
Pt 11		
Pt 11 Div 1		
s 235		
s 235(2)	amended by 229/2018 r 59	1.12.2018
s 236		
s 236(3)		
protected person	**(a) deleted by 108/2022 r 26(1)**	**21.10.2022**
	amended by 108/2022 r 26(2)	**21.10.2022**
Pt 11 Div 3		
s 241A	inserted by 168/2019 r 14	1.7.2019
s 242	amended by 168/2019 r 15	1.7.2019
Pt 11 Div 4		
s 246		
s 246(1)	substituted by 344/2017 r 16	13.9.2017
s 246(1a)—(1d)	inserted by 344/2017 r 16	13.9.2017
Pt 12		
Pt 12 Div 11		
s 284		
s 284(5)		
National Board	substituted by 229/2018 r 60(1)	1.12.2018
private midwifery	amended by 229/2018 r 60(2)	1.12.2018
Pt 12 Div 16	***deleted by 108/2022 r 27***	***21.10.2022***
Pt 13		
Pt 13 Div 1	inserted by 344/2017 r 17	13.9.2017
Pt 13 Div 2	inserted by 344/2017 r 18	16.1.2018

ss 318 and 319	inserted by 48/2018 r 16	1.3.2018
s 320	inserted by 229/2018 r 61	1.12.2018
ss 322 and 323	inserted by 229/2018 r 62	1.12.2018
Pt 14	**inserted by 108/2022 r 28**	**21.10.2022**
Sch 1	***deleted by 108/2022 r 29***	***21.10.2022***
Sch 2		
heading	**substituted by 108/2022 r 30**	**21.10.2022**
cl 1		
Chairperson	**amended by 108/2022 r 31(1)**	**21.10.2022**
Committee	***deleted by 108/2022 r 31(2)***	***21.10.2022***
member	**amended by 108/2022 r 31(3)**	**21.10.2022**
cl 4		
cl 4(1)	**amended by 108/2022 r 31(4)**	**21.10.2022**
cl 4(2)	amended by 229/2018 r 63	1.12.2018
	amended by 108/2022 r 31(5)	**21.10.2022**
cl 4(3)	**amended by 108/2022 r 31(6)**	**21.10.2022**
cl 5		
cl 5(1)	**amended by 108/2022 r 31(7)**	**21.10.2022**
cl 5(2)	**amended by 108/2022 r 31(8)**	**21.10.2022**
note	**amended by 108/2022 r 31(9)**	**21.10.2022**
cl 7		
cl 7(1)	**amended by 108/2022 r 31(10)**	**21.10.2022**
cl 7(2)	**amended by 108/2022 r 31(11)**	**21.10.2022**
cl 8		
cl 8(1)	**amended by 108/2022 r 31(12)**	**21.10.2022**
cl 8(2)	**amended by 108/2022 r 31(13)**	**21.10.2022**
cl 8(3)	**amended by 108/2022 r 31(14)**	**21.10.2022**
cl 8(4)	**amended by 108/2022 r 31(15)**	**21.10.2022**
cl 8(5)	**amended by 108/2022 r 31(16)**	**21.10.2022**
cl 9	**amended by 108/2022 r 31(17)**	**21.10.2022**
cl 10	**amended by 108/2022 r 31(18)**	**21.10.2022**
cl 11	**amended by 108/2022 r 31(19)**	**21.10.2022**
cl 12		
cl 12(1)	**amended by 108/2022 r 31(20)**	**21.10.2022**
cl 13	**amended by 108/2022 r 31(21)**	**21.10.2022**
cl 14		
cl 14(1)	**amended by 108/2022 r 31(22)**	**21.10.2022**
cl 14(2)	**amended by 108/2022 r 31(23)**	**21.10.2022**
cl 14(3)	**amended by 108/2022 r 31(24)**	**21.10.2022**
cl 15	**amended by 108/2022 r 31(25)**	**21.10.2022**
cl 16	**amended by 108/2022 r 31(26)**	**21.10.2022**
Sch 3		
cl 1		

cl 1(1)	**amended by 108/2022 r 32(1)**	**21.10.2022**
cl 2		
cl 2(1)	**amended by 108/2022 r 32(2)**	**21.10.2022**
cl 2(2)	**amended by 108/2022 r 32(3)**	**21.10.2022**
cl 3		
cl 3(2)	**amended by 108/2022 r 32(4)**	**21.10.2022**
cl 4		
cl 4(1)	**amended by 108/2022 r 32(5)**	**21.10.2022**
cl 4(2)	**amended by 108/2022 r 32(6)**	**21.10.2022**
Sch 4		
cl 2		
cl 2(1)	cl 2 redesignated as cl 2(1) by 229/2018 r 64(1)	1.12.2018
cl 2(2)	inserted by 229/2018 r 64(1)	1.12.2018
cl 4		
cl 4(2)	amended by 229/2018 r 64(2)	1.12.2018
cl 10	amended by 229/2018 r 64(3)	1.12.2018
cl 11	amended by 229/2018 r 64(4)	1.12.2018
Sch 6		
cl 16		
cl 16(1)	substituted by 168/2019 r 16(1)	1.7.2019
cl 16(3)	inserted by 168/2019 r 16(2)	1.7.2019
cl 17		
cl 17(1)	amended by 168/2019 r 16(3)	1.7.2019
cl 17(2)	amended by 168/2019 r 16(4)	1.7.2019
Sch 7		
cl 38	**amended by 108/2022 r 33**	**21.10.2022**

Transitional etc provisions associated with Act or amendments

Health Practitioner Regulation National Law (South Australia) (Miscellaneous) Amendment Act 2012, Sch 1—Transitional provision

1—Interpretation

In this Schedule—

principal Act means the *Health Practitioner Regulation National Law (South Australia) Act 2010*.

2—Transitional provision

The amendments effected to Part 4 of the principal Act by this Act do not affect a person's interest in a pharmacy business as it exists immediately before the commencement of this Schedule and the person may continue to hold any such interest until he or she disposes of the interest.

Statutes Amendment (SACAT) Act 2019, Pt 16

112—Transitional provisions

(1) A right of appeal to the District Court under the principal Act in existence before the relevant day (but not exercised before that day) will be exercised as if this Part had been in operation before that right arose, so that the relevant proceedings may be commenced before the Tribunal rather than the District Court.

(2) Nothing in subsection (1) affects any proceedings before the District Court commenced before the relevant day.

(3) A right of appeal to the South Australian Health Practitioners Tribunal under section 199 of the *Health Practitioner Regulation National Law (South Australia)* in existence (but not yet exercised) before the relevant day, will be exercised as if this Part had been in operation before the right arose, so that the relevant proceedings may be commenced before the Tribunal rather than the South Australian Health Practitioners Tribunal.

(4) Any proceedings before the South Australian Health Practitioners Tribunal under the principal Act immediately before the relevant day will, subject to such directions as the President of the Tribunal thinks fit, be transferred to the Tribunal where they may proceed as if they had been commenced before that Tribunal.

(5) The Tribunal may—

(a) receive in evidence any transcript of evidence in proceedings before the South Australian Health Practitioners Tribunal, and draw any conclusions of fact from that evidence that appear proper; and

(b) adopt any findings or determinations of the South Australian Health Practitioners Tribunal that may be relevant to proceedings before the Tribunal; and

(c) adopt or make any decision (including a decision in the nature of a determination), direction or order in relation to proceedings before the South Australian Health Practitioners Tribunal before the relevant day (including so as to make a decision or determination, or a direction or order, in relation to proceedings fully heard before the relevant day); and

(d) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of this section.

(6) The South Australian Health Practitioners Tribunal is dissolved by force of this subsection.

(7) Subject to subsection (8), a member of the South Australian Health Practitioners Tribunal holding office when subsection (6) comes into operation will cease to hold office at that time and any contract of employment, agreement or arrangement relating to the office held by that member is terminated by force of this subsection at the same time (but any such termination will not affect any right of action that a person may have against a Minister or the State on account of that termination).

(8) A person who, immediately before the relevant day, held an appointment under section 10 of the principal Act (as in force immediately before the relevant day) will be taken to have been appointed as an assessor under section 22 of the *South Australian Civil and Administrative Tribunal Act 2013* and will hold office as an assessor for the remainder of the term specified in the panel member's instrument of appointment under section 10.

(9) In this section—

principal Act means the *Health Practitioner Regulation National Law (South Australia) Act 2010*;

relevant day means the day on which this Part comes into operation;

Tribunal means the South Australian Civil and Administrative Tribunal.

Historical versions

12.8.2010
1.10.2012
17.6.2013
1.2.2014
1.9.2014
13.9.2017 (electronic only)
16.1.2018
1.3.2018
1.8.2018
1.12.2018
1.7.2019
9.8.2019
1.3.2020
1.12.2021