

Health Practitioner Regulation National Law Regulation (2010 SI 309)

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New South Wales

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New South Wales

The Australian Health Workforce Ministerial Council has made the following regulation under section 245 of the Health Practitioner Regulation National Law as applied by the law of States and Territories.

Kate Ireland Secretary

Australian Health Ministers' Advisory Council

17 June 2010

Part 1 Preliminary

1 Citation

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

2 Commencement

This Regulation commences in a participating jurisdiction on the day on which the Law commences in that jurisdiction.

Note—

In this Regulation, a reference to “the Law” is a reference to the Health Practitioner Regulation National Law. See clause 12(2) of Schedule 7 of the Law.

Part 2 Application of Commonwealth Privacy Act

3 Application of Commonwealth Privacy Act

For the purposes of section 213(2) of the Law, this Part sets out modifications of the Privacy Act as it applies as a law of a participating jurisdiction for the purposes of the national registration and accreditation scheme.

4 Modifications relating to National Agency and National Boards

The Privacy Act applies as if it were modified so that—

- (a) it applies only in relation to agencies; and
- (b) the agencies are—

- (i) the Advisory Council; and
 - (ii) the National Agency; and
 - (iii) the Agency Management Committee; and
 - (iv) each of the National Boards; and
- (c) a reference in the Act to the principal executive of an agency is a reference to—
- (i) for the Advisory Council, the Chairperson of the Council; and
 - (ii) for the National Agency, the chief executive officer of the National Agency; and
 - (iii) for the Agency Management Committee, the Chairperson of the Committee; and
 - (iv) for a National Board, the Chairperson of the National Board.

Note—

As the Privacy Act applies only in relation to agencies (that is, the Advisory Council, the National Agency, the Agency Management Committee and the National Boards), provisions of the Act dealing with organisations will not apply, including, for example, provisions relating to privacy codes and credit reporting.

5 Modifications relating to appointment of National Health Practitioners Privacy Commissioner and staff

The Privacy Act applies as if it were modified—

- (a) so that the provisions of the Act providing for—
 - (i) the appointment, and conditions of service of, the Privacy Commissioner (other than the provisions providing for the resignation and termination of appointment of the Commissioner and the appointment of an acting Commissioner) and the prohibition on the Commissioner engaging in outside employment do not apply; and
 - (ii) the appointment, and the conditions of service, of the staff of the Office of the Privacy Commissioner do not apply; and
- (b) to provide that a reference to the National Health Practitioners Privacy Commissioner is taken to be a reference to the person appointed to that office by the Ministerial Council with the remuneration, and on the terms and conditions, decided by the Council; and
- (c) so that the Commissioner's functions did not include matters relating to the issuing of guidelines under Commonwealth legislation or matters relating to tax file numbers or credit reporting; and
- (d) to provide that the National Health Practitioners Privacy Commissioner may, for the purposes of performing the Commissioner's functions—

- (i) employ staff; and
 - (ii) engage contractors or consultants; and
 - (iii) enter into arrangements with another entity relating to the provision of staff or other resources by that entity to the Commissioner; and
- (e) so that the Commissioner's power to delegate all or any of the Commissioner's powers extends to any person the Commissioner considers appropriate.

6 Modifications about interferences with privacy

The Privacy Act applies as if it were modified—

- (a) so that an agency is required to comply with the National Privacy Principles rather than the Information Privacy Principles; and
- (b) to provide that an act or practice of an agency is an interference with the privacy of an individual if the act or practice breaches a National Privacy Principle in relation to personal information that relates to the individual.

7 Modifications about financial matters

The Privacy Act applies as if it were modified to provide that the National Health Practitioners Privacy Commissioner is required to—

- (a) ensure the Commissioner's operations are carried out efficiently, effectively and economically; and
- (b) keep proper books and records in relation to the funds held by the Commissioner; and
- (c) ensure expenditure is made from the funds held by the Commissioner only for lawful purposes and, as far as possible, reasonable value is obtained for moneys expended from the funds; and
- (d) ensure the Commissioner's procedures, including internal control procedures, afford adequate safeguards with respect to—
 - (i) the correctness, regularity and propriety of payments made from the funds held by the Commissioner; and
 - (ii) receiving and accounting for payments made to the Commissioner; 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 the Commissioner's annual report; and
- (f) take any action necessary to facilitate the audit of the financial statements; and

- (g) arrange for any further audit by a qualified person of records kept by the Commissioner in relation to the funds held by the Commissioner, if directed to do so by the Ministerial Council.

8 Modifications about annual report

The Privacy Act applies as if it were modified to provide that—

- (a) the National Health Practitioners Privacy Commissioner is required to submit, within 3 months after the end of each financial year, an annual report for the financial year to the Ministerial Council; and
- (b) the National Health Practitioners Privacy Commissioner is required to include in the annual report a financial statement for the period to which the report relates that—
 - (i) has been prepared in accordance with Australian Accounting Standards; and
 - (ii) has been audited by the Auditor-General (however described) of a State or Territory, or an auditor employed, appointed or otherwise engaged by an Auditor-General; and
- (c) the National Health Practitioners Privacy Commissioner is required to include in the annual report a report about the performance of the Commissioner's functions under the Privacy Act during the period to which the report relates; and
- (d) the requirement to lay a copy of the report before each House of the Parliament is a requirement for each member of the Ministerial Council to cause a copy of the report to be laid before each House of the Parliament of the jurisdiction the member represents.

9 Modifications about determinations

The Privacy Act applies as if it were modified so that—

- (a) the provisions of the Act providing for the disallowance of determinations made by the Privacy Commissioner do not apply; and
- (b) sections 246 and 247 of the Law apply to a determination as if it is a regulation.

10 Miscellaneous modifications

The Privacy Act applies—

- (a) as if a reference to the Minister were a reference to a member of the Ministerial Council nominated by that Council; and
- (b) as if a reference to the Governor-General were a reference to the Ministerial Council; and
- (c) as if a reference to the Parliament were a reference to the Parliaments of the

Commonwealth and each participating jurisdiction; and

- (d) as if a reference to the Commonwealth or the Government of the Commonwealth were a reference to a participating jurisdiction or the Government of a participating jurisdiction; and
- (e) as if a reference to the Administrative Appeals Tribunal were a reference to a relevant tribunal; and
- (f) as if a reference to the Federal Court were a reference to the Supreme Court, or another court of competent jurisdiction, of a participating jurisdiction; and
- (g) as if a reference to the Federal Magistrates Court were a reference to the Magistrates Court or Local Court of a participating jurisdiction; and
- (h) as if a reference to the Ombudsman were a reference to the National Health Practitioners Ombudsman; and
- (i) as if a reference to a Commonwealth service provider were a reference to a person who provides goods or services under a contract with the National Agency; and
- (j) as if references to arrangements or communications between a Minister of the Commonwealth and a Minister of a State included references to arrangements or communications between Ministers of States; and
- (k) as if a requirement for a payment to be made by the Commonwealth were a requirement for a payment to be made by the National Agency from the Agency Fund; and
- (l) as if it were modified so that the Commissioner's power to authorise persons to enter premises occupied by an agency and inspect documents extends to a power to authorise any person the Commissioner considered appropriate; and
- (m) as if it were modified so that the provisions providing for the establishment of a Privacy Advisory Committee do not apply; and
- (n) as if it were modified so that the provisions relating to emergencies and disasters do not apply; and
- (o) as if it were modified so that the provisions relating to the making of guidelines about medical research, health information and genetic information do not apply; and
- (p) as if a reference to any other Commonwealth office holder or body were a reference to the equivalent office holder or body of a participating jurisdiction; and
- (q) with any other modifications that are necessary.

11 Relevant tribunal

For the purposes of clause 10(e), a reference in the Privacy Act to a **relevant tribunal** is taken to be a reference to any of the following—

- (a) the ACT Civil and Administrative Tribunal established under the *ACT Civil and Administrative Tribunal Act 2008* of the ACT;
- (b) the Administrative Decisions Tribunal of New South Wales established under the *Administrative Decisions Tribunal Act 1997* of New South Wales;
- (c) the Administrative and Disciplinary Division of the District Court of South Australia established under the *District Court Act 1991* of South Australia;
- (d) the Local Court established under the *Local Court Act* of the Northern Territory;
- (e) the Magistrates Court (Administrative Appeals Division) established under the *Magistrates Court (Administrative Appeals Division) Act 2001* of Tasmania;
- (f) the Queensland Civil and Administrative Tribunal established under the *Queensland Civil and Administrative Tribunal Act 2009* of Queensland;
- (g) the State Administrative Tribunal established under the *State Administrative Tribunal Act 2004* of Western Australia;
- (h) the Victorian Civil and Administrative Tribunal established under the *Victorian Civil and Administrative Tribunal Act 1998* of Victoria.

12 Certain amendments to Privacy Act not applicable

The Privacy Act applies as if the amendments made to it by the *Freedom of Information Amendment (Reform) Act 2010* of the Commonwealth had not taken effect.

13 Regulations

The regulations made under the Privacy Act do not apply.

Part 3 Application of Commonwealth FOI Act

14 Application of Commonwealth FOI Act

For the purposes of section 215(2) of the Law, this Part sets out modifications of the FOI Act as it applies as a law of a participating jurisdiction for the purposes of the national registration and accreditation scheme.

15 Modifications relating to National Agency and National Boards

The FOI Act applies as if it were modified to provide that—

- (a) it applies only in relation to agencies; and

- (b) the agencies are—
 - (i) the Advisory Council; and
 - (ii) the National Agency; and
 - (iii) the Agency Management Committee; and
 - (iv) each of the National Boards; and
- (c) a reference in the Act to the principal executive of an agency is a reference to—
 - (i) for the Advisory Council, the Chairperson of the Council; and
 - (ii) for the National Agency, the chief executive officer of the National Agency; and
 - (iii) for the Agency Management Committee, the Chairperson of the Committee; and
 - (iv) for a National Board, the Chairperson of the National Board; and
- (d) a reference in the Act to the responsible Minister of an agency or the Minister is a reference to a member of the Ministerial Council nominated by the Ministerial Council; and
- (e) the requirement to publish information about the following is a requirement for an agency to publish the information—
 - (i) information concerning the functions and documents of the agency;
 - (ii) the addresses of offices that are to be Information Access Offices for the purposes of the Act; and
- (f) the requirement to first publish the information referred to in paragraph (e) is a requirement for an agency to publish the information by 31 December 2010.

16 Miscellaneous modifications

The FOI Act applies—

- (a) as if a reference to the Commonwealth or the Government of the Commonwealth (other than a reference in relation to a matter affecting national security, defence, international relations or the national economy) were a reference to a participating jurisdiction or the Government of a participating jurisdiction; and
- (b) as if a reference to the Parliament were a reference to the Parliaments of the Commonwealth and the participating jurisdictions; and
- (c) as if a reference to relations, arrangements or communications between the Commonwealth and a State included a reference to relations, arrangements or communications between States; and

- (d) as if a reference to the Federal Court were a reference to the Supreme Court, or another court of competent jurisdiction, of a participating jurisdiction; and
- (e) as if—
 - (i) a reference to the Administrative Appeals Tribunal were a reference to a relevant tribunal; and
 - (ii) a provision of the *Administrative Appeals Tribunal Act 1975* did not apply; and
- (f) as if a reference to the Ombudsman were a reference to the National Health Practitioners Ombudsman; and
- (g) as if a reference to any other Commonwealth office holder or body (other than a reference to the Inspector-General of Intelligence and Security) were a reference to the equivalent office holder or body of a participating jurisdiction; and
- (h) as if a requirement for a Minister to prepare a report on the operation of the Act were a requirement for the National Agency to include a report on the operation of the Act, so far as it relates to the National Agency and the National Boards, in its annual report; and
- (i) as if a reference to the payment of costs by the Commonwealth were a reference to payment of costs by the National Agency from the Agency Fund; and
- (j) with any other modifications that are necessary.

17 Relevant tribunal

For the purposes of clause 16(e), a reference in the FOI Act to a **relevant tribunal** is taken to be a reference to any of the following—

- (a) the ACT Civil and Administrative Tribunal established under the *ACT Civil and Administrative Tribunal Act 2008* of the ACT;
- (b) the Administrative Decisions Tribunal of New South Wales established under the *Administrative Decisions Tribunal Act 1997* of New South Wales;
- (c) the Administrative and Disciplinary Division of the District Court of South Australia established under the *District Court Act 1991* of South Australia;
- (d) the Local Court established under the *Local Court Act* of the Northern Territory;
- (e) the Magistrates Court (Administrative Appeals Division) established under the *Magistrates Court (Administrative Appeals Division) Act 2001* of Tasmania;
- (f) the Queensland Civil and Administrative Tribunal established under the *Queensland Civil and Administrative Tribunal Act 2009* of Queensland;

(g) the State Administrative Tribunal established under the *State Administrative Tribunal Act 2004* of Western Australia;

(h) the Victorian Civil and Administrative Tribunal established under the *Victorian Civil and Administrative Tribunal Act 1998* of Victoria.

18 Certain amendments to FOI Act not applicable

The FOI Act applies as if the amendments made to it by the *Freedom of Information Amendment (Reform) Act 2010* of the Commonwealth had not taken effect.

19 Regulations

The regulations made under the FOI Act, other than the provisions providing for fees and charges, do not apply.

Part 4 Application of Commonwealth Ombudsman Act

20 Application of Commonwealth Ombudsman Act

For the purposes of section 235(2) of the Law, this Part sets out modifications of the Ombudsman Act as it applies as a law of a participating jurisdiction for the purposes of the national registration and accreditation scheme.

21 Modifications relating to National Agency and National Boards

The Ombudsman Act applies as if it were modified to provide that—

(a) it applies only in relation to prescribed authorities; and

(b) the prescribed authorities are—

(i) the Advisory Council; and

(ii) the National Agency; and

(iii) the Agency Management Committee; and

(iv) each of the National Boards; and

(c) a reference in the Act to the principal officer of a prescribed authority is a reference to—

(i) for the Advisory Council, the Chairperson of the Council; and

(ii) for the National Agency, the chief executive officer of the National Agency; and

(iii) for the Agency Management Committee, the Chairperson of the Committee; and

(iv) for a National Board, the Chairperson of the National Board.

Note—

As the Ombudsman Act applies only in relation to the Advisory Council, the National Agency, the Agency Management Committee and the National Boards, certain provisions of the Act, including, for example, provisions providing for the Defence Force Ombudsman and Postal Industry Ombudsman do not apply.

22 Modifications relating to appointment of National Health Practitioners Ombudsman and staff

The Ombudsman Act applies as if it were modified—

- (a) so that the provisions of the Act providing for the appointment of the Ombudsman and the conditions of service of the Ombudsman (other than the provisions providing for the resignation, retirement, suspension or removal of the Ombudsman and the appointment of an acting Ombudsman) do not apply; and
- (b) to provide that a reference to the National Health Practitioners Ombudsman is taken to be a reference to the person appointed to that office by the Ministerial Council with the remuneration, and on the terms and conditions, decided by the Council; and
- (c) so that the National Health Practitioners Ombudsman may be—
 - (i) suspended from office by the Ministerial Council without the need for a statement of the grounds of the suspension to be laid before a House of Parliament; and
 - (ii) removed from office by the Ministerial Council on the ground of misbehaviour or physical or mental incapacity without the need for an address being presented to a House of Parliament; and
- (d) so that the provisions of the Act providing for the Deputy Ombudsmen and other staff of the Ombudsman do not apply; and
- (e) to provide that the National Health Practitioners Ombudsman may, for the purposes of performing the Ombudsman's functions—
 - (i) employ staff; and
 - (ii) engage contractors or consultants; and
 - (iii) enter into arrangements with another entity relating to the provision of staff or other resources by that entity to the Ombudsman.

23 Modifications about financial matters

The Ombudsman Act applies as if it were modified to provide that the National Health Practitioners Ombudsman is required to—

- (a) ensure the Ombudsman's operations are carried out efficiently, effectively and economically; and

- (b) keep proper books and records in relation to the funds held by the Ombudsman; and
- (c) ensure expenditure is made from the funds held by the Ombudsman only for lawful purposes and, as far as possible, reasonable value is obtained for moneys expended from the funds; and
- (d) ensure the Ombudsman's procedures, including internal control procedures, afford adequate safeguards with respect to—
 - (i) the correctness, regularity and propriety of payments made from the funds held by the Ombudsman; and
 - (ii) receiving and accounting for payments made to the Ombudsman; 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 the Ombudsman's annual report; and
- (f) take any action necessary to facilitate the audit of the financial statements; and
- (g) arrange for any further audit by a qualified person of records kept by the Ombudsman in relation to the funds held by the Ombudsman, if directed to do so by the Ministerial Council.

24 Modifications about annual report

The Ombudsman Act applies as if it were modified to provide—

- (a) the National Health Practitioners Ombudsman is required to submit, within 3 months after the end of each financial year, an annual report for the financial year to the Ministerial Council; and
- (b) the National Health Practitioners Ombudsman is required to include in the annual report a financial statement for the period to which the report relates that—
 - (i) has been prepared in accordance with Australian Accounting Standards; and
 - (ii) has been audited by the Auditor-General (however described) of a State or Territory, or an auditor employed, appointed or otherwise engaged by an Auditor-General; and
- (c) the National Health Practitioners Ombudsman is required to include in the annual report a report about the performance of the Ombudsman's functions under the Ombudsman Act during the period to which the report relates; and
- (d) the requirement to lay a copy of the report before each House of the Parliament is a requirement for each member of the Ministerial Council to cause a copy of the report

to be laid before each House of the Parliament of the jurisdiction the member represents.

25 Miscellaneous modifications

The Ombudsman Act applies—

- (a) as if a reference to the Minister or the responsible Minister were a reference to a member of the Ministerial Council nominated by that Council; and
- (b) as if a reference to the Governor-General were a reference to the Ministerial Council; and
- (c) as if a reference to the Parliament were a reference to the Parliaments of the Commonwealth and each participating jurisdiction; and
- (d) as if a reference to the Commonwealth or the Government of the Commonwealth were a reference to a participating jurisdiction or the Government of a participating jurisdiction; and
- (e) as if a reference to the Prime Minister were a reference to a member of the Ministerial Council nominated by that Council; and
- (f) as if a reference to the Administrative Appeals Tribunal were a reference to a relevant tribunal; and
- (g) as if a reference to the Federal Court were a reference to the Supreme Court, or another court of competent jurisdiction, of a participating jurisdiction; and
- (h) as if a reference to the Privacy Commissioner were a reference to the National Health Practitioners Privacy Commissioner; and
- (i) as if it were modified so that provisions relating to the Integrity Commissioner did not apply; and
- (j) as if a reference to a Commonwealth service provider were a reference to a person who provides goods or services under a contract with the National Agency; and
- (k) as if a reference to any other Commonwealth office holder or body were a reference to the equivalent office holder or body of a participating jurisdiction; and
- (l) as if a reference to an arrangement or communication between a Commonwealth Minister and a Minister of a State included a reference to an arrangement or communication between Ministers of States; and
- (m) as if the requirement to observe confidentiality under the Act—
 - (i) applies to any person performing functions under the Act; but

(ii) does not prevent a member of the Ministerial Council making a record of, or divulging or communicating to another member of the Ministerial Council, information acquired by the member in performing functions under the Act; and

(n) with any other modifications that are necessary.

26 Relevant tribunal

For the purposes of clause 25(f), a reference in the Ombudsman Act to a **relevant tribunal** is taken to be a reference to any of the following—

- (a) the ACT Civil and Administrative Tribunal established under the *ACT Civil and Administrative Tribunal Act 2008* of the ACT;
- (b) the Administrative Decisions Tribunal of New South Wales established under the *Administrative Decisions Tribunal Act 1997* of New South Wales;
- (c) the Administrative and Disciplinary Division of the District Court of South Australia established under the *District Court Act 1991* of South Australia;
- (d) the Local Court established under the *Local Court Act* of the Northern Territory;
- (e) the Magistrates Court (Administrative Appeals Division) established under the *Magistrates Court (Administrative Appeals Division) Act 2001* of Tasmania;
- (f) the Queensland Civil and Administrative Tribunal established under the *Queensland Civil and Administrative Tribunal Act 2009* of Queensland;
- (g) the State Administrative Tribunal established under the *State Administrative Tribunal Act 2004* of Western Australia;
- (h) the Victorian Civil and Administrative Tribunal established under the *Victorian Civil and Administrative Tribunal Act 1998* of Victoria.

27 Certain amendments to Ombudsman Act not applicable

The Ombudsman Act applies as if the amendments made to it by the *Freedom of Information Amendment (Reform) Act 2010* of the Commonwealth had not taken effect.

28 Regulations

The Regulations made under the Ombudsman Act, other than provisions providing for witness expenses, do not apply.

Part 5 Miscellaneous

29 Transition period in relation to professional indemnity insurance arrangement for midwives practising private midwifery

For the purposes of section 284(3)(b) of the Law, the transition period ends on 30 June

2012.

30 Notifications made to National Agency after commencement

- (1) This clause applies if—
 - (a) the National Agency receives a notification about a registered health practitioner or student; and
 - (b) the subject matter of the notification happened while the practitioner or student was registered in a health profession under a corresponding prior Act.
- (2) Proceedings may be taken under Part 8 of the Law in relation to the registered health practitioner's or student's behaviour while registered under the corresponding prior Act as if the person were registered under the Law by the National Board established for the health profession.
- (3) However, subclause (2) applies only to the extent—
 - (a) a notification about the registered health practitioner's or student'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.

Note—

This clause is a savings and transitional provision. Under section 305 of the Law it expires on 30 June 2015.