

Health Practitioner Regulation National Law (NSW) No 86a of 2009

[2009-86a]



New South Wales

Status Information

Currency of version

Historical version for 29 June 2018 to 31 July 2018 (accessed 16 March 2025 at 5:49)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**

Health Practitioner Regulation National Law and Other Legislation Amendment Act 2017 No 32 of Queensland, secs 4 (2), (4), (6) and (7), 5–8, 13–15, 20, 25–29, 30 (2) (3), 31, 35 (2), 39–42, 44–49, 51, 52 (other than to the extent that it inserts Div 1 of Part 13 and secs 318, 319 and 321), 53 and 54 and Sch 1 (not commenced — secs 8, 20, 25, 26, 28, 29, 35 (2) and 39 to commence on 1.8.2018)

Health Practitioner Regulation Amendment Act 2017 No 50, Sch 1 [4]–[7] (not commenced — to commence on 1.8.2018)

Criminal Legislation Amendment (Child Sexual Abuse) Act 2018 No 33 (not commenced)

- **See also**

Human Tissue Amendment (Trafficking in Human Organs) Bill 2016 [Non-government Bill: Mr David Shoebridge, MLC]

- **Note**

The Health Practitioner Regulation National Law is applied (with modifications) as a law of NSW by the NSW *Health Practitioner Regulation (Adoption of National Law) Act 2009*. This version is the Law as it applies in NSW.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

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Health Practitioner Regulation National Law (NSW) No 86a of 2009



New South Wales

Editorial note—

The Health Practitioner Regulation National Law is applied (with modifications) as a law of NSW by the NSW [Health Practitioner Regulation \(Adoption of National Law\) Act 2009](#). This version is the Law as it applies in NSW.

Part 1 Preliminary

1 Short title

This Law may be cited as the [Health Practitioner Regulation National Law \(NSW\)](#).

2 Commencement

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

3 Objectives and guiding principles

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

3A Objective and guiding principle [NSW]

In the exercise of functions under a NSW provision, the protection of the health and safety of the public must be the paramount consideration.

Note—

This section is an additional New South Wales provision.

4 How functions to be exercised

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

5 Definitions

In this Law—

ACC means the Australian Crime Commission established under section 7 of the [Australian Crime Commission Act 2002](#) (Cwlth).

accreditation authority means—

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

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

accreditation standard, for a health profession, means a standard used to assess whether a 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.

Note—

See section 6A of the [Health Practitioner Regulation \(Adoption of National Law\) Act 2009](#) which declares that Professional Standards Committees, Councils and Performance Review Panels are all adjudication bodies for the purposes of the Health Practitioner Regulation National Law.

Advisory Council means the Australian Health Workforce Advisory Council established by section 18.

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

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

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

approved accreditation standard means an accreditation standard—

- (a) approved by a National Board under section 47(3); and

(b) published on the Board's website under section 47(6).

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

approved 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 Council of Australian Governments' website.

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

Note—

See section 6B of the *Health Practitioner Regulation (Adoption of National Law) Act 2009* which declares that each Council is a co-regulatory authority for the purposes of the Health Practitioner Regulation National 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 Divisions 3 to 12 of Part 8.

Note—

See section 6 of the *Health Practitioner Regulation (Adoption of National Law) Act 2009* which declares that this jurisdiction is not participating in the health, performance and conduct process provided by Divisions 3 to 12 of Part 8 of the Health Practitioner Regulation National Law. As a consequence, New South Wales is a co-regulatory jurisdiction.

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

Note—

This definition is not applicable to New South Wales.

health practitioner means an individual who practises a health profession.

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

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

- (j) osteopathy;
- (k) pharmacy;
- (l) physiotherapy;
- (m) podiatry;
- (n) psychology.

Note—

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

health profession agreement has the meaning given by section 26.

health 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 established by section 31.

National Register means the Register kept by a National Board under section 222.

national registration and accreditation scheme means the scheme—

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

notification means—

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

notifier means a person who makes a notification.

NSW provision means—

- (a) a provision that forms part of this Law because of a modification made by the [Health Practitioner Regulation \(Adoption of National Law\) Act 2009](#); or
- (b) a NSW regulation.

Note—

This definition is an additional New South Wales provision.

NSW regulation means a regulation made under section 247A.

Note—

This definition is an additional New South Wales provision.

panel

Note—

This definition is not applicable to New South Wales.

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

Note—

This definition is not applicable to New South Wales.

performance assessment

Note—

This definition is not applicable to New South Wales.

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

Note—

This definition is not applicable to New South Wales.

program of study means a program of study provided by an education provider.

prohibition order

Note—

This definition is not applicable to New South Wales.

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

Note—

This definition is not applicable to New South Wales.

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.

Note—

See section 6C of the [Health Practitioner Regulation \(Adoption of National Law\) Act 2009](#) which declares that the Civil and Administrative Tribunal is the responsible Tribunal for the purposes of the Health Practitioner Regulation National Law.

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

Note—

This definition is not applicable to New South Wales.

unsatisfactory professional performance

Note—

This definition is not applicable to New South Wales.

voluntary notification means a complaint or other notification made under Part 8, other than a mandatory notification.

6 Interpretation generally

Schedule 7 applies in relation to this Law.

7 Single national entity

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

8 Extraterritorial operation of Law

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

- (a) things situated in or outside the territorial limits of this jurisdiction;
- (b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of this jurisdiction;
- (c) things, acts, transactions and matters (wherever situated, done, entered into or

occurring) that would, apart from this Law, be governed or otherwise affected by the law of another jurisdiction.

9 Trans-Tasman mutual recognition principle

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

10 Law binds the State

(1) This Law binds the State.

(2) In this section—

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

(a) the Government of this jurisdiction; and

(b) a Minister of the Crown in right of this jurisdiction; and

(c) a statutory corporation, or other entity, representing the Crown in right of this jurisdiction.

Part 2 Ministerial Council

11 Policy directions

(1) The Ministerial Council may give directions to the National Agency about the policies to be applied by the National Agency in exercising its functions under this Law.

(2) The Ministerial Council may give directions to a National Board about the policies to be applied by the National Board in exercising its functions under this Law.

(3) Without limiting subsections (1) and (2), a direction under this section may relate to—

(a) a matter relevant to the policies of the National Agency or a National Board; or

(b) an administrative process of the National Agency or a National Board; or

(c) a procedure of the National Agency or a National Board; or

(d) a particular proposed accreditation standard, or a particular proposed amendment of an accreditation standard, for a health profession.

(4) However, the Ministerial Council may give a National Board a direction under subsection (3)(d) only if—

(a) in the Council's opinion, the proposed accreditation standard or amendment will have a substantive and negative impact on the recruitment or supply of health practitioners; and

(b) the Council has first given consideration to the potential impact of the Council's direction on the quality and safety of health care.

(5) A direction under this section cannot be about—

(a) a particular person; or

(b) a particular qualification; or

(c) a particular application, notification or proceeding.

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

12 Approval of registration standards

(1) The Ministerial Council may approve a registration standard about—

(a) the registration, or renewal of registration, of persons in a health profession; or

(b) the endorsement, or renewal of the endorsement, of the registration of registered health practitioners.

(2) The Ministerial Council may approve a registration standard for a health profession only if—

(a) its approval is recommended by the National Board established for the health profession; and

(b) it does not provide for a matter about which an accreditation standard may provide.

Note—

An accreditation standard for a health profession is a standard used to assess whether a 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 the profession for which the Board is established as being qualified to administer, obtain, possess, prescribe, sell, supply or use a scheduled medicine or class of scheduled medicines.

Note—

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

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

15 Approval of areas of practice for purposes of endorsement

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

Note—

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

16 How Ministerial Council exercises functions

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

17 Notification and publication of directions and approvals

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

18 Establishment of Advisory Council

The Australian Health Workforce Advisory Council is established.

19 Function of Advisory Council

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

20 Publication of advice

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

21 Powers of Advisory Council

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

22 Membership of Advisory Council

- (1) The Advisory Council is to consist of 7 members.
- (2) Members of the Advisory Council are to be appointed by the Ministerial Council.
- (3) One of the members of the Advisory Council is to be appointed as Chairperson, being a person who—
 - (a) is not a registered health practitioner; and
 - (b) has not been registered as a health practitioner under this Law or a corresponding prior Act within the last 5 years.

(4) At least 3 of the other members of the Advisory Council are to be persons who have expertise in health, or education and training, or both.

(5) Schedule 1 sets out provisions relating to the Advisory Council.

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 provide advice to the Ministerial Council in connection with the administration of 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;
- (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 the health profession for which the Board is established (including arrangements relating to refunds of fees, waivers of fees and additional fees for late payment);
 - (b) the annual budget of the National Board (including the funding arrangements for its committees and accreditation authorities);
 - (c) the services to be provided to the National Board by the National Agency to enable the National Board to carry out its functions under this Law.
- (2) If the National Agency and a National Board are unable to agree on a matter relating to a health profession agreement or a proposed health profession agreement, the Ministerial Council may give directions to the National Agency and National Board

about how the dispute is to be resolved.

- (3) Each National Board must publish on its website the fees for which provision has been made in a health profession agreement between the Board and the National Agency.

26A Setting of fees in health profession agreements [NSW]

- (1) For the purposes of section 26, if the Ministerial Council gives a fees policy direction that provides a registration fee is to separately identify a registration and accreditation element and a complaints element, the amount of the complaints element for registration fees payable by NSW health practitioners for a particular health profession is to be decided by the Council established for that profession, with the approval of the Minister.

Note—

The Ministerial Council gave a fees policy direction on 13 November 2009 that provided that the registration fees payable under this Law were to separately identify the registration and accreditation elements and the complaints element of the fees.

- (2) In this section—

complaints element means a component for the costs of operating the health, performance and conduct process under Part 8.

fees policy direction means a direction given to the National Agency and the National Boards about the policies to be applied in entering into a health profession agreement about registration fees.

NSW health practitioner means—

- (a) a registered health practitioner whose principal place of practice is in this jurisdiction; or
- (b) an applicant for registration whose application for registration includes a declaration under section 77(3) that—
- (i) the applicant will predominantly practise the profession in this jurisdiction; or
 - (ii) the applicant's principal place of residence is in this jurisdiction.

registration fee means a relevant fee payable by a health practitioner for registration or renewal of registration under this Law.

Note—

This section is an additional New South Wales provision.

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 Management Committee

29 Agency Management Committee

- (1) The Australian Health Practitioner Regulation Agency Management Committee is established.
- (2) The Agency Management Committee 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 Management Committee.

30 Functions of Agency Management Committee

(1) The functions of the Agency Management Committee are as follows—

(a) subject to any directions of the Ministerial Council, to decide the policies of the National Agency;

(b) to ensure that the National Agency performs its functions in a proper, effective and efficient way;

(c) any other function given to the Committee by or under this Law.

(2) The affairs of the National Agency are to be controlled by the Agency Management Committee and all acts and things done in the name of, or on behalf of, the National Agency by or with the authority of the Agency Management Committee are taken to have been done by the National Agency.

Part 5 National Boards

Division 1 National Boards

31 Establishment of National Boards

(1) Each of the following National Health Practitioner Boards is established for the health profession listed beside that Board in the following Table—

Table—National Boards

Name of Board	Health profession
Aboriginal and Torres Strait Islander Health Practice Board of Australia	Aboriginal and Torres Strait Islander health practice
Chinese Medicine Board of Australia	Chinese medicine
Chiropractic Board of Australia	chiropractic
Dental Board of Australia	dental (including the profession of a dentist, dental therapist, dental hygienist, dental prosthetist or oral health therapist)
Medical Board of Australia	medical
Medical Radiation Practice Board of Australia	medical radiation practice

Nursing and Midwifery Board of Australia	nursing and midwifery
Occupational Therapy Board of Australia	occupational therapy
Optometry Board of Australia	optometry
Osteopathy Board of Australia	osteopathy
Pharmacy Board of Australia	pharmacy
Physiotherapy Board of Australia	physiotherapy
Podiatry Board of Australia	podiatry
Psychology Board of Australia	psychology

(2) A National Board—

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

(3) A National Board represents the State.

32 Powers of National Board

(1) Subject to subsection (2), a National Board has the powers necessary to enable it to exercise its functions.

(2) A National Board does not have power to—

- (a) enter into contracts; or
- (b) employ staff; or
- (c) acquire, hold, dispose of, and deal with, real property.

(3) The National Board may exercise any of its functions in 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.
- (6) At least 2 of the members of a National Board must be persons appointed as community members.
- (7) At least one of the members of a National Board must live in a regional or rural area.
- (8) A person cannot be appointed as a member of a National Board if the person is a member of the Agency Management Committee.
- (9) One of the practitioner members of the National Board is to be appointed as Chairperson of the Board by the Ministerial Council.
- (10) Schedule 4 sets out provisions relating to a National Board.
- (11) In this section—

large participating jurisdiction means any of the following States that is a participating jurisdiction—

- (a) New South Wales;
- (b) Queensland;
- (c) South Australia;
- (d) Victoria;
- (e) Western Australia.

small participating jurisdiction means any of the following States or Territories that is a participating jurisdiction—

- (a) the Australian Capital Territory;
- (b) the Northern Territory;
- (c) Tasmania.

34 Eligibility for appointment

- (1) In deciding whether to appoint a person as a member of a National Board, the Ministerial Council is to have regard to the skills and experience of the person that are relevant to the Board's functions.
- (2) A person is eligible to be appointed as a practitioner member only if the person is a registered health practitioner in the health profession for which the Board is established.
- (3) A person is eligible to be appointed as a community member of a National Board only if the person—
 - (a) is not a registered health practitioner in the health profession for which the Board is established; and
 - (b) has not at any time been registered as a health practitioner in the health profession under this Law or a corresponding prior Act.
- (4) A person is not eligible to be appointed as a member of a National Board if—
 - (a) in the case of appointment as a practitioner member, the person has ceased to be registered as a health practitioner in the health profession for which the Board is established, whether before or after the commencement of this Law, as a result of the person's misconduct, impairment or incompetence; or
 - (b) in any case, the person has, at any time, been found guilty of an offence (whether in a participating jurisdiction or elsewhere) that, in the opinion of the Ministerial Council, renders the person unfit to hold the office of member.

Division 2 Functions of National Boards

35 Functions of National Boards

- (1) The functions of a National Board established for a health profession are as follows—
- (a) to register suitably qualified and competent persons in the health profession and, if necessary, to impose conditions on the registration of persons in the profession;
 - (b) to decide the requirements for registration or endorsement of registration in the health profession, including the arrangements for supervised practice in the profession;
 - (c) to develop or approve standards, codes and guidelines for the health profession, including—
 - (i) the approval of accreditation standards developed and submitted to it by an accreditation authority; and
 - (ii) the development of registration standards for approval by the Ministerial Council; and
 - (iii) the development and approval of codes and guidelines that provide guidance to health practitioners registered in the profession;
 - (d) to approve accredited 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, undertaking and suspensions imposed on the registration of the practitioners or students;
 - (k) to make recommendations to the Ministerial Council about the operation of specialist recognition in the health profession and the approval of specialties for the profession;
 - (l) in conjunction with the National Agency, to keep up-to-date and publicly accessible national registers of registered health practitioners for the health profession;
 - (m) in conjunction with the National Agency, to keep an up-to-date national register of students for the health profession;
 - (n) at the Board's discretion, to provide financial or other support for health 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 the health profession for which the Board is established—
- (a) requirements for professional indemnity insurance arrangements for registered health practitioners registered in the profession;
 - (b) matters about the criminal history of applicants for registration in the profession, and registered health practitioners and students registered by the Board, including, the matters to be considered in deciding whether an individual's criminal history is relevant to the practice of the profession;
 - (c) requirements for continuing professional development for registered health practitioners registered in the profession;
 - (d) requirements about the English language skills necessary for an applicant for registration in the profession to be suitable for registration in the profession;
 - (e) requirements in relation to the nature, extent, period and recency of any previous practice of the profession by applicants for registration in the profession.
- (2) Subject to subsection (3), a National Board may also develop, and recommend to the Ministerial Council, one or more registration standards about the following—
- (a) the physical and mental health of—
 - (i) applicants for registration in the profession; and
 - (ii) registered health practitioners and students;
 - (b) the scope of practice of health practitioners registered in the profession;
 - (c) any other issue relevant to the eligibility of individuals for registration in the

profession or the suitability of individuals to competently and safely practise the profession.

- (3) A registration standard may not be about a matter for which an accreditation standard may provide.

Note—

An accreditation standard for a health profession is used to assess whether a 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.

Example—

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

40 Consultation about registration standards, codes and guidelines

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

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

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

Part 5A New South Wales Councils [NSW]

Note—

This Part is an additional New South Wales provision.

Division 1 Preliminary [NSW]

41A Definitions [NSW]

In this Part—

Council means a Council established under section 41B.

Executive Officer means the Executive Officer of a Council.

NSW regulation means a regulation made under section 247A.

Division 2 Councils [NSW]

41B Establishment of Councils [NSW]

- (1) Each of the following Councils is established for the health profession listed beside that Council in the following Table—

Table—State Councils

Name of Council	Health profession
Aboriginal and Torres Strait Islander Health Practice Council of New South Wales	Aboriginal and Torres Strait Islander health practice
Chinese Medicine Council of New South Wales	Chinese medicine
Chiropractic Council of New South Wales	chiropractic
Dental Council of New South Wales	dental (including the profession of a dentist, dental hygienist, dental prosthetist, dental therapist or oral health therapist)
Medical Council of New South Wales	medical
Medical Radiation Practice Council of New South Wales	medical radiation practice
Nursing and Midwifery Council of New South Wales	nursing and midwifery
Occupational Therapy Council of New South Wales	occupational therapy
Optometry Council of New South Wales	optometry

Osteopathy Council of New South Wales	osteopathy
Paramedicine Council of New South Wales	paramedicine
Pharmacy Council of New South Wales	pharmacy
Physiotherapy Council of New South Wales	physiotherapy
Podiatry Council of New South Wales	podiatry
Psychology Council of New South Wales	psychology

- (2) The Governor may, by order published on the NSW legislation website, amend the Table to subsection (1) by inserting, altering or omitting the name of a Council or health profession.
- (3) A Council—
- (a) is a body corporate with perpetual succession; and
 - (b) has a common seal; and
 - (c) may sue and be sued.

41C General powers of Councils [NSW]

- (1) A Council has all the powers of an individual and, in particular, may do anything necessary or convenient to be done in the exercise of its functions.
- (2) However, a Council cannot employ staff.

41D Functions of Councils [NSW]

A Council has and may exercise the functions conferred or imposed on it by or under this Law or another Act.

41E Membership of Councils [NSW]

Each Council consists of the members prescribed by the NSW regulations.

41F Committees [NSW]

- (1) A Council may establish committees to assist it in connection with the exercise of any of its functions.
- (2) The members of a committee need not be members of the Council.
- (3) The procedure for the calling of meetings of a committee and for the conduct of business at the meetings is—
- (a) as decided by the Council; or

(b) subject to a decision of the Council, as decided by the committee.

41G Councils' complaint functions may be exercised by 2 or more members [NSW]

- (1) A Council may appoint any 2 or more members of the Council to exercise the functions of the Council under Division 3 of Part 8.
- (2) The referral of a complaint by the members appointed is taken to be a referral by the Council.

41H Annual report [NSW]

- (1) An annual report prepared by a Council under the *Annual Reports (Statutory Bodies) Act 1984* must include particulars of the following for the year to which it relates—
 - (a) all complaints received by the Council during the year or received by the Council before that year but which, in the Council's opinion had not, at the start of the year, been finally disposed of;
 - (b) the action taken during the year in relation to complaints received by the Council and the results of that action up to the end of that year;
 - (c) all matters referred to a Performance Review Panel for performance review during the year, or referred to a Panel before the year but which, in the Council's opinion had not, at the start of the year, been finally disposed of;
 - (d) the results of all performance reviews conducted by Performance Review Panels that were finally disposed of during the year.
- (2) Two or more Councils may decide to prepare a joint annual report under the *Annual Reports (Statutory Bodies) Act 1984*.
- (3) This section does not require the identity of a complainant, a person who notifies a professional performance matter to a Council, a person about whom a complaint is made or who is the subject of a performance review or any other person to be disclosed in an annual report.

41I Information to be made available to public [NSW]

- (1) A Council for a health profession must ensure the following information, in relation to a registered health practitioner registered in the profession, is made available to the public on request—
 - (a) any conditions imposed on the registration of the practitioner;
 - (b) any other order made in respect of the practitioner under this Law.
- (2) Without limiting subsection (1), the Council is taken to have complied with that subsection if the information is available on the Register kept by the National Board

for the health profession.

- (3) This section does not require a Council to disclose anything the Council considers relates solely or principally to the physical or mental capacity of a person to practise the person's profession.

41J Delegation by Council and Executive Officer [NSW]

- (1) A Council may delegate to a person the exercise of any of its functions, other than this power of delegation.
- (2) An Executive Officer of a Council may delegate to a person the exercise of—
 - (a) any of the functions of the Executive Officer under this Law, other than this power of delegation; or
 - (b) any functions delegated to the Executive Officer by the Council, unless the Council otherwise provides in its instrument of delegation to the Executive Officer.
- (3) In this section, a reference to a person includes a reference to a group of persons, including a committee.

41K Service of documents on Councils [NSW]

- (1) A document (other than a complaint made under Part 8) may be served on a Council by leaving it at or sending it by post to an office of the Council.
- (2) This does not affect the operation of any provision of a law or of the rules of a court authorising a document to be served on a Council in another way.

41L Authentication of certain documents [NSW]

A certificate, summons, process, demand, order, notice, statement, direction or other document requiring authentication by a Council may be sufficiently authenticated without the seal of the Council if signed by—

- (a) the President or the Executive Officer of the Council; or
- (b) an officer of the Council authorised to do so by the Executive Officer.

41M Recovery of charges, fines, fees and other money by Councils [NSW]

A charge, fine, fee or other money due to a Council may be recovered by the Council as a debt in a court of competent jurisdiction.

41N Proof of certain matters not required [NSW]

In any legal proceedings, proof is not required (until evidence is given to the contrary) of—

- (a) the establishment of a Council; or

- (b) any resolution of a Council; or
- (c) the appointment of, or the holding of office by, a member of a Council; or
- (d) the presence of a quorum at a meeting of a Council.

41NA Special provisions relating to non-financially viable Councils [NSW]

- (1) The Minister may, if satisfied that a Council is not financially viable, make either or both of the following directions—
 - (a) a direction in writing to the Council that the Council delegate such of its functions as are specified in the direction to another Council, or to a person, designated by the Minister in the direction;
 - (b) a direction in writing to the Executive Officer of the Council that the Executive Officer delegate such of the Executive Officer's functions as are specified in the direction to a person designated by the Minister in the direction.

The Council or Executive Officer must comply with any such direction.

- (2) The NSW regulations may modify the functions of a Council (including modification of any of the Council's auditing or reporting requirements) as a consequence of—
 - (a) any direction under subsection (1), or
 - (b) the financial non-viability of the Council.
- (3) Any such regulation may not be made in relation to a Council unless the Minister has certified that, in the opinion of the Minister, the Council is not financially viable.
- (4) Any direction by the Minister under subsection (1) is to be made publicly available.

Division 3 Proceedings of Councils [NSW]

410 Other matters to be taken into account [NSW]

In the exercise of any of its functions under Subdivision 2 or 7 of Division 3 of Part 8 with respect to a complaint about a registered health practitioner or a student, a Council must have regard to any of the following matters, to the extent the Council reasonably considers the matter to be relevant to the complaint—

- (a) another complaint or notification about the practitioner or student made to the Council or the National Agency, or made to a former Board under a repealed Act, including a complaint—
 - (i) in respect of which the Council, the Commission or a National Board has decided no further action should be taken; and
 - (ii) that is not required to be referred, or that the Council or the Commission decides

not to refer, under Division 3 of Part 8;

- (b) a previous finding or decision of a Council inquiry in relation to the practitioner or student;
- (c) a previous finding or decision of a board inquiry, professional standards committee or a tribunal established under a repealed Act in respect of the practitioner or student;
- (d) a written report made by an assessor following an assessment of the practitioner's professional performance;
- (e) a recommendation made, or written statement of decision on a performance review provided, by a Performance Review Panel in relation to the practitioner.

41P Exercise of functions with consent [NSW]

- (1) A Council may exercise any of its functions under this Law with respect to a registered health practitioner or student with the written consent of the practitioner or student.
- (2) A function exercised by the Council with the consent of the registered health practitioner or student may be exercised even though a condition otherwise required to be met or procedures otherwise required to be followed before its exercise have not been met or followed.
- (3) If the registered health practitioner or student withdraws the practitioner's or student's consent, the Council must take the action necessary to give effect to the withdrawal.

Division 4 Administration [NSW]

41Q Executive Officer [NSW]

- (1) There is an Executive Officer of each Council.
- (2) The Executive Officer—
 - (a) is responsible, as the chief executive officer of the Council, for the management of the affairs of the Council subject to any directions of the Council; and
 - (b) has and may exercise other functions conferred or imposed on the Executive Officer by or under this Law or any other Act.
- (3) The Executive Officer of a Council must keep a record of—
 - (a) all proceedings and decisions of Committees to which the Council refers matters; and
 - (b) (Repealed)

(c) all inquiries held by the Council.

Division 5 Finance [NSW]

41R Financial provisions [NSW]

The Executive Officer of a Council must give to the Health Administration Corporation constituted under the *Health Administration Act 1982*, for payment into an account established under section 13A of that Act, all money received by the Council.

41S Education and Research Account [NSW]

- (1) A Council may establish an account named the '[name of Council] Education and Research Account'.
- (2) The Council must pay into its Education and Research Account the amounts decided by the Minister from time to time.
- (3) The Minister may not decide an amount under this section without first consulting with the Council.
- (4) Money in the Education and Research Account may be expended by the Council for or towards the following purposes—
 - (a) any purpose relating to education and research about the health, performance and conduct of registered health practitioners or students registered in the health profession for which the Council is established;
 - (b) meeting administrative expenditure incurred with respect to the Education and Research Account and the purposes for which it is used.
- (5) An expenditure of money under this section must not be made unless it is authorised by a resolution of the Council supported by two-thirds of the members of the Council.

41T Medical Council to pay expenses of Medical Services Committee [NSW]

The reasonable expenses of the Medical Services Committee established under the *Health Administration Act 1982* are to be paid out of the account established under section 13A of that Act for the Medical Council of New South Wales.

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 the health profession for which the Board is established.
- (2) An approval under subsection (1) may be granted subject to the conditions the National Board considers necessary or desirable in the circumstances.
- (3) If the National Board decides to approve the accredited 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 the 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 the health profession for which the Board is established, the Board may decide to—
 - (a) impose the conditions the Board considers necessary or desirable on the approval of the accredited 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 the 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 the health profession for which the Board is established, the registration is subject to any condition the Board considers necessary or desirable in the circumstances.

Note—

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

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

84 Notice to be given to applicant

- (1) Within 30 days after making the decision under section 82, the National Board must—
- (a) give the applicant written notice of the Board's decision; and
 - (b) if the Board decides to register the applicant, give the applicant a certificate of registration.
- (2) If the Board decides not to register the applicant, or decides to register the applicant in a type of registration other than the registration applied for or subject to a condition, the notice under subsection (1)(a) must state—

- (a) the reasons for the decision; and
- (b) that the applicant may appeal against the decision; and
- (c) how an application for appeal may be made and the period within which the application must be made.

85 Failure to decide application

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

Division 7 Student registration

Subdivision 1 Persons undertaking approved 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 the 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 condition 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 that registered the person 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 by the Board as being qualified to administer, obtain, possess, prescribe, sell, supply or use a scheduled medicine or class of scheduled medicines if the practitioner—
 - (a) holds either of the following qualifications relevant to the endorsement—
 - (i) an approved qualification;
 - (ii) another qualification that, in the Board's opinion, is substantially equivalent to, or based on similar competencies to, an approved qualification; and
 - (b) complies with any approved registration standard relevant to the endorsement.

Note—

The endorsement of a health practitioner's registration under this section indicates the practitioner is qualified to administer, obtain, possess, prescribe, sell, supply or use the scheduled medicine or class of medicines specified in the endorsement but does not authorise the practitioner to do so. The authorisation

of a health practitioner to administer, obtain, possess, prescribe, sell, supply or use scheduled medicines in a participating jurisdiction will be provided for by or under another Act of that jurisdiction.

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 Nursing and Midwifery Board of Australia 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 3 Endorsement in relation to midwife practitioners

96 Endorsement as midwife practitioner

- (1) The Nursing and Midwifery Board of Australia may endorse the registration of a registered health practitioner whose name is included in the Register of Midwives as being qualified to practise as a midwife practitioner if the practitioner—

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

Subdivision 4 Endorsement in relation to acupuncture

97 Endorsement for acupuncture

- (1) A National Board may endorse the registration of a registered health practitioner registered by the Board as being qualified to practise as an acupuncturist if the practitioner—
- (a) holds either of the following qualifications relevant to the endorsement—
 - (i) an approved qualification;
 - (ii) another qualification that, in the Board’s opinion, is substantially equivalent to, or based on similar competencies to, an approved qualification; and
 - (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 by the Board 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, 96, 97 or 98.

103 Conditions of endorsement

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

Note—

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

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

104 Notice of decision to be given to applicant

(1) As soon as practicable after making the decision under section 102, the National Board must—

- (a) give the applicant written notice of the Board's decision; and
- (b) if the Board decides to endorse the applicant's registration, give the applicant a new certificate of registration.

(2) If the Board decides not to endorse the applicant's registration or decides to endorse the applicant's registration subject to a condition, the notice under subsection (1)(a) must state—

- (a) the reasons for the decision; and
- (b) that the applicant may appeal against the decision; and
- (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 that registered the practitioner 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—\$30,000; or
- (b) in the case of a body corporate—\$60,000.

(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—\$30,000; or
- (b) in the case of a body corporate—\$60,000.

(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
Nursing and Midwifery	nurse, registered nurse, nurse practitioner, enrolled nurse, midwife, midwife practitioner
Occupational Therapy	occupational therapist
Optometry	optometrist, optician
Osteopathy	osteopath
Pharmacy	pharmacist, pharmaceutical chemist
Physiotherapy	physiotherapist, physical therapist
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—\$30,000; or
- (b) in the case of a body corporate—\$60,000.

- (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—\$30,000; or
- (b) in the case of a body corporate—\$60,000.

- (3) Subsection (1) applies whether or not the title is taken or used with or without any other words and whether in English or any other language.

116 Claims by persons as to registration as health practitioner

- (1) A person who is not a registered health practitioner must not knowingly or recklessly—
- (a) take or use the title of “registered health practitioner”, whether with or without any other words; or
 - (b) take or use a title, name, initial, symbol, word or description that, having regard to the circumstances in which it is taken or used, indicates or could be reasonably

understood to indicate—

- (i) the person is a health practitioner; or
 - (ii) the person is authorised or qualified to practise in a health profession; or
- (c) claim to be registered under this Law or hold himself or herself out as being registered under this Law; or
- (d) claim to be qualified to practise as a health practitioner.

Maximum penalty—

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

(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—\$30,000; or
- (b) in the case of a body corporate—\$60,000.

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—\$30,000; or
- (b) in the case of a body corporate—\$60,000.

Note—

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

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—\$30,000; or
- (b) in the case of a body corporate—\$60,000.

(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—\$30,000; or
- (b) in the case of a body corporate—\$60,000.

Note—

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

119 Claims about type of registration or registration in recognised specialty

- (1) A registered health practitioner must not knowingly or recklessly—
 - (a) claim to hold a type of registration or endorsement under this Law that the practitioner does not hold or hold himself or herself out as holding a type of registration or endorsement if the practitioner does not hold that type of registration; or
 - (b) claim to be qualified to hold a type of registration or endorsement the practitioner does not hold; or
 - (c) claim to hold specialist registration under this Law in a recognised specialty in which the practitioner does not hold specialist registration or hold himself or herself out as holding specialist registration in a recognised specialty if the person does not hold specialist registration in that specialty; or
 - (d) claim to be qualified to practise as a specialist health practitioner in a recognised specialty in which the practitioner is not registered.
- (2) A contravention of subsection (1) by a registered health practitioner does not constitute an offence but may constitute behaviour for which health, conduct or performance action may be taken.
- (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—\$30,000; or
- (b) in the case of a body corporate—\$60,000.

Note—

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

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

Note—

See also Schedule 5F which contains New South Wales provisions providing for specific restrictions in relation to the control of pharmacies.

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— \$30,000.

(2) In this section—

restricted dental act means any of the following acts—

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

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

121A General anaesthesia and simple sedation in dentistry [NSW]

- (1) A dentist must not carry out any procedure forming part of the practice of dentistry on a patient to whom a general anaesthetic has been administered unless the general anaesthetic has been administered by a registered medical practitioner who—
 - (a) holds specialist registration in anaesthesia; or
 - (b) is accredited for the purposes of administering any general anaesthetic at a public or private hospital at which surgery may lawfully be carried out.

Maximum penalty—200 penalty units.

- (2) A dentist must not administer simple sedation by the intravenous route unless the dentist—
 - (a) has been endorsed by the Dental Board of Australia to administer sedation; and
 - (b) is assisted by another person who is either—
 - (i) a registered nurse who has received training in intensive care or anaesthesia; or
 - (ii) a dentist, appropriately trained in the observation and monitoring of sedated patients and in resuscitation, whose sole responsibility in assisting is to monitor the level of consciousness and cardio-respiratory function of the patient and to administer resuscitation if necessary.

Maximum penalty—200 penalty units.

(3) In this section—

general anaesthetic means a drug or other substance that, when administered to a patient, will render the patient—

- (a) unaware of the patient’s surroundings; and
- (b) unable to retain reflex control of the airway; and
- (c) incapable of understanding and obeying a spoken command.

simple sedation means a technique in which the use of a drug produces a state of depression of the central nervous system enabling treatment to be carried out, and in which—

- (a) the patient does not lose consciousness; and
- (b) the drug and techniques used have a margin of safety wide enough to render unintended loss of consciousness unlikely.

Note—

This section is an additional New South Wales provision.

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— \$30,000.

(2) In this section—

optical appliance means—

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

optometrist means a person registered in the optometry profession.

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

123 Restriction on spinal manipulation

- (1) A person must not perform manipulation of the cervical spine unless the person—
 - (a) is registered in an appropriate health profession; or
 - (b) is a student who performs manipulation of the cervical spine in the course of activities undertaken as part of—
 - (i) an approved 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— \$30,000.

- (2) In this section—

appropriate health profession means any of the following health professions—

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

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

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 the health profession for which the Board is established; or
 - (b) a National Board decides to renew an individual's registration in the 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 that registered the practitioner or student—
 - (a) for a registered health practitioner—
 - (i) to change or remove a condition imposed on the practitioner’s registration or endorsement; or
 - (ii) to change or revoke an undertaking given by the practitioner; or
 - (b) for a student—
 - (i) to change or remove a condition imposed on the student’s registration; or
 - (ii) to change or revoke an undertaking given by the student to the Board.
- (2) However, the registered health practitioner or student may not make an application—
 - (a) during a review period applying to the condition or undertaking, unless the practitioner or student reasonably believes there has been a material change in the practitioner’s or student’s circumstances; or
 - (b) for a condition imposed by an adjudication body for a co-regulatory jurisdiction, unless the adjudication body decided, when imposing the condition 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 by the Board.
- (2) The National Board must give the registered health practitioner or student a written notice stating—
- (a) that the Board proposes to change the condition; and
 - (b) how the Board proposes to change the condition; and
 - (c) the reason for the proposed change; and
 - (d) that the practitioner or student may, within 30 days after receipt of the notice, make written or verbal submissions to the Board about why the condition should not be changed.
- (3) However, the condition may not be changed—
- (a) during a review period applying to the condition, unless the National Board reasonably believes there has been a material change in the registered health practitioner's or student's circumstances; or
 - (b) if the condition was imposed by an adjudication body for a co-regulatory jurisdiction, unless the adjudication body decided, when imposing the condition 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 by the Board is no longer necessary; or
 - (b) that an undertaking given to the Board by a health practitioner or student registered by the Board is no longer necessary.
- (2) The National Board may decide to remove the condition or revoke the undertaking.
- (3) However, the condition or undertaking may not be removed or revoked—
 - (a) during a review period applying to the condition or undertaking, unless the National Board reasonably believes there has been a material change in the registered health practitioner's or student's circumstances; or
 - (b) for a condition imposed by an adjudication body for a co-regulatory jurisdiction, unless the adjudication body decided, when imposing the condition, that this Subdivision applied to the condition.
- (4) As soon as practicable after making the decision the National Board must give notice of the decision to the registered health practitioner or student.
- (5) The decision takes effect on the date stated in the notice.

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 is 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.

Note—

See also the *Health Care Liability Act 2001* which provides that medical practitioners practising in New South Wales must be covered by approved professional indemnity insurance within the meaning of that Act.

- (2) A National Board may, at any time by written notice, require a registered health practitioner registered by the Board to give the Board evidence of the appropriate professional indemnity insurance arrangements that are in force in relation to the practitioner's practice of the profession.
- (3) A registered health practitioner must not, without reasonable excuse, fail to comply with a written notice given to the practitioner under subsection (2).
- (4) A contravention of subsection (1) or (3) by a registered health practitioner does not constitute an offence but may constitute behaviour for which health, conduct or performance action may be taken.
- (5) In this section—

registered health practitioner does not include a registered health practitioner who holds non-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 that registered the practitioner or student written notice of the event.
- (2) A contravention of subsection (1) by a registered health practitioner or student does not constitute an offence but may constitute behaviour for which health, conduct or performance action may be taken.
- (3) In this section—

relevant event means—

- (a) in relation to a registered health practitioner—
 - (i) the practitioner is charged, whether in a participating jurisdiction or elsewhere, with an offence punishable by 12 months imprisonment or more; or
 - (ii) the practitioner is convicted of or the subject of a finding of guilt for an offence, whether in a participating jurisdiction or elsewhere, punishable by imprisonment; or

- (iii) appropriate professional indemnity insurance arrangements are no longer in place in relation to the practitioner's practice of the profession; or
 - (iv) the practitioner's right to practise at a hospital or another facility at which health services are provided is withdrawn or restricted because of the practitioner's conduct, professional performance or health; or
 - (v) the practitioner's billing privileges are withdrawn or restricted under the *Medicare Australia Act 1973* 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 that registered the practitioner written notice of the change and any evidence providing proof of the change required by the Board—
- (a) a change in the practitioner's principal place of practice;
 - (b) a change in the address provided by the registered health practitioner as the address the Board should use in corresponding with the practitioner;
 - (c) a change in the practitioner's name.
- (2) A contravention of subsection (1) by a registered health practitioner does not constitute an offence but may constitute behaviour for which health, conduct or performance action may be taken.

132 National Board may ask registered health practitioner for employer's details

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

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—\$5,000; or
 - (b) in the case of a body corporate—\$10,000.
- (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—\$30,000; or
- (b) in the case of a body corporate—\$60,000.

(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 that registered the practitioner, 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

Note—

This Part, other than Division 2, is a substituted New South Wales provision.

Division 1 Preliminary [NSW]

138 Definitions [NSW]

(1) In this Part—

Assessment Committee means an Assessment Committee established under section 172A.

assessor means a person appointed as an assessor under section 174D.

authorised person means a person appointed as an authorised person under section 164.

Australian lawyer has the same meaning as it has in the *Legal Profession Uniform Law (NSW)*.

Commission means the Health Care Complaints Commission constituted under the *Health Care Complaints Act 1993*.

Committee means—

- (a) an Assessment Committee; or
- (b) a Professional Standards Committee.

competent has the meaning given by section 139.

complainant includes a person acting as a nominal complainant in accordance with this Law.

conduct means any act or omission.

confidential information has the meaning given by section 139A.

confidential information notice means a notice that—

- (a) indicates that—
 - (i) confidential information is not included in a statement required to be given to a person under this Law; or
 - (ii) a statement required to be given to a person under this Law will not be provided; and
- (b) gives the reason the confidential information is not included or the statement will not be provided.

Council means a Council established under section 41B.

court includes a tribunal, authority or person having power to require the production of documents or the answering of questions but does not include—

- (a) the Tribunal; or
- (b) a Council; or
- (c) a Performance Review Panel; or
- (d) a Professional Standards Committee.

criminal finding means—

- (a) a finding that an offence has been proved without proceeding to a conviction; or
- (b) a finding that an offence has been proved and the discharging of, or the making of an order releasing, the offender conditionally on entering into a good behaviour bond for a specified period or on other conditions decided by the court.

critical compliance order or condition means an order or condition of a registered health practitioner's or student's registration that is a critical compliance order or condition under section 146B, 149A or 163B.

drug related offence means an offence under—

- (a) the [Drug Misuse and Trafficking Act 1985](#) or regulations under that Act; or
- (b) the [Poisons and Therapeutic Goods Act 1966](#) or regulations under that Act.

Executive Officer means the Executive Officer of a Council.

former Board means a Board established under a repealed Act.

health product means a pharmaceutical product or other product used for health purposes.

health service has the meaning given by the [Health Care Complaints Act 1993](#).

health service provider has the meaning given by the [Health Care Complaints Act 1993](#).

Impaired Registrants Panel means an Impaired Registrants Panel established under section 173.

Minister means—

- (a) the Minister administering this Law; or
- (b) if different Ministers are administering the Law in different respects or different portions of the Law, the Minister administering the Law in the relevant respect or administering the relevant portion of the Law.

overservicing, by a registered health practitioner, means the practitioner, in the course of practising the practitioner's profession—

- (a) provides a service in circumstances in which provision of the service is unnecessary, not reasonably required or excessive; or
- (b) engages in conduct prescribed by the NSW regulations as constituting overservicing.

performance assessment means an assessment of a registered health practitioner's professional performance conducted by an assessor under Subdivision 3 of Division 5 of Part 8.

performance review means a review of a registered health practitioner's professional performance conducted by a Performance Review Panel under Subdivision 4 of Division 5 of Part 8.

Performance Review Panel means a Performance Review Panel established under section 174.

pharmacist means a person registered under this Law in the pharmacy profession.

President means the President of a Council.

professional misconduct has the meaning given by section 139E.

Professional Standards Committee means a Professional Standards Committee established under section 169.

prohibition order has the meaning given by section 149C(5).

protected report means any of the following reports—

- (a) a report prepared by an Impaired Registrants Panel for a Council;
- (b) a report prepared by an assessor for a Council or Performance Review Panel;
- (c) a report prepared by a registered health practitioner about an examination conducted under section 145E, 152B or 152C;
- (d) a report prepared by a registered health practitioner for a Council in connection with an examination of a person by the health practitioner as required by a condition of registration or an order imposed by an adjudication body on the person;
- (e) a report prepared by a registered health practitioner for a Council under a request made by a person to the health practitioner in connection with a matter being dealt with by an Impaired Registrants Panel;
- (f) a report prepared, under clause 12 of Schedule 5B, by a person giving expert advice to a Performance Review Panel.

repealed Act means any of the following Acts—

- (a) *Chiropractors Act 2001*;
- (b) *Dental Practice Act 2001*;

- (c) *Medical Practice Act 1992*;
- (d) *Nurses and Midwives Act 1991*;
- (e) *Optometrists Act 2002*;
- (f) *Osteopaths Act 2001*;
- (g) *Pharmacy Practice Act 2006*;
- (h) *Physiotherapists Act 2001*;
- (i) *Podiatrists Act 2003*;
- (j) *Psychologists Act 2001*.

Secretary means the Secretary of the Ministry of Health.

sex or violence offence means an offence involving any of the following, other than an offence prescribed by the NSW regulations—

- (a) sexual activity;
- (b) acts of indecency;
- (c) child pornography or child abuse material (within the meaning of the *Crimes Act 1900*);
- (d) physical violence or the threat of physical violence.

Tribunal means the Civil and Administrative Tribunal.

Tribunal List Manager means the List Manager of the Health Practitioner List of the Occupational Division of the Tribunal.

unsatisfactory professional conduct has the meaning given by sections 139B-139D.

- (2) A term defined in subsection (1) for this Part and also used in another NSW provision has the same meaning in the other NSW provision as it has in this Part.

139 Competence to practise health profession [NSW]

A person is **competent** to practise a health profession only if the person—

- (a) has sufficient physical capacity, mental capacity, knowledge and skill to practise the profession; and
- (b) has sufficient communication skills for the practice of the profession, including an adequate command of the English language.

139A Confidential information [NSW]

Information is **confidential information** for the purposes of a statement of a decision under this Law if it falls into any of the following categories—

- (a) it has not previously been published or made available to the public when the statement of the decision to which it is or may be relevant is being prepared;
- (b) it relates to the personal or business affairs of a person other than a person to whom the statement is required to be provided or would be required to be provided but for the fact that it contains confidential information;
- (c) it was supplied in confidence;
- (d) its publication would reveal a trade secret;
- (e) it was provided in compliance with a duty imposed by or under an Act;
- (f) its inclusion in the statement would be a contravention of an Act;
- (g) it is a protected report or would reveal the contents of a protected report.

139B Meaning of “unsatisfactory professional conduct” of registered health practitioner generally [NSW]

(1) **Unsatisfactory professional conduct** of a registered health practitioner includes each of the following—

(a) **Conduct significantly below reasonable standard**

Conduct that demonstrates the knowledge, skill or judgment possessed, or care exercised, by the practitioner in the practice of the practitioner’s profession is significantly below the standard reasonably expected of a practitioner of an equivalent level of training or experience.

(b) **Contravention of this Law or regulations**

A contravention by the practitioner (whether by act or omission) of a provision of this Law, or the regulations under this Law or under the NSW regulations, whether or not the practitioner has been prosecuted for or convicted of an offence in respect of the contravention.

(c) **Contravention of conditions of registration or undertaking**

A contravention by the practitioner (whether by act or omission) of—

- (i) a condition to which the practitioner’s registration is subject; or
- (ii) an undertaking given to a National Board.

(d) **Failure to comply with decision or order of Committee or the Tribunal**

A contravention by the practitioner (whether by act or omission) of a decision or order made by a Committee or the Tribunal in relation to the practitioner.

(e) **Contravention of requirement under [Health Care Complaints Act 1993](#)**

A contravention by the practitioner of section 34A(4) of the [Health Care Complaints Act 1993](#).

(f) **Accepting benefit for referral or recommendation to health service provider**

Accepting from a health service provider (or from another person on behalf of the health service provider) a benefit as inducement, consideration or reward for—

- (i) referring another person to the health service provider; or
- (ii) recommending another person use any health service provided by the health service provider or consult with the health service provider in relation to a health matter.

(g) **Accepting benefit for recommendation of health product**

Accepting from a person who supplies a health product (or from another person on behalf of the supplier) a benefit as inducement, consideration or reward for recommending that another person use the health product, but does not include accepting a benefit that consists of ordinary retail conduct.

(h) **Offering a benefit for a referral or recommendation**

Offering or giving a person a benefit as inducement, consideration or reward for the person—

- (i) referring another person to the registered health practitioner; or
- (ii) recommending to another person that the person use a health service provided by the practitioner or consult the practitioner in relation to a health matter.

(i) **Failure to disclose financial interest in giving referral or recommendation**

Referring a person to, or recommending that a person use or consult—

- (i) another health service provider; or
- (ii) a health service; or
- (iii) a health product;

if the practitioner has a financial interest in giving that referral or

recommendation, unless the practitioner discloses the nature of the interest to the person before or at the time of giving the referral or recommendation.

(j) **Engaging in overservicing**

Engaging in overservicing.

(k) **Supervision of assistants**

Permitting an assistant employed by the practitioner (in connection with the practitioner's professional practice) who is not a registered health practitioner to attend, treat or perform operations on patients in respect of matters requiring professional discretion or skill.

(l) **Other improper or unethical conduct**

Any other improper or unethical conduct relating to the practice or purported practice of the practitioner's profession.

(2) For the purposes of subsection (1)(i), a registered health practitioner has a **financial interest** in giving a referral or recommendation—

- (a) if the health service provider, or the supplier of the health product, to which the referral or recommendation relates is a public company and the practitioner holds 5% or more of the issued share capital of the company; or
- (b) if the health service provider, or the supplier of the health product, to which the referral or recommendation relates is a private company and the practitioner has any interest in the company; or
- (c) if the health service provider, or the supplier of the health product, to whom the referral or recommendation relates is a natural person who is a partner of the practitioner; or
- (d) in any circumstances prescribed by the NSW regulations.

(3) For avoidance of doubt, a reference in this section to a referral or recommendation that is given to a person includes a referral or recommendation that is given to more than one person or to persons of a particular class.

(4) In this section—

benefit means money, property or anything else of value.

recommend a health product includes supply or prescribe the health product.

supply includes sell.

139C Additional matters that constitute unsatisfactory professional conduct of medical

practitioners [NSW]

In addition to the matters referred to in section 139B, **unsatisfactory professional conduct** of a medical practitioner also includes each of the following—

(a) **Criminal convictions and criminal findings**

Conduct that results in the medical practitioner being convicted of or being made the subject of a criminal finding for any of the following offences—

- (i) an offence under section 102 of the *Mental Health Act 2007*;
- (ii) an offence under section 175 of the *Children and Young Persons (Care and Protection) Act 1998*;
- (iii) an offence under section 35 of the *Guardianship Act 1987*;
- (iv) an offence under section 128A, 128B, 129 or 129AA of the *Health Insurance Act 1973* of the Commonwealth;
- (v) an offence under section 58 of the *Private Health Facilities Act 2007*.

(b) **Assisting unregistered practitioners**

By the medical practitioner's presence, countenance, advice, assistance or co-operation, knowingly enable a person who is not a medical practitioner (whether or not that person is described as an assistant) or is not otherwise authorised by a National Board to—

- (i) perform operative surgery (as distinct from manipulative surgery) on a patient in respect of any matter requiring professional discretion or skill; or
- (ii) issue or procure the issue of a certificate, notification, report or other like document, or to engage in professional practice, as if the person were a medical practitioner.

(c) **Failing to render urgent attention**

Refusing or failing, without reasonable cause, to attend (within a reasonable time after being requested to do so) on a person for the purpose of rendering professional services in the capacity of a medical practitioner if the practitioner has reasonable cause to believe the person is in need of urgent attention by a medical practitioner, unless the practitioner has taken all reasonable steps to ensure that another medical practitioner attends instead within a reasonable time.

139D Additional matters that constitute unsatisfactory professional conduct of pharmacists [NSW]

(1) In addition to the matters referred to in section 139B, **unsatisfactory professional conduct** of a pharmacist also includes each of the following—

- (a) practising pharmacy for remuneration at a pharmacy in the course of employment by, or in association with, a non-pharmacist;
 - (b) the supply of precursor drugs, or preparations, admixtures, extracts or other substances containing a proportion of precursor drugs, by the pharmacist in circumstances in which the supply of the drugs, preparations, admixtures, extracts or other substances is unnecessary, not reasonably required, or excessive;
 - (c) if the pharmacist is the owner of, or otherwise has a financial interest in, a pharmacy business, failing to display at or near the main entrance of each premises in which the business is carried on the owner's name;
 - (d) if the pharmacist is the pharmacist in charge of a pharmacy, failing to display adjacent to the area where dispensing is carried on in the pharmacy the name of the pharmacist in charge followed by the words "PHARMACIST IN CHARGE";
 - (e) if the pharmacist is the owner of, or otherwise has a financial interest in, a pharmacy business, failing to ensure drug price information displayed in premises in which the business is carried on does not contravene the Price Information Code of Practice (within the meaning of Schedule 5F).
- (2) For the purposes of subsection (1)(c) and (e), the owner of a pharmacy business includes—
- (a) a pharmacist who has a financial interest in the pharmacy business; and
 - (b) a pharmacist who is nominated by the owner of the pharmacy business as being responsible for the matters referred to in clause 6(2)(c) or 7(2) of Schedule 5F.
- (3) In this section—
- non-pharmacist** means an entity that is not a pharmacist, but does not include any of the following—
- (a) the Crown;
 - (b) a public health organisation or a charitable or philanthropic institution;
 - (c) a pharmacists' partnership or pharmacists' body corporate;
 - (d) a friendly or other society that owns a pharmacy business as permitted by clause 6 of Schedule 5F;
 - (e) a body corporate that owns or carries on a pharmacy business under clause 7 of Schedule 5F;
 - (f) a person who has a financial interest in a pharmacy business as referred to in clause 5(4) or (5) of Schedule 5F and who carries on that business;

- (g) a person who, in assuming the administration of the property of another person under a security interest granted in respect of that other person's pharmacy business, carries on that pharmacy business.

precursor drug has the same meaning as **precursor** has in section 24A of the *Drug Misuse and Trafficking Act 1985*.

139E Meaning of “professional misconduct” [NSW]

For the purposes of this Law, **professional misconduct** of a registered health practitioner means—

- (a) unsatisfactory professional conduct of a sufficiently serious nature to justify suspension or cancellation of the practitioner's registration; or
- (b) more than one instance of unsatisfactory professional conduct that, when the instances are considered together, amount to conduct of a sufficiently serious nature to justify suspension or cancellation of the practitioner's registration.

139F References to “complaint” [NSW]

In Subdivisions 1–6 of Division 3 and in Subdivisions 1 and 2 of Division 6, a reference to a complaint includes a reference to a matter arising out of the investigation of a complaint in accordance with this Law or another Act.

139G 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) applies, with any necessary changes, to the person as if a reference to a registered health practitioner included that person.

Note—

This section is a Health Practitioner Regulation National Law provision.

139H 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) applies, with any necessary changes, to the person as if a reference to a registered health practitioner included that person.

Note—

This section is a Health Practitioner Regulation National Law provision.

139I Notifications under section 130 [NSW]

A notice under section 130 is taken to be a complaint both for the purposes of this Part and for the purposes of the [Health Care Complaints Act 1993](#) (including sections 96 and 98 of that Act).

Division 2 Mandatory notifications

Note—

This Division is a Health Practitioner Regulation National Law provision.

140 Definition of notifiable conduct

In this Division—

notifiable conduct, in relation to a registered health practitioner, means the practitioner has—

- (a) practised the practitioner's profession while intoxicated by alcohol or drugs; or
- (b) engaged in sexual misconduct in connection with the practice of the practitioner's profession; or
- (c) placed the public at risk of substantial harm in the practitioner's practice of the profession because the practitioner has an impairment; or
- (d) placed the public at risk of harm because the practitioner has practised the profession in a way that constitutes a significant departure from accepted professional standards.

141 Mandatory notifications by health 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.

- (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.

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.

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 notifications 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 that registered the student must publish details of the failure on the Board's website; and
 - (b) the National Agency may, on the recommendation of the National Board, include a statement about the failure in the Agency's annual report.

143A Mandatory notifications [NSW]

A mandatory notification is taken to be a complaint both for the purposes of this Part and for the purposes of the [Health Care Complaints Act 1993](#) (including sections 96 and 98 of that Act).

Note—

This section is an additional New South Wales provision.

Division 3 Complaints [NSW]

Subdivision 1 Making complaints [NSW]

144 Grounds for complaint about registered health practitioner [NSW]

The following complaints may be made about a registered health practitioner—

(a) **Criminal conviction or criminal finding**

A complaint the practitioner has, either in this jurisdiction or elsewhere, been convicted of or made the subject of a criminal finding for an offence.

(b) **Unsatisfactory professional conduct or professional misconduct**

A complaint the practitioner has been guilty of unsatisfactory professional conduct or professional misconduct.

(c) **Lack of competence**

A complaint the practitioner is not competent to practise the practitioner's profession.

(d) **Impairment**

A complaint the practitioner has an impairment.

(e) **Suitable person**

A complaint the practitioner is otherwise not a suitable person to hold registration in the practitioner's profession.

144A Grounds for complaint about student [NSW]

The following complaints may be made about a student—

(a) **Offences**

A complaint the student has, either in this jurisdiction or elsewhere, been charged with an offence, or has been convicted of or made the subject of a criminal finding for an offence, that is punishable by 12 months imprisonment or more.

(b) **Impairment**

A complaint the student has an impairment.

(c) **Contravention of conditions**

A complaint that the student has contravened a condition of the student's registration or an undertaking given by the student to a National Board.

144B Who can make complaint [NSW]

- (1) Any person can make a complaint.
- (2) A complaint may also be made by a Council or the Secretary.

144C Complaints may be made to Council or Health Care Complaints Commission [NSW]

A complaint may be made to a Council or the Commission.

144D Complaints to be in writing [NSW]

- (1) A complaint, other than a complaint made by a Council or the Secretary, must—
 - (a) be in writing; and
 - (b) contain particulars of the allegations on which it is founded.

- (2) A complaint need not be made in terms that are strictly consistent with the terminology of section 144 or 144A.
- (3) A Council or the Commission may consider and investigate a complaint that does not comply with the requirements of subsection (1) but must not refer the complaint under Subdivision 2 until the requirements are complied with.

144E Where to lodge complaints [NSW]

- (1) A complaint made to a Council must be lodged with the Executive Officer of the Council.
- (2) A complaint made to the Commission is, in accordance with section 9 of the *Health Care Complaints Act 1993*, to be lodged with the Commission.

144F Further particulars may be required from complainant [NSW]

A Council or the Commission may require the complainant to provide further particulars of a complaint.

144G Council to notify Commission and National Boards of complaints [NSW]

A Council must, as soon as practicable after a complaint is made to or by the Council about a registered health practitioner or student, notify the following persons about the complaint or matter—

- (a) the Commission;
- (b) the National Board for the health profession in which the registered health practitioner or student is registered.

Subdivision 2 How complaints are to be dealt with [NSW]

145 Complaints to be dealt with expeditiously [NSW]

All complaints are to be dealt with expeditiously.

145A Council and Commission to consult on complaint [NSW]

- (1) Before any action is taken on a complaint, a Council and the Commission must consult to see if agreement can be reached between them as to the course of action to be taken concerning the complaint.
- (2) Division 2 of Part 2 of the *Health Care Complaints Act 1993* applies to the consultation, despite the other provisions of this Subdivision.

145B Courses of action available to Council on complaint [NSW]

- (1) The following courses of action are available to a Council in respect of a complaint—

- (a) the Council may make any inquiries about the complaint the Council thinks appropriate;
 - (b) the Council may refer the complaint to the Commission for investigation;
 - (c) the Council may refer the complaint to the Tribunal;
 - (d) the Council may refer the complaint to a Committee;
 - (e) for a complaint about a health practitioner or student who is registered in a health profession other than the medical or nursing and midwifery profession, the Council may deal with the complaint by inquiry at a meeting of the Council;
 - (f) the Council may—
 - (i) refer the practitioner or student for a health assessment; or
 - (ii) refer the matter to an Impaired Registrants Panel; or
 - (iii) refer the professional performance of the practitioner concerned for a performance assessment;
 - (g) the Council may direct the practitioner or student concerned to attend counselling;
 - (h) the Council may refer the complaint to the Commission for conciliation or to be dealt with under Division 9 of Part 2 of the *Health Care Complaints Act 1993*;
 - (i) the Council may refer the complaint to another entity, including, for example, a National Board;
 - (j) the Council may determine that no further action should be taken in respect of the complaint.
- (2) The Commission must, on receipt of a complaint referred by a Council for investigation, investigate the complaint or cause it to be investigated.
- (3) If a Council makes a referral under subsection (1)(f), the matter ceases to be a complaint for the purposes of this Law and the *Health Care Complaints Act 1993*.
- (4) Subsection (3) ceases to apply in respect of any matter that a Council subsequently deals with as a complaint.

145BA Notification of outcomes of complaints to complainants [NSW]

- (1) This section applies to a Council for a health profession with respect to any of the following outcomes (a **notifiable outcome**) concerning complaints against health practitioners or students—
- (a) if the Council deals with a complaint by inquiry at a meeting of the Council under

section 145B (1) (e)—the result of the inquiry;

- (b) if the Council refers a health practitioner (or a matter concerning the practitioner's health or professional performance) for assessment under section 145B (1) (f)—any action resulting from the assessment (including the imposition of conditions on the health practitioner's registration);
- (c) a decision of the Council to take action under section 145B (1) (g), (h), (i) or (j) in respect of a complaint.

- (2) The Council must give the complainant notice in writing of a notifiable outcome within 30 days after the outcome.
- (3) The Council may include such other information in the notice in addition to indicating the outcome as it considers appropriate.
- (4) However, the Council must not disclose confidential information in a notice unless it considers that the public interest in disclosing the information outweighs the public interest in protecting the confidentiality of the information and the privacy of any person to whom it relates.
- (5) For avoidance of doubt, section 145B (3) does not affect the obligation of a Council under this section to give notice of a notifiable outcome of the kind referred to in subsection (1) (b).

145C Courses of action available to the Commission on complaint [NSW]

- (1) The following courses of action are available to the Commission in respect of a complaint made to the Commission, or that the Commission has decided to make, about a registered health practitioner or student—
 - (a) the Commission may refer the complaint to the Council for the health profession in which the practitioner or student is registered or, after consultation with a Council, to a Committee or the Tribunal;
 - (b) the Commission may refer the complaint for conciliation or deal with the complaint under Division 9 of Part 2 of the *Health Care Complaints Act 1993*;
 - (c) the Commission may refer the complaint to another entity, including, for example, a National Board;
 - (d) the Commission may determine that no further action should be taken in respect of the complaint;
 - (e) the Commission may take any other action that it can take under the *Health Care Complaints Act 1993*.
- (2) If the Commission refers a complaint to a Committee or the Tribunal, the Commission

must inform the Council accordingly.

145D Serious complaints must be referred to Tribunal [NSW]

- (1) Both a Council for a health profession and the Commission are under a duty to refer a complaint to the Tribunal if, at any time, either forms the opinion that it may, if substantiated, provide grounds for the suspension or cancellation of a registered health practitioner's or student's registration.
- (2) However, either the Council or the Commission may decide not to refer the complaint to the Tribunal if of the opinion the allegations on which the complaint is founded (and on which any other pending complaint against the registered health practitioner or student is founded) relate solely or principally to—
 - (a) for a practitioner, the physical or mental capacity of the practitioner to practise the practitioner's profession; or
 - (b) for a student, the physical or mental capacity of the student to undertake clinical training in the health profession in which the student is registered.
- (3) If the Council decides not to refer the complaint to the Tribunal, the Council must instead refer the complaint to a Committee or Impaired Registrants Panel.
- (4) If the Commission decides not to refer the complaint to the Tribunal, the Commission must instead refer the complaint to the Council.
- (5) This section does not require the Council or the Commission to refer a complaint the Council or Commission thinks is frivolous or vexatious.

Note—

A referral under this section is an application made to the Tribunal for a general decision for the purposes of the [Civil and Administrative Tribunal Act 2013](#).

145E Council may require health practitioner or student to undergo examination [NSW]

- (1) A Council may, by written notice given to a registered health practitioner or student against whom a complaint has been made, direct the practitioner or student to undergo an examination by a specified registered health practitioner at a specified reasonable time and place.
- (2) A registered health practitioner or student must not be directed to undergo an examination under subsection (1) unless it is reasonable to require the examination, given the nature of the complaint against the practitioner or student.
- (3) The fee charged by the specified registered health practitioner for the examination is at the expense of the Council.

145F Result of failure to attend counselling or examination [NSW]

A failure by a registered health practitioner or student, without reasonable excuse, to comply with a direction under section 145B to attend counselling or under section 145E to undergo an examination is, for the purposes of this Law and any inquiry or appeal under this Law, evidence that the practitioner or student—

- (a) for a registered health practitioner, does not have sufficient physical or mental capacity to practise the health profession in which the practitioner is registered; or
- (b) for a student, does not have sufficient physical or mental capacity to undertake clinical training in the health profession in which the student is registered.

145G Inquiries etc not prevented by other proceedings [NSW]

A complaint can be referred to a Committee or the Tribunal, and dealt with by the Committee or Tribunal, even though the practitioner or student concerned is the subject of proposed or current criminal or civil proceedings relating to the subject-matter of the complaint.

145H Complaint not to be referred if health practitioner or student dead [NSW]

A complaint is not to be referred under this Subdivision if the registered health practitioner or student concerned is dead.

145I Complaint need not be referred if health practitioner or student no longer registered [NSW]

A Council or the Commission may decide not to refer a complaint under this Subdivision if the registered health practitioner or student concerned has ceased to be registered.

145J Complaint need not be referred if complainant fails to provide further particulars [NSW]

A Council or the Commission may decide not to refer a complaint under this Subdivision if the complainant has failed to provide further particulars in response to a request by the Council or the Commission.

Subdivision 3 Disciplinary powers of Professional Standards Committees [NSW]

146 Definitions [NSW]

In this Subdivision—

Committee means a Professional Standards Committee.

relevant health practitioner means a health practitioner registered under this Law in the—

- (a) medical profession; or
- (b) nursing and midwifery profession.

146A Powers may be exercised if complaint proved or admitted [NSW]

A Committee may exercise any power conferred on it by this Subdivision if it finds the subject-matter of a complaint against a relevant health practitioner to have been proved or the relevant health practitioner who is the subject of the complaint admits to it in writing to the Committee.

146B General powers to caution, reprimand, counsel etc [NSW]

- (1) A Committee may do one or more of the following in relation to a relevant health practitioner the subject of a complaint referred to it—
 - (a) caution or reprimand the practitioner;
 - (b) impose the conditions it considers appropriate on the practitioner's registration;
 - (c) order that the practitioner seek and undergo medical or psychiatric treatment or counselling (including, but not limited to, psychological counselling);
 - (d) order that the practitioner complete an educational course specified by the Committee;
 - (e) order that the practitioner report on the practitioner's practice at the times, in the way and to the persons specified by the Committee;
 - (f) order that the practitioner seek and take advice, in relation to the management of the practitioner's practice, from the persons specified by the Committee.
- (2) If the relevant health practitioner is not registered, a direction may still be given under this section but has effect only so as to require the conditions concerned to be imposed when the health practitioner is registered.
- (3) If a Committee acting under this section makes an order or directs that any condition be imposed on a health practitioner's registration, the Committee may order that a contravention of the order or condition will result in the health practitioner's registration in the health profession being cancelled.
- (4) The order or condition concerned is then a ***critical compliance order or condition***.

146C Power to fine in certain cases [NSW]

- (1) A Committee may by order impose a fine of an amount of not more than 50 penalty units on a relevant health practitioner the subject of a complaint referred to the committee.

- (2) A fine is not to be imposed unless—
 - (a) the Committee finds the relevant health practitioner to have been guilty of unsatisfactory professional conduct; and
 - (b) the Committee is satisfied there is no other order, or combination of orders, that is appropriate in the public interest.
- (3) A fine is not to be imposed if a fine or other penalty has already been imposed by a court in respect of the conduct.
- (4) A fine must be paid within the time specified in the order imposing the fine and must be paid to the Council.

146D Committee can recommend suspension or cancellation on grounds of lack of physical or mental capacity [NSW]

- (1) A Committee may recommend that a relevant health practitioner's registration be suspended for a specified period or that the practitioner's registration be cancelled if the Committee is satisfied the practitioner does not have sufficient physical or mental capacity to practise the practitioner's profession.
- (2) If the relevant health practitioner is no longer registered, a recommendation may be made under this section that the person be disqualified from being registered.
- (3) The Committee makes its recommendation by referring the matter, with its recommendation and the material on which it relied in making its recommendation, to the Tribunal.
- (4) The Tribunal may—
 - (a) make an order in the terms recommended; or
 - (b) may make another order about the suspension or cancellation of the registration of the relevant health practitioner as the Tribunal thinks proper based on the findings of the Committee.
- (5) An order under this section may also provide that an application for review of the order under Division 8 may not be made until after a specified time.
- (6) Instead of making an order under this section, the Tribunal may exercise any power of a Committee under this Subdivision.

146E Council may refer contravention of conditions to Tribunal [NSW]

- (1) If a Council for a health profession reasonably believes a relevant health practitioner has contravened any conditions imposed under a direction made by a Committee under this Subdivision, it may refer the matter to the Tribunal.

- (2) If the Tribunal finds the failure proved, it may exercise any power conferred on it by Subdivision 6.

Subdivision 4 Dealing with complaints by Assessment Committee [NSW]

147 Definitions [NSW]

In this Subdivision—

Committee means an Assessment Committee.

relevant health practitioner means a health practitioner registered under this Law other than a health practitioner registered in the—

- (a) medical profession; or
- (b) nursing and midwifery profession.

147A Complaints that may be referred to Committee [NSW]

- (1) A Council may refer a complaint to a Committee only if—
 - (a) the complaint is about a relevant health practitioner; and
 - (b) the Commission has decided not to investigate the complaint or following an investigation has decided not to refer the complaint to the Tribunal.
- (2) A complaint may not be referred to a Committee if it is a complaint that—
 - (a) the relevant health practitioner is not of good character; or
 - (b) the relevant health practitioner has been convicted of or made the subject of a criminal finding for an offence.
- (3) This section does not limit the Committee in the exercise of its functions under this Subdivision in relation to any matter that arises in the course of the Committee's investigation of a complaint.

147B How complaints are dealt with [NSW]

- (1) If a complaint is referred to a Committee, the Committee must investigate the complaint.
- (2) A Committee may obtain the medical, legal, financial or other advice it thinks necessary or desirable to enable it to exercise its functions.
- (3) Advice obtained by a Committee under subsection (2) may not, unless otherwise ordered by the Council, be admitted or used in civil proceedings before a court and a person may not be compelled to produce the advice or to give evidence in relation to

the advice in civil proceedings.

(4), (5) (Repealed)

147C Skills testing of relevant health practitioner [NSW]

- (1) A Council may direct a Committee to require the relevant health practitioner the subject of the complaint referred to the Committee to undergo skills testing.
- (2) The Committee must, by written notice given to the relevant health practitioner, require the health practitioner to undergo skills testing by an appropriately qualified person specified in the notice, at the reasonable time and place specified in the notice.
- (3) A failure by the relevant health practitioner, without reasonable excuse, to comply with the notice is, for the purposes of this Part or any inquiry or appeal under this Law, evidence the health practitioner does not have sufficient skill to practise the health profession in which the health practitioner is registered.
- (4) A person who conducts skills testing for the purposes of this section must report to the Committee on the results of the testing.
- (5) The Committee must give a copy of the report to the relevant health practitioner.
- (6) A person must not, directly or indirectly, make a record of or divulge to any person any information contained in a report to a Committee under this section that has come to the person's notice in the exercise of the person's functions under this Law, other than for the purpose of exercising the person's functions under this Law.

Maximum penalty—50 penalty units.

- (7) A person cannot be required in civil proceedings in any court to produce or permit access to a report made to a Committee under this section or to divulge the contents of the report.
- (8) In this section—

report includes a copy, reproduction and duplicate of the report or any part of the report, copy, reproduction or duplicate.

147D Recommendations of Committee [NSW]

- (1) A Committee's report to a Council may include the recommendations about the complaint the Committee considers appropriate, including any of the following—
 - (a) a recommendation that the Council deal with the complaint by inquiry at a meeting of the Council as a complaint of unsatisfactory professional conduct;
 - (b) a recommendation that the Council direct the relevant health practitioner to

attend counselling;

(c) a recommendation that the Council dismiss the complaint.

(2) The Council must give the relevant health practitioner and the Commission a copy of the Committee's report as soon as practicable after the report is made.

(3) The Council must—

(a) if the Committee recommends that the Council deal with the complaint by inquiry at a meeting of the Council as a complaint of unsatisfactory professional conduct, comply with the recommendation; or

(b) otherwise, allow the Commission and the relevant health practitioner, not less than 21 days after they have been given a copy of the Committee's report and recommendations, to make submissions about the report and recommendations.

(4) After considering the Committee's report and recommendations and any submissions made by the Commission or relevant health practitioner, the Council must proceed to deal with the complaint as provided by section 145B.

Note—

See section 145D which provides that both Council and the Commission have a duty to refer a complaint to the Tribunal if, at any time, either of them is of the opinion that the complaint, if substantiated, would provide grounds for the suspension or cancellation of the relevant health practitioner's registration.

147E No representation for parties appearing before Committee [NSW]

A complainant and the relevant health practitioner the subject of the complaint are not entitled to be legally represented at an appearance before a Committee.

Subdivision 5 Dealing with complaint by inquiry at meeting of Council [NSW]

148 Application of Subdivision [NSW]

This Subdivision does not apply to a complaint about a health practitioner or student registered in—

(a) the medical profession; or

(b) the nursing and midwifery profession.

148A Procedures for dealing with complaint at meeting [NSW]

(1) If a Council decides to deal with a complaint about a registered health practitioner or student by inquiry at a meeting of the Council, the meeting must be held in accordance with Part 3 of Schedule 5C and this Subdivision.

- (2) The Council may be assisted by a legal practitioner when dealing with the complaint at a meeting of the Council.
- (3) The Council must give the Commission a copy of any submission made to the Council by the registered health practitioner or student in respect of the complaint or in respect of any recommendation of the Committee concerning the complaint.

148B General procedure [NSW]

The procedure for the calling of a meeting to deal with a complaint and for the conduct of the meeting is, subject to this Law and the NSW regulations, to be decided by the Council.

148C Conduct of meeting [NSW]

At the meeting to deal with the complaint, the Council—

- (a) may inform itself on any matter in the way it thinks fit; and
- (b) may receive written or oral submissions; and
- (c) must proceed with as little formality and technicality, and as much expedition, as the requirements of this Law and the proper consideration of the complaint permit; and
- (d) is not bound by rules of evidence; and
- (e) may proceed to deal with the complaint in the absence of the registered health practitioner or student.

148D Making submissions to inquiry [NSW]

- (1) The registered health practitioner or student is entitled to attend the meeting at which the complaint is dealt with and to make submissions to the Council.
- (2) The Committee may, if the Council so requires, make a submission to the Council with respect to the complaint and may for that purpose attend the meeting at which the complaint is dealt with.
- (3) The Council must give the Commission the opportunity to make a submission to the Council with respect to the complaint and the Commission may for that purpose attend the meeting at which the complaint is dealt with.
- (4) The Committee or the Commission may not be present at the meeting except while actually making a submission, unless the Council otherwise decides.
- (5) Despite subsection (4), the Commission may be present throughout the Council's inquiry if the complaint is the subject of a recommendation of the Commission that it be dealt with by inquiry at a meeting of the Council under this Subdivision.
- (6) The registered health practitioner or student is not entitled to be legally represented

at the inquiry but may be accompanied by a support person. The support person can be an Australian lawyer.

(7) The Commission is not entitled to be legally represented at the inquiry.

148E General powers of Council [NSW]

- (1) The Council may do any one or more of the following in relation to the health practitioner the subject of the inquiry—
- (a) caution or reprimand the practitioner;
 - (b) make an order for the withholding or refunding of part or all of the payment with respect to the fees to be charged or paid for the services that are the subject of the complaint;
 - (c) impose the conditions it considers appropriate on the practitioner's registration;
 - (d) order that the practitioner seek and undergo medical or psychiatric treatment or counselling (including, but not limited to, psychological counselling);
 - (e) order that the practitioner complete an educational course specified by the Council;
 - (f) order that the practitioner report on his or her practice at the times, in the way and to the persons specified by the Council;
 - (g) order that the practitioner seek and take advice, in relation to the management of his or her practice, from persons specified by the Council.
- (2) The Council may do any one or more of the following in relation to the student the subject of the inquiry—
- (a) caution or reprimand the student;
 - (b) impose the conditions it considers appropriate on the student's registration;
 - (c) order that the student seek and undergo medical or psychiatric treatment or counselling (including, but not limited to, psychological counselling);
 - (d) order that the student complete an educational course specified by the Council.
- (3) If the person is not registered, an order or direction can still be given under this section but has effect only so as to prevent the person being registered unless the order is complied with or to require the conditions concerned to be imposed when the person is registered, as appropriate.

148F Power to fine in certain cases [NSW]

- (1) The Council may by order impose a fine, of an amount of not more than 50 penalty

units, on the health practitioner the subject of the inquiry.

- (2) A fine is not to be imposed unless—
 - (a) the Council finds the health practitioner to have been guilty of unsatisfactory professional conduct; and
 - (b) the Council is satisfied there is no other order, or combination of orders, that is appropriate in the public interest.
- (3) A fine is not to be imposed if a fine or other penalty has already been imposed by a court in respect of the conduct.
- (4) A fine must be paid within the time specified in the order imposing the fine and must be paid to the Council.

148G Power of Council to recommend suspension or cancellation of registration [NSW]

- (1) The Council may recommend that the registration of the registered health practitioner or student be suspended for a specified period or cancelled if the Council is satisfied the health practitioner or student—
 - (a) for a health practitioner, does not have sufficient physical or mental capacity to practise the practitioner's profession; or
 - (b) for a student, has an impairment.
- (2) If the health practitioner is not registered, a recommendation can be made under this section that the health practitioner not be registered.
- (3) The Council makes its recommendation by referring the matter with its recommendation to the Tribunal.
- (4) The Tribunal may—
 - (a) make an order in the terms recommended; or
 - (b) make another order about the suspension or cancellation of the health practitioner's or student's registration as the Tribunal thinks proper based on the Council's findings.
- (5) An order may also provide that an application for review of the order under Division 8 may not be made until after a specified time.
- (6) Instead of making an order under this section, the Tribunal may exercise any power or combination of powers of the Council under this Subdivision.

148H Decision of the Council [NSW]

- (1) The Council must, within 30 days of making its decision on the complaint, make

available to the complainant, the registered health practitioner or student concerned, the National Board and any other persons it thinks fit, a written statement of the decision.

- (2) If the Commission made a submission to the Council with respect to the complaint, the Council must provide the Commission with a copy of the written statement of the decision.
- (3) The written statement of a decision must give the reasons for the decision.
- (4) The Council is not required to include confidential information in the statement.
- (5) If the statement would be false or misleading if it did not include the confidential information, the Council is not required to provide the statement.
- (6) If confidential information is not included in the statement given to a person or the statement is not given to a person because of subsection (5), the Council must give a confidential information notice to the person.
- (7) A confidential information notice must be given within one month after the decision is made.
- (8) This section does not affect the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court.

148I Admissibility of Council's findings [NSW]

A finding of a Council under this Subdivision is admissible as evidence in any legal proceedings.

Subdivision 6 Disciplinary powers of Tribunals [NSW]

149 Powers may be exercised if complaint proved or admitted [NSW]

The Tribunal may exercise any power conferred on it by this Subdivision in relation to a registered health practitioner or student if—

- (a) it finds the subject-matter of a complaint against the practitioner or student to have been proved; or
- (b) the practitioner or student admits to it in writing to the Tribunal.

149A General powers to caution, reprimand, counsel etc [NSW]

- (1) The Tribunal may do any one or more of the following in relation to the registered health practitioner—
 - (a) caution or reprimand the practitioner;

- (b) impose the conditions it considers appropriate on the practitioner's registration;
 - (c) order the practitioner to seek and undergo medical or psychiatric treatment or counselling (including, but not limited to, psychological counselling);
 - (d) order the practitioner to complete an educational course specified by the Tribunal;
 - (e) order the practitioner to report on the practitioner's practice at the times, in the way and to the persons specified by the Tribunal;
 - (f) order the practitioner to seek and take advice, in relation to the management of the practitioner's practice, from persons specified by the Tribunal.
- (2) The Tribunal may do any one or more of the following in relation to the student—
- (a) caution or reprimand the student;
 - (b) impose the conditions it considers appropriate on the student's registration;
 - (c) order the student to seek and undergo medical or psychiatric treatment or counselling (including, but not limited to, psychological counselling);
 - (d) order the student to complete an educational course specified by the Tribunal.
- (3) If the health practitioner is no longer registered, an order or direction may still be given under this section but has effect only—
- (a) to prevent the practitioner being registered unless the order is complied with; or
 - (b) to require the conditions concerned to be imposed when the practitioner is registered.
- (4) If the Tribunal makes an order or imposes a condition on the registered health practitioner's or student's registration, the Tribunal may order that a contravention of the order or condition will result in the practitioner's or student's registration being cancelled.
- (5) The order or condition concerned is then a ***critical compliance order or condition***.

149B Power to fine registered health practitioner in certain cases [NSW]

- (1) The Tribunal may by order impose a fine on the registered health practitioner of an amount of not more than 250 penalty units.
- (2) A fine is not to be imposed unless—
- (a) the Tribunal finds the registered health practitioner to have been guilty of unsatisfactory professional conduct or professional misconduct; and
 - (b) the Tribunal is satisfied there is no other order, or combination of orders, that is

appropriate in the public interest.

- (3) A fine is not to be imposed if a fine or other penalty has already been imposed by a court in respect of the conduct.
- (4) A fine must be paid within the time specified in the order imposing the fine and must be paid to the Council for the health profession.

149C Tribunal may suspend or cancel registration in certain cases [NSW]

- (1) The Tribunal may suspend a registered health practitioner's registration for a specified period or cancel the registered health practitioner's registration if the Tribunal is satisfied—
 - (a) the practitioner is not competent to practise the practitioner's profession; or
 - (b) the practitioner is guilty of professional misconduct; or
 - (c) the practitioner has been convicted of or made the subject of a criminal finding for an offence, either in or outside this jurisdiction, and the circumstances of the offence render the practitioner unfit in the public interest to practise the practitioner's profession; or
 - (d) the practitioner is not a suitable person for registration in the practitioner's profession.
- (2) The Tribunal may suspend a student's registration for a specified period or cancel the student's registration if the Tribunal is satisfied—
 - (a) the student has been convicted of or made the subject of a criminal finding for an offence, either in or outside this jurisdiction, and the circumstances of the offence render the student unfit in the public interest to undertake clinical training in the health profession; or
 - (b) the student is otherwise not a suitable person to undertake clinical training in the health profession.
- (3) The Tribunal must cancel a registered health practitioner's or student's registration if the Tribunal is satisfied the practitioner or student has contravened a critical compliance order or condition.
- (4) If the person is no longer registered, the Tribunal may—
 - (a) decide that if the person were still registered the Tribunal would have suspended or cancelled the person's registration; and
 - (b) if the Tribunal would have cancelled the person's registration, decide that the person is disqualified from being registered in the health profession for a specified period or until specified conditions have been complied with; and

(c) require the National Board with which the person was registered to record the fact that the Tribunal would have suspended or cancelled the person's registration in the National Register kept by the Board.

(5) If the Tribunal suspends or cancels a registered health practitioner's or student's registration and it is satisfied the person poses a substantial risk to the health of members of the public, it may by order (a **prohibition order**) do any one or more of the following—

(a) prohibit the person from providing health services or specified health services for the period specified in the order or permanently;

(b) place specified conditions on the provision of health services or specified health services by the person for the period specified in the order or permanently.

Note—

Section 102(3) of the [Public Health Act 2010](#) provides that it is an offence for a person to provide a health service in contravention of a prohibition order.

(5A) The power of the Tribunal to make a prohibition order under subsection (5) extends to a person who is no longer registered if the Tribunal decides under subsection (4) that it would have suspended or cancelled the person's registration if the person were still registered.

(6) If the Tribunal is aware a registered health practitioner or student in respect of whom it is proposing to make a prohibition order is registered in a health profession other than the health profession in respect of which the Tribunal is making the order, the Tribunal must, before making the prohibition order—

(a) notify the Council and the National Board for that health profession, and the Commission, of the proposed order; and

(b) give the Council, National Board and Commission an opportunity to make a submission.

(7) An order may also provide that an application for review of the order under Division 8 may not be made until after a specified time.

149D Council may refer contravention of disciplinary order to Tribunal [NSW]

(1) If a Council for a health profession reasonably believes a person has failed to comply with an order (or conditions imposed under an order) made by the Tribunal under this Subdivision, it may refer the matter to the Tribunal.

(2) If the Tribunal finds the failure proved, it may exercise any power conferred on it by this Subdivision.

149E Effect of cancellation and disqualification decisions of Tribunal [NSW]

- (1) Despite any other provision of this Law, each of the following persons cannot make an application for registration as a health practitioner unless the Tribunal has made a reinstatement order under section 163B with respect to the person—
 - (a) a person whose registration as such a health practitioner has been cancelled by the Tribunal under this Law;
 - (b) a person who has been disqualified from being registered as such a health practitioner by the Tribunal under this Law.
- (2) Subsection (1) and Division 8 continue to apply in respect of a disqualified person and the disqualification order even if the period of disqualification has expired or specified conditions for the cessation of the disqualification have been complied with.

Subdivision 7 Powers of a Council for protection of public [NSW]

150 Suspension or conditions of registration to protect public [NSW]

- (1) A Council must, if at any time it is satisfied it is appropriate to do so for the protection of the health or safety of any person or persons (whether or not a particular person or persons) or if satisfied the action is otherwise in the public interest—
 - (a) by order suspend a registered health practitioner's or student's registration; or
 - (b) by order impose on a registered health practitioner's registration the conditions relating to the practitioner's practising the health profession the Council considers appropriate; or
 - (c) by order impose on a student's registration the conditions the Council considers appropriate.
- (2) A suspension of a registered health practitioner's or student's registration under subsection (1) has effect until the first of the following happens—
 - (a) the complaint about the practitioner or student is disposed of;
 - (b) the suspension is ended by the Council.
- (3) If a Council for a health profession is satisfied a health practitioner or student registered in the profession has contravened a critical compliance order or condition, the Council must—
 - (a) suspend the practitioner's or student's registration until a complaint concerning the matter is dealt with by the Tribunal; and
 - (b) refer the matter to the Tribunal as a complaint.

- (4) A Council for a health profession may take action under this section—
 - (a) whether or not a complaint has been made or referred to the Council about the practitioner or student; and
 - (b) whether or not proceedings in respect of a complaint about the practitioner or student are before a Committee or the Tribunal.
- (5) Without limiting the conditions that may be imposed under subsection (1)(b), a Council may impose a condition requiring the registered health practitioner to undergo a performance assessment, but the condition has no effect unless the Commission agrees with the imposition of the condition.
- (6) A Council must give written notice of action taken under this section to the registered health practitioner or student concerned.
- (7) If a Council delegates any function of the Council under this section to a group of 2 or more persons, at least one of those persons must be a person who—
 - (a) is not a registered health practitioner or student in the health profession for which the Council is established; and
 - (b) has not at any time been registered as a health practitioner or student in that health profession under this Law or a corresponding prior Act.

150A Review of certain decisions [NSW]

- (1) A registered health practitioner or student may apply to a Council for the review of a decision of the Council under section 150 to—
 - (a) suspend the practitioner's or student's registration; or
 - (b) impose conditions on the practitioner's or student's registration or alter conditions imposed on the practitioner's or student's registration.
- (2) On receiving an application for review, a Council—
 - (a) may refuse to reconsider its decision if, in the Council's opinion, the application is frivolous or vexatious; or
 - (b) must otherwise reconsider its decision, and in so doing must consider any new evidence or material submitted by the practitioner or student that the Council reasonably considers is relevant.
- (3) Following its reconsideration of a decision, a Council may—
 - (a) affirm or vary the decision; or
 - (b) set it aside and take any action the Council has the power to take under section 150.

- (4) A Council may vary or set aside a decision only if the Council is satisfied there has been a change in the registered health practitioner's or student's circumstances that justifies the variation or setting aside of the decision.

150B Audio recording of meeting [NSW]

- (1) A Council must cause an audio recording to be made of any proceedings of the Council in connection with the consideration by the Council of the exercise or proposed exercise of a function under this Subdivision in respect of a registered health practitioner or student—
 - (a) during which the practitioner or student, or the practitioner's or student's adviser, is present; or
 - (b) during which a person other than a member of the Council or a staff member of the Council is present and gives the Council oral information relevant to the Council's consideration.
- (2) A recording under this section is not admissible in evidence in—
 - (a) civil or criminal proceedings in a court of law (other than proceedings under this Law); or
 - (b) an inquest or inquiry under the *Coroners Act 2009*.

150C Power to remove or alter conditions or end suspension [NSW]

- (1) A Council may, at any time—
 - (a) end a period of suspension imposed by the Council under this Subdivision; or
 - (b) alter or remove conditions imposed under this Subdivision.
- (2) A Council may, at any time after taking action under section 150 with respect to a registered health practitioner or student (***the original action***), take any other action it could have taken under that section at the time of taking the original action.
- (3) The Council must give written notice of the action it takes under this section to the registered health practitioner or student concerned.

150D Referral of matter to Commission [NSW]

- (1) A Council must, as soon as practicable but no later than 7 days after taking action under section 150, refer the matter to the Commission for investigation.
- (2) The Council may (despite any other Act or law) give to the Commission information obtained by the Council in connection with the exercise of functions under section 150 (including information, copies of documents or evidence obtained under section 150J) and a copy of a recording made under section 150B) in respect of the matter.

- (3) The matter must be dealt with by the Commission as a complaint made to the Commission against the registered health practitioner or student concerned.
- (4) The Commission must investigate the complaint or cause it to be investigated and, as soon as practicable after it has completed its investigation and if it considers it appropriate to do so, refer the complaint to the Tribunal or a Committee for the health profession in which the health practitioner or student is registered.

Note—

See section 145D which provides that both Council and the Commission have a duty to refer a complaint to the Tribunal if, at any time, either of them is of the opinion that the complaint, if substantiated, would provide grounds for the suspension or cancellation of the registered health practitioner's or student's registration.

- (4A) Despite subsections (3) and (4), the Commission is not required to investigate the complaint or cause it to be investigated if the matter that is the subject of the complaint is being, or has been, investigated as, or as part of, another complaint to the Commission.
- (5) This section does not apply if a Council takes action against a registered health practitioner or student under section 150—
 - (a) because, in the Council's opinion, the practitioner or student has an impairment; or
 - (b) that is action of a kind referred to in section 150(5).

150E Special provision—performance assessment [NSW]

- (1) If the Commission agrees with the proposed imposition by a Council under section 150 of a condition on a registered health practitioner's registration requiring the practitioner to take part in a performance assessment, the matter giving rise to the proposal—
 - (a) must be dealt with by way of a performance assessment; and
 - (b) may, if the Council and the Commission agree, also be dealt with by the Commission as a complaint against the practitioner.
- (2) If the Commission does not agree with the imposition of the condition, the matter must be dealt with by the Commission as a complaint against the registered health practitioner.
- (3) The Council may (despite any other Act or law) provide to the Commission any information obtained by the Council in connection with the exercise of functions under section 150 (including any information, copies of documents or evidence obtained under section 150J) and a copy of any recording made under section 150B) in respect of the matter.

- (4) If a matter is to be dealt with under this section by way of a performance assessment, it may be so dealt with despite anything to the contrary in section 154A.
- (5) If the matter is to be dealt with as a complaint, the Council must refer the matter to the Commission and the matter must be dealt with by the Commission as a complaint made to the Commission against the practitioner concerned.
- (6) The Commission must investigate the complaint or cause it to be investigated and, as soon as practicable after the investigation is completed, refer the complaint to a Committee for the health profession or the Tribunal.

Note—

See section 145D which provides that both Council and the Commission have a duty to refer a complaint to the Tribunal if, at any time, either of them is of the opinion the complaint, if substantiated, would provide grounds for the suspension or cancellation of the health practitioner's registration.

150F Special provisions—impairment [NSW]

- (1) This section applies if a Council takes action against a registered health practitioner or student under section 150 because, in the Council's opinion, the practitioner or student has an impairment.
- (2) The Council must, as soon as practicable after taking that action and, in any event, within 7 days after taking that action, notify the Commission that it has taken that action.
- (3) The Council must consult with the Commission to see if agreement can be reached as to whether the matter should be—
 - (a) dealt with as a complaint against the registered health practitioner or student; or
 - (b) referred to an Impaired Registrants Panel.
- (4) The matter is to be dealt with as a complaint against the registered health practitioner or student only if, following the consultation—
 - (a) the Council and the Commission agree it should be dealt with as a complaint; or
 - (b) either the Council or the Commission is of the opinion the matter should be dealt with as a complaint.
- (5) If the matter is to be dealt with as a complaint, the Council must refer the matter to the Commission and the matter must be dealt with by the Commission as a complaint made to the Commission against the registered health practitioner or student.
- (6) The Commission must investigate the complaint or cause it to be investigated and, as soon as practicable after the investigation is completed, consult with the Council about how the matter is to be dealt with, including, for example, by referring the complaint to the Tribunal or a Committee for the health profession in which the health

practitioner or student is registered.

Note—

See section 145D which provides that both Council and the Commission have a duty to refer a complaint to the Tribunal if, at any time, either of them is of the opinion the complaint, if substantiated, would provide grounds for the suspension or cancellation of the health practitioner's or student's registration.

- (7) If the matter is not to be dealt with as a complaint, the Council must refer the matter to an Impaired Registrants Panel.

150FA Critical impairment conditions [NSW]

- (1) This section applies if a Council imposes or alters a condition under this Law on the registration of a health practitioner because of the impairment of the practitioner.

Note—

In relation to the alteration of conditions—see, for example, section 152K.

- (2) The Council may order that a contravention of a condition on the registration of a health practitioner that it imposes or alters because of the impairment of the practitioner will result in the contravention being referred to the Commission to be dealt with as a complaint against the practitioner. Any such condition is then a **critical impairment condition**.
- (3) If a Council for a health profession is satisfied a health practitioner registered in the profession has contravened a critical impairment condition—
 - (a) the Council must refer the matter to the Commission; and
 - (b) the matter may be dealt with by the Commission as a complaint made to the Commission against the practitioner.
- (4) If the Commission decides to deal with the matter as a complaint, the Commission must investigate the complaint or cause it to be investigated and, as soon as practicable after the investigation is completed, consult with the Council about how the matter is to be dealt with, including, for example, by referring the complaint to the Tribunal or a Committee for the health profession in which the health practitioner is registered.

Note—

See section 145D which provides that both a Council and the Commission have a duty to refer a complaint to the Tribunal if, at any time, either of them is of the opinion the complaint, if substantiated, would provide grounds for the suspension or cancellation of the health practitioner's or student's registration.

- (5) This section has effect despite anything to the contrary in this Law.

150G (Repealed)

150H Duration of conditions—complaint matters [NSW]

- (1) This section applies if—
 - (a) a Council for a health profession imposes conditions on the registration of a registered health practitioner or student under section 150; and
 - (b) the matter is dealt with as a complaint against the practitioner or student.
- (2) The conditions imposed by the Council have effect until the first of the following happens—
 - (a) the complaint about the registered health practitioner or student is disposed of;
 - (b) the conditions are removed by the Council.
- (3) This section—
 - (a) does not prevent conditions being imposed under another provision of this Law; and
 - (b) is subject to anything done by the Tribunal on an appeal.

150I Duration of conditions—impairment matters [NSW]

- (1) This section applies if—
 - (a) a Council for a health profession imposes conditions on the registration of a registered health practitioner or student under section 150; and
 - (b) the matter is referred to an Impaired Registrants Panel.
- (2) The conditions imposed by the Council have effect until the first of the following happens—
 - (a) if the matter is subsequently dealt with by the Council as a complaint, the complaint about the registered health practitioner or student is disposed of;
 - (b) the conditions are removed by the Council.
- (3) The Council is not required to alter or remove the conditions merely because the registered health practitioner or student agrees to conditions being imposed on the practitioner's or student's registration in accordance with the recommendations of an Impaired Registrants Panel.
- (4) If the registered health practitioner or student agrees to conditions being imposed on the practitioner's or student's registration in accordance with the recommendations of an Impaired Registrants Panel, the practitioner or student may, by written notice to the Council, ask for the conditions imposed under this Subdivision to be altered or removed.

- (5) On receipt of the request, the Council must review the matter, and may—
 - (a) refuse to alter or remove the conditions; or
 - (b) alter or remove the conditions.
- (6) The Council must give the registered health practitioner or student written notice of its decision.
- (7) The Council may specify in the notice a period during which a further request by the registered health practitioner or student for the conditions to be altered or removed is not permitted.
- (8) The Council may reject a request that the conditions be altered or removed if it is made during that period.
- (9) This section—
 - (a) does not prevent conditions being imposed under another provision of this Law; and
 - (b) is subject to anything done by the Tribunal on an appeal.

150J Powers of Council to obtain information, records and evidence [NSW]

- (1) If, in a Council's opinion, a person is capable of giving information, documents (including medical records) or evidence that would assist the Council in making a decision about action taken or proposed to be taken by the Council under this Subdivision, the Council may, by written notice given to the person, require the person to do one or more of the following—
 - (a) to give the Council, in writing signed by the person (or, in the case of a corporation, by a competent officer of the corporation), within the time and in the way specified in the notice, information of which the person has knowledge;
 - (b) to produce to the Council, in accordance with the notice, documents;
 - (c) to appear before the Council or a member of staff of the Council authorised by the President or Deputy President of the Council at a specified reasonable time and place and give evidence, either orally or in writing, and produce documents.
- (2) Information and documents may be given to a Council in compliance with this section despite any other Act or law.
- (3) A person who is subject to a requirement made under subsection (1) must not—
 - (a) without reasonable excuse, fail to comply with the requirement; or
 - (b) in purported compliance with the requirement, provide information, documents or

evidence knowing the information, documents or evidence to be false or misleading in a material particular.

Maximum penalty—20 penalty units.

Subdivision 8 Duty of courts etc to refer matters to Executive Officer [NSW]

151 Referral of mental health matters to Executive Officer [NSW]

- (1) If a registered health practitioner or student is found to be a mentally ill person or a mentally disordered person in accordance with section 27 of the *Mental Health Act 2007*, the person prescribed by the NSW regulations must cause notice of that fact to be given to—
 - (a) the Executive Officer of the Council for the health profession in which the registered health practitioner or student is registered; and
 - (b) the National Board for the health profession in which the registered health practitioner or student is registered.
- (2) The notice, and the way in which the notice is given, must comply with any requirements prescribed by the NSW regulations.

151A Referral of matters by courts [NSW]

- (1) A court in this jurisdiction before which a person is convicted of an offence, or is made the subject of a criminal finding for a sex or violence offence or a drug related offence, must cause notice of the conviction or criminal finding, and of any penalty imposed on the person, to be given to the Executive Officer of a Council for a health profession if the court has reasonable grounds to believe that the person is or was, at the time the offence was committed, registered in the health profession.
- (2) If a coroner has reasonable grounds to believe the evidence given or to be given in proceedings conducted or to be conducted before the coroner may indicate a complaint could be made about a person who is or was registered in a health profession, the coroner may give a transcript of that evidence to the Executive Officer of the Council for the health profession.
- (3) If a notice or a transcript of evidence is given to the Executive Officer under this section—
 - (a) a complaint is taken to have been made to a Council about the person to whom the notice or transcript relates; and
 - (b) the Executive Officer must give written notice of the notice or transcript of evidence to the National Board for the health profession in which the person is or was registered.

- (4) The coroner is not the complainant in relation to a complaint taken to have been made under subsection (3) and sections 144D(1), 144E and 144F do not apply to the complaint.

Division 4 Impairment [NSW]

152 Persons may notify Council of impairment matters concerning practitioners or students [NSW]

A person may notify a Council of a matter the person thinks indicates a registered health practitioner or student has or may have an impairment.

152A Commission may refer impairment matters to Council [NSW]

- (1) If the Commission becomes aware of a matter the Commission considers indicates a registered health practitioner or student has or may have an impairment, the Commission may refer the matter to the Council for the health profession in which the practitioner or student is registered.
- (2) This section does not affect the functions of a Council in relation to a complaint made to the Commission or a matter referred to the Commission for investigation.

152B Council may require registered health practitioner to undergo examination [NSW]

- (1) If a Council reasonably believes a registered health practitioner has or may have an impairment, the Council may, by written notice given to the practitioner, require the practitioner to undergo an examination by another registered health practitioner.
- (2) The notice must state—
 - (a) that the registered health practitioner is required to undergo an examination by a registered health practitioner; and
 - (b) the name of the registered health practitioner who is to conduct the examination; and
 - (c) if the examination is to be conducted at a particular time and place, the time and the place at which the examination is to be conducted; and
 - (d) that if the registered health practitioner fails to undergo the examination as required by the notice, the failure may constitute evidence that the practitioner does not have sufficient physical or mental capacity to practise the practitioner's health profession.
- (3) The fee charged by the registered health practitioner for conducting the examination must be at the expense of the Council.
- (4) If the registered health practitioner fails, without reasonable excuse, to comply with the notice, the failure is evidence the practitioner does not have sufficient physical or

mental capacity to practise the practitioner's health profession.

152C Council may require student to undergo examination [NSW]

- (1) If a Council reasonably believes a student has or may have an impairment, the Council may, by written notice given to the student, require the student to undergo an examination by a registered health practitioner.
- (2) The notice must state—
 - (a) that the student is required to undergo an examination by a registered health practitioner; and
 - (b) the name of the registered health practitioner who is to conduct the examination; and
 - (c) if the examination is to be conducted at a particular time and place, the time and the place at which the examination is to be conducted; and
 - (d) that if the student fails to undergo the examination as required by the notice the Council may suspend the student's registration until the student undergoes the examination.
- (3) The fee charged by the registered health practitioner for conducting the examination is at the expense of the Council.
- (4) If the student fails, without reasonable excuse, to comply with the notice, the Council may suspend the student's registration until the student undergoes the examination.
- (5) The suspension takes effect when written notice of it is served on the educational provider with which the student is undertaking the approved program of study or that arranged the clinical training for the student.

152D Referral of impairment matters concerning practitioners or students [NSW]

- (1) A Council may decide to refer a matter to an Impaired Registrants Panel if the Council considers the matter indicates a registered health practitioner or student has or may have an impairment.
- (2) Subsection (1) applies whether or not the matter is the subject of a complaint to the Council.
- (3) If the Council is aware a complaint has been made to the Commission about a registered health practitioner or student who is the subject of a referral to an Impaired Registrants Panel, the Council must notify the Commission of the referral.

152E Panel must inquire into matters referred to it [NSW]

- (1) An Impaired Registrants Panel must inquire into any matter referred to it and may

obtain reports and other information concerning the matter from any source it considers appropriate.

- (2) The Panel may ask the registered health practitioner or student who is the subject of the referral, to attend before the Panel for the purpose of enabling the Panel to obtain information on the matter and make an assessment.

152F Panel not to take action while Commission investigating [NSW]

- (1) An Impaired Registrants Panel is not to investigate or take any other action in relation to a matter if the Panel is aware the matter is the subject of an investigation by the Commission, while the investigation is being conducted.
- (2) Subsection (1) does not apply if the Commission agrees to the continuation of the investigation or other action to be taken.

152G Council to give notice of proposed inquiry [NSW]

- (1) A Council must give notice to a registered health practitioner or student of any proposed inquiry by an Impaired Registrants Panel concerning the practitioner or student.
- (2) The notice must include sufficient details of the matters to which the inquiry is to relate.

152H Practitioner or student entitled to make representations [NSW]

- (1) A registered health practitioner or student who is the subject of an inquiry by an Impaired Registrants Panel is entitled to make oral or written representations to the Panel about the matters being or to be the subject of the inquiry.
- (2) This section does not prevent the Panel from conducting an inquiry in the absence of the registered health practitioner or student to whom it relates, if the practitioner or student has been given notice of the inquiry.

152I Assessment, report and recommendations by Panel [NSW]

- (1) An Impaired Registrants Panel must make an assessment about a matter referred to it, based on the results of its inquiry into the matter.
- (2) On the basis of its assessment, the Panel may do any one or more of the following—
 - (a) counsel the practitioner or student concerned or recommend the practitioner or student undertake specified counselling (including, but not limited to, psychological counselling);
 - (b) recommend the practitioner or student concerned to agree to conditions being placed on the practitioner's or student's registration or to having the practitioner's or student's registration suspended for a specified period;

(c) make recommendations to the Council that referred the matter to it as to action that the Panel considers should be taken in relation to the matter.

- (3) The Panel must give a written report about the matter to the Council that referred the matter to it.
- (4) The report must detail—
- (a) the results of the Panel's inquiries and assessment in respect of the referral; and
 - (b) any action taken by the Panel in relation to it.

152J Voluntary suspension or conditions on registration [NSW]

A Council may impose conditions on a registered health practitioner's or student's registration, or suspend the practitioner's or student's registration, if—

- (a) an Impaired Registrants Panel has recommended the Council do so; and
- (b) the Council is satisfied the practitioner or student has voluntarily agreed to the conditions or suspension.

152K Review of conditions [NSW]

- (1) A registered health practitioner or student who agrees to conditions being imposed on the practitioner's or student's registration, or to have the registration suspended, may by written notice to the Council ask—
- (a) that the conditions be altered or removed; or
 - (b) that the suspension be terminated or shortened.
- (2) On receipt of the request, the Council must require an Impaired Registrants Panel to review the matter and give a written report to the Council on the results of its review.
- (3) If the Panel recommends that the Council refuse to alter or remove any of the conditions, or refuse to terminate or shorten the suspension, the Council may do so.
- (4) The Council must give the health practitioner or student written notice of its decision.
- (5) The Council may specify in the notice a period in which a further request by the practitioner or student under this section is not permitted.
- (6) The Council may refuse a request that the conditions be altered or removed, or that the suspension be terminated or shortened, if it is made during that period.

152L Some matters to be dealt with as complaints [NSW]

- (1) If an Impaired Registrants Panel recommends that a registered health practitioner or student agree to conditions being imposed on the practitioner's or student's

registration or to having the practitioner's or student's registration suspended and the practitioner or student fails to agree with the recommendation, the Council must deal with the matter that was the subject of the referral to the Panel as a complaint against the practitioner or student.

- (2) If the Panel recommends that a matter referred to it be dealt with as a complaint, the Council must deal with the matter as a complaint against the health practitioner or student concerned.
- (3) In any other case that the Council thinks it appropriate to do so, the Council may treat a matter that has been referred to an Impaired Registrants Panel as grounds for a complaint under this Law and may deal with the matter accordingly.

152M Prohibition or conditions on student [NSW]

- (1) An Impaired Registrants Panel that investigates a matter about a student may recommend to the Council that referred the matter to the Panel that it is in the public interest for the Council—
 - (a) to suspend the student's registration; or
 - (b) to impose specified conditions on the student's registration.
- (2) If the Council is satisfied it is in the public interest to do so, the Council may by written order take the action recommended by the Panel.
- (3) The order takes effect when notice of it is served on the education provider with which the student is undertaking the approved program of study or who arranged clinical training for the student.
- (4) An order remains in force for the period, not more than 2 years, specified in the order unless it is sooner revoked by the Council.
- (5) The Council may issue further orders in respect of a student but only on the recommendation of an Impaired Registrants Panel.

Division 5 Performance assessment [NSW]

Subdivision 1 Preliminary [NSW]

153 Meaning of "professional performance" [NSW]

For the purposes of this Division, a reference to the **professional performance** of a registered health practitioner is a reference to the knowledge, skill or judgment possessed and applied by the practitioner in the practice of the practitioner's health profession.

153A Meaning of "unsatisfactory" in relation to professional performance [NSW]

For the purposes of this Division, the professional performance of a registered health

practitioner is **unsatisfactory** if it is below the standard reasonably expected of a practitioner of an equivalent level of training or experience.

Subdivision 2 Council may obtain performance assessment [NSW]

154 Power to obtain assessment [NSW]

- (1) A Council may decide to have the professional performance of a registered health practitioner assessed under this Division if a matter comes to its attention that indicates the professional performance of the registered health practitioner, or any aspect of the practitioner's professional performance, is or may be unsatisfactory.
- (2) Subsection (1) is not limited to matters that are the subject of a complaint or notification to the Council and may include a pattern of complaints about a registered health practitioner's practice.

154A Serious matters not to be referred for assessment [NSW]

- (1) A Council must not have the professional performance of a registered health practitioner assessed if a matter giving rise to the proposed assessment—
 - (a) raises a significant issue of public health or safety that, in the Council's opinion, requires investigation by the Commission; or
 - (b) raises a prima facie case of professional misconduct by the registered health practitioner, or unsatisfactory professional conduct by the registered health practitioner.
- (2) The matter must be dealt with as a complaint.

154B Persons may notify Council of professional performance matters [NSW]

- (1) A person may notify the Council for a health profession of a matter the person thinks indicates the professional performance of a health practitioner registered in the profession is unsatisfactory.
- (2) The Council must not have the professional performance of the practitioner assessed on the basis of a notification if it is made anonymously.

154C Commission may refer professional performance matters to Council [NSW]

- (1) If the Commission becomes aware of a matter the Commission considers indicates the professional performance of a health practitioner registered in a health profession is unsatisfactory, the Commission may refer the matter to a Council for the profession.
- (2) This section does not affect the functions of a Council in relation to a complaint made to the Commission or a matter referred to the Commission for investigation.

Subdivision 3 Assessment of professional performance by assessor

[NSW]

155 How Council obtains an assessment [NSW]

A Council has the professional performance of a registered health practitioner assessed by having one or more assessors conduct an assessment of the practitioner's professional performance, or of any particular aspect or aspects of the practitioner's professional performance.

155A Information to be given to health practitioner [NSW]

- (1) As soon as practicable after deciding to have the professional performance of a registered health practitioner assessed, a Council must give the practitioner written notice of the decision.
- (2) The notice must include the following—
 - (a) details of the matter that gave rise to the assessment;
 - (b) information about how the performance assessment process works.

155B Report and recommendations by assessor [NSW]

- (1) An assessor who is required by a Council to conduct a performance assessment in relation to a registered health practitioner must—
 - (a) conduct an assessment of the practitioner's professional performance; and
 - (b) give a written report about the assessment to the Council.
- (2) The report must include the recommendations the assessor considers appropriate.
- (3) If more than one assessor is appointed to conduct a performance assessment in relation to a registered health practitioner, the report may be made jointly or separately, but in any case must be made in the way directed by the Council.

155C Action that may be taken by Council [NSW]

- (1) After receiving the report of an assessor about a performance assessment, a Council may—
 - (a) decide that no further action should be taken in respect of the registered health practitioner the subject of the report; or
 - (b) require a Performance Review Panel to conduct a performance review in relation to the practitioner; or
 - (c) make a complaint against the practitioner; or
 - (d) refer the matter to an Impaired Registrants Panel; or

- (e) counsel the practitioner or direct the practitioner to attend counselling; or
 - (f) impose by order on the practitioner's registration, with the consent of the practitioner, the conditions the Council considers appropriate.
- (2) A Council must make a complaint against the practitioner concerned if the assessment—
- (a) raises a significant issue of public health or safety that, in the opinion of the Council, requires investigation by the Commission; or
 - (b) raises a prima facie case of professional misconduct by a registered health practitioner, or unsatisfactory professional conduct by a registered health practitioner.
- (3) This section does not limit a Council's powers under section 150.

Subdivision 4 Performance review by Performance Review Panel [NSW]

156 Panel to conduct performance review [NSW]

- (1) If required by a Council, a Performance Review Panel must conduct a review of the professional performance of a registered health practitioner.
- (2) The chairperson of the Panel must inform the registered health practitioner in writing that a performance review will be conducted not less than 14 days before the time and place appointed for the performance review.

156A Panel not to take action while Commission investigating [NSW]

- (1) The Performance Review Panel is not to take any action in relation to the registered health practitioner if the Panel becomes aware the practitioner is the subject of a complaint that is being investigated by the Commission.
- (2) Subsection (1) does not apply if the Commission agrees to the continuation of the performance review.

156B Panel must refer certain matters to Council [NSW]

- (1) The Performance Review Panel must terminate the performance review if, before or during the performance review, the Panel forms the opinion that—
 - (a) the performance review raises a significant issue of public health or safety that, in the Panel's opinion, requires investigation by the Commission; or
 - (b) the performance review raises a prima facie case of professional misconduct by the registered health practitioner, or unsatisfactory professional conduct by the registered health practitioner.

(2) If the Panel terminates the performance review, it must refer the issue or case back to the Council with a recommendation that a complaint be made against the registered health practitioner.

(3) The Council must deal with the matter in accordance with the recommendation.

156C Actions by Panel [NSW]

(1) At the completion of the performance review, the Performance Review Panel may make the recommendations to the Council about the registered health practitioner the Panel considers appropriate.

(2) Without limiting subsection (1), if the Panel finds the professional performance of the registered health practitioner, or a particular aspect of the professional performance of the practitioner, is unsatisfactory, the Panel may do any one or more of the following things—

(a) impose the conditions, relating to the practitioner's practise of the health profession, it considers appropriate on the practitioner's registration;

(b) order the practitioner to complete an educational course specified by the Panel;

(c) order the practitioner to report on the practitioner's practise of the health profession at the times, in the way and to the persons specified by the Panel;

(d) order the practitioner to seek and take advice, in relation to the management of the practitioner's practice, from the persons specified by the Panel.

(3) The Panel must recommend to the Council that a complaint be made against the registered health practitioner if the Panel finds the matter—

(a) raises a significant issue of public health or safety that requires investigation by the Commission; or

(b) raises a prima facie case of professional misconduct by the practitioner, or unsatisfactory professional conduct by the health practitioner.

(4) If the Panel makes a recommendation that a complaint be made against the registered health practitioner, the Council must act in accordance with the recommendation.

(5) In any other case that the Council thinks it appropriate to do so, the Council may make a complaint in respect of a matter that has been considered by a Performance Review Panel, after consulting with the Commission.

156D Re-assessment [NSW]

(1) Without limiting section 156C, a Performance Review Panel may direct that a registered health practitioner's professional performance be re-assessed at a future

date.

- (2) A Council must have one or more assessors conduct that assessment, when it is required, and report to the Council on the assessment.
- (3) The Council may take any action in respect of that assessment that is available to the Council under section 155C, including requiring a Performance Review Panel to conduct a further performance review in relation to the practitioner.

156E Decision [NSW]

- (1) A Performance Review Panel must give a written statement of a decision on a performance review of a registered health practitioner to—
 - (a) the registered health practitioner; and
 - (b) the Council.
- (2) The statement of the decision must—
 - (a) include reasons for the decision; and
 - (b) be given to the registered health practitioner and the Council within one month after the decision is made.
- (3) The Council may provide a copy of the statement of decision to the persons the Council or Panel thinks fit.

156F Statement need not contain confidential information [NSW]

- (1) A Performance Review Panel is not required to include confidential information in the statement of a decision.
- (2) If the statement would be false or misleading if it did not include the confidential information, the Panel is not required to provide the statement.
- (3) If confidential information is not included in the statement given to a person or the statement is not given to a person because of subsection (2), the Panel must give a confidential information notice to the person.
- (4) A confidential information notice must be given within one month after the decision is made.
- (5) This section does not affect the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court, subject to the provisions of this Law relating to protected reports.

Subdivision 5 Miscellaneous [NSW]

157 Monitoring by Council [NSW]

- (1) Following a performance review, the Council must—
 - (a) monitor compliance with any decisions or orders made by the Performance Review Panel; and
 - (b) from time to time, evaluate the effectiveness of those orders in improving the professional performance of the registered health practitioner concerned to a standard that is commensurate with other practitioners of an equivalent level of training or experience.
- (2) The Council may take any action under this Law in respect of a registered health practitioner that it considers appropriate as a result of the exercise of its functions under subsection (1).

Division 6 Appeals to Tribunal [NSW]

Subdivision 1 Appeals against actions of Committee [NSW]

158 Appeals against decisions of Committee [NSW]

- (1) If a complaint about a registered health practitioner or student is referred to a Committee, the practitioner or student or the complainant, may appeal against any of the following to the Tribunal—
 - (a) a finding of the Committee;
 - (b) the exercise of a power by the Committee under Subdivision 3 of Division 3;
 - (c) the exercise by the Tribunal List Manager of a power under that Subdivision.

Note—

An appeal under this section is an external appeal to the Tribunal for the purposes of the *Civil and Administrative Tribunal Act 2013*.

- (2) The appeal is to be dealt with by way of rehearing and fresh evidence, or evidence in addition to or in substitution for the evidence received at the inquiry, may be given.
- (3) The Tribunal may—
 - (a) dismiss the appeal; or
 - (b) make any finding or exercise any power the Tribunal could have made or exercised if the complaint had been originally referred to the Tribunal.
- (4) An appeal under this section does not affect any finding or exercise of power with

respect to which it has been made until the Tribunal makes an order on the appeal.

158A Appeals on points of law [NSW]

- (1) A registered health practitioner or student about whom a complaint is referred to a Committee or the complainant may appeal with respect to a point of law to the Tribunal.

Note—

An appeal under this section is an external appeal to the Tribunal for the purposes of the *Civil and Administrative Tribunal Act 2013*.

- (2) An appeal may be made—
 - (a) during an inquiry—within 28 days after the date of the Committee’s decision on the point of law which is the subject of the appeal; or
 - (b) before the commencement of an inquiry but after the date of giving notice of the inquiry.
- (3) If an inquiry conducted by a Committee has not been completed when an appeal is made, the inquiry must not continue until the appeal has been disposed of.
- (4) The Committee must not make any decision that is inconsistent with the Tribunal’s determination with respect to the point of law.

Subdivision 2 Appeal against actions by Council [NSW]

159 Right of appeal [NSW]

- (1) A person may appeal to the Tribunal against any of the following decisions of a Council for a health profession—
 - (a1) against a reprimand by the Council for the health profession under Division 3;
 - (a) against a suspension by the Council for the health profession under Division 3 or a refusal to end a suspension;
 - (b) against conditions imposed by the Council for the health profession on the person’s registration under Division 3 or 4 or the alteration of the conditions by the Council;
 - (c) against a refusal by the Council for the health profession to alter or remove conditions imposed by the Council under Division 3 in accordance with a request made by the person under section 150I;
 - (d) against a decision by the Council for the health profession to give a direction or make an order in relation to the person under section 148E;
 - (e) against a refusal by the Council for the health profession to alter or remove

conditions imposed on the person's registration, or to end a suspension, imposed under Division 4 in accordance with a request made by the person under section 152K.

Note—

An appeal under this section is an external appeal to the Tribunal for the purposes of the *Civil and Administrative Tribunal Act 2013*.

- (2) An appeal may not be made in respect of a request by a person that is rejected by a Council because it was made during a period in which the request was not permitted under section 150I or 152K.
- (3) The appeal is to be dealt with by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence that was before the Council, may be given.

159A Appeal by student against order [NSW]

- (1) A student may appeal to the Tribunal against a decision of the Council for the health profession to issue an order—
 - (a) suspending the student's registration; or
 - (b) imposing conditions on the student's registration.

Note—

An appeal under this section is an external appeal to the Tribunal for the purposes of the *Civil and Administrative Tribunal Act 2013*.

- (2) (Repealed)
- (3) The appeal must be made within 28 days, or the longer period as the Tribunal may allow in a particular case, after notice of the Council's decision is given to the student.
- (3A) The appeal is to be dealt with by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence that was before the Council, may be given.
- (4) On an appeal, the Tribunal may by order terminate, vary or confirm the order, as it thinks proper.

159B Appeals on point of law [NSW]

- (1) A registered health practitioner or student who is the subject of action taken by the Council for the health profession under section 150, 150A or 150C may appeal, with respect to a point of law, to the Tribunal.

Note—

An appeal under this section is an external appeal to the Tribunal for the purposes of the *Civil and*

Administrative Tribunal Act 2013.

- (2) Subsection (1) does not limit a right of appeal under section 159.
- (3) The Council must not make a decision that is inconsistent with the Tribunal's decision with respect to a point of law under this section.
- (4) A registered health practitioner or student may not make an application to the Supreme Court for judicial review of action taken by a Council under section 150, 150A or 150C, being an application alleging any error of law, until an appeal under this section in respect of the point of law concerned has been made and disposed of.

159C Tribunal's powers on appeal [NSW]

- (1) On an appeal against a decision of a Council, the Tribunal may by order—
 - (a) confirm the decision; or
 - (b) set aside the decision; or
 - (c) set aside the decision and make a new decision (being a decision that the Council could have made).
- (2) The Tribunal's order must not cause a suspension or conditions imposed by a Council to have effect beyond the day on which a related complaint about the person is disposed of.

Subdivision 3 Appeal against actions of Performance Review Panel [NSW]

160 Appeals against decisions of Panel [NSW]

- (1) A registered health practitioner who is the subject of a performance review may appeal to the Tribunal against a decision of the Performance Review Panel or any order or direction made by the Panel under Division 5.

Note—

An appeal under this section is an external appeal to the Tribunal for the purposes of the *Civil and Administrative Tribunal Act 2013*.

- (2) The appeal is to be dealt with by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence that was before the Performance Review Panel, may be given.
- (3) The Tribunal may, as it thinks appropriate—
 - (a) dismiss the appeal; or
 - (b) make any finding or exercise any power or combination of powers that the Performance Review Panel could have made or exercised.

160A Appeals on points of law [NSW]

- (1) A registered health practitioner who is the subject of a performance review may appeal with respect to a point of law to the Tribunal.

Note—

An appeal under this section is an external appeal to the Tribunal for the purposes of the *Civil and Administrative Tribunal Act 2013*.

- (2) An appeal may be made—
 - (a) during a performance review—within 28 days after the date of the Performance Review Panel’s decision on the point of law that is the subject of the appeal; or
 - (b) before the commencement of a performance review but after the date the practitioner is informed of the performance review.
- (3) If a performance review has not been completed when an appeal is made, the Performance Review Panel must not continue with the performance review until the appeal has been disposed of.
- (4) The Performance Review Panel must not make any decision that is inconsistent with the Tribunal’s determination with respect to the point of law.

Subdivision 4 Miscellaneous [NSW]

161 When appeal must be made [NSW]

An appeal under this Division or Division 14A, other than an appeal on a point of law, must be made—

- (a) within 28 days after the day the person making the appeal was given notice of the decision being appealed against; or
- (b) within the longer period allowed by the Tribunal.

161A (Repealed)

161B Appeal does not stay decision [NSW]

An appeal under this Division does not operate to stay the effect of the decision being appealed against unless the Tribunal otherwise orders.

Division 7

162, 162A

Division 8 Reviews [NSW]

163 Appropriate review body [NSW]

- (1) For the purposes of this Division, the **appropriate review body** is—
 - (a) if the order being reviewed provides that it may be reviewed by a Council, the Council; or
 - (a1) if the Tribunal List Manager decides, on application by the person the subject of the review or the Commission, that a Council is the appropriate review body, the Council; or
 - (b) if the Tribunal List Manager decides, on application by the person the subject of the review, that a National Board is the appropriate review body, the National Board; or
 - (c) otherwise, the Tribunal.
- (2) An application for review by a person must be lodged with the Executive Officer of the Council for the health profession in which the person is or was registered.
- (3) The Executive Officer must refer the application to the appropriate review body.

163A Right of review [NSW]

- (1) A person may apply to the appropriate review body for a review of—
 - (a) a prohibition order made in relation to the person; or
 - (b) a relevant order made in relation to the person.
- (2) A person may also apply to the appropriate review body for a review of an order made under this Division.
- (3) An application for review of an order may not be made—
 - (a) while the terms of the order provide that an application for review may not be made; or
 - (b) while an appeal to the Tribunal or the Supreme Court in respect of the same matter is pending.
- (4) In this section—

decision-making entity means the following—

 - (a) a Committee;
 - (b) a Performance Review Panel;

- (b1) a Council, but only in relation to orders made under this Division, Subdivision 5 of Division 3 or section 155C (1) (f);
- (c) an existing health practitioner tribunal (within the meaning of Part 2 of Schedule 1 to the *Civil and Administrative Tribunal Act 2013*) or the Chairperson or Deputy Chairperson of such a tribunal;
- (d) the Tribunal or the Tribunal List Manager;
- (e) the Supreme Court.

relevant order, in relation to a person, means any of the following orders made by a decision-making entity—

- (a) an order that the person's registration as a registered health practitioner or student is suspended; or
- (b) an order that the person's registration be cancelled or that the person is disqualified from being registered in a particular health profession; or
- (c) an order that conditions be imposed on the person's registration in a health profession.

163B Powers on review [NSW]

- (1) The appropriate review body must conduct an inquiry into an application for review and may then do any of the following—
 - (a) dismiss the application;
 - (b) make an order ending or shortening the period of the suspension concerned;
 - (c) make a reinstatement order;
 - (d) make an order altering or removing the conditions to which the person's registration is subject, including by imposing new conditions;
 - (e) make an order—
 - (i) ending or shortening the period of a prohibition order; or
 - (ii) altering or removing the conditions to which the person is subject under a prohibition order, including by imposing new conditions.
- (2) If the appropriate review body makes an order altering a critical compliance condition, or removing a critical compliance condition and imposing a new condition, the altered condition or new condition is a **critical compliance condition** unless the body orders otherwise.
- (3) A **reinstatement order** is an order that the person may be registered in accordance

with Part 7 if—

- (a) the person makes an application for registration to the National Board; and
- (b) the relevant National Board decides to register the person.

(3A) Any condition imposed on a person's registration by the National Board under Part 7 applies but only to the extent that it is not inconsistent with conditions imposed or altered by the appropriate review body under subsection (4).

(4) The appropriate review body may also impose conditions on the person's registration or alter the conditions to which the person's registration is to be subject under the reinstatement order.

(5) The order on a review under this section may also provide that the order is not to be reviewed under this Division until after a specified time.

163C Inquiry into review application [NSW]

- (1) A review under this Division is a review to determine the appropriateness, at the time of the review, of the order concerned.
- (2) The review is not to review the decision to make the order, or any findings made in connection with the making of that decision.
- (3) In addition to any other matter the review may take into account, the review must take into account any complaint made or notified to a Council or a National Board, or a former Board under a repealed Act, about the person, whether the complaint was made or notified before or after the making of the order that is the subject of the review and whether or not the complaint was referred under Subdivision 2 of Division 3 or any other action was taken on the complaint.
- (4) A Council and the Commission are entitled to appear at any inquiry conducted by the Tribunal under this Division.

Division 9 Enforcement powers [NSW]

164 Appointment of authorised persons [NSW]

- (1) The Secretary may appoint a person as an authorised person for the purposes of this Division.
- (2) The Secretary must provide an authorised person with a certificate of authority.

164A Powers of authorised persons [NSW]

- (1) An authorised person may exercise the powers conferred by this section for the purpose of—

- (a) ascertaining whether the NSW provisions (including any conditions or suspension imposed under the NSW provisions) are being complied with or have been contravened; or
 - (b) investigating a complaint made or intended to be made under Division 3.
- (2) An authorised person may, with the approval of the Council for a health profession, given on the particular occasion, enter and inspect at any reasonable time premises that the authorised person believes on reasonable grounds are being used for the carrying on of the practice of the health profession.
- (3) While on premises entered under this section or under the authority of a search warrant under section 164B, an authorised person may do any one or more of the following—
 - (a) require any person on the premises to produce any records in the possession or under the control of that person relating to the carrying on of the practice of the health profession;
 - (b) inspect, take copies of, or extracts or notes from, the records and, if the authorised person considers it necessary to do so for the purpose of obtaining evidence, seize the records;
 - (c) examine and inspect any apparatus or equipment used or apparently used in the course of the practice of the health profession;
 - (d) take photographs, films and audio, video and other recordings as the authorised person considers necessary;
 - (e) require any person on the premises to answer questions or otherwise furnish information in relation to the carrying on of the practice of a health profession or a contravention of a NSW provision;
 - (f) require the owner or occupier of the premises to give the authorised person the assistance and facilities as is or are reasonably necessary to enable the authorised person to exercise the functions of an authorised person under this section.
- (4) An authorised person is not entitled to enter a part of premises used for residential purposes, except—
 - (a) with the consent of the occupier of the part; or
 - (b) under the authority of a search warrant.
- (5) An authorised person must, when exercising on any premises any function of the authorised person under this section, produce the authorised person's certificate of authority to any person apparently in charge of the premises who requests its production.

- (6) If an authorised person seizes any records under this section, they may be kept by the authorised person until the completion of any proceedings (including proceedings on appeal) in which they may be evidence but only if the person from whom the records were seized is given, within a reasonable time after the seizure, a copy of the records certified by an authorised person as a true copy.
- (7) A copy of a record given under subsection (6) is, as evidence, of equal validity to the record of which it is certified to be a copy.

164B Search warrants [NSW]

- (1) A person appointed under this Division as an authorised person may apply to an authorised officer for the issue of a search warrant for premises if the authorised person believes on reasonable grounds—
 - (a) a NSW provision is being contravened on the premises; or
 - (b) there is on the premises evidence of a contravention of a provision of this Law or the NSW regulations.
- (2) The authorised officer may, if satisfied there are reasonable grounds for doing so, issue a search warrant authorising an authorised person named in the warrant—
 - (a) to enter and inspect the premises; and
 - (b) to exercise on the premises any function of an authorised person under section 164A.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) In this section—

authorised officer has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

164C Offences [NSW]

- (1) A person must not—
 - (a) prevent an authorised person from exercising any function conferred or imposed on the authorised person under this Division; or
 - (b) hinder or obstruct an authorised person in the exercise of a function conferred or imposed on the authorised person under this Division; or
 - (c) without reasonable excuse, refuse or fail to comply with any requirement made or to answer any question asked by an authorised person under this Division; or
 - (d) give an authorised person information knowing it to be false or misleading in a

material particular.

Maximum penalty—

- (a) for an offence under paragraph (a) or (b)—50 penalty units; or
- (b) for an offence under paragraph (c) or (d)—20 penalty units.

- (2) It is a sufficient defence to a prosecution for the offence under paragraph (c) of failing to answer a question asked by an authorised person if the defendant satisfies the court that the defendant did not know, and could not with reasonable diligence have ascertained, the answer to the question.

164D Self-incrimination [NSW]

- (1) A person is not excused from answering a question asked by an authorised person under this Division on the ground the answer might tend to incriminate the person.
- (2) However, information furnished by an individual in answering a question asked by an authorised person under this Division is not admissible against the individual in criminal proceedings (except proceedings for an offence against section 164C) if—
 - (a) the individual objected at the time of doing so on the ground it might incriminate the individual; or
 - (b) the individual was not warned on that occasion that the individual may object to furnishing the information on the ground it might incriminate the individual.
- (3) A person is not excused from producing a record to an authorised person under this Division on the ground the record might tend to incriminate the person, and the record is not inadmissible in evidence against the person in criminal proceedings on the ground the record might incriminate the person.

Note—

Section 187 of the [Evidence Act 1995](#) provides that the privilege against self-incrimination does not apply to bodies corporate.

164E Offence of impersonating authorised person [NSW]

A person must not—

- (a) impersonate an authorised person; or
- (b) falsely represent the person is an authorised person.

Maximum penalty—50 penalty units.

164F Authorised persons to produce certificate of authority [NSW]

An authorised person must, on exercising in a place a function of the authorised person

under this Division, produce the person's certificate of authority to any person apparently in charge of the place who requests its production.

164G Council may require further information from practitioner or student [NSW]

- (1) A Council for a health profession may, by written notice given to a registered health practitioner or student registered in the profession, require the practitioner or student to give to the Council, within a reasonable period specified in the notice, further information about any complaint or other matter concerning the practitioner or student.
- (2) A registered health practitioner or student must not—
 - (a) without reasonable excuse, fail to comply with a requirement under this section; or
 - (b) in purported compliance with a requirement under this section, provide information knowing it to be false or misleading in a material particular.

Maximum penalty—20 penalty units.

Division 10 Constitution and proceedings of Tribunal

Subdivision 1 Interpretation

165 Definitions [NSW]

In this Division:

Division member means a Division member of the Occupational Division of the Tribunal.

medical practitioner proceedings means proceedings involving a health practitioner who practises in the medical profession or a student of that profession.

senior judicial officer means a person who is:

- (a) a Judge of the Supreme Court (or a Judge or other person having the same status as a Judge of the Supreme Court), or
- (b) a Judge of the District Court.

165A Relationship with NCAT Act [NSW]

The provisions of this Division are intended to apply despite anything to the contrary in the [Civil and Administrative Tribunal Act 2013](#).

Subdivision 2 Constitution of Tribunal

165B Constitution of Tribunal for complaints, applications and appeals [NSW]

- (1) If a complaint is referred to the Tribunal or an application or appeal is made to the Tribunal under this Law—
 - (a) the Tribunal must inform the Council for the health profession of the referral, application or appeal; and
 - (b) the Council for the health profession must select 3 persons (whether or not they are currently Division members) to sit as members of the Tribunal in the proceedings.

Note—

Schedule 5 to the *Civil and Administrative Tribunal Act 2013* provides the President must appoint a person as an occasional member for particular proceedings entered in the Health Practitioner List if that person has been selected for participation in the proceedings in accordance with any applicable procedures specified by or under this Law. If a person selected under subsection (1) (b) is not already a Division member, the President will be required to appoint the person as an occasional member in relation to the proceedings.

- (2) Except as provided by subsections (4), (5) and (5A), the Tribunal, when conducting an inquiry or hearing an appeal under this Law, is to be constituted by—
 - (a) 1 Division member who is an Australian lawyer of at least 7 years' standing or, in the case of medical practitioner proceedings, 1 Division member who is a senior judicial officer; and
 - (b) 2 health practitioners selected for appointment by the Council as occasional members under subsection (1) (b) who are registered in the same health profession as the health practitioner or student the subject of the inquiry or appeal; and
 - (c) 1 lay person (that is, a person who is not registered in the health profession) selected for appointment by the Council as an occasional member under subsection (1) (b) from among a panel of lay persons for the time being nominated by the Minister.
- (3) If the health profession has divisions, at least one and, if practicable, both, of the health practitioners referred to in subsection (2) (b) must be registered in the same division of the health profession as the health practitioner or student the subject of the inquiry or hearing.
- (4) The Tribunal, when constituted to hear appeals under this Law that are restricted to points of law, is to be constituted by—
 - (a) in the case of medical practitioner proceedings, 1 Division member who is a senior judicial officer; or
 - (b) in any other case, 1 Division member who is an Australian lawyer of at least 7

years' standing.

- (5) The Tribunal, when constituted to exercise a function under section 146D or 148G, is to be constituted by a Division member selected by the Tribunal List Manager.
- (5A) The Tribunal, when constituted to make an ancillary decision or an interlocutory decision within the meaning of the *Civil and Administrative Tribunal Act 2013*, is to be constituted by the Tribunal List Manager or the member referred to in subsection (2) (a).
- (6) A person is not to be selected to sit on the Tribunal if the person is a member of the Council.
- (7) An inquiry or appeal conducted or heard by the Tribunal under this Law may relate to more than one health practitioner or student if the complaint or complaints the subject of the inquiry or appeal arise from the same conduct.

165C Effect of vacancy on Tribunal [NSW]

- (1) If one of the members (other than the presiding member) constituting the Tribunal for the purpose of conducting a hearing under this Law vacates office for any reason before an inquiry or appeal is completed or a decision is made in respect of an inquiry or appeal, the inquiry or appeal may be continued and a determination made by the remaining members of the Tribunal.
- (2) If more than one of the members vacate office, or the presiding member vacates office, for any reason before the Tribunal has completed an inquiry or appeal or made a determination in respect of an inquiry or appeal, the inquiry or appeal is terminated.
- (3) When an inquiry or appeal is terminated, the Tribunal may be reconstituted in accordance with this Division for the purposes of conducting a new inquiry or appeal in respect of the matter concerned.
- (4) In this section:

presiding member means the member referred to in section 165B (2) (a).

Subdivision 3 Proceedings of Tribunal [NSW]

165D Joinder of complaints [NSW]

The Tribunal may, subject the rules of procedural fairness, order the joinder of more than one complaint against the same or different health practitioners in proceedings.

165E Time when orders take effect [NSW]

An order of the Tribunal under this Law takes effect on—

- (a) the day on which the order is made; or

(b) the later day specified in the order.

165F Powers of Tribunal exercised by Supreme Court [NSW]

A power of the Tribunal exercised under this Law by the Supreme Court is, except for the purposes of an appeal, taken to have been exercised by the Tribunal.

165G Executive Officer to be informed of disciplinary action [NSW]

The Tribunal must inform the Executive Officer of the Council for a health profession of the exercise of any power under this Part by the Tribunal in relation to that profession.

Subdivision 4 Inquiries and appeals before Tribunal [NSW]

165H No inquiry required if complaint admitted [NSW]

No inquiry need be conducted into a complaint referred to the Tribunal under this Law if the registered health practitioner or student who is the subject of the complaint admits the subject-matter of the complaint in writing to the Tribunal.

165I Notice of time and place of inquiry or appeal [NSW]

The Tribunal must give not less than 14 days' notice of an inquiry or appeal under this Law to each of the following—

- (a) the registered health practitioner or student the subject of the inquiry or appeal;
- (b) the Council for the health profession;
- (c) the National Board for the health profession;
- (d) for an inquiry into a complaint, the Commission;
- (e) the Chairperson of the relevant Committee, if appropriate.

165J Representation before Tribunal [NSW]

- (1) At an inquiry conducted or appeal heard under this Law by the Tribunal, the registered health practitioner or student and any complainant concerned are entitled to attend and to be represented by—
 - (a) an Australian legal practitioner; or
 - (b) with the leave of the member presiding, another adviser.
- (2) The Tribunal may grant leave for another person to appear (whether in person or by an Australian legal practitioner or another adviser) at an inquiry or appeal if the Tribunal is satisfied that it is appropriate for the person to appear.
- (3) This section does not prevent the Tribunal from proceeding in the absence of the

registered health practitioner or student concerned, as long as the practitioner or student has been given notice of the inquiry or appeal.

165K When hearings may be closed to public [NSW]

Despite section 49 (2) of the *Civil and Administrative Tribunal Act 2013*, the Tribunal may make an order that a hearing for proceedings under this Law be conducted wholly or partly in private only if it is satisfied that it is desirable to do so in the public interest for reasons connected with the subject-matter of the proceedings or the nature of the evidence to be given.

165L Interlocutory orders [NSW]

- (1) The Tribunal may, during any proceedings under this Law, exercise any power or combination of powers conferred on the Tribunal by section 149A, except the power to caution or reprimand.
- (2) The Tribunal may, in respect of an appeal under section 159B, make an order staying the decision of the Council appealed against until the appeal has been disposed of.
- (3) The Tribunal may, during any proceedings under this Law, suspend a registered health practitioner's or student's registration if—
 - (a) it has found the subject-matter of the complaint against the practitioner or student to have been proved; and
 - (b) the complaint has not yet been finally disposed of; and
 - (c) it is satisfied that it is appropriate to do so for the protection of the health or safety of any person or persons (whether or not a particular person or persons) or the action is otherwise in the public interest.

165M Tribunal to provide details of decisions [NSW]

- (1) As soon as practicable after making a decision on an inquiry or an appeal under this Law (bearing in mind the public welfare and seriousness of the matter), the Tribunal must give a written statement of the decision to—
 - (a) the parties; and
 - (b) the Council for the health profession in which the practitioner or student is registered (regardless of whether it is a party).
- (2) The statement of a decision must—
 - (a) set out any findings on material questions of fact; and
 - (b) refer to any evidence or other material on which the findings were based; and
 - (c) give the reasons for the decision.

- (3) The Tribunal may also provide the statement of a decision to the persons the Tribunal thinks fit.
- (4) Unless the Tribunal has ordered otherwise, the Tribunal is to make publicly available a statement of a decision given by it under this section if the decision is in respect of a complaint that has been proved or admitted in whole or in part.
- (5) This section applies to a decision on an inquiry that is conducted into a complaint referred to the Tribunal under this Law where the subject-matter of the complaint is admitted in writing to the Tribunal.

166-167G

Division 11 Professional Standards Committees [NSW]

Subdivision 1 Preliminary [NSW]

168 Definitions [NSW]

In this Division—

Committee means a Professional Standards Committee.

relevant health practitioner means a health practitioner registered under this Law in the—

- (a) medical profession; or
- (b) nursing and midwifery profession.

Subdivision 2 Establishment and membership of Committees [NSW]

169 Establishment of Committees [NSW]

- (1) There are to be Professional Standards Committees established for the purposes of this Law.
- (2) A Committee has and may exercise the jurisdiction and functions conferred or imposed on it by or under this Law.

169A Council to establish Committee when required [NSW]

- (1) A Council must establish a Committee when a complaint about a relevant health practitioner is referred to a Committee.
- (2) A Council establishes a Committee by appointing 4 persons to sit as the Committee for the purpose of conducting an inquiry into the complaint.

169B Membership of Committee [NSW]

- (1) A Committee consists of—
 - (a) 2 registered health practitioners who—
 - (i) are registered in the same health profession as the relevant health practitioner the subject of the proceedings before the Committee; and
 - (ii) have the qualifications, if any, prescribed by the NSW regulations for that profession; and
 - (b) one person who is an Australian lawyer and not a registered health practitioner and who is to be appointed by the Council as Chairperson of the Committee; and
 - (c) one person, appointed from among a panel of persons for the time being nominated by the Minister, who—
 - (i) is not a registered health practitioner or student in the same health profession as the relevant health practitioner the subject of the proceedings before the Committee; and
 - (ii) has not at any time been registered as a health practitioner or student in that health profession under this Law or a corresponding prior Act.
- (2) A person who is a member of the Council may not be appointed to sit on a Committee.
- (3) A member of a Committee, while sitting on the Committee, is entitled to be paid by the Council at a rate decided by the Minister.
- (4) The rate must be decided by the Minister in consultation with the Council.

Subdivision 3 Proceedings of Committees [NSW]

170 Multiple inquiries [NSW]

One or more Committees may conduct more than one inquiry at the same time.

170A How a Committee decides [NSW]

- (1) A decision supported by at least 3 members of a Committee on any question arising during an inquiry is the decision of the Committee.
- (2) The Chairperson of a Committee has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

170B Time when orders take effect [NSW]

An order of a Committee takes effect on—

- (a) the day the order is made; or
- (b) if a later day is specified in the order, that day.

170C Committee to inform Executive Officer of its actions under disciplinary provisions [NSW]

A Committee must inform the Executive Officer of the exercise of any power by the Committee under Subdivision 3 of Division 3.

170D Chairperson may exercise certain powers of Committee [NSW]

- (1) The Chairperson of a Committee may exercise the following powers of the Committee—
 - (a) the power to terminate an inquiry;
 - (b) the power to hand down a decision of the Committee on an inquiry;
 - (c) the power to make a decision concerning any interlocutory issue before the Committee.
- (2) A power of the Committee exercised by the Chairperson of the Committee is taken to have been exercised by the Committee.

170E Effect of vacancy on Committee [NSW]

- (1) If one of the members (other than the Chairperson of the Committee) constituting a Committee for the purpose of conducting an inquiry under this Law vacates office for any reason before the inquiry is completed or a determination in respect of the inquiry is made, the inquiry may be continued and a determination made by the remaining members of the Committee.
- (2) If more than one of the members vacate office, or the Chairperson of the Committee vacates office, for any reason before the Committee has completed an inquiry or made a determination in respect of an inquiry, the inquiry is terminated.
- (3) When an inquiry is terminated, the Committee may be reconstituted in accordance with this Division for the purposes of conducting a new inquiry in respect of the matter concerned.

Subdivision 4 Inquiries before Committees [NSW]

171 Committee to hold inquiry into complaint [NSW]

- (1) A Committee must hold an inquiry into a complaint about a relevant health practitioner that is referred to it.
- (2) No inquiry need be held into the complaint if the relevant health practitioner admits

the subject-matter of the complaint in writing to the Committee.

- (3) On appointment, the Chairperson of the Committee must fix a time and place for the holding of an inquiry by the Committee into the complaint.
- (4) The Chairperson must give not less than 14 days' notice of the inquiry to—
 - (a) the relevant health practitioner; and
 - (b) the complainant, if any; and
 - (c) (Repealed)
 - (d) the Council for the health profession in which the practitioner is registered; and
 - (e) the Commission.

171A Procedure for inquiry [NSW]

- (1) Subject to this section, the Committee may conduct proceedings on the inquiry as it thinks fit.
- (2) Proceedings of the Committee are to be open to the public unless the Committee directs otherwise.
- (3) The Committee is not to direct that proceedings are to be closed to the public unless satisfied it is desirable to do so in the public interest because of—
 - (a) the subject-matter of the inquiry; or
 - (b) the nature of the evidence to be given.
- (4) The Committee may be assisted by an Australian lawyer appointed, at the request of the Committee, by the Executive Officer of the Council.

171B Representation at inquiry [NSW]

- (1) At the inquiry held by the Committee, the relevant health practitioner and any complainant are entitled to attend and to be represented by—
 - (a) an Australian legal practitioner; or
 - (b) with the leave of the Chairperson of the Committee, another adviser.
- (2) Subsection (1) does not prevent the Committee from addressing questions directly to the relevant health practitioner.
- (3) The Committee may grant leave for any other person to appear at the inquiry if the Committee is satisfied it is appropriate for the person to appear.
- (4) This section does not prevent the Committee from proceeding in the absence of the

relevant health practitioner or the complainant, if the practitioner or complainant has been given notice of the inquiry.

171C Adjourments and interlocutory orders [NSW]

- (1) The Committee may adjourn proceedings for any reason it thinks fit.
- (2) The Committee may, during any proceedings, exercise any power or combination of powers conferred on a Committee by section 146B, except the power to caution or reprimand.

171D Committee must refer certain matters to Tribunal [NSW]

- (1) The Committee must immediately terminate the inquiry if, before or during the inquiry, the Committee—
 - (a) forms the opinion the complaint, if substantiated, may provide grounds for the suspension or cancellation of the registration of the relevant health practitioner; or
 - (b) becomes aware the Council or the Commission has referred the complaint or another complaint about the practitioner to the Tribunal.
- (2) Subsection (1)(a) does not apply to a complaint that the Council decided not to refer to the Tribunal because the allegations on which it, and any other pending complaint against the practitioner, was founded related solely or principally to the practitioner's physical or mental capacity to practise the practitioner's profession.
- (3) If the Committee terminates an inquiry, it must refer the complaint to the Tribunal unless it has already been referred to the Tribunal.
- (4) (Repealed)
- (5) The Committee must inform the Council when it takes any action under this section.

171E Committee to provide details of decision [NSW]

- (1) The Committee must give a written statement of its decision on the inquiry to the following within one month after the decision is made—
 - (a) the complainant;
 - (b) the relevant health practitioner;
 - (c) the Council.
- (2) The statement of decision must—
 - (a) set out any findings on material questions of fact; and
 - (b) refer to any evidence or other material on which the findings were based; and

- (c) give reasons for the decision.
- (3) The Committee may also give the statement of decision to any other person the Committee thinks fit.
- (4) The Council—
 - (a) must make publicly available the statement of decision if the decision is in respect of a complaint that has been proved or admitted in whole or in part; and
 - (b) may disseminate any other statement of decision as the Council thinks fit.
- (5) Subsection (4) does not apply if the Committee has ordered that the statement is not to be made publicly available.

171F Statement need not contain confidential information [NSW]

- (1) A Committee is not required to include confidential information in a statement of a decision given to a person.
- (2) If the statement would be false or misleading if it did not include the confidential information, the Committee is not required to provide the statement.
- (3) If confidential information is not included in the statement of a decision given to a person, or a statement is not given to a person because of subsection (2), the Committee must give the person a confidential information notice.
- (4) A confidential information notice must be given within one month of the decision.
- (5) This section does not affect the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court, subject to the provisions of this Law relating to protected reports.

171G Record of inquiry [NSW]

- (1) Proceedings on any inquiry of the Committee under this Subdivision are to be recorded.
- (2) The NSW regulations may prescribe the manner in which the evidence may be recorded.

Division 12 Assessment Committees [NSW]

172 Definitions [NSW]

In this Division—

Committee means an Assessment Committee.

relevant health practitioner means a health practitioner registered under this Law

other than a health practitioner registered in the—

- (a) medical profession; or
- (b) nursing and midwifery profession.

172A Establishment of Committees [NSW]

- (1) There are to be Assessment Committees established for the purposes of this Law.
- (2) A Committee has and may exercise the jurisdiction and functions conferred or imposed on it by or under this Law.

172B Membership of Committee [NSW]

- (1) A Committee consists of the following members appointed by the Council—
 - (a) 3 registered health practitioners who—
 - (i) are registered in the same health profession as the relevant health practitioner the subject of the proceedings before the Committee; and
 - (ii) have the qualifications, if any, prescribed by the NSW regulations for that profession; and
 - (b) one person, appointed from among a panel of persons for the time being nominated by the Minister, who—
 - (i) is not a registered health practitioner or student in the same health profession as the relevant health practitioner the subject of the proceedings before the Committee; and
 - (ii) has not at any time been registered as a health practitioner or student in that health profession under this Law or a corresponding prior Act.
- (2) If the health profession has divisions, at least one and, if practicable, all, of the members appointed under subsection (1)(a) must be registered in the same division of the health profession as the health practitioner the subject of the complaint.
- (3) A person who is a member of the Council may not be appointed to sit on a Committee.
- (4) A member of a Committee, while sitting on the Committee, is entitled to be paid by the Council at a rate decided by the Minister.
- (5) The rate must be decided by the Minister in consultation with the Council.

172C Multiple inquiries [NSW]

One or more Committees may conduct more than one assessment at the same time.

Division 13 Impaired Registrants Panels [NSW]

173 Establishment of Impaired Registrants Panels [NSW]

- (1) There are to be Impaired Registrants Panels established for the purposes of this Law.
- (2) A Panel has and may exercise the jurisdiction and functions conferred or imposed on it by or under this Law or any other Act.

173A Council to establish Panel when required [NSW]

- (1) If a Council decides to refer a matter to an Impaired Registrants Panel, it must appoint 2 or 3 persons to sit as the Panel for the purpose of dealing with the matter.
- (2) A panel must include—
 - (a) at least one person who is registered in the same health profession as the registered health practitioner or student who is the subject of the Panel's proceedings; and
 - (b) at least one medical practitioner.
- (3) If the health profession has divisions, the member appointed under subsection (2)(a) must be registered in the same division of the health profession as the registered health practitioner or student the subject of the complaint.
- (4) A person may be appointed to sit on a Panel whether or not the person is a member of the Council, but not if the person has previously dealt with the particular matter before the Panel in the person's capacity as a member of the Council.
- (5) A member of a Panel, while sitting on the Panel, is entitled to be paid at the rate decided by the Minister in consultation with the Council.

173B Decisions of Panel [NSW]

- (1) If an Impaired Registrants Panel consists of 2 members—
 - (a) a decision supported by both members of the Panel is the decision of the Panel; and
 - (b) if the members of the Panel disagree as to any matter dealt with by the Panel, the Panel's report to the Council must include details of the disagreement and the reasons for it.
- (2) If a Panel consists of 3 members—
 - (a) a decision supported by a majority of the members of the Panel is the decision of the Panel; and
 - (b) the Panel's report to the Council must include any minority decision.

Division 14 Performance Review Panels and assessors [NSW]

174 Establishment of Performance Review Panels [NSW]

- (1) There are to be Performance Review Panels established for the purposes of this Law.
- (2) A Panel has and may exercise the jurisdiction and functions conferred or imposed on it by or under this Law or any other Act.

174A Membership of Performance Review Panels [NSW]

- (1) If a Council decides to require a Performance Review Panel to conduct a performance review of the professional performance of a registered health practitioner, the Council must appoint 3 persons to sit as the Panel for the purpose of that performance review.
- (2) Of those 3 persons—
 - (a) 2 are to be registered health practitioners registered in the same health profession as the health practitioner to whom the proceedings relate; and
 - (b) one is to be a person who—
 - (i) is not a registered health practitioner or student in the same health profession as the health practitioner to whom the proceedings relate; and
 - (ii) has not at any time been registered as a health practitioner or student in that health profession under this Law or a corresponding prior Act.
- (3) If the health profession has divisions, at least one and, if practicable, both, of the members appointed under subsection (2)(a) must be registered in the same division of the health profession as the health practitioner the subject of the complaint.
- (4) One of the members of the Panel must be appointed by the Council as Chairperson of the Panel.
- (5) A person may be appointed to sit on a Panel whether or not the person is a member of the Council, but not if the person has previously dealt with the particular matter before the Panel in the person's capacity as a member of the Council.
- (6) A member of a Panel, while sitting on the Panel, is entitled to be paid by the Council at a rate decided by the Minister in consultation with the Council.

174B Decisions of Panel [NSW]

A decision supported by a majority of members of a Performance Review Panel is the decision of the Panel.

174C Certain powers may be exercised by Chairperson [NSW]

- (1) The Chairperson of a Performance Review Panel may exercise the following functions

of a Panel—

- (a) the power to terminate a performance review;
- (b) the power to hand down a decision of the Panel on a performance review.

(2) A power of a Performance Review Panel that is exercised by the Chairperson of the Panel under this Law is taken to have been exercised by the Panel.

174D Assessors [NSW]

- (1) A Council may appoint suitably qualified persons to be assessors for the purposes of this Law.
- (2) Assessors are to be appointed on the terms and conditions decided by the Council.
- (3) An assessor has the functions conferred on an assessor by this Law and any other functions, in connection with Division 5, conferred on the assessor by the Council.

Division 14A Appeals [NSW]

175 Appellable decisions [NSW]

- (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.

Note—

An appeal under this section to the Tribunal in its capacity as an appropriate responsible tribunal is an external appeal to the Tribunal for the purposes of the *Civil and Administrative Tribunal Act 2013*.

- (2) For the purposes of subsection (1), the **appropriate responsible tribunal** for an appellable decision is—
- (a) for a 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
 - (b) for a 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
 - (c) 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.
- (3) The appeal is to be dealt with by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence that was before the National Board, may be given.

Note—

This section is a substituted New South Wales provision.

175A Parties to the proceedings [NSW]

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 made the appellable decision.

Note—

This section is a substituted New South Wales provision.

175B Costs

The responsible tribunal may make any order about costs it considers appropriate for the proceedings.

Note—

This section is a Health Practitioner Regulation National Law provision (see section 201 of the National Law).

175C 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.

Note—

This section is a Health Practitioner Regulation National Law provision (see section 202 of the National Law).

Note—

Section 203 of the Health Practitioner Regulation National Law is not applicable to New South Wales.

Division 14B Miscellaneous [NSW]

176 Notice from adjudication body [NSW]

- (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 for the profession.
- (2) For the purposes of subsection (1), in this jurisdiction a decision by an adjudication body is any of the following—
 - (a) a decision by the adjudication body to impose or agree to conditions on a registered health practitioner's or student's registration;
 - (b) a decision by the adjudication body to suspend a registered health practitioner's or student's registration;
 - (c) a decision by the adjudication body to cancel a registered health practitioner's or student's registration.

Note—

This subsection is an additional New South Wales provision.

- (3) 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.

176A 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.

Note—

This section is a Health Practitioner Regulation National Law provision (see section 205 of the National Law).

176B National Board to give notice to registered health practitioner's employer

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

Note—

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

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

Note—

This section is a Health Practitioner Regulation National Law provision (see section 206 of the National Law).

176BA Council to notify employers and accreditors about conditions concerning health, conduct or performance of health practitioners [NSW]

- (1) This section applies if a Council makes any of the following decisions (a **condition decision**) with respect to a registered health practitioner under this Law—
 - (a) to impose conditions on the practitioner’s registration concerning the health, conduct or performance of the practitioner;
 - (b) to alter or remove conditions that the Council has imposed on the practitioner’s registration concerning the health, conduct or performance of the practitioner.
 - (2) The Council must, as soon as practicable after it makes a condition decision with respect to a registered health practitioner, give written notice of the decision to each employer or accreditor of the practitioner.
 - (3) The Council may also, if it considers it appropriate, give written notice of a condition decision with respect to a registered health practitioner to an entity that becomes the practitioner’s employer or accreditor after the decision is made.
 - (4) The notice must include the details of the conditions that have been imposed or removed or the alterations that have been made to conditions that have been imposed.
 - (5) If the notice given by the Council is about a condition that is imposed, altered or removed because of an impairment of the registered health practitioner, the practitioner’s employer or accreditor must ensure that the nominated or agreed information recipient discloses or uses information about the impairment only for the purpose of—
 - (a) the supervision or oversight of the practitioner during the course of the practitioner’s work for the employer or accreditor; or
 - (b) ensuring the safety of patients at premises used by the practitioner during the course of the practitioner’s work for the employer or accreditor.
- Maximum penalty (subsection (5))—
- (a) in the case of an individual—20 penalty units; or
 - (b) in the case of a body corporate—50 penalty units.
- (6) An employer or accreditor of a registered health practitioner may nominate another person to be the nominated information recipient for the purposes of subsection (5), but only if the person is—
 - (a) involved in the supervision or oversight of registered health practitioners of the

kind concerned during the course of their work; or

(b) responsible for ensuring the safety of patients at premises used by registered health practitioners of the kind concerned during the course of their work.

(7) If an employer or accreditor has not nominated a person to be the nominated information recipient for the purposes of subsection (5), the Council may, after consulting the employer or accreditor (and, if it considers it appropriate, the registered health practitioner concerned), provide information about the impairment to an agreed information recipient who is a person of a kind referred to in subsection (6) (a) or (b).

(8) In this section—

accreditor, in relation to a registered health practitioner, means a licensee for a private health facility under the *Private Health Facilities Act 2007* that has accredited the health practitioner to provide services at the facility.

employer, in relation to a registered health practitioner, means an entity that has—

(a) employed the health practitioner or other person under a contract of employment to provide services to or for the entity; or

(b) appointed or engaged the health practitioner or other person under any other kind of contract or agreement to provide services to or for the entity.

176C Adjudication body to consider impact of decision on third parties [NSW]

(1) If an adjudication body proposes to make a decision that, in the body's opinion, will impose an appreciable burden on an identifiable third party in connection with a registered health practitioner's practice or clinical training undertaken by a student, the body—

(a) must give the third party an opportunity to make submission to the body with respect to the decision; and

(b) must take the submission into account before giving the direction or making the order.

(2) If an adjudication body makes a decision that will, in the body's opinion, impose an appreciable burden on an identifiable third party in connection with a registered health practitioner's practice or clinical training undertaken by a student, the body must give the third party notice of the decision as soon as practicable after it is made.

(3) An example of a decision that may impose an appreciable burden on an identifiable third party in connection with a registered health practitioner's practice is a decision that has the effect of requiring the practice of a registered health practitioner to be supervised by an identified third party.

(4) In this section—

adjudication body means—

- (a) a Committee;
- (b) a Council;
- (c) a Panel;
- (d) the Tribunal.

third party means a health service provider other than the registered health practitioner to whom an inquiry relates, but does not include a person or body exercising functions conferred by this Law or the [Health Care Complaints Act 1993](#).

Note—

This section is a New South Wales provision.

176D Effect of suspension [NSW]

- (1) 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.

Note—

This subsection is a Health Practitioner Regulation National Law provision (see section 207 of the National Law).

- (2) Accordingly, a reference in any other Act or instrument to a registered health practitioner does not include a reference to a health practitioner whose registration is suspended.
- (3) When a suspension imposed under this Law ends, the person's rights and privileges as a registered health practitioner or student in the health profession are revived, subject to—
 - (a) any other action taken by the Council for the profession under Subdivision 7 of Division 3 of Part 8 or Division 4 of Part 8; or
 - (b) any order of the Tribunal on a complaint referred to the Tribunal.

176E Protection from liability for certain publications [NSW]

- (1) A publication in good faith of a written statement of a decision made by a Council, a Committee or a Panel does not subject a protected person to any liability (including liability in defamation).
- (2) In this section—

protected person means—

- (a) a Council, a Committee or a Panel or a member of a Council, a Committee or a Panel; or
- (b) the proprietor, editor or publisher of a newspaper; or
- (c) the proprietor or broadcaster of a radio or television station or the producer of a radio or television show; or
- (d) an Internet service provider or Internet content host; or
- (e) a member of staff of, or a person acting at the direction of, a person or entity referred to in this definition; or
- (f) a person, or a person belonging to a class of persons, prescribed by the NSW regulations for the purposes of this section.

Note—

This section is a New South Wales provision.

176F Confidentiality of protected reports

- (1) A person must not, directly or indirectly—
 - (a) disclose a protected report to another person that the person has obtained in the exercise of the person's functions under this Law; or
 - (b) make a record of, or disclose to another person, information contained in a protected report that the person has obtained in the exercise of the person's functions under this Law

Maximum penalty: 50 penalty units.

- (2) Subsection (1) does not apply to the disclosure by a person of a protected report or information contained in a protected report—
 - (a) for the purpose of exercising functions under this Law; or
 - (b) to the Commission.
- (3) A protected report may not be admitted or used in civil proceedings before a court other than with the consent of—
 - (a) the person giving the report; and
 - (b) the person the subject of the report.
- (4) A person may not be compelled to produce a protected report, or to give evidence in relation to the report or its contents, in civil proceedings before a court.

177-207 (Repealed)

Part 9 Finance

208 Australian Health Practitioner Regulation Agency Fund

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

209 Payments into Agency Fund

- (1) There is payable into the Agency Fund—
 - (a) all money appropriated by the Parliament of any participating jurisdiction or the Commonwealth for the purposes of the Fund; and
 - (b) all fees, costs and expenses paid or recovered under this Law; and
 - (c) all fines paid to, or recovered by, a National Board in accordance with an order of an adjudication body; and
 - (d) the proceeds of the investment of money in the Fund; and
 - (e) all grants, gifts and donations made to the National Agency or a National Board, but subject to any trusts declared in relation to the grants, gifts or donations; and
 - (f) all money directed or authorised to be paid into the Fund by or under this Law, any law of a participating jurisdiction or any law of the Commonwealth; and
 - (g) any other money or property received by the National Agency or a National Board in connection with the exercise of its functions.
- (2) Any money paid into the Agency Fund under subsection (1) for or on behalf of a National Board must be paid into the Board's account kept within the Agency Fund.

210 Payments out of Agency Fund

- (1) Payments may be made from the Agency Fund for the purpose of—
 - (a) paying any costs or expenses, or discharging any liabilities, incurred in the administration or enforcement of this Law; and

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

211 Investment of money in Agency Fund

- (1) Subject to this section, the National Agency may invest money in the Agency Fund in the way it considers appropriate.
- (2) The National Agency may invest money in a National Board's account kept within the Agency Fund only if the Agency has consulted the Board about the investment.
- (3) An investment under this section must be—
- (a) in Australian money; and
 - (b) undertaken in Australia.
- (4) The National Agency must use its best efforts to invest money in the Agency Fund in a way it considers is most appropriate in all the circumstances.
- (5) The National Agency must keep records that show it has invested in the way most appropriate in the circumstances.
- (6) A security, safe custody acknowledgment or other document evidencing title accepted, guaranteed or issued for an investment arrangement must be held by the National Agency.

212 Financial management duties of National Agency and National Boards

- (1) The National Agency must—
- (a) ensure that its operations are carried out efficiently, effectively and economically; and
 - (b) keep proper books and records in relation to the Agency Fund; and
 - (c) ensure that expenditure is made from the Agency Fund for lawful purposes only and, as far as possible, reasonable value is obtained for moneys expended from the Fund; and

- (d) ensure that its procedures, including internal control procedures, afford adequate safeguards with respect to—
 - (i) the correctness, regularity and propriety of payments made from the Agency Fund; and
 - (ii) receiving and accounting for payments made to the Agency Fund; and
 - (iii) prevention of fraud or mistake; and
 - (e) take any action necessary to ensure the preparation of accurate financial statements in accordance with Australian Accounting Standards for inclusion in its annual report; and
 - (f) take any action necessary to facilitate the audit of those financial statements in accordance with this Law; and
 - (g) arrange for any further audit by a qualified person of the books and records kept by the National Agency in relation to the Agency Fund, if directed to do so by the Ministerial Council.
- (2) A National Board must—
- (a) ensure that its operations are carried out efficiently, effectively and economically; and
 - (b) take any action necessary to ensure that the National Agency is able to comply with this section in relation to the funding of the National Board in exercising its functions.

Part 10 Information and privacy

Division 1 Privacy

213 Application of Commonwealth Privacy Act

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

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

- (4) In this section—

Privacy Act means the *Privacy Act 1988* 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) The regulations under this Law may modify the FOI Act for the purposes of this Law.
- (3) Without limiting subsection (2), 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 1982* 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
- (ba) for a person exercising functions under a NSW provision, the disclosure is to the National Agency or a National Board; or

Note—

See also section 176F which provides for the confidentiality of protected reports.

Note—

This paragraph is an additional New South Wales provision.

- (c) the disclosure is otherwise required or permitted by law; or
- (d) the disclosure is with the agreement of the person to whom the information relates; or
- (e) the disclosure is in a form that does not identify the identity of a person; or
- (f) the information relates to proceedings before a responsible tribunal and the proceedings are or were open to the public; or
- (g) the information is, or has been, accessible to the public, including because it is or was recorded in a National Register; or
- (h) the disclosure is otherwise authorised by the Ministerial Council.

217 Disclosure of information for workforce planning

- (1) The Ministerial Council may, by written notice given to a National Board, ask the Board for information required by the Council for planning the workforce of health practitioners, or a class of practitioners, in Australia or a part of Australia.
- (2) If a National Board receives a request under subsection (1), the Board may, by written

notice given to health practitioners registered by the Board, ask the practitioners for information relevant to the request.

- (3) A registered health practitioner who is asked to provide information under subsection (2) may, but is not required to, provide the information.
- (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 officer under the *Medicare Australia 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 National Registers

- (1) Each of the following National Boards must, in conjunction with the National Agency—
- (a) keep the public national register listed beside that Board in the following Table that is to include the names of all health practitioners, other than specialist health practitioners, currently registered by the Board; and
 - (b) if Divisions are listed beside the public national register in the Table, keep the register in a way that ensures it includes those Divisions.
- (2) In addition, each National Board must keep a public national register that is to include the names of all health practitioners, other than specialist health practitioners, who were registered by the Board and whose registration has been cancelled by an adjudication body.

Table—Public national registers

Name of Board	Name of public national register	Divisions of public national register
Aboriginal and Torres Strait Islander Health Practice Board of Australia	Register of Aboriginal and Torres Strait Islander Health Practitioners	
Chinese Medicine Board of Australia	Register of Chinese Medicine Practitioners	Acupuncturists, Chinese herbal medicine practitioners, Chinese herbal dispensers
Chiropractic Board of Australia	Register of Chiropractors	
Dental Board of Australia	Register of Dental Practitioners	Dentists, Dental therapists, Dental hygienists, Dental prosthetists, Oral health therapists

Medical Board of Australia	Register of Medical Practitioners	
Medical Radiation Practice Board of Australia	Register of Medical Radiation Practitioners	Diagnostic radiographers, Nuclear medicine technologists, Radiation therapists
Nursing and Midwifery Board of Australia	Register of Nurses Register of Midwives	Registered nurses (Division 1), Enrolled nurses (Division 2)
Occupational Therapy Board of Australia	Register of Occupational Therapists	
Optometry Board of Australia	Register of Optometrists	
Osteopathy Board of Australia	Register of Osteopaths	
Pharmacy Board of Australia	Register of Pharmacists	
Physiotherapy Board of Australia	Register of Physiotherapists	
Podiatry Board of Australia	Register of Podiatrists	
Psychology Board of Australia	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 by the Board; and
- (b) a public national register that includes the names of all specialist health practitioners whose registration has been cancelled by an adjudication body.

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 its National Register or Specialists Register 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 its National Register or Specialists Register 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 the National Register or Specialists Register 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(2) or 223(b) must include the following information for each health practitioner whose registration was cancelled by an adjudication body—

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

228 Inspection of registers

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

- (2) The National Agency may give a person a copy of the register under subsection (1)(c) only if the Agency is satisfied it would be in the public interest to do so.
- (3) The National Agency may waive, wholly or partly, the payment of a fee by a person under subsection (1)(b) or (c) if the Agency considers it appropriate in the circumstances.

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 by the Board.
- (2) The record is to be kept—
 - (a) in a way that does not identify persons involved in the matter, unless the decision was made by a responsible tribunal and the hearing was open to the public; and
 - (b) otherwise in the way decided by the National Board.

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

Ombudsman Act means the *Ombudsman Act 1976* 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—

- (a) a member of the Advisory Council;
- (b) a member of the Agency Management Committee;
- (c) a member of a National Board or a committee of the National Board;
- (d) a member of an external accreditation entity;
- (e) a member of the staff of the National Agency;
- (f) a consultant or contractor engaged by the National Agency;
- (g) a person appointed by the National Agency to conduct an examination or

assessment for a National Board;

- (h) a person employed or engaged by an external accreditation entity to assist it with its accreditation function.

236A Protection from personal liability for persons exercising functions under NSW provisions [NSW]

- (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 Council for the health profession on whose behalf, or in relation to which, the protected person was exercising functions.
- (3) In this section—

protected person means a person exercising functions under a NSW provision.

Note—

This section is an additional New South Wales provision.

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

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

- (4) The protection given to the person by this section extends to—
 - (a) a person who, in good faith, provided the person with any information on the basis of which the notification was made or the information was given; and
 - (b) a person who, in good faith, was otherwise concerned in the making of the notification or giving of the information.

Division 2 Inspectors

238 Functions and powers of inspectors

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

239 Appointment of inspectors

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

240 Identity card

- (1) A National Board must give an identity card to each inspector it appoints.
- (2) The identity card must—
 - (a) contain a recent photograph of the inspector; and
 - (b) be signed by the inspector; and
 - (c) identify the person as an inspector appointed by the National Board; and
 - (d) include an expiry date.
- (3) This section does not prevent the issue of a single identity card to a person—
 - (a) if the person is appointed as an inspector for this Law by more than one National Board; or

(b) if the person is appointed as an inspector and investigator for this Law by a National Board; or

(c) for this Law and other Acts.

(4) A person who ceases to be an inspector must give the person's identity card to the National Board that appointed the person within 7 days after the person ceases to be an inspector, unless the person has a reasonable excuse.

241 Display of identity card

(1) An inspector may exercise a power in relation to someone else (the **other person**) only if the inspector—

(a) first produces the inspector's identity card for the other person's inspection; or

(b) has the identity card displayed so it is clearly visible to the other person.

(2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the inspector must produce the identity card for the other person's inspection at the first reasonable opportunity.

Division 3 Legal proceedings

242 Proceedings for offences

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

243 Conduct may constitute offence and be subject of disciplinary proceedings

(1) If a person's behaviour constitutes an offence against this Law or another Act and constitutes professional misconduct, unsatisfactory professional performance or unprofessional conduct under this Law—

(a) the fact that proceedings for an offence have been taken in relation to the behaviour does not prevent proceedings being taken before an adjudication body under this Law for the same behaviour; and

(b) the fact that proceedings have been taken before an adjudication body under this Law in relation to the conduct does not prevent proceedings for an offence being taken for the same behaviour.

(2) If a person's behaviour may be dealt with by a health complaints entity under the law of a participating jurisdiction and constitutes professional misconduct, unsatisfactory professional performance or unprofessional conduct under this Law—

(a) the fact that the behaviour has been dealt with by the health complaints entity does not prevent proceedings being taken before an adjudication body under this

Law for the same behaviour; and

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

244 Evidentiary certificates

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

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

244A Evidentiary certificates for NSW provisions [NSW]

- (1) A certificate purporting to be signed by the Executive Officer of a Council 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 a NSW provision—

- (i) an appointment, approval or decision;
 - (ii) a notice, direction or requirement;
 - (iii) a record, or an extract from a record;
- (b) a stated document is another document kept under a NSW provision;
- (c) on a stated day, or during a stated period, an appointment as an authorised person was, or was not, in force for a stated person;
- (d) on a stated day, a stated person was given a stated notice or direction under a NSW provision;
- (e) on a stated day, a stated requirement was made of a stated person under a NSW provision;
- (f) on a stated day before 1 July 2010, or during a stated period before 1 July 2010, a stated person was or was not registered as a health practitioner or a student under a repealed Act;
- (g) on a stated day before 1 July 2010, or during a stated period before 1 July 2010, a registration under a repealed Act was or was not subject to a stated condition;
- (h) on a stated day before 1 July 2010, a registration under a repealed Act was suspended or cancelled or otherwise ceased to have effect (whether or not for a specified period).

(2) In this section—

registration under a repealed Act includes any other form of authorisation, for example, a practising certificate, endorsement, or the like.

repealed Act means an Act that was repealed by the [Health Practitioner Regulation Amendment Act 2010](#).

Note—

This section is an additional New South Wales provision.

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.

247A NSW regulations [NSW]

- (1) The Governor may make regulations, not inconsistent with this Law, for or with respect to any matter that by a NSW provision of this Law is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to a NSW provision of this Law.
- (2) Without limiting subsection (1), the regulations may make provision for or with respect to the following matters—
 - (a) standards applicable to premises used for pharmacy businesses for or with respect to the safe and competent delivery of pharmacy services;
 - (b) the inspection by or on behalf of the Pharmacy Council of New South Wales of pharmacy businesses;
 - (c) the infection control standards to be followed by health practitioners practising in this jurisdiction;
 - (d) the records to be kept by health practitioners practising in this jurisdiction;
 - (e) the reimbursement by the Councils of the costs incurred by the Ministry of Health in establishing the national registration and accreditation scheme.
- (3) A matter for which the first regulations made under this section make provision is

taken to be a matter for which a regulatory impact statement is not required for the purposes of the *Subordinate Legislation Act 1989*.

(4) In this section and Schedule 5C—

Governor means the Governor with the advice of the Executive Council, and includes a reference to a person for the time being lawfully administering the Government.

Note—

This section is an additional New South Wales provision.

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 Nursing and Midwifery Board of Australia.

private midwifery means practising the nursing and 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

Note—

This section is not applicable to New South Wales.

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

Note—

This section is not applicable to New South Wales.

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)

Note—

This paragraph is not applicable to New South Wales.

- (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

Note—

This section is not applicable to New South Wales.

298

Note—

This section is not applicable to New South Wales.

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) Parts 8 to 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.

Division 16 Savings and transitional regulations

305 Savings and transitional regulations

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

Part 13 Transitional and other provisions for Health Practitioner Regulation National Law and Other Legislation Amendment Bill 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 ss 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 ss 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(5A) and give the registered health practitioner or student notice under section 125(6).

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(5A) and give the registered health practitioner or student notice under section 126(6).

321

Note—

This section is not applicable to New South Wales.

Schedule 1 Constitution and procedure of Advisory Council

(Section 22)

Part 1 General

1 Definitions

In this Schedule—

Chairperson means the Chairperson of the Advisory Council.

member means a member of the Advisory Council.

Part 2 Constitution

2 Terms of office of members

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

qualified) for reappointment.

3 Remuneration

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

4 Vacancy in office of member

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

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

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

- (a) the member has been found guilty of an offence (whether in a participating jurisdiction or elsewhere) that, in the opinion of the Chairperson of the Ministerial Council, renders the member unfit to continue to hold the office of member; or
- (b) the member ceases to be a registered health practitioner as a result of the member's misconduct, impairment or incompetence; or
- (c) the Advisory Council recommends the removal of the member, on the basis that the member has engaged in misconduct or has failed or is unable to properly exercise the member's functions as a member.

(3) In addition, the Chairperson of the Ministerial Council may remove the Chairperson of the Advisory Council from office as a member if the Chairperson of the Advisory Council becomes a registered health practitioner.

5 Extension of term of office during vacancy in membership

(1) If the office of a member becomes vacant because the member has completed the member's term of office, the member is taken to continue to be a member during that vacancy until the date on which the vacancy is filled (whether by reappointment of the member or appointment of a successor to the member).

(2) However, this clause ceases to apply to the member if—

- (a) the member resigns the member's office by instrument in writing addressed to the Chairperson of the Ministerial Council; or

(b) the Chairperson of the Ministerial Council determines that the services of the member are no longer required.

(3) The maximum period for which a member is taken to continue to be a member under this clause after completion of the member's term of office is 6 months.

6 Disclosure of conflict of interest

(1) If—

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

(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 Advisory Council.

(2) Particulars of any disclosure made under this clause must be recorded by the Advisory Council 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 Advisory Council otherwise determines—

(a) be present during any deliberation of the Advisory Council with respect to the matter; or

(b) take part in any decision of the Advisory Council with respect to the matter.

(4) For the purposes of the making of a determination by the Advisory Council 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 Advisory Council for the purpose of making the determination; or

(b) take part in the making of the determination by the Advisory Council.

(5) A contravention of this clause does not invalidate any decision of the Advisory Council.

Part 3 Procedure

7 General procedure

The procedure for the calling of meetings of the Advisory Council and for the conduct of

business at those meetings is, subject to this Law, to be as determined by the Advisory Council.

8 Quorum

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

9 Presiding member

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

10 Transaction of business outside meetings or by telecommunication

(1) The Advisory Council may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Advisory Council for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Advisory Council.

(2) The Advisory Council may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

(3) For the purposes of—

(a) the approval of a resolution under subclause (1); or

(b) a meeting held in accordance with subclause (2);

the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Advisory Council.

(4) Papers may be circulated among the members for the purposes of subclause (1) by facsimile, email or other transmission of the information in the papers concerned.

11 First meeting

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

Schedule 2 Agency Management Committee

(Section 29)

Part 1 General

1 Definitions

In this Schedule—

Chairperson means the Chairperson of the Committee.

Committee means the Agency Management Committee.

member means a member of the Committee.

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 Committee, from 3 or more consecutive meetings of the Committee of which reasonable notice has been given to the member personally or by post; or
- (e) dies.

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

- (a) the member has been found guilty of an offence (whether in a participating

jurisdiction or elsewhere) that, in the opinion of the Chairperson of the Ministerial Council, renders the member unfit to continue to hold the office of member; or

- (b) the member ceases to be a registered health practitioner as a result of the member's misconduct, impairment or incompetence; or
- (c) the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration for their benefit; or
- (d) the Committee recommends the removal of the member, on the basis that the member has engaged in misconduct or has failed or is unable to properly exercise the member's functions as a member.

(3) In addition, the Chairperson of the Ministerial Council may remove the Chairperson of the Committee from office as a member if the Chairperson of the Committee becomes a registered health practitioner.

5 Vacancies to be advertised

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

Note—

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

6 Extension of term of office during vacancy in membership

- (1) If the office of a member becomes vacant because the member has completed the member's term of office, the member is taken to continue to be a member during that vacancy until the date on which 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 Committee 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 Committee 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 Committee; 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 Committee.
- (2) Particulars of any disclosure made under this clause must be recorded by the Committee 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 Committee otherwise determines—
 - (a) be present during any deliberation of the Committee with respect to the matter; or
 - (b) take part in any decision of the Committee with respect to the matter.
- (4) For the purposes of the making of a determination by the Committee under subclause (3), a member who has a direct or indirect pecuniary or other interest in a matter to which the disclosure relates must not—
 - (a) be present during any deliberation of the Committee for the purpose of making the determination; or
 - (b) take part in the making of the determination by the Committee.
- (5) A contravention of this clause does not invalidate any decision of the Committee.

Part 3 Procedure

9 General procedure

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

10 Quorum

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

11 Chief executive officer may attend meetings

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

12 Presiding member

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

13 Voting

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

14 Transaction of business outside meetings or by telecommunication

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

15 First meeting

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

16 Defects in appointment of members

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

Schedule 3 National Agency

(Section 23)

Part 1 Chief executive officer

1 Chief executive officer

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

2 Functions of chief executive officer

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

3 Delegation and subdelegation by chief executive officer

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

4 Vacancy in office

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

Part 2 Staff, consultants and contractors

5 Staff of National Agency

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

6 Staff seconded to National Agency

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

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

7 Consultants and contractors

- (1) The National Agency may engage persons with suitable qualifications and experience as consultants or contractors.
- (2) The terms and conditions of engagement of consultants or contractors are as decided by the National Agency from time to time.

Part 3 Reporting obligations

8 Annual report

- (1) The National Agency must, within 3 months after the end of each financial year,

submit an annual report for the financial year to the Ministerial Council.

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

public sector auditor means—

 - (a) the Auditor-General (however described) of a participating jurisdiction; or
 - (b) an auditor employed, appointed or otherwise engaged by an Auditor-General of a participating jurisdiction.

9 Reporting by National Boards

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

Schedule 4 National Boards

(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

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

3 Remuneration

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

4 Vacancy in office of member

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

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

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

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

5 Vacancies to be advertised

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

Note—

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

6 Extension of term of office during vacancy in membership

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

- (3) The maximum period for which a member is taken to continue to be a member under this clause after completion of the member's term of office is 6 months.

7 Members to act in public interest

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

8 Disclosure of conflict of interest

- (1) If—

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

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

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

committee in the same way as it applies to a member of the National Board and the National Board.

Part 3 Functions and powers

9 Requirement to consult other National Boards

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

- (a) consult with the other Board about the proposed recommendation; and
- (b) if the first Board makes the recommendation to the Ministerial Council, advise the Council about any contrary views expressed by the other Board about the recommendation.

10 Boards may obtain assistance

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

11 Committees

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

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

Part 4 Procedure

12 General procedure

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

13 Quorum

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

14 Presiding member

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

15 Voting

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

16 Transaction of business outside meetings or by telecommunication

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

17 First meeting

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

18 Defects in appointment of members

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

Schedule 5 Investigators

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 5A Savings and transitional provisions [NSW]

Note—

This Schedule is an additional New South Wales provision.

Part 1 NSW Regulations [NSW]

1 Savings and transitional regulations [NSW]

- (1) The NSW regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts—

the *Health Practitioner Regulation (Adoption of National Law) Act 2009*

the *Health Practitioner Regulation Amendment Act 2010*

the *Health Legislation Amendment Act 2012*

any Act that amends this Law

- (2) Any such provision may, if the NSW regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as—
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of *Health Practitioner Regulation Amendment Act 2010* [NSW]

Division 1 Preliminary [NSW]

2 Definitions [NSW]

In this Part—

commencement means commencement of this Part.

Division 2 Complaints and disciplinary proceedings [NSW]

3 Complaints made but not being dealt with on commencement [NSW]

- (1) This clause applies if, immediately before the commencement, a former Board had received but not started dealing with a complaint about a person registered in a health profession by the Board.
- (2) From the commencement, the complaint is taken to have been made to the Council established for the profession.

4 Relevant matters still being dealt with on participation day [NSW]

- (1) This clause applies if, immediately before the commencement, any of the following referrals, actions, applications or appeals (**relevant matters**) had been started but not completed under a repealed Act—
 - (a) the referral of a matter to an Impaired Registrants Panel;
 - (b) the referral of the professional performance of a health practitioner for assessment;
 - (c) the referral of a complaint to a Committee;
 - (d) the referral of a matter to a Performance Review Panel;
 - (e) an application for a review;
 - (f) action by a former Board to suspend, or impose conditions on, a registered health practitioner's registration under public protection provision;
 - (g) the referral of a complaint or another matter to a Tribunal;
 - (h) an appeal or application to a Tribunal;
 - (i) an appeal to the Supreme Court.
- (2) From the commencement, the relevant matter is to continue to be dealt with under the repealed Act under which it was made.
- (3) After the relevant matter has been decided under the repealed Act, any further proceedings or appeal in relation to the matter the subject of the relevant matter is to be dealt with under this Law as if the relevant matter had been decided under this Law.
- (4) For the purposes of this clause, the repealed Act applies—
 - (a) as if a reference to the former Board were a reference to the Council; and
 - (b) with any other changes that are necessary or convenient.

(5) The National Board for the health profession must give effect to a decision made in relation to a relevant matter under a repealed Act, and the decision continues to apply, as if it were a decision made under this Law.

(6) In this clause—

public protection provision means any of the following provisions—

- (a) section 54 of the *Chiropractors Act 2001*;
- (b) section 72 of the *Dental Practice Act 2001*;
- (c) section 66 of the *Medical Practice Act 1992*;
- (d) section 48 of the *Nurses and Midwives Act 1991*;
- (e) section 58 of the *Optometrists Act 2002*;
- (f) section 54 of the *Osteopaths Act 2001*;
- (g) section 67 of the *Pharmacy Practice Act 2006*;
- (h) section 55 of the *Physiotherapists Act 2001*;
- (i) section 54 of the *Podiatrists Act 2003*;
- (j) section 54 of the *Psychologists Act 2001*.

5 Complaints about dental prosthetists [NSW]

(1) This clause applies if, immediately before the commencement, the Dental Technicians Registration Board under the *Dental Technicians Registration Act 1975*—

- (a) had received but not started dealing with a complaint about a dental prosthetist;
or
- (b) had started but not completed dealing with a complaint about a dental prosthetist.

(2) From the commencement, the complaint is—

- (a) taken to have been made to the Dental Council of New South Wales; and
- (b) to be dealt with under this Law in the way agreed between the Dental Council of New South Wales and the Commission.

6 Complaints about dental technicians [NSW]

(1) This clause applies if, immediately before the commencement, the Dental Technicians Registration Board under the *Dental Technicians Registration Act 1975*—

- (a) had received but not started dealing with a complaint about a dental technician;
or
 - (b) had started but not completed dealing with a complaint about a dental technician.
- (2) From the commencement, the complaint is taken to be a complaint made to the Commission about the professional conduct of the dental technician.
- (3) For the purposes of subclause (2), a code of conduct prescribed under section 10AM of the *Public Health Act 1991* is taken to have applied to the dental technician's practice of the profession before the commencement as if the dental technician had not been required to be registered under a health registration Act.
- (4) If, after the complaint is dealt with, an order is made in relation to the dental technician that does either or both of the following, the order is taken to be a prohibition order for the purposes of Division 3 of Part 2A of the *Public Health Act 1991*—
- (a) prohibits the dental technician from providing health services or specified health services for the period specified in the order or permanently;
 - (b) places conditions on the provision of health services by the dental technician for the period specified in the order or permanently.

7 Existing orders in relation to dental technicians' registration [NSW]

- (1) This clause applies if, immediately before the commencement, an order was in force in relation to a dental technician that did either or both of the following:
- (a) prohibited the dental technician from providing health services or specified health services for the period specified in the order or permanently;
 - (b) placed conditions on the provision of health services by the dental technician for the period specified in the order or permanently.
- (2) From the commencement, the order is taken to be a prohibition order for the purposes of Division 3 of Part 2A of the *Public Health Act 1991*.

Division 3 Appointments [NSW]

8 Board members [NSW]

- (1) A person who, immediately before the commencement, was a member of a former Board for a health profession is taken, after the commencement, to be a member of the Council for that profession as if the person had been appointed under this Law.
- (2) The person holds office as a member of the Council until the earlier of the following days—

- (a) the day that is 2 years after the commencement;
 - (b) the day a NSW regulation made for section 41E in relation to the membership of that Council commences;
 - (c) the day the person otherwise vacates office under this Law.
- (3) For the purposes of clause 12(2) of Schedule 5C, the period for which the person held consecutive terms of office as a member of a former Board immediately before the commencement is to be taken into account in calculating the total period for which the person has held office.
- (4) However, the person may be appointed for one more term of office under this Law even if the person has held office for consecutive terms of office totalling more than 9 years.
- (5) Subclauses (2) and (4) apply despite—
- (a) anything in clause 12 of Schedule 5C; or
 - (b) anything in the member's instrument of appointment as in force immediately before the commencement.

9 President and Deputy President of former Board [NSW]

- (1) If a person referred to in clause 8 was, immediately before the commencement, the President of a former Board for a health profession the person is taken, after the commencement, to be the President of the Council for the health profession under this Law.
- (2) If a person referred to in clause 8 was, immediately before the commencement, the Deputy President of a former Board for a health profession the person is taken, after the commencement, to be the Deputy President of the Council for the health profession under this Law.

10 Tribunals [NSW]

- (1) A person who, immediately before the commencement, was the Chairperson of a Tribunal for a health profession under a repealed Act is taken, after the commencement, to be the Chairperson of the Tribunal for that profession under this Law as if the person had been appointed under this Law.
- (2) A person who, immediately before the commencement, was a Deputy Chairperson of a Tribunal for a health profession under a repealed Act is taken, after the commencement, to be the Deputy Chairperson of the Tribunal for that profession under this Law as if the person had been appointed under this Law.
- (3) A person who, immediately before the commencement, was a member of a panel of

lay persons for a Tribunal for a health profession under a repealed Act is taken, after the commencement, to be a member of a panel of lay persons for the Tribunal for that profession under this Law.

- (4) A person to whom this clause applies continues to hold office until the earlier of the following—
 - (a) the day the person's term of appointment under the repealed Act would have ended if that Act had not been repealed;
 - (b) the day the person otherwise vacates office under this Law.

11 Professional Standards Committees [NSW]

- (1) A person who, immediately before the commencement, was a member of a panel of lay persons for Professional Standards Committees for a health profession under a repealed Act is taken, after the commencement, to be a member of a panel of lay persons for Professional Standards Committees for that profession under this Law.
- (2) The person continues to be a member of the panel until the earlier of the following—
 - (a) the day that is 2 years after the commencement;
 - (b) the person resigns or is removed from the panel by the Minister.

12 Committees [NSW]

- (1) A person who, immediately before the commencement, was a member of a Committee for a health profession is taken, after the commencement, to be a member of the Assessment Committee for that profession under this Law as if the person had been appointed under this Law.
- (2) The person continues to hold office until the earlier of the following—
 - (a) the day that is 2 years after the commencement;
 - (b) the person otherwise vacates office under this Law.

- (3) In this clause—

Committee means the following—

- (a) the Chiropractic Care Assessment Committee constituted under the *Chiropractors Act 2001*;
- (b) the Dental Care Assessment Committee constituted under the *Dental Practice Act 2001*;
- (c) the Optometry Care Assessment Committee constituted under the *Optometrists Act 2002*;

- (d) the Osteopathy Care Assessment Committee constituted under the *Osteopaths Act 2001*;
- (e) the Pharmacy Care Assessment Committee constituted under the *Pharmacy Practice Act 2006*;
- (f) the Physiotherapy Standards Advisory Committee constituted under the *Physiotherapists Act 2001*;
- (g) the Podiatry Standards Advisory Committee constituted under the *Podiatrists Act 2003*;
- (h) the Psychological Care Assessment Committee constituted under the *Psychologists Act 2001*.

13 Assessors [NSW]

A person who was, immediately before the commencement, appointed as an assessor under a repealed Act by a former Board constituted for a health profession is taken after the commencement to have been appointed as an assessor under this Law by the Council established for that profession.

Division 4 Staff [NSW]

14 Definitions [NSW]

In this Division—

HPCA Division means the Health Professional Councils Authority Division of the Government Service.

HPRB Division means Health Professional Registration Boards Division of the Government Service.

new employer means an employer to whom a person's employment is transferred under this Division.

relevant former board means the following—

- (a) the Dental Board of New South Wales;
- (b) the New South Wales Medical Board;
- (c) the Pharmacy Board of New South Wales.

transferred employee means a person whose employment is transferred under this Division.

15 Staff employed by HPRB Division [NSW]

- (1) A person who was, immediately before the commencement, a member of staff of the HPRB Division is, from the commencement, taken to be a member of staff of the HPCA Division employed on the same terms and conditions that applied to the member immediately before the commencement.
- (2) Subclause (1) does not prevent the terms and conditions on which a member of staff is employed being varied.
- (3) The Minister may, by written order, transfer the employment of a member of staff of the HPCA Division to the employment of the National Agency.
- (4) A member of staff may decline to be transferred to the National Agency.

16 Staff employed by relevant former board [NSW]

- (1) The Minister may, by written order, transfer the employment of a member of staff of a relevant former board to the employment of the National Agency or the HPCA Division.
- (2) A member of staff of a relevant former board may decline to be transferred to the National Agency or the HPCA Division.

17 Continuity of employment [NSW]

The continuity of a transferred employee's employment is taken not to have been broken by the transfer of employment, and service with the Government Service or relevant former board that is continuous service up to the time of transfer is deemed for all purposes to be service with the new employer.

18 Accrued leave entitlements [NSW]

A transferred employee retains any rights to sick leave, annual leave or long service leave accrued or accruing immediately before the transfer of employment (other than accrued leave for which the employee has, on ceasing to be an employee of the Government Service or relevant former board, been paid the monetary value under any other entitlement of the employee).

19 Transfer payments [NSW]

A transferred employee is not entitled to receive any payment or other benefit (including in the nature of severance pay or redundancy or other compensation) merely because the employee ceased to be an employee of the Government Service or relevant former board, or the employee's contract of employment with the Government Service or relevant former board was terminated, as a result of the transfer of employment.

Division 5 Financial matters [NSW]

20 Education and research account [NSW]

- (1) An amount in an Education and Research Account established by a former Board for a health profession under a repealed Act is taken to be transferred to the Education and Research Account established by the Council for that profession under this Law.
- (2) An amount that had been appropriated from the Education and Research Account under the repealed Act for or towards a purpose specified under that Act but not paid before the commencement is to be paid by the Council for the health profession under this Law.

21 Education Account for dental technicians [NSW]

- (1) As soon as practicable after the commencement, the Dental Council of New South Wales must establish an account named the Dental Technicians Education Account.
- (2) The Council must pay into the Education Account the amounts decided in accordance with the NSW regulations.
- (3) Money in the Education Account may be expended by the Council only for purposes relating to the education of dental technicians.
- (4) An expenditure of money in the Education Account must not be made unless it is authorised by a committee of the Council consisting of 5 members.
- (5) The committee must consist of—
 - (a) at least 2 members who are dental technicians; and
 - (b) no more than 2 members who are dentists.
- (6) An expenditure of money in the Education Account may be authorised by the committee only if 4 of the members of the committee support the expenditure.
- (7) All the money in the Education Account must be expended within 3 years after the Account is established.
- (8) When all the money in the Education Account has been expended the Council must close the Account.
- (9) In this clause—

dental technician means a person, other than a dentist or dental prosthetist, who is engaged in the mechanical construction, or renewal or repair, of artificial dentures or restorative dental appliances.

Division 6 Pharmacy businesses [NSW]

22 Approval, authorisation or consent given under *Pharmacy Practice Act 2006* continues [NSW]

- (1) An approval, authorisation or consent in force under Division 2 of Part 3 of the *Pharmacy Practice Act 2006* immediately before the commencement continues after the commencement as if it had been given under Schedule 5F.
- (2) Without limiting subclause (1), the approval, authorisation or consent continues subject to any conditions that applied to it immediately before the commencement.

23 Application for approval, authorisation or consent [NSW]

An application for an approval, authorisation or consent made under Part 3 of the *Pharmacy Practice Act 2006* but not decided immediately before the commencement is taken, after the commencement, to be an application made to the Pharmacy Council of New South Wales under Schedule 5F.

24 Appointment of responsible pharmacist continues [NSW]

An appointment under clause 9 of the *Pharmacy Practice Regulation 2008* in force immediately before the commencement continues after the commencement as if it had been made under this Law.

25 Register of Pharmacies [NSW]

The Register of Pharmacies kept under the *Pharmacy Practice Act 2006* immediately before the commencement is taken, from the commencement, to be the Register of Pharmacies kept by the Pharmacy Council of New South Wales under this Law.

26 Inspectors [NSW]

A person who immediately before the commencement was an inspector under the *Pharmacy Practice Act 2006* is taken, from the commencement, to be an authorised person appointed under this Law.

Division 7 Miscellaneous [NSW]

27 Principal place of practice [NSW]

A person who was, immediately before the commencement, registered as a health practitioner under a repealed Act is taken on the commencement to have declared the address recorded for the person in the Register kept under that Act as being the person's principal place of practice.

28 References to former Boards in conditions [NSW]

- (1) This clause applies if—

- (a) a registered health practitioner's or student's registration is subject to a condition under section 279; and
 - (b) the condition includes a reference to a former Board.
- (2) From the commencement, the reference to the former Board is taken to be a reference to—
- (a) the Council established for the same health profession as the profession for which the former Board was established; or
 - (b) if the Council gives the registered health practitioner or student written notice that the reference is taken to be a reference to the National Board for the profession, the National Board.

Part 3 Provision consequent on enactment of [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2010](#) [NSW]

29 Protected reports [NSW]

The amendment to the definition of **protected report** in section 138 (1) made by the [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2010](#) applies to a report the subject of that amendment whether prepared before, on or after the commencement of that amendment.

Part 4 Provisions consequent on enactment of [Health Legislation Amendment Act 2012](#) [NSW]

30 Definition [NSW]

In this Part:

amending Act means the [Health Legislation Amendment Act 2012](#).

31 Mandatory notifications [NSW]

Section 143A as inserted by the amending Act does not extend to a notification under Division 2 of Part 8 that was made before the commencement of that section.

32 Suspension or conditions of registration to protect public [NSW]

Section 150 (7) as substituted by the amending Act does not apply to a delegation made by a Council before that substitution.

33 Membership of Committees [NSW]

- (1) The substitution of section 169B (1) (c) by the amending Act does not affect any Committee that was established before that substitution.

- (2) The substitution of section 172B (1) (b) by the amending Act does not affect any Committee that was established before that substitution.

34 Membership of Performance Review Panels [NSW]

The substitution of section 174A (2) (b) by the amending Act does not affect any Performance Review Panel that was established before that substitution.

Part 5 Provision consequent on enactment of [Health Legislation Amendment Act 2013](#) [NSW]

35 Appointments of acting members and acting President of Councils

The amendment of clause 11 (1) and (3) of Schedule 5C by the [Health Legislation Amendment Act 2013](#) does not affect the appointment of any person holding office as an acting member or an acting President of a Council immediately before the commencement of that amendment.

Part 6 Provision consequent on enactment of [Health Practitioner Regulation Legislation Amendment Act 2014](#) [NSW]

36 Application of amendment concerning requirement for reinstatement order before registration [NSW]

- (1) Without limiting section 287, section 149E, as inserted by the [Health Practitioner Regulation Legislation Amendment Act 2014](#), extends to persons whose registrations as health practitioners were cancelled, or who were disqualified from being registered as health practitioners, by the Tribunal (or a predecessor of the Tribunal) before the commencement of section 149E.

Note—

Section 287 makes provision for cancellations of registration and disqualifications from registration made under corresponding prior Acts to continue to have effect under this Law as if they were decisions made by the responsible tribunal under this Law. As a result, subclause (1) includes such cancellations and disqualifications as well as cancellations and disqualifications under this Law. The subclause also extends to decisions made by the former health practitioner tribunals before their abolition and replacement by the Tribunal.

- (2) However, subclause (1) does not affect any application for registration that was made and granted before the commencement of section 149E.

Part 7 Provision consequent on enactment of [Health Practitioner Regulation National Law \(NSW\) Amendment \(Review\) Act 2016](#) [NSW]

37 Application of amendment concerning membership of Committee [NSW]

Any person appointed by the Minister under section 172B (1) (as in force immediately

before its amendment by the *Health Practitioner Regulation National Law (NSW) Amendment (Review) Act 2016* is taken to have been appointed by the relevant Council.

Part 8 Provision consequent on enactment of Health Practitioner Regulation Amendment Act 2017 [NSW]

38 Setting of inaugural fee by Secretary for paramedicine [NSW]

Until such time as the amount of the complaints element for registration fees payable by paramedics is first set in accordance with section 26A of the Law, the Secretary of the Ministry of Health may instead set the amount.

Part 9 Provisions consequent on enactment of Health Legislation Amendment Act (No 2) 2018 [NSW]

39 Appeal against reprimand by Council [NSW]

Section 159 (1) (a1) of this Law extends to a reprimand given before the commencement of that paragraph even if the reprimand was not given by way of an order.

40 Tribunal's powers on appeal [NSW]

Section 159C (1) of this Law, as substituted by the *Health Legislation Amendment Act (No 2) 2018*, extends to an appeal that has been made but not finally disposed of before that substitution.

41 Effect of suspension [NSW]

Section 176D of this Law, as substituted by the *Health Legislation Amendment Act (No 2) 2018*, extends to a suspension that was imposed before that substitution.

Schedule 5B Provisions relating to performance assessments [NSW]

Note—

This Schedule is an additional New South Wales provision.

Part 1 Provisions relating to assessors [NSW]

1 General [NSW]

- (1) An assessor may exercise the powers conferred by this Part only for the purpose of conducting a performance assessment when required by a Council or a Performance Review Panel.
- (2) The performance assessment must be conducted in accordance with any directions given by the Council or the Performance Review Panel.
- (3) If the Council or the Panel instructs the assessor to limit the performance assessment

to a particular aspect or aspects of the registered health practitioner's professional performance, the assessment must be limited to that aspect or those aspects.

- (4) However, the assessor may assess other aspects of the professional performance of the registered health practitioner if during the course of the performance assessment the assessor forms the opinion that other aspects of the professional performance of the practitioner may be unsatisfactory and should be assessed.

2 Entry to premises [NSW]

- (1) An assessor may at any reasonable time enter and inspect—

- (a) any premises that the assessor reasonably believes are used by a registered health practitioner in connection with his or her professional practice; and
- (b) any premises in or on which the assessor reasonably believes records relating to the carrying out of a professional practice by a registered health practitioner are kept.

- (2) An assessor may enter premises only—

- (a) with the consent of the occupier and the health practitioner to whom the performance assessment relates; or
- (b) after having given the occupier of the premises, and the health practitioner to whom the performance assessment relates, at least 14 days notice of the assessor's intention to enter the premises.

- (2A) The notice referred to in subclause (2) (b) may be given by the assessor or by another person on behalf of the assessor.

- (3) On premises entered on the basis that they are used by a registered health practitioner in connection with his or her professional practice, an assessor has the following powers—

- (a) power to examine any equipment that the assessor reasonably believes is, has or may be used in connection with the professional practice;
- (b) power to take photographs of the premises, or of any equipment on the premises (being equipment that the assessor reasonably believes is, has or may be used in connection with the professional practice);
- (c) power to require the production of and inspect any stocks of any substance or drugs in or about those premises;
- (d) power to require any person on those premises to produce any records in the possession or under the control of that person relating to the carrying out of that professional practice;

- (e) power to take copies of, or extracts or notes from, the records;
 - (f) power to ask questions of any person on those premises;
 - (g) power to require the owner or occupier of those premises to provide the assessor with the assistance and facilities reasonably necessary to enable the assessor to exercise the functions of an assessor under this clause.
- (4) On premises entered on the basis that records relating to the carrying out of professional practice by a registered health practitioner are kept there, an assessor has the following powers—
- (a) power to require any person on those premises to produce any records in the possession or under the control of that person and relating to the carrying out of that professional practice;
 - (b) power to take copies of, or extracts or notes from, the records.
- (5) This clause does not authorise an assessor to enter any part of premises that is being used for residential purposes except with the consent of the occupier.
- (6) This clause does not authorise an assessor to require a person to answer any question, and a failure or refusal by a person to answer any question does not constitute an offence against clause 5.
- (7) However, a failure or refusal by a registered health practitioner, without reasonable excuse, to answer any question asked by an assessor is evidence that the professional performance of the registered health practitioner is unsatisfactory.

3 Power to conduct assessment exercise [NSW]

- (1) A Council may, by notice given to a registered health practitioner who is the subject of a performance assessment, require the practitioner to take part in an assessment exercise.
- (2) An assessment exercise is an exercise during which the assessor observes and assesses the professional performance of the registered health practitioner.
- (3) If practicable an assessment exercise must be based on an actual clinical situation (that is, an actual consultation or examination or the giving or performance of any other treatment, by a registered health practitioner).
- (4) However, an assessment exercise may be based on a simulated clinical situation (for example, a mock consultation) if an actual clinical situation is not practicable in the circumstances.
- (5) The time and place for, and the length of, the assessment exercise must be reasonable.

- (6) A failure or refusal by a registered health practitioner to take part in, or to continue with, an assessment exercise does not constitute an offence against clause 5.
- (7) However, a failure or refusal by a registered health practitioner, without reasonable excuse, to take part in or to continue with an assessment exercise is evidence that the professional conduct of the registered health practitioner is unsatisfactory.
- (8) This clause does not authorise an assessor to be present during any examination of a person, or at the giving or performance of any other health service or treatment by a registered health practitioner in respect of a person, without the consent of the person.

4 Answers to questions [NSW]

- (1) Any information furnished by a person in answering a question asked by an assessor for the purposes of a performance assessment is not admissible against the person in civil proceedings before a court except with the consent of the person.
- (2) Subclause (1) does not extend to any information furnished by a person that is a record required to be kept by or under this Law or any other Act.

5 Offences [NSW]

A person must not—

- (a) prevent an assessor from exercising a function conferred or imposed on the assessor under this Schedule; or
- (b) hinder or obstruct an assessor in the exercise of a function conferred or imposed on the assessor under this Schedule; or
- (c) furnish an assessor with information knowing it to be false or misleading in a material particular.

Maximum penalty—

- (a) for an offence under paragraph (a) or (b)—50 penalty units; or
- (b) for an offence under paragraph (c)—20 penalty units.

6 Offence of impersonating assessor [NSW]

A person must not impersonate or falsely represent that the person is an assessor.

Maximum penalty—50 penalty units.

7 Certificates of authority [NSW]

- (1) An assessor must be provided with a certificate of authority in a form approved by the Council that appointed the assessor.

- (2) An assessor must, on exercising in any place any function of the assessor under this Schedule, produce the assessor's certificate of authority to any person apparently in charge of the place who requests its production.

Part 2 Provisions relating to performance reviews [NSW]

8 Conduct of performance review [NSW]

- (1) A performance review must be conducted in the way decided by the Performance Review Panel.
- (2) The performance review must be conducted—
 - (a) with as little formality and technicality, and as much expedition, as the requirements of this Law and the proper consideration of the matter permit; and
 - (b) in the absence of the public.
- (3) In conducting a performance review a Performance Review Panel is not bound by the rules of evidence but may inform itself on any matter in any way it thinks appropriate.

9 Power to summon witnesses and take evidence [NSW]

- (1) The Chairperson of a Performance Review Panel may summon a person to appear at a performance review and to produce the documents (if any) referred to in the summons.
- (2) The Chairperson of the Panel may require a person appearing at the performance review to produce a document.
- (3) A person served with a summons to appear at a performance review to give evidence must not, without reasonable excuse—
 - (a) fail to attend as required by the summons; or
 - (b) fail to attend from day to day unless excused, or released from further attendance, by a member of the Panel.

Maximum penalty—20 penalty units.

- (4) A person appearing at a performance review to give evidence must not, without reasonable excuse—
 - (a) fail to answer a question that the person is required to answer by the Chairperson of the Panel; or
 - (b) fail to produce a document that the person is required to produce by this clause.

Maximum penalty—20 penalty units.

10 Power to obtain documents [NSW]

- (1) A member of a Performance Review Panel may, by notice in writing served on a person, require the person—
 - (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member of the Performance Review Panel or a person authorised by the Panel in that behalf; and
 - (b) to produce, at that time and place, to the person so specified a document specified in the notice.
- (2) A person who fails, without reasonable excuse, to comply with a notice served on the person under this clause is guilty of an offence.

Maximum penalty—20 penalty units.

11 Practitioner entitled to make representations [NSW]

- (1) A registered health practitioner who is the subject of a performance review is entitled to attend at the performance review and make oral or written representations to the Performance Review Panel with respect to the subject matter of the performance review.
- (2) The registered health practitioner is entitled to be accompanied by an Australian legal practitioner or other adviser, but is not entitled to be represented by the Australian legal practitioner or other adviser.
- (3) This clause does not prevent a Performance Review Panel from conducting a performance review in the absence of the registered health practitioner, as long as the practitioner has been informed of the performance review.

12 Panel may obtain reports [NSW]

A Performance Review Panel may, for the purpose of conducting a performance review, obtain a report from a person who, in the Panel's opinion, is sufficiently qualified or experienced to give expert advice on the matter that is the subject of the performance review.

13 Assessors may assist Panel [NSW]

- (1) The Council that established a Performance Review Panel may appoint one or more assessors to assist the Panel with the performance review.
- (2) The Panel may direct an assessor—
 - (a) to conduct an assessment of the professional performance of a registered health practitioner, and report on that assessment to the Panel; and

- (b) to provide the other assistance in connection with the performance review the Panel directs.

14 Release of information [NSW]

- (1) The Chairperson of a Performance Review Panel may, if the Chairperson thinks it appropriate in the particular circumstances of the case (and whether or not on the request of the practitioner concerned or any other person)—
 - (a) direct that the name of any witness is not to be disclosed in the performance review; or
 - (b) direct that all or any of the following matters are not to be published—
 - (i) the name and address of any witness;
 - (ii) the name and address of a registered health practitioner;
 - (iii) any specified evidence;
 - (iv) the subject-matter of the performance review.
- (2) A direction may be amended or revoked at any time by the Chairperson of the Panel.
- (3) A direction may be given before or during a performance review, but must not be given before the performance review unless notice is given of the time and place appointed by the Chairperson of the Panel for consideration of the matter to the following persons—
 - (a) a person who requested the direction;
 - (b) the practitioner concerned;
 - (c) another person the person presiding thinks fit.
- (4) A person who contravenes a direction given under this clause is guilty of an offence.
Maximum penalty—
 - (a) in the case of a corporation, 150 penalty units; or
 - (b) in any other case, 20 penalty units.

Schedule 5C Provisions relating to the members and procedure of Councils [NSW]

Note—

This Schedule is an additional New South Wales provision.

Part 1

1-9 (Repealed)

Part 2 Members of Councils [NSW]

10 President and Deputy President of Council [NSW]

- (1) Of the members of a Council—
 - (a) one who is registered in the health profession for which the Council is established must be appointed as President of the Council; and
 - (b) one must be appointed as Deputy President of the Council.
- (2) The appointments are to be made in and by the relevant instrument of appointment as a member of the Council, or by another instrument executed by the Governor.
- (3) A person who is the President or Deputy President vacates office as President or Deputy President if the person—
 - (a) is removed from that office by the Governor under subclause (4); or
 - (b) resigns that office by instrument in writing addressed to the Minister; or
 - (c) ceases to be a member.
- (4) The Governor may remove a member from the office of President or Deputy President.

11 Acting members and acting President [NSW]

- (1) The Minister may, from time to time, appoint a person to act in the office of a member of a Council during the illness or absence of the member, and the person, while so acting, has and may exercise all the functions of the member and is taken to be a member.
- (2) The Deputy President may act in the office of President during the illness or absence of the President, and while so acting has and may exercise all the functions of the President and is taken to be the President.
- (3) The Minister may, from time to time, appoint a member to act in the office of President during the illness or absence of both the President and Deputy President, and the member, while so acting, has and may exercise all the functions of the President and is taken to be the President.
- (4) A person is not eligible to be appointed under subclause (1) to act in the office of a member of the Council required to be a registered health practitioner nominated by a particular body unless the person is a member of that body.
- (5) The Minister may remove any person from any office to which the person was

appointed under this clause.

- (6) A person while acting in the office of a member is entitled to be paid the remuneration (including travelling and subsistence allowances) decided by the Minister from time to time.
- (7) For the purposes of this clause, a vacancy in the office of a member, the President or the Deputy President is taken to be an absence from office of the member, President or Deputy President.

12 Terms of office [NSW]

- (1) Subject to this Schedule, a member of a Council holds office for the period, not exceeding 3 years, specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.
- (2) A person may not hold office as a member of a Council for consecutive terms of office totalling more than 9 years (excluding any period served because of the operation of clause 8 (2) (a) of Schedule 5A).

13 Remuneration [NSW]

- (1) A member of a Council is entitled to be paid the remuneration (including travelling and subsistence allowances) decided by the Minister from time to time.
- (2) A member of a Council is, while sitting on an inquiry, entitled to be paid at a rate decided by the Minister.
- (3) A Council may pay a member of the Council who performs any service for the Council the amount the Minister considers appropriate.

14 Filling of vacancy in office of member [NSW]

If the office of any member of a Council becomes vacant, a person must be nominated by the Minister to fill the vacancy.

15 Casual vacancies [NSW]

- (1) A member of a Council vacates office if the member—
 - (a) dies; or
 - (b) absents himself or herself from 4 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings; or
 - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt

or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or

(d) becomes a mentally incapacitated person; or

(e) is convicted in this jurisdiction of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in this jurisdiction of an offence that, if committed in this jurisdiction, would be an offence so punishable; or

(f) ceases to have any qualification necessary for his or her appointment as a member, other than the nomination of a particular person or body; or

(g) resigns the office by instrument in writing addressed to the Minister; or

(h) is removed from office by the Governor under subclause (2) or (3).

(2) The Governor may remove a member from office.

(3) Without limiting subclause (2), the Governor may remove from office a member who contravenes the provisions of clause 16.

16 Disclosure of financial interests [NSW]

(1) A member of a Council who has a direct or indirect financial interest—

(a) in a matter that is being considered, or is about to be considered, at a meeting of the Council; or

(b) in a thing being done or about to be done by the Council;

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 Council.

(2) A disclosure by a member at a meeting of a Council that the member—

(a) is a member, or is in the employment, of a specified company or other body; or

(b) is a partner, or is in the employment, of a specified person; or

(c) has some other specified interest relating to a specified company or other body or a specified person;

is taken to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure.

(3) A Council must cause particulars of any disclosure made under this clause to be recorded in a book kept for the purpose and that book must be open at all reasonable hours for inspection by any person on payment of the fee decided by the Council from

time to time.

- (4) After a member has, or is taken to have, disclosed the nature of an interest in any matter or thing pursuant to this clause, the member must not, unless the Council otherwise determines—
 - (a) be present during any deliberation of the Council, or take part in any decision of the Council, with respect to that matter; or
 - (b) exercise any functions under this Law with respect to that thing.
- (5) Even if a member contravenes the provisions of this clause, the contravention does not invalidate any decision of the Council or the exercise of any function under this Law.
- (6) This clause does not apply to or in respect of an interest of a member in a matter or thing which arises merely because the member is a registered health practitioner.
- (7) A reference in this clause to a meeting of the Council includes a reference to a meeting of a committee of the Council.

17 Effect of certain other Acts [NSW]

- (1) Part 4 of the *Government Sector Employment Act 2013* does not apply to or in respect of the appointment of a member of a Council and a member is not, as a member, subject to that Act.
- (2) If by or under any other Act provision is made—
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
 - (b) prohibiting the person from engaging in employment outside the duties of that office;that provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Law as a member.
- (3) The office of a member is not for the purposes of any Act, an office or place of profit under the Crown.

Part 3 Procedure of Councils [NSW]

18 General procedure [NSW]

The procedure for the calling of meetings of a Council and for the conduct of business at those meetings is, subject to this Law, as decided by the Council.

19 Quorum [NSW]

- (1) Except as otherwise provided by this Law, the quorum for a meeting of the Council is the number equal to half of the number of its members or, if half is not a whole number, the next highest whole number.
- (2) If a Council has more than 4 members, the quorum for a meeting of the Council for the purpose of dealing with a complaint about a registered health practitioner or student by inquiry is 3.

20 Presiding member [NSW]

- (1) The President or, in the absence of the President, the Deputy President or in the absence of both of them, another member of a Council elected to chair the meeting by the members present, must preside at a meeting of the Council.
- (2) The person presiding at any meeting of a Council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

21 Voting [NSW]

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

22 Minutes [NSW]

A Council must cause full and accurate minutes to be kept of the proceedings of each meeting of the Council.

Schedule 5D Proceedings before Professional Standards Committees or the Tribunal [NSW]

Note—

This Schedule is an additional New South Wales provision.

1 Definition [NSW]

- (1) In this Schedule—

Committee means a Professional Standards Committee.

- (2) A reference in this Schedule (however expressed) to proceedings before the Tribunal is a reference to proceedings before the Tribunal under this Law.

2 Proceedings generally [NSW]

In proceedings before it, a Committee or the Tribunal is not bound to observe the rules of law governing the admission of evidence, but may inform itself of any matter in the way it thinks fit.

3 Power to summon witnesses and take evidence [NSW]

- (1) The Chairperson or Deputy Chairperson of a Committee may summon a person to appear in proceedings before the Committee to give evidence and to produce the documents (if any) referred to in the summons.

Note—

See sections 46, 47 and 48 of the *Civil and Administrative Tribunal Act 2013* concerning the powers of the Tribunal with respect to witnesses and evidence.

- (2) The person presiding at the proceedings may require a person appearing in the proceedings to produce a document.
- (3) A Committee may, in proceedings before it, take evidence on oath or affirmation and, for that purpose a member of the Committee—
 - (a) may require a person appearing in the proceedings to give evidence either to take an oath or to make an affirmation in a form approved by the person presiding; and
 - (b) may administer an oath to or take an affirmation from a person so appearing in the proceedings.
- (4) A person served with a summons to appear in proceedings before a Committee and to give evidence must not, without reasonable excuse—
 - (a) fail to attend as required by the summons; or
 - (b) fail to attend from day to day unless excused, or released from further attendance, by a member of the Committee.
- (5) A person appearing in proceedings to give evidence must not, without reasonable excuse—
 - (a) when required to be sworn or affirm—fail to comply with the requirement; or
 - (b) fail to answer a question that the person is required to answer by the person presiding; or
 - (c) fail to produce a document that the person is required to produce by this clause.

Maximum penalty—20 penalty units.

4 Power to obtain documents [NSW]

- (1) A member of a Committee or the Tribunal may, by notice in writing served on a person, require the person—
 - (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member of the Committee or the Tribunal or a person authorised by the Committee or the Tribunal in that behalf; and

(b) to produce, at that time and place, to the person so specified a document specified in the notice.

(2) A person who fails, without reasonable excuse, to comply with a notice served on the person under this clause is guilty of an offence.

Maximum penalty—20 penalty units.

(3) The power conferred by this clause is in addition to any other power conferred on the Tribunal by the *Civil and Administrative Tribunal Act 2013* with respect to the provision of documents.

5 Evidence of other proceedings [NSW]

(1) A Committee or the Tribunal may receive and admit on production any of the following, as evidence in any proceedings—

(a) the judgment and findings of a court (whether civil or criminal and whether or not of this jurisdiction);

(b) the verdict or findings of a jury of a court (whether civil or criminal and whether or not of this jurisdiction);

(c) the judgment and findings of a tribunal (whether or not of this jurisdiction);

(d) a finding, decision or determination of a Professional Standards Committee established under this Law or a corresponding prior Act;

(e) a decision of a performance and professional standards panel established under the Health Practitioner Regulation National Law;

(f) a certificate of the conviction of or the making of a criminal finding in respect of any person;

(g) a transcript of the depositions or of shorthand notes, duly certified by the Registrar or clerk of the court or tribunal as correct, of the evidence of witnesses taken in a court or tribunal referred to in paragraphs (a)–(c);

where the Committee or the Tribunal is of the opinion that the judgment, findings, verdict, certificate, decision, determination or evidence is relevant to the proceedings.

(2) If the Committee or the Tribunal is of the opinion that evidence so admitted is capable of establishing that a registered health practitioner has engaged in conduct that is sufficiently similar to the conduct alleged against the practitioner in the proceedings, it may rely on the evidence in—

(a) making a finding that a registered health practitioner is guilty of unsatisfactory professional conduct or professional misconduct; or

(b) exercising any of its powers under Subdivision 3 or 6 of Division 3 of Part 8.

(3) The power conferred by this clause is in addition to any other power conferred on the Tribunal by the *Civil and Administrative Tribunal Act 2013* with respect to the use of evidence.

6 Additional complaints [NSW]

(1) A Committee or the Tribunal may in proceedings before it deal with one or more complaints about a registered health practitioner or student.

(2) If, during the proceedings, it appears to the Committee or the Tribunal that, having regard to any matters that have arisen, another complaint could have been made against the practitioner or student concerned—

(a) whether instead of or in addition to the complaint which was made; and

(b) whether or not by the same complainant;

the Committee or the Tribunal may take that other complaint to have been referred to it and may deal with it in the same proceedings.

(3) In proceedings in which a Committee or the Tribunal is dealing with more than one complaint about a registered health practitioner or student, the Committee or the Tribunal may have regard to all the evidence before it (whether the evidence arose in relation to a complaint in respect of which the Committee or the Tribunal is making a finding or any other complaint or complaints in the proceedings) when making any of the following findings—

(a) a finding on a question of fact in relation to the conduct of a registered health practitioner or student;

(b) a finding that a registered health practitioner is guilty of unsatisfactory professional conduct or professional misconduct.

(4) If another complaint is taken to have been referred to a Committee or the Tribunal under subclause (2), the complaint may be dealt with after such an adjournment (if any) as is, in the Committee's or Tribunal's opinion, just and equitable in the circumstances.

7 Release of information [NSW]

(1) The person presiding in proceedings before a Committee or the Tribunal may, if the person presiding thinks it appropriate in the particular circumstances of the case (and whether or not on the request of a complainant, the registered health practitioner or student concerned or any other person)—

(a) direct that the name of any witness is not to be disclosed in the proceedings; or

(b) direct that all or any of the following matters are not to be published—

- (i) the name and address of any witness;
- (ii) the name and address of a complainant;
- (iii) the name and address of a registered health practitioner or student;
- (iv) any specified evidence;
- (v) the subject-matter of a complaint.

(2) A direction may be amended or revoked at any time by the person presiding.

(3) A direction may be given before or during proceedings, but must not be given before the proceedings unless notice is given of the time and place appointed by the person presiding for consideration of the matter to—

- (a) a person who requested the direction; and
- (b) the complainant or the registered health practitioner or student concerned, as appropriate; and
- (c) another person the person presiding thinks fit.

(4) For the purposes of this clause, a reference to the name of any person includes a reference to any information, picture or other material that identifies the person or is likely to lead to the identification of the person.

(5) A person who contravenes a direction given under this clause is guilty of an offence.

Maximum penalty—

- (a) in the case of a corporation, 150 penalty units; or
- (b) in any other case, 20 penalty units.

8 Authentication of documents by Committee [NSW]

Every document requiring authentication by a Committee may be sufficiently authenticated if signed by the Chairperson of that Committee or by a member of that Committee.

Note—

See section 87 (Authentication of documents) of the [Civil and Administrative Tribunal Act 2013](#) in relation to the Tribunal.

9 Nominal complainant [NSW]

(1) In any proceedings before a Committee or the Tribunal, a person appointed by the Commission—

- (a) may act as nominal complainant in place of the actual complainant; and
 - (b) when so acting, is, for the purposes of this Law and the NSW regulations, to be taken to be the person who made the complaint.
- (2) A reference in this Law to a complainant includes a reference to a nominal complainant.

10 Intervention by Secretary and Commission [NSW]

Without limiting the operation of clause 9, the Secretary personally (or a person employed in the Ministry of Health appointed by the Secretary) or a person appointed by the Commission may intervene, and has a right to be heard, in any proceedings before a Committee or the Tribunal.

11 Expedition of inquiries and appeals [NSW]

- (1) It is the duty of a Committee or the Tribunal to hear inquiries and appeals under this Law and to determine those inquiries and appeals expeditiously.
- (2) Without limiting subclause (1)—
- (a) an inquiry or appeal related to action taken by the Council under section 150 must be listed for hearing by a Committee or the Tribunal as soon as practicable; and
 - (b) a Committee or the Tribunal may postpone or adjourn proceedings before it as it thinks fit.

12 Certain complaints may not be heard [NSW]

- (1) A Committee or the Tribunal may decide not to conduct an inquiry, or at any time to terminate an inquiry or appeal, if—
- (a) any of the following circumstances apply—
 - (i) a complainant fails to comply with a requirement made of the complainant by the Committee or the Tribunal;
 - (ii) the person about whom the complaint is made ceases to be a registered health practitioner or student;
 - (iii) the complaint before the Committee or the Tribunal is withdrawn; and
 - (b) in the opinion of the Committee or the Tribunal it is not in the public interest for the inquiry or appeal to continue.
- (2) A Committee or the Tribunal must not conduct or continue any inquiry or any appeal if the registered health practitioner or student concerned dies.
- (3) The power conferred on a Committee or the Tribunal by this clause may be exercised

by the Chairperson of the Committee or the member of the Tribunal presiding and, if exercised by the Chairperson or member, is taken to have been exercised by the Committee or the Tribunal.

13 Tribunal may award costs [NSW]

- (1) The Tribunal may order the complainant (if any), the registered health practitioner or student concerned, or any other person entitled to appear (whether as of right or because leave to appear has been granted) at an inquiry or appeal before the Tribunal to pay costs to another person as decided by the Tribunal.
- (2) When an order for costs has taken effect, the Tribunal is, on application by the person to whom the costs have been awarded, to issue a certificate setting out the terms of the order and stating that the order has taken effect.
- (3) The person in whose favour costs are awarded may file the certificate in the District Court, together with an affidavit by the person as to the amount of the costs unpaid, and the Registrar of the District Court must enter judgment for the amount unpaid together with any fees paid for filing the certificate.
- (3A) The Tribunal may fix the amount of costs itself or order that the amount of costs be assessed by a costs assessor under the legal costs legislation (as defined in section 3A of the [Legal Profession Uniform Law Application Act 2014](#)) or on any other basis.
- (4) This clause applies instead of section 60 (Costs) of the [Civil and Administrative Tribunal Act 2013](#).

Schedule 5E Provisions relating to Assessment Committee [NSW]

Note—

This Schedule is an additional New South Wales provision.

Part 1 Preliminary [NSW]

1 Definition [NSW]

In this Schedule—

Committee means an Assessment Committee.

Part 2 Members [NSW]

2 Chairperson of Committee [NSW]

One of the members referred to in section 172B(1)(a) must be appointed by the Council as the Chairperson of the Committee.

3 Term of office [NSW]

Subject to this Schedule, a member of a Committee holds office for the period, not exceeding 4 years, specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

4 Remuneration [NSW]

A member of a Committee is entitled to be paid the remuneration (including travelling and subsistence allowances) decided by the Minister from time to time.

5 Filling of vacancy in office of member [NSW]

If the office of any member of a Committee becomes vacant, a person is, subject to this Law, to be appointed to fill the vacancy.

6 Casual vacancies [NSW]

- (1) A member of a Committee is taken to have vacated office if the member—
 - (a) dies; or
 - (b) absents himself or herself from 4 consecutive meetings of the Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Council or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Council for being absent from those meetings; or
 - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (d) becomes a mentally incapacitated person; or
 - (e) is convicted in this jurisdiction of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in this jurisdiction of an offence that, if committed in this jurisdiction, would be an offence so punishable; or
 - (f) resigns the office by instrument in writing addressed to the Council; or
 - (g) is removed from office by the Council under subclause (3).
- (2) Without limiting subclause (1), a member who is appointed under section 172B(1)(a) and who ceases to be a registered health practitioner is taken to have vacated office.
- (3) The Council may remove a member from office.

Part 3 Procedure of the Committee [NSW]

7 General procedure [NSW]

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

8 Quorum [NSW]

The quorum for a meeting of a Committee is 3 members.

9 Voting [NSW]

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

10 Presiding member [NSW]

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

Schedule 5F Pharmacies [NSW]

Note—

This Schedule is an additional New South Wales provision.

Part 1 Preliminary [NSW]

1 Definitions [NSW]

In this Schedule—

approved premises means premises approved under clause 12.

associated professional services room, in relation to a pharmacy business, means a professional services room specified as being associated with the pharmacy business in an approval in force under clause 3.

Council means the Pharmacy Council of New South Wales.

exempted body corporate means a body corporate that carries on, or has a financial interest in, a pharmacy business under clause 7.

financial interest has the meaning given by clause 2.

firm means a partnership or other unincorporated association of persons.

holding company has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth.

listed corporation has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth.

pharmacists' body corporate means a body corporate all the shareholders and directors of which are pharmacists.

pharmacists' partnership means a partnership consisting only of pharmacists.

pharmacy means premises in or on which a person carries on a pharmacy business and includes—

- (a) the portion (if any) of the premises in or on which the person sells or offers for sale goods of any kind; and
- (b) a professional services room;

but does not include premises located in a public hospital controlled by a public health organisation (within the meaning of the *Health Services Act 1997*).

pharmacy business means the business of a pharmacist or pharmaceutical chemist in which the dispensing and compounding of prescriptions for any substance specified in the Poisons List proclaimed under section 8 of the *Poisons and Therapeutic Goods Act 1966* occurs.

Price Information Code of Practice means the *Price Information Code of Practice* published by the Therapeutic Goods Administration of the Commonwealth, as in force on 25 February 2008.

professional services room means premises in or on which a person carries on a pharmacy business that involves only—

- (a) the preparation and packaging of drugs, or the packaging of drugs, by or under the personal supervision of a pharmacist, for supply to individual patients or to a health care facility for supply to patients or residents of that facility; and
- (b) the storage of those drugs.

public hospital has the meaning given by the *Health Services Act 1997*.

Register of Pharmacies means the Register of Pharmacies kept by the Council under clause 14.

security interest, in respect of a pharmacy business, means a mortgage, bill of sale or charge over, or other arrangement of a kind prescribed by the NSW regulations in respect of, a pharmacy business, that secures the payment of a debt or performance of some

other obligation under a contract or other legally enforceable arrangement.

2 Meaning of “financial interest” [NSW]

- (1) A **financial interest** means a direct or indirect monetary or financial interest and includes—
- (a) a proprietary interest, including a proprietary interest as a sole proprietor, partner, director, member or shareholder, or trustee or beneficiary; and
 - (b) an interest, whether proprietary or otherwise, in a pharmacy business that a person has because the person is a member or shareholder of—
 - (i) an exempted body corporate; or
 - (ii) a holding company, whether a listed corporation or not, of an exempted body corporate that is not a listed corporation; and
 - (c) an interest, whether proprietary or otherwise, in a pharmacy business that a person has because the person is a trustee or beneficiary of a trust, the trust property of which includes shares in—
 - (i) an exempted body corporate; or
 - (ii) a holding company, whether a listed corporation or not, of an exempted body corporate that is not a listed corporation; and
 - (d) an interest, whether proprietary or otherwise, in a pharmacy business that a person has because the person is a trustee or beneficiary of a trust, being a trust the trustees of which, in their capacity as the trustees of that trust, carry on or have a financial interest in the business.
- (2) However, a **financial interest** does not include—
- (a) an interest in a pharmacy business that a person has because the person is—
 - (i) a member of a friendly or other society that has a financial interest in a pharmacy business permitted by clause 6; or
 - (ii) a member of a listed corporation that is an exempted body corporate; or
 - (b) an interest in a pharmacy business that a person has because the person is a member of an exempted body corporate (other than a listed corporation referred to in subclause (1)(b)(ii)), but only if the person was a member of the body corporate before the commencement of Schedule 7.12 to the [Pharmacy Practice Act 2006](#); or
 - (c) an interest a person has in the profits of a pharmacy business because the person is an employee employed in that business, other than an interest constituted by

legal or beneficial ownership of shares or other securities of a body corporate (issued as part of an employee share scheme or otherwise); or

- (d) an interest that is prescribed by the NSW regulations as not constituting a financial interest for the purposes of this Schedule.

Part 2 Control of pharmacies [NSW]

3 Pharmacies to be approved and holders of financial interests registered [NSW]

- (1) A person must not carry on a pharmacy business unless—
- (a) the premises on which the pharmacy business is carried on are the subject of a current approval of the Council; and
 - (b) all holders of a financial interest in the pharmacy business are registered in the Register of Pharmacies.

Maximum penalty—50 penalty units.

- (2) Despite subclause (1)(b), a person who has lodged an application under clause 12(1)(b) may carry on the pharmacy business to which the application relates until the Council decides the application if—
- (a) the premises at which the business is carried on are the subject of a current approval of the Council; and
 - (b) a holder of a financial interest in the business who is not the subject of the application is registered in the Register of Pharmacies.
- (3) To avoid doubt, any failure to register a financial interest that is a security interest with respect to a pharmacy business does not—
- (a) affect the validity, priority or enforceability of the security interest or of the agreement or other arrangement providing for the security interest; or
 - (b) otherwise limit the effect of the security interest or the agreement or other arrangement providing for the security interest.

4 Notification of financial interests in pharmacy businesses [NSW]

- (1) A person who intends to acquire a financial interest in a pharmacy business (other than an interest referred to in clause 5(4)) must, at least 14 days before acquiring the interest, give written notice to the Council of the following matters—
- (a) the nature of the interest and the date on which it is intended to be acquired;
 - (b) the basis on which the person is entitled to hold the interest under this Schedule (for example, as a pharmacist, a pharmacists' body corporate or a friendly or other

society);

- (c) a copy of any bill of sale in relation to the acquisition;
- (d) a copy of any sale agreement for the business;
- (e) a copy of any partnership agreement for the business;
- (f) a copy of any lease for the pharmacy;
- (g) a copy of any agreement under which any other person has a financial interest in the business;
- (h) a copy of any agreement, between persons who have financial interests in the business, that makes provision for any rights the persons possess because of having the financial interests;
- (i) a copy of any agreement for the provision of management services to the business or to any pharmacists' body corporate that owns an interest in the business;
- (j) a copy of any agreement (except a contract of employment) between any person who has a financial interest in the business and any entity in respect of the provision of accounting, information technology, human resources or other support services to the business;
- (k) if a pharmacists' body corporate or a pharmacist is acting as a trustee (whether of a fixed trust, unit trust, discretionary trust or other kind of trust), a copy of any relevant trust deed;
- (l) a copy of any security interest in respect of the business.

Maximum penalty—50 penalty units.

- (2) A person who acquires a financial interest in a pharmacy business as referred to in clause 5(4) must, within 28 days after acquiring the interest, give written notice to the Council of that fact, the nature of the interest concerned and the date on which it was acquired.

Maximum penalty—50 penalty units.

- (3) A person who ceases to have a financial interest in a pharmacy business must, within 14 days after doing so, give written notice to the Council of that fact and the nature of the interest concerned.

Maximum penalty—50 penalty units.

- (4) The NSW regulations may prescribe additional matters to be included in a notice under this clause.

5 Restrictions on who may have financial interest in pharmacy business [NSW]

(1) A person must not own or otherwise have a financial interest in a pharmacy business (including as a partner or member of a firm) unless as one of the following—

- (a) a pharmacist;
- (b) a partner in a pharmacists' partnership;
- (c) a pharmacists' body corporate or a member of a pharmacists' body corporate.

Maximum penalty—100 penalty units.

(2) Subclause (1) does not prevent a person from having a financial interest in a pharmacy business—

- (a) if the person—
 - (i) comes into possession of the business or any assets of the business as a result of a default on an obligation secured by a security interest; and
 - (ii) does not have the financial interest for more than 6 months (or the longer period specified by the Council by written notice given to the person) from the date the person comes into possession of the pharmacy business or assets; or
- (b) if the person has the interest for a period of not more than 6 months (or the longer period specified by the Council by written notice given to the person) and the person has the interest because the person—
 - (i) is the executor, administrator or trustee of the estate of a deceased person who carried on the pharmacy business on the day of his or her death; or
 - (ii) is appointed or authorised under the laws relating to bankruptcy to administer the property of the person who carried on a pharmacy business and who has become bankrupt; or
- (c) if the person—
 - (i) is a pharmacist whose registration is cancelled or suspended; and
 - (ii) owned or otherwise had a financial interest in a pharmacy business immediately before the cancellation or suspension took effect; and
 - (iii) does not have the financial interest for a period of more than 6 months immediately following the day on which the cancellation or suspension took effect; or
- (d) in circumstances prescribed by the NSW regulations.

(3) Despite subclause (2)(b) and (c), a person may have a financial interest in a pharmacy

business under those paragraphs only if the business is in the charge of a pharmacist who personally supervises the carrying on of that business.

- (4) A person who has a financial interest in a pharmacy business under subclause (2)(c) must not, during the period during which the person holds the interest, enter or be in premises in which that business is carried on unless the person—
 - (a) has the Council's consent; and
 - (b) complies with any conditions imposed by the Council in giving its consent.
- (5) The Council may, at any time—
 - (a) vary or revoke a consent; or
 - (b) vary or revoke a condition imposed on a consent.
- (6) A person who holds provisional, limited or non-practising registration in the pharmacy profession is taken not to be a pharmacist for the purposes of subclause (1) during the period of that registration.

Note—

Clauses 6 and 7 provide for the exemption from subclause (1) of friendly and other societies and certain bodies corporate, respectively, in the circumstances set out in those clauses.

6 Exemption for friendly societies [NSW]

- (1) Clause 5 does not prevent a friendly society from owning or otherwise having a financial interest in a pharmacy business in accordance with a written approval given by the Minister.
- (2) An approval must not be given unless—
 - (a) the Minister is satisfied the net profits arising from the operation of the pharmacy business will be applied solely to the provision of benefits (other than benefits in the form of dividends or shares) to members of the friendly society; and
 - (b) the Minister is satisfied the operation of the pharmacy business is justified in the interests of members of the friendly society or of members of the public, or both; and
 - (c) the friendly society has nominated a pharmacist to be responsible for—
 - (i) ensuring there is displayed at or near the main entrance of each premises in which the business is carried on the owner's name; and
 - (ii) ensuring drug price information displayed in premises in which the business is carried on does not contravene the Price Information Code of Practice.

- (3) The Minister may—
 - (a) give an approval unconditionally or subject to conditions; or
 - (b) at any time, vary or revoke an approval.
- (4) The Minister must revoke an approval given to a friendly society if the Minister is satisfied.
 - (a) the net profits arising from the operation of the pharmacy business will no longer be applied solely to the provision of benefits to members of the friendly society in accordance with subclause (2)(a); or
 - (b) there is no longer a pharmacist nominated as being responsible for the matters specified in subclause (2)(c).
- (5) Clause 5 does not prevent a friendly or other society that was, immediately before the repeal of section 27A(1) of the *Pharmacy Act 1964*, lawfully carrying on a pharmacy business under that provision, from owning or otherwise having a financial interest in a pharmacy business.
- (6) An approval granted to a friendly or other society under section 27A(2) of the *Pharmacy Act 1964* and in force immediately before the repeal of that Act is taken to be an approval granted to the friendly society or other society (as if it were a friendly society), and in force, under subclause (1).
- (7) Subclause (4) does not apply in relation to a society referred to in subclause (6) that, immediately before the repeal of section 27A of the *Pharmacy Act 1964*, no longer satisfied the criteria referred to in section 27A(3)(a) of that Act.
- (8) A friendly or other society to which subclause (1), (5) or (6) applies must not own or otherwise have a financial interest in more than 6 pharmacy businesses.

Maximum penalty—100 penalty units.
- (9) A pharmacy business and an associated professional services room are counted as one pharmacy business for the purposes of subclause (8).

7 Exemption for certain bodies corporate [NSW]

- (1) Clause 5 does not prevent an existing body corporate from continuing to carry on a pharmacy business or continuing to have a financial interest in a pharmacy business in accordance with—
 - (a) clause 21 of the *Pharmacy (General) Regulation 1998* as in force immediately before its repeal; and
 - (b) subclause (2).

- (2) The existing body corporate must nominate a pharmacist to be responsible for—
- (a) ensuring there is displayed at or near the main entrance of each premises in which the business is carried on the owner's name; and
 - (b) ensuring drug price information displayed in premises in which the business is carried on does not contravene the Price Information Code of Practice.

- (3) In this clause—

existing body corporate means a body corporate that, immediately before the repeal of the *Pharmacy (General) Regulation 1998*, lawfully carried on a pharmacy business or had a financial interest in a pharmacy business under clause 21 of that Regulation.

Note—

The definition of **financial interest** in clause 2 operates to prohibit a person (other than a pharmacist, a partner in a pharmacists' partnership or a pharmacists' body corporate or a member of a pharmacists' body corporate) from having a financial interest (including as a shareholder) in a body corporate to which this clause applies (other than a listed corporation). That prohibition, however, does not apply where the person was a member of the body corporate before the commencement of Schedule 7.12 to the *Pharmacy Practice Act 2006*.

8 Indicating a corporation or firm to be a pharmacy business [NSW]

- (1) A corporation must not indicate it is a pharmacy business unless it is—
- (a) a pharmacists' body corporate that carries on a pharmacy business; or
 - (b) a friendly or other society that has a financial interest in a pharmacy business permitted by clause 6 and that carries on that business; or
 - (c) an exempted body corporate that carries on a pharmacy business.

Maximum penalty—50 penalty units.

- (2) A person must not indicate a corporation is a pharmacy business if the person knows, or ought reasonably to know, an indication by the corporation itself would be a contravention of subclause (1).

Maximum penalty—50 penalty units.

- (3) A partner or member of a firm must not indicate the firm is a pharmacy business unless the firm is a pharmacists' partnership that carries on a pharmacy business.

Maximum penalty—50 penalty units.

- (4) This clause does not apply to a person who has a financial interest in a pharmacy business as referred to in clause 5(5), but only in relation to indications made in the course of, and in relation to, carrying on that business.

9 Restriction on number of pharmacy businesses in which pharmacists may have a financial interest [NSW]

- (1) A pharmacist must not (whether as an individual or as a partner in a pharmacists' partnership or a member of a body corporate) own or otherwise have a financial interest in more than 5 pharmacy businesses in this jurisdiction.

Maximum penalty—100 penalty units.

- (2) A pharmacy business and an associated professional services room are counted as one pharmacy business for the purposes of subclause (1).

10 Certain provisions in certain instruments to be void [NSW]

- (1) Any of the following provisions in a lease or a licence, or an arrangement that creates a security interest, in respect of a pharmacy business is void—
- (a) a provision that requires the lessee or the licensee, or the grantor of the security interest (as the case may be), to purchase or otherwise obtain goods or services in connection with the business from the lessor or the licensor, or the grantee of the security interest;
 - (b) a provision that gives to the lessor, the licensor or the grantee power to control the way in which the business is to be carried on (including power to decide whether or not the pharmacy may participate in any public health programs);
 - (c) a provision that gives to the lessor, the licensor or the grantee access to the books of account kept for the business, other than for the purposes of determining whether or not the lessee, the licensee or grantor is complying with the terms and conditions of the lease, licence or arrangement;
 - (d) a provision that provides that the lessor, the licensor or the grantee is to receive consideration that varies according to the profits or takings of the business.
- (2) Subclause (1)(b) does not affect a provision relating to the opening or closing hours of a pharmacy business that is located in a retail shopping centre.

11 Pharmacist to be in charge of every pharmacy business [NSW]

- (1) A pharmacy business carried on in approved premises must be in the charge of a pharmacist who must personally supervise the carrying on of the business.
- (2) If a pharmacy business is carried on in approved premises in contravention of subclause (1), the following persons are guilty of an offence—
- (a) the owner of the pharmacy business;
 - (b) the pharmacist in charge of the approved premises, if the pharmacist is required under the terms of the pharmacist's employment to be in charge of the approved

premises at the time of the contravention.

Maximum penalty—100 penalty units.

- (3) It is a defence in proceedings against an owner for a contravention of subclause (1) if the owner proves to the satisfaction of the court that the owner used all due diligence to prevent the contravention.
- (4) To avoid doubt, during a period in which a pharmacy business carried on in an associated professional services room, and the pharmacy business with which the premises are associated, operate simultaneously, subclause (1) requires each business to be in the charge of a separate pharmacist who must personally supervise the carrying on of each business.
- (5) A person who holds provisional, limited or non-practising registration in the pharmacy profession is taken not to be a pharmacist for the purposes of this clause during the period of that registration.

Part 3 Approval of premises and registration of financial interests [NSW]

12 Application for approval of premises or registration of financial interest [NSW]

- (1) An application for either of the following may be made to the Executive Officer of the Council—
 - (a) an approval of premises as suitable for carrying on a pharmacy business by a pharmacist;
 - (b) registration of the holder of a financial interest in a pharmacy business.
- (2) An application for an approval of premises must be made—
 - (a) in the form approved by the Council; and
 - (b) by the owner, or one of the owners, of the pharmacy business.
- (3) An application for registration of the holder of a financial interest must be made—
 - (a) in the form approved by the Council; and
 - (b) by the following person—
 - (i) the owner, or one of the owners, of the pharmacy business;
 - (ii) if required to be made during any period in which a person referred to in clause 5(4)(a) or (b) assumes the administration of the pharmacy business, that person;

- (iii) if required to be made during a period in which a person assumes the administration of the pharmacy business under a security interest granted in respect of the pharmacy business, that person.
- (4) A person who is the owner of a pharmacy business to be carried on in a professional services room may apply for approval of the premises only if—
- (a) the person is the owner of a pharmacy business that is carried on in approved premises other than a professional services room; and
 - (b) in the application, the person nominates the pharmacy business (or, if the owner of more than one such pharmacy business, nominates one of the businesses) as the business with which the professional services room is associated.
- (5) The application must be accompanied by the fee prescribed by the NSW regulations.
- (6) The Council may require the application to be verified by a statutory declaration.
- (7) The Council may decide to—
- (a) refuse the application; or
 - (b) approve the premises or register the holder of the financial interest.
- (8) The Council must not approve premises—
- (a) that fail to comply with a standard prescribed for the premises by the NSW regulations; or
 - (b) that are within or partly within, or adjacent or connected to, a supermarket and that the public can directly access from within the premises of the supermarket.
- (9) The NSW regulations may prescribe standards for the purposes of subclause (8)(a) only for or with respect to the safe and competent delivery of pharmacy services.
- (10) The Council may revoke an approval of premises if—
- (a) the premises do not comply with a standard prescribed for the premises by the NSW regulations; or
 - (b) the premises become premises of a type described in subclause (8)(b); or
 - (c) the Council becomes aware the premises are no longer being used for the purposes of carrying on a pharmacy business.
- (11) In this clause—
- supermarket** means any retail store, or market, selling food and other domestic goods, whether or not by self-service operation and regardless of size, but does not include a retail store or market—

- (a) commonly known as a department store; or
- (b) in which food or produce is sold only in a cafe, coffee shop, restaurant or other prepared food or beverage counter.

13 Appeals against refusal to approve pharmacy or to register holder of financial interest [NSW]

- (1) A person aggrieved by any of the following decisions of the Council may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision—
 - (a) a decision relating to an application for the approval of premises;
 - (b) a decision relating to an application for the approval of the registration of the holder of a financial interest;
 - (c) a decision to revoke an approval of premises.
- (2) For the purposes of a review, an application for an approval or for registration that has not been dealt with by the Council is taken to have been refused on—
 - (a) the day that is one month after the application was lodged; or
 - (b) if a later day was decided by the Council and notified to the applicant before the day referred to in paragraph (a), that day.

14 Council to keep register [NSW]

- (1) The Council must keep a register (a **Register of Pharmacies**) containing particulars of—
 - (a) approved premises; and
 - (b) registered holders of financial interests.
- (2) The Register of Pharmacies must be kept in the form decided by the Council.
- (3) The Register of Pharmacies must be available for inspection—
 - (a) at the office of the Council at all reasonable times; and
 - (b) in the other ways (for example, by Internet access) and at the times decided by the Council.
- (4) The Council may charge a fee for an inspection of the Register of Pharmacies, not exceeding the amount prescribed by the NSW regulations.
- (5) The Council may make the alterations and additions to the Register of Pharmacies that are necessary to ensure the information recorded in the Register is accurate.

Part 4 Declarations and information [NSW]

15 Annual declaration to be submitted [NSW]

- (1) A person who holds a financial interest in a pharmacy business must, on or before the declaration date in each year, give to the Council, in the form approved by the Council, a declaration for the declaration period specifying the following information—
 - (a) the nature of the interest;
 - (b) the basis on which the person is entitled to hold the interest under this Law (for example, as a pharmacist, a member of a pharmacists' body corporate, a friendly or other society under clause 6 or a body corporate under clause 7);
 - (c) the number of pharmacy businesses in which the person has a financial interest;
 - (d) in relation to each pharmacy business the person owns, a description of the policies or systems in place to ensure safe and competent delivery of pharmacy services;
 - (e) any other information prescribed by the NSW regulations.

Maximum penalty—20 penalty units.

- (2) The Council may require the declaration to be verified by statutory declaration.
- (3) In this clause—

declaration date means a date notified to pharmacy owners by the Council in writing at least one month in advance.

declaration period means the period of 12 months ending 2 months before the declaration date.

16 Direction to supply information about financial interests [NSW]

- (1) The Council may, by written notice given to a person, require the person to give the Council, within the time specified in the notice, specified information or a specified document relating to a financial interest the person has in a pharmacy business.
- (2) The person must not—
 - (a) fail or refuse to comply with the notice to the extent the person is capable of complying with it; or
 - (b) in purported compliance with the notice, knowingly give information or produce a document that is false or misleading.

Maximum penalty—50 penalty units.

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) at the end of 6 months; or
 - (b) if proceedings involving the thing are started within 6 months, at the end of the proceedings and any appeal from the proceedings.
- (2) Despite subclause (1), unless the thing has been forfeited, the inspector must immediately return a thing seized as evidence to its owner if the inspector is no longer satisfied its continued retention as evidence is necessary.

17 Access to seized things

- (1) Until a seized thing is forfeited or returned, an inspector must allow its owner to inspect it and, if it is a document, to copy it.

- (2) Subclause (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

Part 3 General matters

18 Damage to property

- (1) This clause applies if—
 - (a) an inspector damages property when exercising or purporting to exercise a power;
or
 - (b) a person (the **other person**) acting under the direction of an inspector damages property.
- (2) The inspector must promptly give written notice of particulars of the damage to the person who appears to the inspector to be the owner of the property.
- (3) If the inspector believes the damage was caused by a latent defect in the property or circumstances beyond the inspector's or other person's control, the inspector must state the belief in the notice.
- (4) If, for any reason, it is impracticable to comply with subclause (2), the inspector must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.
- (5) This clause does not apply to damage the inspector reasonably believes is trivial.
- (6) In this clause—
owner, of property, includes the person in possession or control of it.

19 Compensation

- (1) A person may claim compensation from the National Agency if the person incurs loss or expense because of the exercise or purported exercise of a power under this Schedule by the inspector.
- (2) Without limiting subclause (1), compensation may be claimed for loss or expense incurred in complying with a requirement made of the person under this Schedule.
- (3) Compensation may be claimed and ordered to be paid in a proceeding brought in a court with jurisdiction for the recovery of the amount of compensation claimed.
- (4) A court may order compensation to be paid only if it is satisfied it is fair to make the order in the circumstances of the particular case.

20 False or misleading information

A person must not state anything to an inspector that the person knows is false or

misleading in a material particular.

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.

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 relation to the coastal sea of this jurisdiction as if that coastal sea were part of this jurisdiction.