



Summary of the draft

***Health Practitioner Regulation  
National Law Amendment Law 2017***





Summary of the draft

***Health Practitioner Regulation***

***National Law Amendment Law 2017***



## Key Terms

|   |  |
|---|--|
| <b>AHPRA</b>                            | Australian Health Practitioner Regulation Agency   |
| <b>Draft Bill</b>                       | Draft Bill for the <i>Health Practitioner Regulation National Law Amendment Law 2017</i>   |
| <b>COAG</b>                             | Council of Australian Governments  |
| <b>Co-regulatory jurisdiction</b>       | A jurisdiction which is not participating in the health, performance and conduct process of the National Law, but is involved in other parts of the National Scheme. New South Wales is a co-regulatory jurisdiction, so the health professional councils work with the Health Care Complaints Commission to assess and manage concerns about practitioners in NSW. Queensland is also a co-regulatory jurisdiction, and concerns about practitioners are managed by the Office of the Health Ombudsman in Queensland. |
| <b>Health practitioner</b>              | An individual who practises a health profession under the National Law   |
| <b>IGA</b>                              | Intergovernmental Agreement for a National Registration and Accreditation Scheme for the health professions  |
| <b>Ministers or Ministerial Council</b> | The COAG Health Council (sitting as the Australian Health Workforce Ministerial Council) comprising the Health Ministers of all State and Territories and the Commonwealth   |
| <b>National Law</b>                     | Health Practitioner Regulation National Law  |
| <b>National regulation</b>              | Under the National Law, regulations are made or amended by the Ministerial Council. The national regulations are subordinate legislation, similar to regulations that may be made under a State Act of Parliament.   |
| <b>National Scheme</b>                  | National Registration and Accreditation Scheme for the health professions  |

## Key reforms

- The draft Bill includes the following key reforms:
  - national regulation of paramedics
  - improvements in governance arrangements for the National Scheme, including:
    - a new power for the Ministerial Council to change the structure of National Boards by regulation
    - recognition of nursing and midwifery as separate professions
    - enabling community members to be appointed as chairpersons of National Boards
  - strengthening notifications management and disciplinary and enforcement powers to:
    - improve their effectiveness and administration, and
    - better protect the public
  - technical and miscellaneous amendments to improve the efficiency and effectiveness of the National Law
  - Norfolk Island health practitioners, who nominate their principal place of practice as Norfolk Island, will be deemed under the National Law to be a NSW practitioner..
- A summary of each of these reforms is set out below, with more details in the attachment.

## Background to National Scheme and National Law

3. The IGA was agreed at COAG in March 2008 and sets out the agreed basis for the National Scheme, which was implemented through the National Law.
4. The National Law was enacted or adopted by all states and territories in 2009 and 2010. It commenced on 1 July 2010, initially regulating ten health professions (with commencement in Western Australia on 18 October 2010). Four more health professions joined the scheme from 1 July 2012.
5. The National Law currently regulates 14 health professions: Aboriginal and Torres Strait Islander health practice; Chinese medicine; chiropractic; dental; medical; medical radiation practice; nursing and midwifery; occupational therapy; optometry; osteopathy; pharmacy; physiotherapy; podiatry; and psychology.
6. The National Law established 14 National Boards to regulate the 14 nationally registered health professions. It also established AHPRA to provide regulatory services for the National Boards and advice and assistance to the Ministerial Council, and the National Health Practitioner Ombudsman and Privacy Commissioner.
7. The National Scheme and National Law ensure that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered. It allows health practitioners to have a single registration recognised anywhere in Australia and provides mechanisms for detecting and addressing practitioner health, conduct or performance issues. The scheme provides powers to prosecute persons who falsely hold out to be registered or use a restricted professional title. It also enables the continuous development of a flexible, responsive and sustainable health workforce and innovation in the education of health practitioners and service delivery by health practitioners.
8. Some local modifications apply in certain States and Territories. In particular, NSW and Queensland's complaints handling and disciplinary functions operate under "co-regulatory" arrangements which are recognised by the National Law.

## Independent review of the National Scheme

9. In 2014, the Ministerial Council appointed Mr Kim Snowball, the former Director-General of the Department of Health in Western Australia to conduct an independent review of the National Scheme. The independent review involved an extensive consultation process which included consultation forums in each capital city and over 230 written submissions were received.
10. The independent review acknowledged the significant achievements made by the National Scheme and National Law, including:
  - ensuring that the community can have confidence that health practitioners providing treatment and care in Australia meet a national standard based on safe practice
  - consolidating 74 Acts of Parliament and 97 separate health profession boards across eight States and Territories into a single National Scheme
  - increasing the mobility of health practitioners working in Australia by removing the necessity for them to be separately registered in each jurisdiction
  - improving protection to the health system by ensuring that any health practitioner who has been found to have committed misconduct can no longer practise undetected in another jurisdiction
  - enabling significant improvements to health workforce information and planning due to the availability of accurate data on each of the 14 professions operating within it.

## Ministerial Council's response to the independent review

11. The final report of the independent review made 33 recommendations. The Ministerial Council announced its response to the report on 7 August 2015 and accepted nine recommendations, accepted 11 recommendations in principle, did not accept six recommendations and deferred decisions on seven recommendations pending further advice. Details of the Ministerial Council's response is available at: <http://www.coaghealthcouncil.gov.au/Portals/0/The%20Independent%20Review%20of%20the%20National%20Registration%20and%20Accreditation%20Scheme%20for%20Health%20Professions.pdf>
12. The implementation of the Ministerial Council's response to the independent review is occurring in two stages. The first stage consists of the amendments being progressed in this Bill. The second stage of proposed reforms will require stakeholder consultation to be undertaken and it is expected that agreed reforms will be progressed in a second Bill.

## National regulation of paramedics

13. On 6 November 2015, the Ministerial Council announced its intention for paramedics to be regulated as part of the National Scheme. On 7 October 2016, the Ministerial Council agreed to proceed with inclusion of paramedics in the National Scheme and noted that paramedics would be registered in all jurisdictions.
14. The Bill establishes the Paramedicine Board of Australia, which will be responsible for regulating paramedics with regulatory and other support provided by AHPRA. The Bill also amends the National Law to require people who use the title 'paramedic' to be registered. Paramedics will be subject to the same regulatory arrangements as the other health professions regulated under the National Law, including registration processes, accreditation of training programs, national standards, and procedures for managing the health, performance and conduct of registered paramedics (with complaints handling and disciplinary functions undertaken in Queensland and New South Wales under their co-regulatory models).
15. The regulation of paramedics as part of the National Scheme is expected to:
  - protect the public by: establishing minimum qualifications and other requirements for the registration of a person as a paramedic; providing powers to deal effectively with paramedics who have an impairment that affects their practice, are poorly performing or who engage in unprofessional conduct or professional misconduct; and preventing persons who are not qualified, registered and fit to practise from using the title 'paramedic' or holding themselves out to be registered if they are not
  - facilitate the provision of high quality education and training in paramedicine through the accreditation of training programs for registration purposes
  - improve transparency and accountability in the delivery of public and private sector paramedicine services, and
  - provide a suitable regulatory framework for the public and private sector paramedic workforce.

## Qualifications for registration as a paramedic

16. Approved qualifications for paramedicine will be decided by the National Board in accordance with the usual arrangements for accreditation functions in the National Law.
17. However, in addition to the approved qualifications, and as agreed by the Ministerial Council on 7 October 2016, the Bill recognises that a person who holds a Diploma of Paramedical Science, Diploma of Paramedical Science (Ambulance), Advanced Diploma of Paramedical Science (Ambulance), Diploma in Paramedical Science (Pre-Hospital Care) or Advanced Diploma Paramedical Sciences (Pre-Hospital Care) issued by the Ambulance Service of NSW will be qualified for general registration in paramedicine under the National Law.
18. All applicants will still be required to meet the registration standards to be developed by the Paramedicine Board of Australia, once established.

## Registration fees for paramedics

19. The National Scheme is funded from fees paid by registrants. Registration fees are set by the National Board and AHPRA and vary between professions based on the cost of regulating each profession under the National Law. The fees vary depending on factors such as the size of the profession, the risks associated with practice, the level and complexity of complaints and notifications, and the capital reserves needed to ensure sustainability of the operations of the National Board. The National Law requires that registration fees are reasonable having regard to the efficient and effective operation of the National Scheme.
20. Registration fees for paramedics will be set by the National Board and AHPRA after the National Board is established. In addition to annual registration fees, paramedics will also be required to pay a one-off application fee for first time registrants. This fee is to **cover the costs** associated with processing the application and assessing a person's eligibility and suitability for registration. This includes verification of the practitioner's identity, assessment and verification of qualifications, training and/or experience as a paramedic, and covers the cost of a criminal history check (in Australia), and confirmation of registration with international regulatory bodies (as needed).

## Transitional provisions for national regulation of paramedics

21. Subject to Parliamentary processes, national regulation of paramedics is planned to start in the second half of 2018.
22. The Paramedicine Board of Australia will be appointed as soon as possible after the Bill is passed to enable the Board to work with AHPRA to prepare the profession for national regulation. During this period, the Board must develop mandated registration standards to recommend to the Ministerial Council for approval. The registration standards set requirements for professional indemnity insurance arrangements, criminal history of applicants, continuing professional development, English language skills and recency of practice. It is expected that other registration standards and codes may also need to be developed, for example, to support the transition of the existing paramedic workforce into the scheme and set requirements for professional conduct.
23. In order to ensure a smooth transition, the Bill gives the Board powers to carry out certain functions during the period leading up to registration, including developing and consulting on draft registration standards, codes and guidelines, recognising qualifications for registration, and considering national accreditation arrangements for the profession. The National Law enables accreditation functions to be done by an external accreditation body or a Committee appointed by the Board.

## Governance – powers for Ministerial Council to change the structure of National Boards

24. The structure of National Boards for the health professions regulated under the National Law is currently fixed, with each registered profession having its own National Board specified in the National Law. The independent review found that five health professions accounted for 87.5% of registrants and 95.5% of complaints and notifications in 2012-13 (these professions were dental, medical, nursing/midwifery, pharmacy and psychology). The remaining nine professions account for 12.5% of registrants and less than 5% of complaints and notifications (referred to in the report as the "low regulatory workload professions").
25. The independent review recommended consolidating the nine low regulatory workload National Boards into a single National Board. On 8 April 2016, the Ministerial Council decided not to accept this recommendation. It decided that efficiencies can and should be achieved by streamlining existing committee and operational arrangements under all the National Boards. However, the Ministerial Council did not rule out the possibility that changes may be required in the future to ensure the governance arrangements for the National Scheme continue to be fit for purpose. Therefore, the Ministerial Council agreed to amend the National Law so that changes to the governance and membership of National Boards could be made by regulation.



26. To achieve flexibility for the Ministerial Council, the Bill requires that National Boards for each health profession be provided for in regulations, rather than specified in the National Law. Under the National Law, regulations are made or amended by the Ministerial Council. The Bill also states that the regulations may: continue existing National Boards; establish a Board for a health profession or two or more health professions; or dissolve a Board if another Board is established for that profession. This provides flexibility for the Ministerial Council to consolidate or separate National Boards as needed, to effectively manage changes in the governance, membership, cost effectiveness and efficiency of the Boards.
27. There are no current proposals to change the structure of National Boards. To demonstrate that the existing structure of National Boards is to be retained, the proposed changes to the regulations to prescribe the current National Boards will be tabled in the Queensland Parliament at the same time as the Bill is introduced<sup>1</sup>. The following commitment was given by the Ministerial Council in their communique of 8 April 2016: “if in the future Health Ministers are considering whether to exercise such powers, then consultation would be required with affected stakeholders before any changes in regulation could be progressed”.
28. The National Law specifies the professions regulated under the National Scheme. This means any change to add a profession to, or remove a profession from, the National Scheme would require the agreement of the Ministerial Council and amendment to the National Law. Appropriate consultation would also need to be undertaken prior to this type of change occurring.

### **Governance – recognition of nursing and midwifery as separate professions**

29. The significant majority of midwives in Australia hold dual registration as nurses and midwives (approximately 30,000). However, there are approximately 3,000 registered midwives who are qualified to practice as midwives only. In recent years, direct entry training programs for midwifery, and the introduction of alternative maternity choices for women, mainly in metropolitan areas, have seen a growth in the proportion of registered midwives who do not hold concurrent registration as a nurse.
30. The independent review recommended that the National Law be amended to reflect that nursing and midwifery are two professions regulated by one National Board. The Bill amends the National Law to recognise that nursing and midwifery are separate professions. However, these professions will continue to be regulated by the Nursing and Midwifery Board of Australia. Separate registers already exist for nurses and midwives and these registers will continue to be maintained.

### **Governance – appointment of community members as chairpersons of National Boards**

31. Under the National Law, the Chairperson of each National Board is appointed by the Ministerial Council and must be a health practitioner in the profession for which the Board is established.
32. The independent review recommended a change to the National Law to enable the appointment of either a practitioner member in the relevant profession or community member as Chairperson of a National Board. The Ministerial Council accepted this recommendation and the Bill implements it. This change will provide greater flexibility for the Ministerial Council to make appropriate appointments of Chairpersons for the National Boards.

1. Queensland is the host jurisdiction for the National Law.

## Strengthening notifications management and disciplinary and enforcement powers

33. The National Law contains disciplinary and enforcement powers to address practitioner health, performance and conduct issues. The amendments in the Bill will strengthen the powers to:

- clarify that a National Board may require a health practitioner to provide details of all the person's practice arrangements, regardless of the manner of their engagement (including, for example, engagement as an employee, contractor, self-employment or a voluntary or honorary appointment). This will be referred to as providing 'practice information'. This will ensure that where action is being taken against a health practitioner, a National Board is able to inform all places at which the person practices. Under the Bill practitioners will not be required to provide information about the residential addresses of clients or patients where a practitioner provides a 'house call' service or otherwise visits residential premises. To assist health practitioners, the Bill empowers AHPRA to develop guidelines about 'practice information' to be provided by practitioners. The guidelines will contain additional practical information about how the concept of 'practice information' in the National Law applies to common employment, contracting and volunteering arrangements.
  - broaden the grounds on which a National Board may take immediate action against a health practitioner or student to enable immediate action to be taken by a National Board if it reasonably believes the action is in the public interest. The National Law as it applies in NSW contains a similar 'public interest' test for immediate action. The Board will always seek to respond in a way that is proportionate to the risk posed
  - clarify that a prohibition order issued by a tribunal can prohibit a health practitioner from providing any type of health service and the order may be permanent. Currently prohibition orders can only prohibit a person from "using a specified title" or "providing a specified health service". This change provides greater flexibility for a tribunal to make an appropriate order in cases where a person is not a fit and proper person to continue providing any kind of health service
  - make it an offence to breach a prohibition order issued in any State or Territory, with a maximum penalty of \$30,000
  - require practitioners subject to prohibition orders issued in any State or Territory to inform patients and employers of the order and include details of the order in any advertising. The obligation to inform employers will extend to other entities that engage health practitioners, such as practitioners engaged under a contract for service or as a volunteer. A breach of these requirements will have a maximum penalty of \$5,000 for individuals and \$10,000 for a body corporate (for the advertising offence)
  - require National Boards to maintain a public register of prohibition orders. This will protect the public by ensuring they have access to information about practitioners who are subject to prohibition orders and ensure accountability of practitioners
  - improve communication with notifiers who report health, performance or conduct matters, by giving National Boards a discretion to inform notifiers of a greater range of action taken in response to notifications and reasons for decisions. AHPRA and National Boards will develop a common protocol to ensure appropriate information is disclosed to notifiers at appropriate times, while also taking into account privacy concerns of practitioners and patients. The existing mandatory requirements for informing notifiers will be maintained (for example, quarterly progress updates about investigations under section 161(3)(b), notice of action by a National Board under section 180 and notice of a decision by a panel under section 192).
34. The attachment outlines other changes in the Bill which are intended to strengthen the disciplinary and enforcement powers in the National Law. Most of the above changes will not apply to NSW practitioners as NSW is a co-regulatory jurisdiction.

## Technical and miscellaneous amendments to the National Law

35. The attachment outlines the technical and miscellaneous amendments in the Bill which are intended to improve the efficiency and effectiveness of the National Law.

## Regulation of Norfolk Island health practitioners

36. The Commonwealth Government took responsibility for governing Norfolk Island from 1 July 2016. NSW is assisting the Commonwealth by providing some services and regulatory support to roll out certain health-related laws to Norfolk Island for an initial period of five years until 30 June 2021.
37. The Commonwealth will apply relevant NSW laws to Norfolk Island. Therefore it is expected that NSW regulatory agencies will assume responsibility for the investigation and consideration of complaints about Norfolk Island based health practitioners.
38. The Bill provides that if a practitioner's principal place of practice is recorded in the National Register as an address on Norfolk Island, their principal place of practice under the National Law is deemed to be NSW.
39. The provisions of the Bill relating to Norfolk Island practitioners will apply until 30 June 2021, with this date able to be extended by regulation.

## Status of Bill

40. The Bill is a draft, which will be consulted on with key stakeholders and is for discussion and consultation purposes only. The draft Bill reflects policy decisions agreed by Ministers, but the draft Bill has not yet been approved by individual Health Ministers or the Ministerial Council.
41. Comments received as part of the consultation process will be considered in finalising the draft Bill for approval by the Ministerial Council in the first half of 2017. The Bill is planned to be introduced to the Queensland Parliament, as the host jurisdiction, in mid-2017. If the Bill is passed in Queensland, the changes apply automatically in all other States and Territories, except for Western Australia which must pass its own separate legislation, and South Australia where regulations must be made to adopt the changes. The changes relating to complaints handling and disciplinary functions will not apply to NSW.

## Feedback – How to make a submission in relation to the proposed amendments

42. Comments can be made by 5pm on Wednesday, 22 February 2017 to:

**NRAS.Project@dhhs.vic.gov.au**

Or

**NRAS Review Implementation Project Secretariat  
Workforce Regulation  
Health and Human Services Workforce Branch  
Department of Health and Human Services  
GPO Box 4057  
Melbourne VIC 3001**



# Attachment

## *Draft Health Practitioner Regulation National Law Amendment Law 2017*

The issues are listed in the table under the following categories:

|                                       |   |
|---------------------------------------|---|
| <b>Chairpersons</b>                   | enabling community members to be appointed as chairpersons of National Boards   |
| <b>National Boards</b>                | a new power for Ministers to change the structure of National Boards by regulation  |
| <b>Norfolk Island</b>                 | Norfolk Island health practitioners who nominate their principal place of practice as Norfolk Island, to be deemed under the National Law as a NSW practitioner |
| <b>Notifications/<br/>Enforcement</b> | strengthening notifications management and disciplinary and enforcement powers  |
| <b>Nursing/Midwifery</b>              | recognition of nursing and midwifery as separate professions  |
| <b>Paramedics</b>                     | national regulation of paramedics   |
| <b>Technical/<br/>Miscellaneous</b>   | technical and miscellaneous amendments to improve the efficiency and effectiveness of the National Law  |

| No. | Section of National Law | Issue                         | Proposed amendment   |
|-----|-------------------------|-------------------------------|--|
| 1.  | Section 5 – Definitions | Technical/<br>Miscellaneous   | <p><b>Merger of CrimTrac agency into the Australian Crime Commission</b></p> <p>The CrimTrac Agency was merged into the Australian Crime Commission from 1 July 2016 under the <i>Australian Crime Commission Amendment (National Policing Information) Act 2016 (Cwlth)</i>.</p> <p>The National Law contains a definition of “CrimTrac” and refers to “CrimTrac” in sections 79 and 135. The Bill removes the definition of “CrimTrac” and replaces it with a new definition of “ACC”, meaning the Australian Crime Commission established under section 7 of the <i>Australian Crime Commission Act 2002 (Cwlth)</i>.</p> <p>The Bill also makes minor consequential changes to sections 79 (Power to check applicant’s proof of identity) and 135 (Criminal history check) to replace references to “CrimTrac” with references to the “ACC”.</p>   |
| 2.  | Section 5 – Definitions | Notifications/<br>Enforcement | <p><b>Definition of “prohibition order”</b></p> <p>A new definition of “prohibition order” is included. The definition of “prohibition order” is a decision by a responsible tribunal under section 196(4)(b); a prohibition order under section 149C(5) of the NSW National Law; and a decision by a responsible tribunal of another participating jurisdiction under section 196(4)(b) as that section applies in the other jurisdiction.</p>  |
| 3.  | Section 5 – Definitions | Technical/<br>Miscellaneous   | <p><b>COAG Health Council – change of name of Ministerial Council</b></p> <p><i>Background</i></p> <p>The National Law defines “Ministerial Council” as the Australian Health Workforce Ministerial Council comprising Ministers of the governments of the participating jurisdictions and the Commonwealth with portfolio responsibility for health.</p> <p>The structure and names of Ministerial Councils are revised by COAG from time to time. The “Australian Health Workforce Ministerial Council” no longer exists as a separate Ministerial Council and its work has been included in the ambit of the COAG Health Council.</p> <p><i>Independent review</i></p> <p>Recommendation 32 of the independent review states: “That the <i>Health Practitioner Regulation National Law 2009</i> be amended to reflect provisions endorsed by the Australian Health Workforce Ministerial Council in 2011”. The Ministerial Council accepted this recommendation. The agreed amendments are outlined in Appendix 11 to the report of the independent review. Appendix 11 states:</p> <p><i>Legislative amendments are to be made to the National Law... to recognise the COAG Standing Council on Health to be the Ministerial Council for the purposes of the legislation.</i></p> <p><i>Amendments in Bill</i></p> <p>The Bill amends the definition of “Ministerial Council” to mean the COAG Health Council or a successor of the COAG Health Council (regardless of the name of the successor body) when constituted by Ministers of the governments of the participating jurisdictions and the Commonwealth with portfolio responsibility for health. The new definition takes into account that the name of the Ministerial Council may change in future.</p> |

| No. | Section of National Law                       | Issue              | Proposed amendment  |
|-----|---|--------------------|---|
| 4.  | Section 5 – Definitions                       | National Boards    | <p><b>Definition of “National Board”</b></p> <p>The definition of “National Board” is amended to refer to National Health Practitioner Boards provided for under regulations, in accordance with changes to section 31 (see entry for section 31 below).</p>  |
| 5.  | Section 5 – Definitions                       | Nursing/ Midwifery | <p><b>Recognition of nursing and midwifery as separate professions</b></p> <p>Recommendation 27 of the report of the independent review states: “That the <i>Health Practitioner Regulation National Law 2009</i> be amended to reflect and recognise that nursing and midwifery are two professions regulated by one National Board.” Ministers accepted this recommendation in principle, with a request for the Australian Health Ministers’ Advisory Council to provide policy recommendations on suitable amendments to the National Law.</p> <p>The Bill implements this recommendation by listing “nursing” and “midwifery” as separate professions in the definition of “health profession”.</p>  |
| 6.  | Section 5 – Definitions                       | Paramedics         | <p><b>Definition of “health profession” to include “paramedicine”</b></p> <p>The profession “paramedicine” is added to the definition of “health profession”. This has the effect of making “paramedicine” one of the professions regulated by the National Law.</p>  |
| 7.  | Section 31 – Establishment of National Boards | National Boards    | <p><b>New power for Ministers to change the structure of National Boards by regulation</b></p> <p>Section 31 of the National Law is removed and replaced by a new section 31. The new section 31 provides that the regulations:</p> <ul style="list-style-type: none"> <li>• must provide for a National Health Practitioner Board for each health profession;</li> <li>• may: <ul style="list-style-type: none"> <li>– continue existing National Boards, including the Paramedicine Board of Australia established by the Bill;</li> <li>– establish a National Board for a health profession or two or more health professions;</li> <li>– dissolve a National Board for a health profession if it is replaced by another Board established for that profession.</li> </ul> </li> </ul> <p>These provisions provide flexibility to change the structure of National Boards by regulations made by the Ministerial Council.</p> <p>The new section 31 also provides that regulations may be made about anything necessary or convenient to allow, facilitate or provide for the following:</p> <ul style="list-style-type: none"> <li>• the establishment, continuation or dissolution of a National Board;</li> <li>• the effect of anything done by an existing National Board that is continued in force by regulations;</li> <li>• the transfer of matters from a dissolved Board to a replacement Board.</li> </ul> <p>These are powers to make transitional arrangements for a new National Board structure in regulations.</p> <p>The matters currently provided for in sections 31(2) and (3) of the National Law about the status of National Boards are retained by the Bill.</p> |

| No. | Section of National Law                    | Issue           | Proposed amendment  |
|-----|--|-----------------|---|
| 8.  | Section 33 – Membership of National Boards | National Boards | <p><b>Membership of National Boards for two or more health professions</b></p> <p>Section 33(5) is amended to provide that if a National Board is established for two or more health professions, the practitioner members of the National Board must consist of at least one member of each health profession for which the Board is established.</p> <p>A new provision is inserted to provide that the regulations may prescribe matters relating to the composition of practitioner members for a National Board established for two or more health professions. This power allows Ministers to make regulations about the representation of practitioners on a multi-profession Board. As with all changes to the National Law and regulations, any such regulation would require the approval of all Ministers.</p>   |
| 9.  | Section 33 – Membership of National Boards | Chairpersons    | <p><b>Enabling community members to be appointed as Chairpersons of National Boards</b></p> <p><i>Independent review</i></p> <p>Recommendation 26 of the report of the independent review states: “That the <i>Health Practitioner Regulation National Law 2009</i> be amended to enable the Australian Health Workforce Ministerial Council to appoint either a practitioner member or a community member of a National Board as Chairperson”. The Ministerial Council accepted this recommendation.</p> <p><i>Amendments in Bill</i></p> <p>Section 33 is amended to allow the Ministerial Council to appoint community members as well as practitioner members to the role of the Chairperson of a National Board. The Bill achieves this by omitting the word “practitioner” from section 33(9).</p>  |
| 10. | Section 34 – Eligibility for appointment   | National Boards | <p><b>Eligibility for appointment of Board members for National Boards for two or more health professions</b></p> <p>A number of minor consequential changes are being made to section 34 to reflect the power given to Ministers to change the structure of National Boards by regulation, which in future may involve the establishment of a Board for two or more health professions.</p> <p>Section 34(2) is amended to provide that for a Board established for two or more health professions, a person is eligible to be appointed as a practitioner member of the Board if the person is a registered health practitioner in at least one of the health professions for which the Board is established.</p> <p>Section 34(3) is amended to make it clear that for a Board established for two or more health professions, a community member cannot be registered or previously registered in any of the health professions for which the Board is established.</p> <p>Section 34(4)(a) is amended to make it clear that a practitioner member is not eligible to be appointed as a member of a National Board if they cease to be a registered health practitioner in any one or more of the professions which the Board regulates, as a result of misconduct, impairment or incompetence. For example, if a Board member is registered in two health professions regulated by the Board and loses registration in only one of those professions due to misconduct, impairment or incompetence, this would be sufficient to make them ineligible to be appointed or to continue as a Board member.</p> |



| No. | Section of National Law                     | Issue                       | Proposed amendment   |
|-----|---|-----------------------------|--|
| 11. | Section 56 – Period of general registration | Technical/<br>Miscellaneous | <p data-bbox="657 472 1390 533"><b>Commencement date of registration up to 90 days after Board's decision</b></p> <p data-bbox="657 544 1465 757">Under section 56(2) of the National Law, a health practitioner's registration takes effect when the Board makes the decision to grant registration. This requirement creates administrative challenges, particularly for processing applications for registrants moving from student to general registration, interns moving to general registration and internationally qualified practitioners trying to meet the multiple requirements of National Boards, employers and immigration authorities.</p> <p data-bbox="657 768 1465 925">Appendix 11 of the report of the independent review states: "There are a number of instances when it would be of value for the Board to commence registration on a date to be determined. Such an amendment would be of particular value in the event that further professions were registrable under the National Law."</p> <p data-bbox="657 936 874 965"><b><i>Amendments in Bill</i></b></p> <p data-bbox="657 976 1465 1070">Section 56 is amended to enable a National Board to decide an application for registration, with the date on which registration will commence to be up to 90 days after the day the National Board decides the application.</p> |

| No. | Section of National Law  | Issue                       | Proposed amendment   |
|-----|--|-----------------------------|--|
| 12. | <p>Section 65 – Eligibility for limited registration and</p> <p>Section 71 – Limited registration not to be held for more than one purpose</p> | Technical/<br>Miscellaneous | <p><b>Power to grant more than one type of registration within the same profession</b></p> <p><i>Background</i></p> <p>A number of health professions under the National Law have “divisions” within the National Register to designate practitioners of different types. For example, the Register of Dental Practitioners has divisions for dentists, dental therapists, dental hygienists, dental prosthetists and oral health therapists. The Register of Medical Radiation Practitioners has divisions for diagnostic radiographers, nuclear medicine technologists and radiation therapists. Details of the divisions for the professions of Chinese medicine practitioners and nurses are set out in section 222.</p> <p>Section 65(1)(a) provides that a person is only eligible for limited registration if the person is not qualified for general or specialist registration. Section 71 of the National Law states that an individual may not hold limited registration in the same health profession for more than one purpose under division 4 of part 7 at the same time.</p> <p>For professions with several divisions of registration, this means it is not possible for a practitioner who holds general or limited registration in one division of the register to be granted limited registration in another division of the same profession. This is problematic for those upskilling and limits workforce flexibility. For example, a person may hold general or limited registration as a dental therapist or hygienist and require limited registration as a dentist to undertake post-graduate training or supervised practice to qualify for general registration as a dentist.</p> <p><i>Independent review</i></p> <p>Appendix 11 of the report of the independent review referred to the issue in a similar way: “At this stage, it is not possible to obtain limited registration in a different sub-type within the same profession (s.65(1)). This has a negative effect on individuals who are registered, for example, as a dental hygienist but who then want to undertake limited registration, for example, for the purpose of undertaking examinations to progress to become eligible for registration as a dentist.”</p> <p><i>Amendments in Bill</i></p> <p>Section 65 is amended to enable a health practitioner who holds general or limited registration in one division of the register for a profession to obtain limited registration in another division of the register for the same profession, if they are not qualified for general registration under the other division and they otherwise meet the qualification and other requirements for limited registration.</p> <p>The Bill also makes consequential changes to section 71. Section 71 continues to apply as is for health professions that do not have divisions of the register. However, for professions that have divisions, the Bill provides that health practitioners may not hold limited registration in the same division of the register for their profession for more than one purpose at the same time.</p> |

| No. | Section of National Law                                       | Issue                    | Proposed amendment  |
|-----|---|--------------------------|---|
| 13. | Section 95 – Endorsement of nurse practitioner                | National Boards          | <p><b>Minor consequential change – reference to Nursing and Midwifery Board of Australia</b></p> <p>The reference to the “Nursing and Midwifery Board of Australia” is being updated to reflect the fact that National Boards will be prescribed in regulations made under section 31. This clause will refer to the National Board which is established for the health profession of nursing. As there are no current plans to change the structure of National Boards, this will be a reference to the Nursing and Midwifery Board of Australia. If the Ministerial Council exercised its powers under section 31 to change the structure of National Boards in the future, the clause would refer to the Board established for the health profession of nursing.</p>   |
| 14. | Section 96 – Endorsement of midwife practitioner              | National Boards          | <p><b>Minor consequential change – reference to Nursing and Midwifery Board of Australia</b></p> <p>The reference to the “Nursing and Midwifery Board of Australia” is being updated to reflect the fact that National Boards will be prescribed in regulations made under section 31. This clause will refer to the National Board which is established for the health profession of midwifery. As there are no current plans to change the structure of National Boards, this will be a reference to the Nursing and Midwifery Board of Australia. If the Ministerial Council exercised its powers under section 31 to change the structure of National Boards in the future, the clause would refer to the Board established for the health profession of midwifery.</p>   |
| 15. | Section 113 – Restriction on use of protected titles          | Nursing/ Midwifery       | <p><b>Minor consequential change – references to “nursing” and “midwifery” as separate professions</b></p> <p>The table of protected titles is amended to refer to “nursing” and “midwifery” as separate professions. The following protected titles apply to the following professions:</p> <p>Midwifery – midwife, midwife practitioner</p> <p>Nursing – nurse, registered nurse, nurse practitioner, enrolled nurse</p> <p>The issue of whether the title “midwife practitioner” needs to be kept in the National Law is being considered as part of the second stage of amendments to the National Law, to be consulted on separately.</p>  |
| 16. | Section 113 – Restriction on use of protected titles          | Paramedics               | <p><b>Inclusion of “paramedic” as a protected title for the health profession “paramedicine”</b></p> <p>The table of protected titles is amended to include the profession “paramedicine” and the corresponding protected title “paramedic”.</p>  |
| 17. | Section 118 – Claims by persons as to specialist registration | Technical/ Miscellaneous | <p><b>Technical amendment to correct a drafting error</b></p> <p>Section 118(2)(b) is amended to make a technical amendment to correct a drafting error.</p> <p>Section 118(1) makes it an offence for a person who is not a specialist health practitioner to claim they are a specialist health practitioner. Section 118(2) makes it an offence for a person to claim an association with a specialist health practitioner when the other person is not a specialist health practitioner. Section 118(2)(a) uses the correct formulation “in relation to another person who is not a specialist health practitioner”. Section 118(2)(b) currently only refers to “in relation to another person”. Section 118(2)(b) is amended to use the correct formulation “in relation to another person who is not a specialist health practitioner”.</p> |

| No. | Section of National Law  | Issue                      | Proposed amendment  |
|-----|--|----------------------------|---|
| 18. | <p>Section 125 – Changing or removing conditions or undertaking on application by registered health practitioner or student and</p> <p>Section 126 – Changing conditions on Board’s initiative</p> | Notifications/ Enforcement | <p><b>Review period when conditions on registration or undertaking are changed</b></p> <p><i>Background</i></p> <p>When a National Board makes the following decisions, it must decide a “review period” for the decision:</p> <ul style="list-style-type: none"> <li>• section 83(2) – a decision to register a person subject to a condition the Board considers necessary or desirable</li> <li>• section 103(2) – a decision to impose a condition on the endorsement of an applicant’s registration</li> <li>• section 112(4) – a decision to renew a health practitioner’s registration or endorsement of registration subject to a condition.</li> </ul> <p>A “review period” is the period during which a health practitioner or student may not make an application to change or remove a condition or undertaking and during which the Board may not change a condition on its own initiative, unless there has been a material change of circumstances (see sections 125(2)(a) and 126(3)(a)). The term “review period” is defined in section 5.</p> <p>Under section 125(1), a practitioner or student may apply for a condition or undertaking to be changed. A National Board must decide to grant or refuse the application under section 125(5). Under section 126, a National Board may change a condition imposed on a practitioner’s or student’s registration on its own initiative.</p> <p>Currently, there is no ability to decide a “review period” if a condition or undertaking is changed under sections 125 or 126 and this can lead to uncertainty for practitioners and premature applications for review of decisions.</p> <p><i>Independent review</i></p> <p>Appendix 11 of the report of the independent review states: “When conditions are amended under sections 125 and 126, there is no requirement for a review period to be set and we think that this would be of benefit to practitioners.”</p> <p><i>Amendments in Bill</i></p> <p>Sections 125 and 126 are amended to give National Boards a discretion to decide a “review period” when a National Board decides to change a registration condition or an undertaking. The discretion to decide a “review period” will apply regardless of whether the change occurs on application from the practitioner or student (under section 125) or on the Board’s own initiative (under section 126).</p> |

| No. | Section of National Law   | Issue                         | Proposed amendment   |
|-----|---|-------------------------------|--|
|     |   |                               | <p>As the practitioner or student has already been subject to a “review period” when the original condition was imposed on their registration or undertaking given, it may not be necessary to impose a further “review period” in every case when the condition or undertaking is changed. However, there may be cases where it would be beneficial for the National Board to impose a “review period” to give certainty to the practitioner about the minimum period before a review can be sought to enable sufficient time for resolution of the issues related to the condition or undertaking or to prevent the practitioner from immediately seeking a review once the condition or undertaking is changed. For this reason, the Bill provides that the “review period” should be at the discretion of the National Board, rather than a requirement, as applies in sections 83, 103 and 112.</p> <p>Sections 125(6) and 126(6) are also amended to provide that if the National Board decides a review period, the Board must give written notice of the details of the review period to the practitioner or student at the same time as giving them notice of the Board’s decision under sections 125(5) and 126(5) respectively.</p> |
| 19. | <p>Section 125<br/>– Changing or removing conditions or undertaking on application by registered health practitioner or student<br/>and<br/>Section 126<br/>– Changing conditions on Board’s initiative</p> | Notifications/<br>Enforcement | <p><b>Conditions imposed on registration by an adjudication body of a co-regulatory jurisdiction</b></p> <p>Under subdivision 2, division 11, part 7 of the National Law, sections 125(2)(b) and 126(3)(b) provide that when an adjudication body of a co-regulatory jurisdiction imposes a condition on registration, the adjudication body may decide, when imposing the condition, that the procedures in that subdivision apply for making changes to the condition.</p> <p>The words “when imposing the condition” in these sections are unnecessarily restrictive. The power for an adjudication body to decide whether or not the subdivision applies could be made at any time, and does not necessarily have to be made at the time the conditions are imposed.</p> <p>The Bill amends sections 125(2)(b) and 126(3)(b) to provide that an adjudication body may decide whether or not the subdivision applies “when imposing the condition <b>or at a later time</b>”.</p>   |

| No. | Section of National Law  | Issue                      | Proposed amendment  |
|-----|--|----------------------------|---|
| 20. | New section 127A – When matters under this subdivision may be decided by review body of a co-regulatory jurisdiction | Notifications/ Enforcement | <p data-bbox="619 465 1390 528"><b>Co-regulatory jurisdiction powers to change conditions imposed in another jurisdiction</b></p> <p data-bbox="619 539 759 573"><i>Background</i></p> <p data-bbox="619 577 1434 797">Sections 125(2)(b) and 126(3)(b) recognise that a condition may be imposed on a health practitioner’s registration by an adjudication body in a co-regulatory jurisdiction. These provisions of the National Law also recognise that the adjudication body for a co-regulatory jurisdiction may decide whether the review process in part 7, division 11, subdivision 2 should apply or not – that is, whether a practitioner or student should be able to apply to the National Board to change or remove a condition.</p> <p data-bbox="619 808 1434 1032">However, no provision is made in the National Law or the laws of co-regulatory jurisdictions for the reverse situation, that is, where a condition is imposed on a health practitioner’s registration in a jurisdiction that is not a co-regulatory jurisdiction, but there is a need for a review body in a co-regulatory jurisdiction to review the condition. For example, this situation may arise if the practitioner moved their principal place of practice from a National Board jurisdiction to a co-regulatory jurisdiction.</p> <p data-bbox="619 1043 839 1077"><i>Independent review</i></p> <p data-bbox="619 1081 1398 1267">Appendix 11 of the report of the independent review states: “Co-regulatory issues – under sections 125(2)(b), 126(3)(b) and 127(3)(b), there is no equivalent section in the National Law (NSW) to allow a co-regulatory jurisdiction to change a condition imposed by an adjudication body in a National Board jurisdiction (Part 8) if the adjudication body decided, when imposing the condition, that the subdivision applied.”</p> <p data-bbox="619 1279 839 1312"><i>Amendments in Bill</i></p> <p data-bbox="619 1317 1414 1503">The Bill inserts a new section which provides power for a National Board to refer a matter to a “review body” of a co-regulatory jurisdiction if the National Board considers that a change or removal of a condition or a change or revocation of an undertaking should be decided by the review body. This will usually occur where a practitioner has moved to a co-regulatory jurisdiction and has commenced practising in that jurisdiction.</p> <p data-bbox="619 1514 1434 1671">The National Board may make this decision on its own initiative or after receiving a request from the review body. The new provision provides that 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 the review body’s jurisdiction.</p> <p data-bbox="619 1693 1434 2139">“Review body” is defined as an entity declared by an Act or regulation of a co-regulatory jurisdiction to be a review body for the purposes of the new provision. In NSW, it is planned that the review body will be a Health Professional Council or the Civil and Administrative Tribunal of NSW. This will need to be declared in an Act or regulation in NSW. It appears unnecessary for Queensland to prescribe any ‘review bodies’ for this new provision, as the Queensland co-regulatory arrangements currently allow for transfer of matters between National Boards and the Health Ombudsman and appeal of National Board decisions to the Queensland Civil and Administrative Appeals Tribunal. Queensland and New South Wales may also make further changes to their own State-based laws to provide for this situation from a co-regulatory perspective. For example, it is expected that NSW will seek to amend its laws to provide that an “undertaking” given in another jurisdiction will be converted to a “condition” when the matter is referred to a NSW review body under this provision.</p> |

| No. | Section of National Law   | Issue                      | Proposed amendment   |
|-----|---|----------------------------|--|
| 21. | <p>Section 132 – National Board may ask registered health practitioner for employer’s details and</p> <p>Section 206 – National Board to give notice to registered health practitioner’s employer</p> | Notifications/ Enforcement | <p><b>National Board may ask registered health practitioner for “practice information” – regardless of their manner of engagement, including as an employee, contractor, volunteer, partner, “service company” arrangement, self-employment or working in an honorary capacity</b></p> <p>Section 132 currently allows a National Board to ask a registered health practitioner to inform the Board if the practitioner is employed by another entity and the employer’s details. Section 206 requires a National Board to inform a practitioner’s employer about health, conduct or performance action being taken against the practitioner.</p> <p><b><i>Independent review</i></b></p> <p>Appendix 11 of the report of the independent review states: “s.206 requires that notice of a decision to take action against a registered health practitioner is communicated to the practitioner’s employer. This definition might be expanded to require notice to all places of practice – making it clear that s.206 applies equally to contractual arrangements.”</p> <p><b><i>Amendments to section 132 in Bill</i></b></p> <p>The Bill amends section 132 so that it applies to a broad range of different practice arrangements under which a health practitioner may be engaged, including where the practitioner is an employee, contractor, volunteer, partner in a partnership, where a practitioner is a member of a practice involving a “service company” arrangement, the practitioner is self-employed or working in an honorary capacity. The changes will mean that no matter what type of arrangements are in place for the engagement of a practitioner, the practitioner must provide details of the arrangements under which they are engaged and practising. The Bill refers to this as a requirement to provide ‘practice information’. ‘Practice information’ will be defined as each of the following that applies to the practitioner:</p> <ul style="list-style-type: none"> <li>(a) if the practitioner is self-employed and paragraph (b) does not apply – the practitioner will be required to notify the National Board: <ul style="list-style-type: none"> <li>(i) that the practitioner is self-employed;</li> <li>(ii) each business name under which they operate (if applicable); and</li> <li>(iii) the address of each of the premises at which the practitioner practices;</li> </ul> </li> <li>(b) if the practitioner is self-employed and shares premises with other registered health practitioners and the cost of the premises is shared with the other practitioners – the practitioner will be required to notify the National Board: <ul style="list-style-type: none"> <li>(i) that the practitioner is self-employed;</li> <li>(ii) each business name under which they operate (if applicable); and</li> <li>(iii) the address of each of the premises at which the practitioner practices;</li> <li>(iv) the names of the other registered health practitioners with which the practitioner shares premises;</li> </ul> </li> </ul> |

| No. | Section of National Law | Issue | Proposed amendment  |
|-----|-------------------------|-------|---|
|     |                         |       | <p>(c) if the practitioner is engaged under a contract of employment, contract for services or any other arrangement or agreement with an entity – the practitioner will be required to notify the National Board of the name, address and contact details of the entity;</p> <p>(d) if the practitioner is providing services for or on behalf of an entity, whether in an honorary capacity, as a volunteer or otherwise, and whether or not the practitioner receives payment from the entity for the services – the name, address and contact details of the entity.</p> <p>It is expected that most practitioners will fall within paragraph (c), which are employment arrangements, contracts for services and other arrangements or agreements (this covers, for example, practitioners who are ‘credentialed’ to practice in a hospital, franchising arrangements and other contractual arrangements).</p> <p>Paragraph (d) covers voluntary and honorary appointments and arrangements, such as where a practitioner is volunteering for a charity or sporting club or holds an honorary appointment.</p> <p>Paragraph (a) covers self-employed practitioners who practice alone.</p> <p>Paragraph (b) covers other arrangements that may not fall within paragraphs (a), (c) or (d), such as arrangements involving the use of “service companies” to operate a business or partnership arrangements.</p> <p>Given the complexity of the definition and the broad range of arrangements it could potentially apply to, the Bill also provides a power for AHPRA to make guidelines about ‘practice information’ to be provided by practitioners. The guidelines are intended to assist practitioners, by providing additional practical information about how the concept of ‘practice information’ in the National Law applies to common employment, contracting and volunteering arrangements.</p> <p>The Bill makes it clear that practitioners are not required to provide information about the residential addresses of clients or patients where a practitioner provides a ‘house call’ service or otherwise visits residential premises.</p> <p><b>Amendments to section 206 in Bill</b></p> <p>Corresponding amendments are made to section 206. If a practitioner notifies the Board of details of an entity under paragraph (c) or (d) of the definition of ‘practice information’, the National Board must notify the entity of health, conduct or performance action against the practitioner. If a practitioner notifies the Board of ‘practice information’ under paragraph (b), the Bill provides a discretion for the National Board as to whether that information is provided to the other health practitioners with whom the person shares premises. Depending on the risks to the public, the circumstances of the case and the particular arrangements of the practice, it may or may not be appropriate to notify other health practitioners working at the same premises.</p> |



| No. | Section of National Law  | Issue                      | Proposed amendment  |
|-----|--|----------------------------|---|
| 22. | Section 151 – When National Board may decide to take no further action | Notifications/ Enforcement | <p><b>Grounds for taking no further action about notifications</b></p> <p>Section 151 sets out the grounds upon which a National Board may decide to take no further action in relation to a notification.</p> <p>Section 151(1)(e) currently sets out one of the grounds as: “the subject matter of the notification is being dealt with, or has already been dealt with, <u>adequately</u> by another entity”. The use of the word “adequately” places an obligation on the National Board to enter into an assessment about the performance of another entity and whether it has dealt with a matter “adequately”. It is not the National Board’s role to review the performance or conduct of other entities in handling complaints or notifications. As such, the Bill removes the word “adequately” from section 151(1)(e).</p> <p>The Bill also adds the following grounds upon which a National Board may decide to take no further action in relation to a notification:</p> <ul style="list-style-type: none"> <li>• if a National Board has referred the subject matter of a notification to another entity to be dealt with by that entity (for example, where the Board refers a matter to a health complaints entity within a State or Territory);</li> <li>• if the health practitioner to whom the notification relates has taken appropriate steps to remedy the issue the subject of the notification and the Board reasonably believes no further action is required in relation to the notification.</li> </ul>   |
| 23. | Section 155 – Definition   | Notifications/ Enforcement | <p><b>Power to substitute one immediate action for another</b></p> <p><i>Background</i></p> <p>Sections 155, 156 and 159 of the National Law do not explicitly provide for a National Board to revoke one type of “immediate action” they have taken and substitute another form of “immediate action”. For example, a National Board may wish to revoke the suspension of a practitioner’s registration and substitute a condition of registration (or vice versa).</p> <p>This may occur, for example, if new information suggests that a condition imposed on the registration would be sufficient to protect public safety. Similarly, new information may suggest that a condition is no longer sufficient to protect public safety and the practitioner’s registration needs to be suspended.</p> <p><i>Independent review</i></p> <p>Appendix 11 of the report of the independent review states: “There is no avenue for ending a suspension imposed under section 156 (immediate action). This is problematic as a National Board may want to end a suspension or revoke an undertaking not to practice; and impose conditions.”</p> <p><i>Amendments in Bill</i></p> <p>To address this issue, the Bill amends the definition of “immediate action” in section 155 so that immediate action also includes:</p> <ul style="list-style-type: none"> <li>• revoking a suspension and imposing a condition on registration, if immediate action had previously been taken suspending a health practitioner’s or student’s registration;</li> <li>• suspending registration instead of a condition, if immediate action had previously been taken imposing a condition on a health practitioner’s or student’s registration.</li> </ul> |

| No. | Section of National Law                      | Issue                      | Proposed amendment  |
|-----|--|----------------------------|---|
| 24. | Section 156 – Power to take immediate action | Notifications/ Enforcement | <p data-bbox="619 465 1043 499"><b>Grounds for taking immediate action</b></p> <p data-bbox="619 506 1434 920">The grounds on which a National Board may take immediate action against a registered health practitioner or student under section 156(1)(a) or (b) of the National Law require that a National Board must reasonably believe that the practitioner’s conduct, performance or health poses a <b>serious risk</b> to persons and it is necessary to take immediate action to protect public health or safety. This threshold in its current form may constrain a National Board from taking swift action where it is warranted to protect public health, public safety or the public interest. For example, if a practitioner has been charged with a serious crime, and the relationship between the alleged crime and the practitioner’s practice is not yet well established, the community expectation may be that the practitioner’s practice should be constrained until the criminal matter is resolved, both for the protection of the public and for public confidence in the health profession.</p> <p data-bbox="619 927 1434 1088">The Bill amends section 156 to broaden the grounds on which a National Board may take immediate action against a health practitioner to enable immediate action to be taken by a National Board if it reasonably believes the immediate action is in the public interest. The National Law as it applies in NSW contains a similar ‘public interest’ test for immediate action.</p> <p data-bbox="619 1095 1434 1160">The Board will always seek to respond in a way that is proportionate to the risk posed.</p> |

| No. | Section of National Law   | Issue                      | Proposed amendment  |
|-----|---|----------------------------|---|
| 25. | <p>Section 158 – Notice to be given to registered health practitioner or student about immediate action</p> <p>Section 167 – Decision by National Board</p> <p>Section 177 – Decision by National Board</p> <p>Section 180 – Notice to be given to health practitioner or student and notifier</p> <p>Section 192 – Notice to be given about panel’s decision</p> | Notifications/ Enforcement | <p><b>Improving communication with notifiers</b></p> <p><i>Summary</i></p> <p>The Bill makes amendments to improve communication with notifiers by providing flexibility for National Boards to inform notifiers of progress at key decision points after receiving a notification and to provide reasons for decisions. The Bill also removes specific limitations on the information that can be provided to notifiers.</p> <p><i>Independent review</i></p> <p>The final report of the independent review identified key concerns raised by stakeholders in all jurisdictions about notifications by notifiers, including:</p> <ul style="list-style-type: none"> <li>• poor communication with both notifiers and practitioners;</li> <li>• outcomes not being well explained to notifiers;</li> <li>• consumer-notifiers commonly feel they are denied the opportunity to prevent others from experiencing the harm they experienced because the system does not explain its actions.</li> </ul> <p>Recommendation 9(g) of the final report stated:</p> <p><i>the Health Practitioner Regulation National Law 2009 (the National Law) to be amended so that notifiers personally impacted by practitioner conduct can be informed in confidence by the National Board about the process, decision and rationale for the decision regarding their case. This complements the amendments to the National Law approved by Ministerial Council in 2011 as detailed in Appendix 11.</i></p> <p><i>Details</i></p> <p>The National Law currently requires communication with notifiers at certain decision points and these minimum requirements are being retained in the Bill. Currently, if a National Board is investigating a registered health practitioner or student as a result of a notification, section 161(3)(b) requires a National Board to provide a written update about the progress of the investigation to the notifier at least every 3 months. The Bill retains this requirement.</p> <p>Also, sections 180(1)(b) and 192(2)(b) of the National Law currently require notifiers to be informed of the ultimate outcome of a notification. However, sections 180(2) and 192(4) limit the information to be provided to notifiers to “the extent the information is available on the National Board’s register”. The Bill removes sections 180(2) and 192(4) so that these limitations no longer apply. The requirements in sections 180 and 192 to inform notifiers of decisions made by National Boards and panels will remain in place, but the Bill amends these sections to provide additional powers for National Boards to inform notifiers of the reasons for these decisions.</p> |

| No. | Section of National Law   | Issue                       | Proposed amendment   |
|-----|---|-----------------------------|--|
|     |   |                             | <p>The Bill also provides National Boards with additional powers to inform notifiers of decisions involving a health practitioner or student at any of the following key points and to provide reasons for the decision:</p> <ul style="list-style-type: none"> <li>• when immediate action is taken under section 158;</li> <li>• when a decision is made by a National Board after considering an investigator's report under section 167;</li> <li>• when a decision is made by a National Board after considering an assessor's report after a health or performance assessment under section 177.</li> </ul> <p>These amendments will give National Boards more flexibility about when to provide information to notifiers and enable more complete information to be provided than is currently the case. As part of implementing these changes, AHPRA and National Boards will develop a common protocol to ensure appropriate information is disclosed to notifiers at appropriate times, while also taking into account privacy concerns of practitioners and patients. At times, this will need to be considered on a case by case basis, depending on the individual circumstances of the case.</p> |
| 26. | Section 180 – Notice to be given to health practitioner or student and notifier | Technical/<br>Miscellaneous | <p><b>Notice of decisions following show cause process</b></p> <p>Currently, section 180(1) only requires notice to be given of decisions under section 179(2). However, a National Board may also make a decision under s.178(2) (for example, if section 179 does not apply, as provided for in section 179(3)). This issue was referred to in appendix 11 of the report of the independent review.</p> <p>The Bill makes a minor amendment to section 180(1) to clarify that notice must be given of decisions made under both sections 178(2) and 179(2).</p>  |

| No. | Section of National Law                     | Issue                      | Proposed amendment  |
|-----|---|----------------------------|---|
| 27. | Section 181 – Establishment of health panel | Notifications/ Enforcement | <p data-bbox="655 472 1347 495"><b>Review of a suspension arising from a health panel decision</b></p> <p data-bbox="655 510 794 533"><i>Background</i></p> <p data-bbox="655 548 1465 837">A health panel established under section 181 of the National Law can decide to suspend a health practitioner’s or student’s registration under section 191(3)(b). Currently, a health practitioner or student may seek a review of the suspension through an appeal to the relevant tribunal under section 199(1)(j). However, the National Law does not provide any express mechanism for the decision to be reviewed or for the suspension to be revoked (other than the general power to amend/revoke a decision in clause 23 of schedule 7). This leaves uncertainty for practitioners and students about the length of time a suspension will remain in place.</p> <p data-bbox="655 853 879 875"><i>Independent review</i></p> <p data-bbox="655 891 1465 1010">Appendix 11 of the report of the independent review states: “... if a health panel suspends a practitioner under section 191(3)(b), there is no requirement under the National Law for the panel to set a review period. We think this would be of benefit.”</p> <p data-bbox="655 1025 874 1048"><i>Amendments in Bill</i></p> <p data-bbox="655 1064 1465 1279">To address this issue, the Bill amends section 191 of the National Law to provide that if a panel suspends a practitioner’s or student’s registration, it must also decide a date by which the suspension be reviewed. This will provide practitioners or students affected by a suspension with a degree of certainty that their suspension will be reviewed at an appropriate time. The Bill also makes the following related amendments to facilitate the suspension being reviewed:</p> <ul data-bbox="655 1294 1465 2002" style="list-style-type: none"> <li data-bbox="655 1294 1465 1541">• new section – a new provision is inserted to provide that a panel reviewing a suspension may do any of the following: <ul data-bbox="683 1368 1465 1541" style="list-style-type: none"> <li data-bbox="683 1368 954 1391">– revoke the suspension;</li> <li data-bbox="683 1406 1465 1462">– revoke the suspension, impose conditions on the person’s registration in place of the suspension and decide a review period for the conditions;</li> <li data-bbox="683 1478 1369 1541">– not revoke the suspension and decide a new date by which the suspension be reviewed;</li> </ul> </li> <li data-bbox="655 1556 1465 1704">• section 181 is amended to provide that a National Board must establish a health panel if a health panel decides that a registration suspension must be reviewed. The Board may appoint the same panel or a different panel to the one that originally imposed the suspension, depending on the availability of panel members;</li> <li data-bbox="655 1720 1465 2002">• section 184 is amended to provide that if a panel is established to review a suspension, the panel may decide the matter on the basis of documents, without a hearing if it considers appropriate to do so (this is often referred to as making a decision “on the papers”). The panel is required to notify the practitioner or student that it intends to proceed this way. This power is proposed to be used by a panel particularly for circumstances where a practitioner has elected not to continue active involvement in the suspension process, or where a practitioner has a long term illness that does not allow them to be able to participate in a hearing;</li> </ul> |

| No. | Section of National Law | Issue | Proposed amendment  |
|-----|-------------------------|-------|---|
|     |                         |       | <ul style="list-style-type: none"> <li>• section 191 is amended to provide that a health panel may be reasonably satisfied that a later review date may be necessary to review the suspension. If the panel makes this decision, the panel must notify the practitioner or student of the new review date and the reasons for the new date. The suspension would remain in place until the panel makes a decision to revoke the suspension. Examples of when a panel may be reasonably satisfied a later review date may be decided would include:               <ul style="list-style-type: none"> <li>– if the practitioner’s or student’s attendance at the hearing is required and they are unwell, the panel may decide it is preferable to wait until they are well enough to participate in the hearing;</li> <li>– if the practitioner’s or student’s evidence to the panel requires further review by the panel and this cannot be completed prior to the due date;</li> <li>– if a panel member becomes unwell and time is needed to find a suitable replacement;</li> </ul> </li> <li>• section 192 is amended to provide that notice of a decision about review of a suspension must be given under section 192, in the same way as for other decisions of panels.</li> </ul> <p>If a further health assessment is needed before reviewing the suspension, the National Board would be able to rely on its existing power under section 169 to require a health practitioner or student to undergo a health assessment.</p> |

| No. | Section of National Law   | Issue                      | Proposed amendment  |
|-----|---|----------------------------|---|
| 28. | Section 196 – Decision by responsible tribunal about registered health practitioner | Notifications/ Enforcement | <p><b>Scope of application of prohibition orders</b></p> <p>If a responsible tribunal decides to cancel a person’s registration under the National Law or a person does not hold registration under the National Law, section 196(4)(b) currently allows the tribunal to prohibit the person from “using a specified title” or “providing a specified health service”. This is commonly referred to as a “prohibition order”. The cancellation of registration and making a prohibition order only occur in the most serious cases, usually where practitioners have engaged in serious conduct, which may include conduct which involves but is not limited to, sexual boundary violations, criminal offences or professional incompetence resulting in serious harm or death of a patient.</p> <p>The specific nature of the wording of section 196(4)(b) has caused difficulties in some cases, particularly those where a person is not a fit and proper person to continue providing any kind of health service.</p> <p><b>Independent review</b></p> <p>Recommendation 29 of the independent review stated: “That <i>the Health Practitioner Regulation National Law 2009</i> prohibition order powers be amended to provide the means for Tribunals to prohibit the person from providing any type of health service, to establish an offence for breaching a prohibition order and to provide for mutual recognition of prohibition orders issues by jurisdictions.” The Ministerial Council accepted this recommendation in principle, on the basis that advice be sought about a process to enable the recognition of prohibition orders across jurisdictions. The second part of the recommendation is dealt with in the entry below.</p> <p><b>Amendments in Bill</b></p> <p>To implement the first part of the review’s recommendation, the Bill amends section 196(4)(b) to allow a responsible tribunal to issue a prohibition order to prohibit a person from providing any health service or a specified health service or using any protected title or a specified title. The provision also clarifies that the prohibition order may be for a stated period or may be permanent. The approach in the Bill aligns with section 149C(5) of the Health Practitioner Regulation National Law (NSW).</p> <p>The revised wording provides greater flexibility for responsible tribunals, particularly to make appropriate orders where a person is not a fit and proper person to continue providing any kind of health service.</p> |

| No. | Section of National Law                               | Issue                      | Proposed amendment   |
|-----|---|----------------------------|--|
| 29. | New section – Offences relating to prohibition orders | Notifications/ Enforcement | <p><b>Offence for breach of a prohibition order</b></p> <p>The National Law does not contain any offences for a person who does not comply with a decision of a tribunal under section 196(4)(b) prohibiting the person from using a specified title or providing a specified health service. This is commonly referred to as a “prohibition order” (note that the wording of section 196(4)(b) is also proposed to be amended as referred to in the previous entry above). The making of a prohibition order has limited protective effect if there are no offences for breach of an order.</p> <p><b>Independent review</b></p> <p>Recommendation 29 of the independent review stated: “That the Health Practitioner Regulation National Law 2009 prohibition order powers be amended to provide the means for Tribunals to prohibit the person from providing any type of health service, to establish an offence for breaching a prohibition order and to provide for mutual recognition of prohibition orders issues by jurisdictions.” The Ministerial Council accepted this recommendation in principle, on the basis that advice be sought about a process to enable the recognition of prohibition orders across jurisdictions.</p> <p><b>Amendments in Bill</b></p> <p>The Bill implements the second part of this recommendation by making it an offence for a person to contravene a prohibition order issued in any participating jurisdiction, with a maximum penalty of \$30,000 (see also the entry for the definition of “prohibition order” in section 5). The Bill also includes the following offences related to prohibition orders:</p> <ul style="list-style-type: none"> <li>• a person subject to a prohibition order (referred to as a “prohibited person”) who fails to inform patients or employers of the prohibition order in writing prior to providing any health service, commits an offence with a maximum penalty of \$5,000. If a patient is under 16 or under guardianship, the prohibited person must tell the patient’s parent or guardian before providing the health service. Similar to the changes made to section 132 and explained above, a prohibited person must disclose the prohibition order to an entity that engages them, regardless of the manner in which they are engaged (for example, a prohibited person must notify an entity that engages the prohibited person under a contract for services or a charity or sporting club if they are providing health services as a volunteer, of the fact they are subject to the prohibition order);</li> <li>• failure to include details of a prohibition order when advertising health services to be provided by a prohibited person is an offence, with a maximum penalty of \$5,000 for an individual and \$10,000 for a body corporate.</li> </ul> <p>These related offences are similar to offences that apply in NSW under sections 102(2) and 103(2) of the <i>Public Health Act 2010</i> (NSW).</p> |
| 30. | Section 199 – Appellable decisions                    | Notifications/ Enforcement | <p><b>Appellable decisions</b></p> <p>Section 199 is amended to provide that if a health panel reviews a suspension of registration, a decision by the health panel not to revoke the suspension is subject to appeal to the appropriate relevant tribunal.</p>  |



| No. | Section of National Law  | Issue                       | Proposed amendment   |
|-----|--|-----------------------------|--|
| 31. | Section 213 – Application of CwIth Privacy Act<br>Section 215 – Application of CwIth FOI Act<br>New section – Application of CwIth Australian Information Commissioner Act | Technical/<br>Miscellaneous | <p><b>Consequential amendments needed as a result of the <i>Australian Information Commissioner Act 2010 (CwIth)</i></b></p> <p>Consequential amendments are needed to the National Law as a result of the <i>Australian Information Commissioner Act 2010 (CwIth)</i> and <i>Freedom of Information Amendment (Reform) Act 2010 (CwIth)</i>.</p> <p><b>Independent review</b></p> <p>Recommendation 32 of the independent review states: “That the <i>Health Practitioner Regulation National Law 2009</i> be amended to reflect provisions endorsed by the Australian Health Workforce Ministerial Council in 2011”. The Ministerial Council accepted this recommendation. The agreed amendments are outlined in Appendix 11 to the report of the independent review. Appendix 11 states:</p> <p><i>Subsequent to the commencement of the National Scheme, the Commonwealth enacted legislation to reform the Commonwealth freedom of information arrangements. The legislative amendments commenced on 1 November 2010. The legislation includes the enactment of the Australian Information Commissioner Act 2010 which, among other things, establishes the positions of Information Commissioner and Freedom of Information Commissioner.</i></p> <p><i>The National Law is to be amended to adopt the reformed Commonwealth legislation under the National Scheme. This would require an amendment to the existing provisions in relation to the Privacy Act by removing reference to the Office of the Privacy Commissioner and the Privacy Commissioner, which are no longer established under that Act. An equivalent provision to those currently in place in relation to the Privacy Act, FOI Act and Ombudsman Act will need to be included in the National Law for the Australian Information Commissioner Act.</i></p> <p><i>Amendments in Bill for Australian Information Commissioner Act 2010</i></p> <p>The Bill implements these technical amendments and applies the <i>Australian Information Commissioner Act 2010 (AIC Act)</i> to the National Scheme. The Bill provides that for the purposes of applying the AIC Act:</p> <ul style="list-style-type: none"> <li>• a reference to the “Office of the Australian Information Commissioner” should be taken to be a reference to the “Office of the National Health Practitioner Privacy Commissioner”; and</li> <li>• a reference to the “Information Commissioner” (as defined in section 3A of the AIC Act) should be taken to be a reference to the “National Health Practitioner Privacy Commissioner”.</li> </ul> <p>The Bill also includes a provision similar to sections 213(2)(c) and (3) and 215(2) and (3) to provide that modifications may be made to the AIC Act by a regulation made under the National Law.</p> <p>The Bill also makes minor and technical consequential amendments to sections 213 and 215 to ensure the revised Commonwealth legislation applies appropriately to the National Scheme.</p> |

| No. | Section of National Law | Issue | Proposed amendment   |
|-----|-------------------------|-------|--|
|     |                         |       | <p><b><i>Amendments in Bill for Freedom of Information Amendment (Reform) Act 2010 (Cwlth)</i></b></p> <p>The <i>Freedom of Information Amendment (Reform) Act 2010 (Cwlth) (No. 51 of 2010)</i> (FOI Reform Act) amended the <i>Freedom of Information Act 1982 and Privacy Act 1988 (Cwlth)</i>. The amendments made by the FOI Reform Act currently do not apply to the National Law because sections 12 and 18 of the <i>Health Practitioner Regulation National Law Regulation</i> provide that they do not apply. After the Bill amends the National Law to take account of the AIC Act and FOI Reform Act, it is planned that sections 12 and 18 of the <i>Health Practitioner Regulation National Law Regulation</i> will be repealed. This will mean that the FOI Reform Act will apply to the National Scheme.</p> <p>The most significant consequence of the FOI Reform Act applying to the National Scheme will be that the National Health Practitioner Ombudsman and Privacy Commissioner will take on a new role of undertaking external, merits review of FOI decisions made by AHPRA.</p> <p>Consequential amendments will also be required to the <i>Health Practitioner Regulation National Law Regulation</i> to ensure that the AIC Act and FOI Reform Act apply appropriately to the National Scheme. These consequential changes will be made after the Bill has been passed by Parliament.</p> <p><i>'National Health Practitioner Ombudsman and Privacy Commissioner' name</i></p> <p>The National Law refers to the 'National Health Practitioners Privacy Commissioner' (see section 213) and the 'National Health Practitioners Ombudsman' (see section 235). For alignment with the name of the National Law and the Australian Health Practitioner Regulation Agency (AHPRA), as well as to recognise that it is not the Ombudsman/Privacy Commissioner for Health Practitioners, but rather for the National Scheme, the Bill makes a minor amendment to change the references to 'Practitioners' to 'Practitioner' in the names of these bodies.</p> |

| No. | Section of National Law   | Issue                      | Proposed amendment  |
|-----|---|----------------------------|---|
| 32. | Section 220 – Disclosure to protect health or safety of patients or other persons | Notifications/ Enforcement | <p><b>Disclosure to protect health or safety of patients or other persons</b></p> <p>Section 220 provides power for a National Board to disclose information to a Commonwealth, State or Territory entity about a registered health practitioner who poses, or may pose, a risk to public health or the health or safety of the public or certain members of the public. However, section 220 does not apply to persons who are not registered health practitioners.</p> <p>Section 216(2)(c) permits protected information to be disclosed if it is required or permitted by law. However, in the early stages of an investigation, it may not always be clear if other legislation permits or requires disclosure of information about a practitioner who is not registered.</p> <p>There are instances where National Boards and AHPRA receive information about persons who are not registered health practitioners or who were previously registered, and where it considers there is a strong public interest in permitting the disclosure of that information to an entity of the Commonwealth, State or Territory for action. For example, information may be received about a person who is pretending to be a registered practitioner and under the current wording of section 220, information about that person may not be able to be disclosed.</p> <p><b>Amendments in Bill</b></p> <p>The Bill amends section 220 so that a National Board may give information to an entity of the Commonwealth, State or Territory if a National Board reasonably believes that:</p> <ul style="list-style-type: none"> <li>• a person who provides a health service but is not a registered health practitioner poses, or may pose, a risk to public health; or</li> <li>• the health or safety of a patient or class of patients is or may be at risk because of the provision of a health service by a person who is not a registered health practitioner.</li> </ul> <p>Section 220 will also continue to apply to registered health practitioners in the same way as it does now.</p> |

| No. | Section of National Law   | Issue                          | Proposed amendment  |
|-----|---|--------------------------------|---|
| 33. | Section 222 – National registers and Section 223 – Specialists Register | National Boards and Paramedics | <p><b>Keeping of registers by National Boards to be prescribed in regulations</b></p> <p>Section 222 currently sets out which National Board keeps each public national register of practitioners registered by the Board. As a consequence of the amendments being made to section 31, which provide for National Boards to be provided for in regulations, the Bill amends section 222 to provide that the Board which keeps each register must be prescribed in regulations.</p> <p>However, the remainder of section 222, including the names of each of the public national registers and their divisions are retained in section 222.</p> <p>There are no current proposals to change the structure of National Boards. Similarly, there are no current proposals to change the arrangements for the keeping of national registers by each National Board.</p> <p>To demonstrate that the existing arrangements for keeping of National Registers is to be retained, the proposed changes to the regulations to prescribe which National Board will keep each National Register will be tabled in the Queensland Parliament at the same time as the Bill is introduced.</p> <p>The Bill also makes minor amendments to sections 222 and 223 to provide that the registers should include details of persons subject to prohibition orders (see also the entry below for amendments to section 227).</p> <p>The amendment to include the Register of Paramedics in the table of public national registers under section 222 is made separately, as this amendment and the keeping of the register will need to commence on the participation day for the inclusion of paramedics in the National Scheme.</p> |
| 34. | Section 227– Register about former registered health practitioners      | Notifications/ Enforcement     | <p><b>Register about former registered health practitioners</b></p> <p>The National Law does not require or empower National Boards to keep a register of prohibition orders issued under section 196(4)(b).</p> <p>The Bill amends section 227 to require the public registers kept by National Boards under section 222 and 223 to include a copy of a prohibition order for each person subject to such an order.</p>  |

| No. | Section of National Law                                      | Issue                       | Proposed amendment   |
|-----|--|-----------------------------|--|
| 35. | Section 246 – Parliamentary scrutiny of national regulations | Technical/<br>Miscellaneous | <p><b>Tabling of national regulations</b></p> <p><i>Background</i></p> <p>Section 246(1) provides that a regulation made under the National Law may be disallowed in a participating jurisdiction by a House of Parliament of that jurisdiction in the same way that a regulation made under an Act of that jurisdiction may be disallowed and as if the regulation had been tabled in the House on the first sitting day after the regulation is published by the Victorian Government Printer.</p> <p>This deeming provision has resulted in some Parliaments lacking visibility of the national regulations and difficulty in ensuring proper process is followed to ensure those regulations are open to disallowance procedures.</p> <p><i>Independent review</i></p> <p>Recommendation 32 of the independent review states: “That the <i>Health Practitioner Regulation National Law 2009</i> be amended to reflect provisions endorsed by the Australian Health Workforce Ministerial Council in 2011”. The Ministerial Council accepted this recommendation. The agreed amendments are outlined in Appendix 11 to the report of the independent review. Appendix 11 states:</p> <p><i>The following amendments to the National Law are to be made... section 246(1) of the National Law be replaced with a provision which states that... a regulation must be tabled in a House of Parliament in the same way that other regulations in the relevant jurisdiction are tabled...</i></p> <p><i>Amendments in Bill</i></p> <p>The Bill amends section 246 to require regulations made under the National Law to be tabled in the Parliament of each participating jurisdiction in the same way a regulation made in that jurisdiction must be tabled. In NSW, regulations are not tabled, but notice of their making is given to Parliament. The Bill provides that notice of a regulation made under the National Law must be given in the same way notice must be given for a regulation made in that jurisdiction. The Bill also provides that failure to comply with the tabling or notice requirement does not affect the validity of the regulation.</p> <p>The provisions about majority disallowance in sections 246(2) and (3) remain unchanged.</p> |

| No. | Section of National Law  | Issue                                     | Proposed amendment  |
|-----|--|---|---|
| 36. | New section – Norfolk Island practitioners taken to be New South Wales practitioners   | Technical/<br>Miscellaneous               | <p><b>Regulation of Norfolk Island practitioners</b></p> <p>The Commonwealth Government removed self-government from Norfolk Island and took full responsibility for the island from 1 July 2016. NSW has agreed to assist the Commonwealth by providing certain state-type services and regulatory support in school education, local government and health for the people of Norfolk Island and to roll out certain health-related laws to Norfolk Island.</p> <p>As part of the agreement between NSW and the Commonwealth, it is expected that the NSW Health Care Complaints Commission and the NSW Health Councils will take responsibility for the investigation and consideration of complaints against Norfolk Island health practitioners, as if they were NSW health practitioners registered under the National Law. It is expected that this will be done by the Commonwealth applying the relevant NSW laws to Norfolk Island.</p> <p><b>Amendments in Bill</b></p> <p>The Bill includes a new provision that provides if a practitioner’s principal place of practice is recorded in the National Register as an address in Norfolk Island, their principal place of practice under the National Law is deemed to be NSW. The practitioner will be deemed under the National Law to be a NSW practitioner.</p> <p>The provisions of the Bill relating to Norfolk Island practitioners will apply until 30 June 2021, with this date able to be extended by regulation.</p> |
| 37. | Section 284 – Exemption from requirement for professional indemnity insurance arrangements for midwives practising private midwifery | National Boards and Nursing/<br>Midwifery | <p><b>Minor consequential changes to section 284</b></p> <p>The Bill makes a minor consequential change to the definition of “National Board” in section 284(5) to replace the reference to “the Nursing and Midwifery Board of Australia” with “the National Board established under the regulations for midwifery”. This change is needed as a result of the amendments to section 31 which require that National Boards for each health profession are dealt with in the regulations.</p> <p>The Bill also makes a minor consequential amendment to the definition of “private midwifery” to remove the words “nursing and” so that it reads: “<b>private midwifery</b> means practising the midwifery profession...”. This change reflects the recognition of nursing and midwifery as separate professions.</p>  |
| 38. | Part 13, division 1 – Transitional and other provisions  | Paramedics                                | <p><b>New Part 13, division 1 – Transitional and other provisions for health profession “paramedicine”</b></p> <p>The Bill inserts a new part 13 titled “Transitional and other provisions for Health Practitioner Regulation National Law Amendment Law 2017”. Division 1 of part 13 is titled “Paramedicine Board and registration of paramedics” which:</p> <ul style="list-style-type: none"> <li>• establishes the Paramedicine Board of Australia;</li> <li>• provides limited powers and functions of the Paramedicine Board until the participation day; and</li> <li>• provides for a number of transitional and other matters for the health profession of paramedicine.</li> </ul> <p>More details about each of these matters are outlined below.</p>   |

| No. | Section of National Law                               | Issue      | Proposed amendment   |
|-----|---|------------|--|
| 39. | New section 306 – Definitions                         | Paramedics | <p><b>Definitions</b></p> <p>The Bill inserts new definitions for the following terms for part 13:</p> <ul style="list-style-type: none"> <li>• <b>Paramedicine Board</b> – defined as the Paramedicine Board of Australia established under section 307 (see below) and the Board continued in force on the participation day by a regulation made under section 31;</li> <li>• <b>participation day</b> – defined as a day prescribed by regulation after which an individual may be registered in paramedicine under the National Law;</li> <li>• <b>relevant day</b> – defined as the day three years after the participation day.</li> </ul> <p>On 8 April 2016, Ministers announced that national registration for paramedics would commence in the second half of 2018. The “participation day” will be prescribed in a regulation made under the National Law once there is sufficient certainty about the proposed date on which paramedics are to be registered. This date will be decided by the Ministerial Council in conjunction with the Paramedicine Board and AHPRA.</p> <p>At the same time as the participation day is prescribed, an amendment will be made to the regulations to continue the “Paramedicine Board of Australia” under the regulations as a National Board, like all other National Boards, which are being prescribed in the regulations under section 31.</p> <p>Once the Paramedicine Board is prescribed in the regulations after the participation day, it will have all the powers of a National Board under the National Law. Similarly, all provisions of the National Law applying to National Boards will apply to the Paramedicine Board. Until the participation day, the functions and powers of the Paramedicine Board will be governed by the provisions in Part 13, division 1 of the Bill.</p> <p>The definition of “relevant day” is used in the grandparenting provision (see new section 310 below), which applies for three years from the participation day.</p> |
| 40. | New section 307 – Establishment of Paramedicine Board | Paramedics | <p><b>Establishment of Paramedicine Board</b></p> <p>This new section establishes the Paramedicine Board of Australia for the health profession of paramedicine. Like all other National Boards under the National Law, this new section provides that the Board:</p> <ul style="list-style-type: none"> <li>• is a body corporate with perpetual succession;</li> <li>• has a common seal;</li> <li>• may sue and be sued in its corporate name;</li> <li>• represents the State.</li> </ul> <p>These matters are currently provided for in section 31(2) and (3) of the National Law for other National Boards.</p> <p>The new section provides that it applies until the Paramedicine Board is continued in force by a regulation made under section 31. As outlined above, this regulation will be made at the same time as the regulation to prescribe the participation day that registration of paramedics commences.</p>   |

| No. | Section of National Law                                      | Issue      | Proposed amendment  |
|-----|--|------------|---|
| 41. | New section 308 – Powers and functions of Paramedicine Board | Paramedics | <p><b>Powers and functions of Paramedicine Board</b></p> <p>This new section provides that sections 32, 33, 34, 37, 40, 234 and schedule 4 of the National Law apply to the Paramedicine Board until the participation day. These provisions deal with:</p> <ul style="list-style-type: none"> <li>• section 32 – powers of National Boards;</li> <li>• section 33 – membership of National Boards;</li> <li>• section 34 – eligibility for appointment to National Boards;</li> <li>• section 37 – delegation of functions by National Boards;</li> <li>• section 40 – consultation about registration standards, codes and guidelines;</li> <li>• section 234 – general duties of persons exercising functions under this Law;</li> <li>• schedule 4 – constitution, functions and powers, and procedures of National Boards.</li> </ul> <p>The new section provides that, despite section 34, the Ministerial Council may appoint practitioner members to the Board who the Council is satisfied have skills and experience in paramedicine relevant to the Board's functions. This clause is required because paramedics will not be registered until after the participation day, which means that upon establishment of the Board, there will be no registered paramedics to appoint as practitioner members.</p> <p>The new section also sets out the functions of the Paramedicine Board until the participation day, as follows:</p> <ul style="list-style-type: none"> <li>• develop and recommend registration standards to the Ministerial Council under section 38 of the National Law for the Council's approval under section 12;</li> <li>• develop and approve codes and guidelines under section 39;</li> <li>• decide under section 43 whether an accreditation function is to be exercised by an external accreditation entity or a committee established by the Board;</li> <li>• approve, refuse to approve or ask an accreditation authority to review accreditation standards under section 47 and to do the other things required by section 47;</li> <li>• approve, or refuse to approve, an accredited program of study for registration in paramedicine under section 49, if given a report by an accreditation authority;</li> <li>• decide the day after which individuals may apply for registration in paramedicine;</li> <li>• do anything under part 7 to register individuals in paramedicine;</li> <li>• anything else the National Board may do under division 1 of part 13.</li> </ul> <p>As outlined above, after the participation day, the Paramedicine Board will have all the functions and powers of a National Board, once it is prescribed in regulations.</p> <p>The new section also provides that if the Board makes a decision under section 43, AHPRA or an accreditation authority may do the things mentioned in sections 44 to 48 to give effect to the Board's decision.</p> |



| No. | Section of National Law  | Issue      | Proposed amendment  |
|-----|--|------------|---|
| 42. | New section 309 – Paramedicine Board taken to be a National Board for stated matters           | Paramedics | <p><b>Paramedicine Board taken to be a National Board for stated matters</b></p> <p>The Paramedicine Board is established under section 307. As such, it does not fall within the definition of “National Board” in section 5.</p> <p>For this reason, the Bill includes a new section which provides that the Paramedicine Board is taken to be a National Board for certain provisions of the National Law. This will ensure, for example, that the Ministerial Council and AHPRA may treat the Paramedicine Board as a National Board for the purposes of their powers.</p> <p>The Paramedicine Board will be taken to be a National Board for parts 2, 4, 9 and 10 (except division 3) of the National Law and section 236.</p>   |
| 43. | New section 310 – Qualifications for general registration in paramedicine for a limited period | Paramedics | <p><b>Qualifications for general registration in paramedicine for a limited period</b></p> <p>This new section provides for grandparenting of qualifications for the existing paramedic workforce to enable them to obtain registration under the National Scheme, for a period of three years from the participation day (note that another provision, outlined below, deals with practitioners who hold a Diploma of Paramedical Science issued by the Ambulance Service of NSW).</p> <p>This new section provides that an individual who applies for registration in paramedicine before the “relevant day” (a defined term meaning the period of three years from the participation day) is qualified for general registration in paramedicine if the individual:</p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• 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</li> <li>• has practised paramedicine during the 10 years before the participation day for a consecutive period of five years or for any periods which together amount to five years and satisfies the Paramedicine Board that he or she is competent to practise paramedicine.</li> </ul> <p>Once established, the Paramedicine Board will need to decide the qualifications which are adequate for obtaining registration under this grandparenting provision.</p> <p>This provision will apply despite section 53 of the National Law.</p> <p>It is important to note that all of the eligibility requirements for registration, set out in section 52 of the National Law, will apply to people seeking registration under the grandparenting provisions.</p> |

| No. | Section of National Law   | Issue      | Proposed amendment   |
|-----|---|------------|--|
| 44. | New section 311 – Accepted qualification for general registration in paramedicine | Paramedics | <p><b>Accepted qualification for general registration in paramedicine – Ambulance Service of NSW qualification</b></p> <p><i>Ministerial Council decision</i></p> <p>On 7 October 2016, the Ministerial Council agreed to “include a provision in the National Law which specifies that despite section 53 (which sets out the qualifications required for general registration), a person is qualified for general registration if they hold the Ambulance Service of NSW paramedic qualification”.</p> <p><i>Provisions in Bill</i></p> <p>To implement this decision, the Bill includes a new section that provides an individual is qualified for general registration in paramedicine for the purposes of section 52(1)(a) if they hold a Diploma of Paramedical Science, Diploma of Paramedical Science (Ambulance), Advanced Diploma of Paramedical Science (Ambulance), Diploma in Paramedical Science (Pre-Hospital Care) or Advanced Diploma Paramedical Sciences (Pre-Hospital Care) issued by the Ambulance Service of New South Wales. This provision does not have an expiry date.</p> <p>The new section will also apply if the name of the Diploma of Paramedical Science is changed in future or if the qualification is delivered by another training entity in place of the Ambulance Service of New South Wales. The Bill achieves this by stating the Diploma of Paramedical Science includes a qualification that replaces the existing diploma and is prescribed by regulation and is issued by the Ambulance Service of New South Wales or another entity prescribed by regulation.</p> <p>The new section applies despite section 53 of the National Law.</p> <p><b>Qualifications ‘equivalent to’ the Diploma of Paramedical Science issued by the Ambulance Service of NSW</b></p> <p>Section 53(b) provides that an individual is qualified for general registration in a health profession if the individual holds a qualification a National Board considers to be substantially equivalent to, or based on similar competencies as, an “approved qualification”.</p> <p>To remove any doubt, the Bill declares that the new provision does not make a Diploma of Paramedical Science issued by the Ambulance Service of New South Wales an “approved qualification” for section 53(b).</p> <p>The Paramedicine Board will decide what qualifications are “approved qualifications” for section 53(a) and (b) after it is established. A person will only be qualified for general registration in paramedicine under section 53(b) if they hold a qualification which is substantially equivalent to, or based on similar competencies as, an “approved qualification” decided by the Board.</p> <p>This provision does not provide grounds for an individual to be qualified for general registration in paramedicine if they hold a qualification which is substantially equivalent to, or based on similar competencies as, the Diploma of Paramedical Science issued by the Ambulance Service of New South Wales.</p> |

| No. | Section of National Law   | Issue      | Proposed amendment  |
|-----|---|------------|---|
| 45. | New section 312 – Applications for registration in paramedicine and period of registration                    | Paramedics | <p><b>Applications for registration in paramedicine and period of registration</b></p> <p>A new section is included which provides that an individual may apply to the Paramedicine Board for registration in paramedicine before the participation day and after a day decided by the Board.</p> <p>If the Paramedicine Board grants an application for registration under part 7 before the participation day, the registration period does not start until the participation day and may be for a period of up to two years. The new section applies despite section 56.</p> <p>The power to allow the first registration to be for a period more than 12 months is to ensure that registrants can be placed on the correct registration 'cycle' to ensure that their registration is aligned to a common registration date with other registrants.</p>  |
| 46. | New section 313 – Applications for registration in paramedicine made but not decided before participation day | Paramedics | <p><b>Applications for registration in paramedicine made but not decided before participation day</b></p> <p>It is expected that the vast majority of applications for registration of paramedics will be decided by the participation day. However, experience in registering other professions has demonstrated that there can be a last minute rush of applications, all of which may not be able to be decided by the participation day.</p> <p>To deal with this situation, a new section is included which provides that if a person has applied to the Paramedicine Board for registration before the participation day, but the Board has not decided the application by the participation day, the applicant does not commit an offence against section 113 or 116 while the application is being decided. That is, the person can take and use the title 'paramedic' and hold themselves out as a paramedic while the application is being decided.</p> <p>Under section 85, if a National Board does not make a decision about an application for registration within 90 days after the application is received, the Board is taken to refuse the application. This means that the new section can only apply for a maximum period of 90 days.</p> |

| No. | Section of National Law   | Issue      | Proposed amendment   |
|-----|---|------------|--|
| 47. | New section 314 – Period after participation day during which an individual does not commit an offence under ss 113 and 116 | Paramedics | <p data-bbox="619 465 1374 533"><b>Period after participation day during which an individual does not commit an offence under ss 113 and 116</b></p> <p data-bbox="619 539 1422 696">The Bill includes a new section which provides a 90 day “transitional period” from the participation day during which an individual who is eligible for registration in paramedicine does not commit an offence against section 113 or 116 by taking or using the title ‘paramedic’ or holding themselves out as a paramedic.</p> <p data-bbox="619 703 1422 837">The effect of this provision is that if an eligible paramedic submits a late application, the applicant can be assured that no enforcement action can be taken against them provided they submitted their application within 90 days after the participation day.</p> <p data-bbox="619 844 1422 1003">AHPRA’s practical experience of registering other professions is that no matter how effective the communication strategy is for members of the profession, there will always be a small number of applicants who submit late applications. This provision is intended to provide certainty for both AHPRA and the practitioner about possible enforcement action during the transitional period.</p> |

| No. | Section of National Law   | Issue                       | Proposed amendment  |
|-----|---|-----------------------------|---|
| 48. | New section 315 – Application of ss 113 and 116 to individual temporarily practising paramedicine in another jurisdiction | Paramedics                  | <p><b>Application of ss 113 and 116 to individual temporarily practising paramedicine in another jurisdiction</b></p> <p><i>Background</i></p> <p>If the draft Bill is passed by the Queensland Parliament, the changes will apply automatically in all other States and Territories, except for Western Australia which must pass its own separate legislation, and South Australia where regulations must be made to adopt the changes.</p> <p>It is possible that Western Australia may not have passed its own separate legislation and South Australia may not have had the regulations adopted by the participation day. If this occurs, a Western Australian or South Australian paramedic who operates across State borders or who is assisting with an emergency in another State or Territory would commit an offence against the holding out and protection of title provisions of the National Law if they took or used the title “paramedic” or held themselves out as a paramedic in another State or Territory.</p> <p><i>Provisions in Bill</i></p> <p>To address this possibility, the Bill includes a new section which applies to an individual who:</p> <ul style="list-style-type: none"> <li>• usually practices paramedicine in a participating jurisdiction that has not enacted provisions about paramedicine similar to the Bill;</li> <li>• temporarily takes or uses a title or does anything else relating to paramedicine in another jurisdiction, that would contravene section 113 or 116;</li> <li>• complies with any regulation made under the National Law about temporarily taking or using a title or doing anything else relating to paramedicine in another jurisdiction.</li> </ul> <p>Provided that the person complies with the requirements of any regulation made under the National Law, the person would not commit an offence against section 113 or 116. A regulation would be made if this situation arises, which would specify operational matters, such as ensuring that paramedics who are practising in another jurisdiction are identified and approved to practice in the other jurisdiction under appropriate operational arrangements.</p> |
| 49. | Part 13, division 2   | Technical/<br>Miscellaneous | <p><b>Transitional provisions</b></p> <p>The Bill will include additional transitional provisions in division 2 of Part 13 for other matters in the Bill.</p>   |

| No. | Section of National Law      | Issue           | Proposed amendment  |
|-----|------------------------------|-----------------|---|
| 50. | Schedule 4 – National Boards | National Boards | <p><b>Minor consequential amendments to schedule 4 for National Boards</b></p> <p>The Bill makes minor consequential amendments to schedule 4 relating to the power given to Ministers to change the structure of National Boards by regulation.</p> <p><b>Clause 2</b></p> <p>Clause 2 of schedule 4 deals with the term of office of members of National Boards. It currently provides that a member holds office for the period not exceeding three years stated in their instrument of appointment.</p> <p>The amendments to section 31 give the Ministerial Council the power to dissolve a Board for a health profession if another Board is established for that health profession (for example, the newly established Board may be for more than one health profession). In such a case, the membership of the Board would need to be reconsidered.</p> <p>To allow for this, the Bill amends clause 2 of schedule 4 to provide that a Board member’s term of office ends if the National Board is dissolved by regulations made under section 31.</p> <p><b>Clause 4(2)(b)</b></p> <p>Clause 4(2)(b) of schedule 4 provides that the Chairperson of the Ministerial Council may remove a Board member from office if the member ceases to be a registered health practitioner as a result of the member’s misconduct, impairment or incompetence.</p> <p>The Bill amends this clause to provide that if a Board member ceases to be a registered health practitioner in any health profession in which they are registered due to misconduct, impairment or incompetence, they may be removed from office by the Chairperson of the Ministerial Council.</p> |
| 51. | Various                      | National Boards | <p><b>Minor consequential changes for National Boards established for two or more health professions</b></p> <p>The Bill will make minor consequential changes to a significant number of provisions of the National Law to reflect the power given to the Ministerial Council to change the structure of National Boards by regulation, which in future may involve the establishment of a Board for two or more health professions.</p> <p>In general, these amendments merely change the words ‘the health profession’ to ‘a health profession’ to recognise that, in future, a National Board may be established for two or more health professions.</p>  |



