# Health Legislation (Health Practitioner Regulation National Law) Amendment Bill 2010

# Explanatory Notes

## General Outline

### Short title

The short title of the Bill is the Health Legislation (Health Practitioner Regulation National Law) Amendment Bill 2010.

### Objectives of the Bill

The principal objective of the Health Legislation (Health Practitioner Regulation National Law) Amendment Bill 2010 (the Bill) is to support the smooth commencement of the National Registration and Accreditation Scheme for the Health Professions (the National Scheme) in Queensland from 1 July 2010.

Parliament has previously enacted two pieces of legislation – the *Health Practitioner Regulation (Administrative Arrangements) National Law Act 2008* (the Administrative Arrangements Act) and the *Health Practitioner Regulation National Law Act 2009* (the National Law Act), to which is scheduled the Health Practitioner Regulation National Law (the National Law) – establishing the substantive content of the National Scheme and the statutory bodies responsible for performing various functions in relation to it.

The current Bill is the third and final piece of Queensland legislation required to implement the National Scheme in Queensland. It makes those administrative and consequential amendments to legislation across Government required to accommodate and appropriately reflect the commencement of the National Scheme. This includes transferring responsibility for administering pharmacy ownership restrictions from the Pharmacists Board of Queensland, which is being abolished on commencement of the National Scheme, to Queensland Health.

A further objective of the Bill is to make minor amendments to the National Law Act and the National Law. The first inserts a head of power to allow the Governor in Council to make regulations containing provisions of a transitional or savings nature to ensure the smooth commencement of the National Scheme in Queensland. The second amends the National Law to ensure the statutory privilege attached to conciliation processes conducted by participating jurisdictions' health complaints entities are not inadvertently undermined by the mandatory notification requirements of the National Law.

The Bill also makes minor amendments to the *Queensland Institute of Medical Research Act 1945* (the QIMR Act) to help the Queensland Institute of Medical Research (the QIMR) perform its statutory functions more effectively and efficiently while an ongoing review of the QIMR Act is being completed.

## Reasons for the Bill

On 26 March 2008, the Council of Australian Governments (COAG) signed the 'Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions' (the COAG IGA), which provides for a single national registration and accreditation scheme for health professions (the National Scheme).

COAG agreed to the inclusion of the following ten professions in the National Scheme from 1 July 2010:

- chiropractors, registered in Queensland under the *Chiropractors Registration Act 2001*;
- dental practitioners, subdivided into dentists, dental therapists, dental hygienists, registered under the *Dental Practitioners Registration Act 2001*, dental prosthetists, registered under the *Dental Technicians and Dental Prosthetists Registration Act 2001*, and oral health therapists (not currently recognised in Queensland);
- medical practitioners, registered under the *Medical Practitioners Registration Act 2001*;
- nurses and midwives, subdivided into registered nurses, enrolled nurses and midwives, registered under the *Nursing Act 1992*;
- optometrists, registered under the *Optometrists Registration Act 2001*;

- osteopaths, registered under the *Osteopaths Registration Act 2001*;
- pharmacists, registered under the *Pharmacists Registration Act 2001*;
- physiotherapists, registered under the *Physiotherapists Registration Act 2001*;
- podiatrists, registered under the *Podiatrists Registration Act 2001*; and
- psychologists, registered under the *Psychologists Registration Act 2001*.

Nine of these ten professions are currently registered in Queensland by State-based boards under the relevant registration Acts. The tenth, nursing and midwifery, is registered by the Queensland Nursing Council (QNC) under the Nursing Act.

The Australian Health Workforce Ministerial Council (the Ministerial Council) agreed on 5 March 2009 to include an additional three health professions in the National Scheme from 1 July 2012, and further agreed on 27 August 2009 to increase this to the following four professions:

- Aboriginal and Torres Strait Islander health practitioners, not currently registered in Queensland;
- Chinese medicine practitioners, not currently registered in Queensland;
- medical radiation practitioners, registered in Queensland as medical radiation technologists under the *Medical Radiation Technologists Registration Act 2001*; and
- occupational therapists, registered under the *Occupational Therapists Registration Act 2001*.

Queensland, as host jurisdiction for the legislation, has already passed two pieces of legislation to implement the National Scheme.

The first, the Administrative Arrangements Act, received Royal assent on 25 November 2008. The Administrative Arrangements Act provides for the adoption of a National Law, hosted by Queensland, prescribing limited matters for the first stage of implementation of the National Scheme. It creates the Australian Health Practitioner Registration Agency (the National Agency) and the national boards (which entered into operation from 1 February 2009 and 1 July 2009 respectively), but does not confer authority for registration and other functions.

The second piece of legislation, the National Law Act, received Royal assent on 3 November 2009. Scheduled to the National Law Act is the National Law containing the substantive content of the National Scheme, including authority for registration, accreditation and disciplinary functions. The National Law Act repeals and replaces the Administrative Arrangements Act from its commencement on 1 July 2010.

The COAG IGA provides for each jurisdiction to introduce adopting or corresponding legislation applying the National Law in that jurisdiction and consequentially amending the jurisdiction's legislation as required to enable implementation and appropriate recognition of the National Law. This legislation is known as each jurisdiction's Bill C. In Queensland's case, however, the National Law Act applies the National Law. Consequently, the current Bill, which constitutes Queensland's Bill C, only makes the consequential and administrative amendments required to complete implementation of the National Scheme for the first ten health professions in Queensland from 1 July 2010.

These amendments include the repeal or partial rescission of 14 Health portfolio Acts which are being replaced by the National Law, as well as definitional amendments to 42 Acts across Government to reflect commencement of the new scheme. Other jurisdictions are currently in the process of developing legislation adopting the National Law and making similar consequential amendments to their Acts.

The COAG IGA specifies that the IGA does not cover the licensing of pharmacy premises or pharmacy ownership restrictions, and that these matters will continue to be the responsibility of individual States and Territories.

## Achievement of the objectives

The policy objectives of the Bill will be achieved through the following consequential and administrative amendments to various Acts:

Repeal, partial repeal or partial rescission of health practitioner registration Acts

The following Acts deal with registration, accreditation and disciplinary matters in relation to health professions being transitioned to the National Scheme from 1 July 2010:

- Chiropractors Registration Act;
- Dental Practitioners Registration Act;

- Medical Practitioners Registration Act;
- Nursing Act;
- Optometrists Registration Act;
- Osteopaths Registration Act;
- Podiatrists Registration Act;
- Physiotherapists Registration Act; and
- Psychologists Registration Act.

As these matters will be wholly dealt with in relation to these professions under the National Law, Part 11 of the Bill repeals these Acts from 1 July 2010. This has the effect of abolishing the boards (or, in the case of nurses and midwives, the council) currently responsible for performing registration and accreditation functions in relation to the affected professions. From 1 July 2010, these functions will be wholly performed by national boards established under the National Law.

The Dental Technicians and Dental Prosthetists Registration Act deals with equivalent matters in relation to dental prosthetists, who are being transitioned to the National Scheme on its commencement, and in relation to dental technicians, who are not proposed to be transitioned. Part 3 of the Bill and the Schedule to the Bill therefore rescind the application of the Dental Technicians and Dental Prosthetists Registration Act to dental prosthetists from 1 July 2010, and rename and appropriately adapt the Act to reflect its restricted application to dental technicians only.

Pharmacists, registered under the Pharmacists Registration Act, will transition to the National Scheme on its commencement. Consistent with the COAG IGA, those provisions of the Act imposing restrictions on pharmacy ownership will continue in force. Part 9 of the Bill repeals the remainder of the Act with effect from 1 July 2010, renames the Act as the *Pharmacy Business Regulation Act 2001* and makes other necessary amendments to enable Queensland Health to effectively monitor and enforce the pharmacy ownership restrictions.

Repeal or partial rescission of administration Acts

The *Medical Board (Administration) Act 2006* establishes the Office of the Medical Board (the OMB), and requires the Medical Board of Queensland (the MBQ) to source all administrative and operational services from the OMB under a service agreement. As these services will be provided to the MBQ's successor, the Medical Board of Australia, by the National Agency

on the commencement of the National Law, Part 11 of the Bill repeals the Medical Board (Administration) Act from that time.

The *Health Practitioner Registration Boards (Administration) Act 1999* similarly establishes the Office of Health Practitioner Registration Boards (the OHPRB) and requires the remaining health practitioner registration boards (other than the QNC) to source all administrative and operational services from the OHPRB under a service agreement. The majority of Queensland's health practitioner registration boards currently sourcing services from the OHPRB will be replaced by national boards under the National Law on commencement of the National Scheme, and will be required to source these services from the National Agency from that time.

However, the following Queensland boards will continue in operation after 1 July 2010:

- Dental Technicians Board of Queensland, created under the renamed Dental Technicians Registration Act;
- Medical Radiation Technologists Board of Queensland, created under the *Medical Radiation Technologists Registration Act 2001*;
- Occupational Therapists Board of Queensland, created under the *Occupational Therapists Registration Act 2001*; and
- Speech Pathologists Board of Queensland, created under the *Speech Pathologists Registration Act 2001*.

The Schedule to the Bill therefore rescinds the application of the Health Practitioner Registration Boards (Administration) Act to professions transitioning to the National Scheme on 1 July 2010, with the Act continuing wholly in force for the remaining professions. Equivalent amendments will be required to be made in advance of the transition of medical radiation technologists and occupational therapists to the National Scheme in 2012.

Health Practitioner (Professional Standards) Act

The National Law provides for questions of professional misconduct or the fraudulent obtaining of registration by a registered health practitioner to be heard by a responsible tribunal. Questions of unsatisfactory professional conduct or impairment (that is, matters not serious enough to be classed as misconduct) may be decided by a national board or a performance and professional standards panel or health panel. National boards are appointed by the Ministerial Council, and must consist of a balance of practitioner and community members. Panels may be established by

national boards in response to notifications or other concerns about the health, performance or conduct of a registered health practitioner, and must consist of a balance of practitioner and community members.

Jurisdiction to review certain disciplinary and other decisions of boards and panels is vested in each jurisdiction's responsible tribunal.

A 'responsible tribunal' is a tribunal declared under a law of a participating jurisdiction to be the responsible tribunal for that jurisdiction for the purposes of the National Law. The National Law Act declares the Queensland Civil and Administrative Tribunal (QCAT), created under the *Queensland Civil and Administrative Tribunal Act 2009* (the QCAT Act), to be Queensland's responsible tribunal.

While the National Law prescribes the substantive disciplinary matters that a responsible tribunal may hear and the decisions it may make on hearing these, it otherwise leaves each jurisdiction free to prescribe the form, constitution and procedures of the responsible tribunal for that jurisdiction (though not inconsistently with the National Law). The substantive powers and the procedures of national boards and panels in deciding disciplinary matters are wholly prescribed under the National Law.

The *Health Practitioner (Professional Standards) Act 1999* (the Professional Standards Act) prescribes a range of matters regarding the handling of investigations and disciplinary matters in relation to health practitioners (excluding nurses and midwives). These matters include the powers of State boards and professional conduct review panels, the review by QCAT of decisions of boards and panels and the further review and appeal of QCAT decisions.

Equivalent matters in relation to nurses and midwives are dealt with under the Nursing Act, which provides for the QNC and QCAT to hear matters relating to professional conduct and impairment, and for the review of QNC and QCAT decisions by QCAT.

As the majority of these matters will be prescribed in relation to National Scheme professions under the National Law, Part 5 of the Bill amends the Professional Standards Act to largely rescind its application to those National Scheme professions to which it currently applies. This will leave the Act in place to continue operating in full for State-registered professions (including, ahead of their transition to the National Scheme from 1 July 2012, occupational therapists and medical radiation technologists). As the Nursing Act is to be wholly repealed on

commencement of the National Law, no similar rescission is required in relation to that Act.

However, those provisions of the Professional Standards Act dealing with tribunal procedural matters will continue to be required to apply to disciplinary proceedings involving nationally registered professions (including nurses and midwives). Further, those provisions providing for further review by QCAT of certain of its own decisions in disciplinary proceedings ('tribunal review decisions') and the appeal of certain QCAT disciplinary decisions to the Court of Appeal will also remain relevant to National Scheme professions.

Part 5 of the Bill therefore further amends the Professional Standards Act to allow that Act to provide for the following procedural matters in relation to disciplinary proceedings involving National Scheme professions (including nurses and midwives):

- the requirement that QCAT be constituted by a judicial member when hearing health practitioner disciplinary matters;
- the requirement that QCAT is to be assisted by members of professional and public panels of assessors in hearing disciplinary matters;
- the membership of public and professional panels of assessors;
- the conduct by QCAT of disciplinary proceedings;
- review by QCAT of reviewable decisions by boards and panels and of tribunal review decisions; and
- appeal of certain QCAT decisions to the Court of Appeal.

For the sake of clarity and convenience, the relevant provisions, which for State-registered professions are located in several places throughout the Act, have been replicated and consolidated in a standalone Part 12A which only applies to matters arising under the National Law. New Part 12A consequently reproduces (with appropriate minor amendments) those provisions of the Professional Standards Act which deal with registrant disciplinary proceedings and applies these to disciplinary matters arising under the National Law.

Where appropriate, Part 5 also effects minor consequential amendments to provisions of the Act other than in new Part 12A to reflect their restricted application to State-registered professions only, to accommodate the

necessary implications of the commencement of the National Scheme and to ensure the continued effective operation of the Act.

Jurisdiction to review certain non-disciplinary decisions of national boards, such as the decision to refuse to register a person, is also vested in each jurisdiction's responsible tribunal. As is currently the case with equivalent decisions under the Queensland health practitioner registration Acts, the QCAT Act will prescribe the form, constitution and procedures of QCAT when hearing reviews of these decisions under the National Law.

Consequential amendments

A significant number of Acts across government refer to Acts, bodies and matters affected by the commencement of the National Scheme. To this end, they use definitions of 'health practitioner registration Act', 'health practitioner' and other related definitions which will be rendered in part or in whole obsolete by the commencement of the National Scheme. The Schedule to the Bill amends these Acts by replacing these definitions with a consistent set of new definitions which reflect the new statutory distribution of registration and accreditation responsibilities, or otherwise removing definitions and in effect calling up relevant definitions in the *Acts Interpretation Act 1954*.

Transitional amendments to the Nursing Act

From 1 July 2010, the Nursing and Midwifery Board of Australia will assume responsibility for registration and accreditation functions in relation to nurses and midwives from the QNC. To enable the smooth transfer and continuation of registration functions, Part 8 of the Bill amends the Nursing Act to permit the QNC to transfer protected registrant information to the Nursing and Midwifery Board.

The National Law prescribes a number of transitional arrangements to effect the smooth transfer of health practitioners' registration to the National Scheme on its commencement. These include that a practitioner who, immediately before the relevant jurisdiction's participation day, held registration under a law of the jurisdiction is taken to hold registration under the National Law. Further, the National Law provides that this registration expires at the end of the day on which it would have expired under the law of the participating jurisdiction or on which the annual registration fee would have become payable.

The Nursing Act requires that the registration, enrolment or authorisation of a person registered, enrolled or authorised under that Act who fails to

pay the annual licence fee by 30 June be immediately cancelled. It is therefore somewhat unclear how the National Law transitional arrangements will operate in relation to this category of registrant. To remove all doubt, Part 8 of the Bill amends the Nursing Act to provide that the registration of a person currently registered under the Nursing Act (which, for the purposes of the National Law, includes a person enrolled or authorised under the Nursing Act) expires at the end of 1 July 2010.

Mandatory notification under the National Law

Part 4, Division 4 of the Health Services Act provides for the establishment and gazettal of approved quality assurance committees (QACs) at public and private sector health service facilities and professional and training associations. Rather than to assign blame for adverse events, QACs are intended to provide a means for health services to objectively evaluate their own activities, ensure appropriate standards of care are maintained and develop appropriate means of addressing any systemic and other issues which arise. In order to enable QACs to perform this function frankly and openly, the Health Services Act attaches statutory privilege to QAC considerations, indemnifies persons who give information to QACs and prohibits the recording or disclosure of information gleaned by a person as a member of a QAC, other than for certain specified purposes.

Part 4B of the Health Services Act provides for the conduct of root cause analyses (RCAs) into reportable events which occur at health service facilities. In nearly identical terms, Part 4A of the *Ambulance Service Act 1991* provides for the conduct of RCAs into reportable events which occur during the provision of ambulance services. From time to time, registered health practitioners may take part in RCAs conducted under the Ambulance Service Act.

RCAs are systematic processes of analysis for identifying the factors that contributed to the occurrence of reportable events, as well as any remedial measures which may be taken to prevent their recurrence. An RCA is explicitly not intended to investigate any individual practitioner's professional competence or to assign blame for an event. Rather, similar to a QAC, an RCA is intended to provide a mechanism for a health service facility or the Queensland Ambulance Service to critically, openly and objectively assess its own activities and to learn from any systemic issues which are identified as having contributed to a reportable event.

For this reason, both the Health Services Act and the Ambulance Service Act require an RCA to focus on identifying and improving policies,

practices and procedures, rather than on the conduct of individuals. Further, an RCA is to be stopped if the team conducting it becomes aware that the event being examined involved either a blameworthy act or impaired capacity on the part of an individual involved.

Part 8, Division 2 of the National Law provides that a health practitioner who, in practising the profession, forms a reasonable belief that another practitioner has behaved in a way which constitutes notifiable conduct must notify the National Agency of this belief. 'Notifiable conduct' involves a health practitioner practising the profession while intoxicated, engaging in sexual misconduct, placing the public at risk of substantial harm by practising while impaired or placing the public at risk of harm by practising in a way which represents a departure from accepted professional standards.

However, under section 141(4)(d) of the National Law, a practitioner is taken not to have formed the belief in practising the profession where:

- the belief is formed in the course of the practitioner exercising functions as a member of a quality assurance committee or other similar body approved or authorised under an Act of a participating jurisdiction; and
- the Act prohibits disclosure of the information.

Accordingly, it is open to jurisdictions to nominate in legislation those bodies whose practitioner members are in part or in whole exempt from the mandatory notification requirements of the National Law, and to prescribe the extent of this exemption.

QACs and RCAs could reasonably be expected from time to time to examine events involving behaviour constituting notifiable conduct for the purposes of the National Law. The imposition of the mandatory notification requirement could in these cases subvert the purpose for which these statutory mechanisms are established by undermining health practitioners' confidence in the confidentiality of disclosures to these mechanisms, confidentiality which is intended to secure their cooperation. Further, because RCAs are designed to identify systemic rather than individual contributors to patient harm, an RCA may not provide a suitable basis on which to base a reasonable belief in a practitioner's culpability. Part 6 of the Bill therefore amends the Health Services Act to explicitly exempt members of QACs and RCA teams from the mandatory notification requirements under the National Law. Part 2 makes a similar amendment

to the Ambulance Service Act in relation to RCA teams constituted under that Act.

However, in certain circumstances the risk of harm to the public, which the mandatory notification provisions of the National Law are intended in part to mitigate, outweighs the benefits of maintaining confidentiality in relation to QACs and RCAs. In particular, where a practitioner forms the reasonable belief that another practitioner's conduct constitutes a risk of substantial harm to the public, the threat to patient safety is sufficient to require this be notified to the National Agency despite the reasonable belief arising on the basis of information gleaned through a QAC or RCA process.

Part 6 of the Bill therefore further amends the Health Services Act to provide that this exemption is displaced where a practitioner forms a reasonable belief that another practitioner's conduct which is the subject of the QAC investigation or RCA constitutes a substantial risk to the public. Again, Part 2 effects a similar amendment to the Ambulance Service Act in relation to RCAs conducted under that Act.

Amendments to the Medical Radiation Technologists Registration Act

Medical radiation technologists (MRTs) are currently registered in Queensland under the *Medical Radiation Technologists Registration Act 2001* (the MRT Registration Act). The MRT Registration Act provides for a number of requirements to be imposed on registrants to qualify them for renewal of their general registration as an MRT, including that they meet the recency of practice requirements prescribed under a regulation.

MRTs will be transitioned to the National Scheme on 1 July 2012. The National Law requires national boards to develop registration standards about a number of matters, including recency of practice and continuing professional development. On the transition of MRTs, registration standards developed by the relevant national board, the Medical Radiation Practitioners Board of Australia, will take the place of requirements prescribed under the MRT Registration Act, which will be repealed at that time.

The Medical Radiation Technologists Board of Queensland has developed a draft set of recency of practice requirements, including continuing professional development, for inclusion in the *Medical Radiation Technologists Registration Regulation 2002*. In the interests of maintaining high professional standards and quality practice in the lead up to the inclusion of MRTs in the National Scheme, the Board favours the incorporation of relevant requirements into the Queensland registration Act in the interval before its supplantation by the National Law.

As recency of practice and continuing professional development are treated as related but distinct heads of activity in the National Law, it is necessary to create a separate head of power in the MRT Registration Act providing for continuing professional development requirements as a condition of renewal of general registration to be prescribed under a regulation. Part 7 of the Bill inserts this head of power into the Act. This head of power reflects the existing head of power to prescribe recency of practice requirements under a regulation. The intent of the proposed amendment is to ensure regulation of the Queensland-registered profession is as similar as possible to the anticipated national model to enable its seamless transition into NRAS from 2012.

Amendment of the National Law and the National Law Act

Section 150(5) of the National Law requires health complaints entities, including Queensland's Health Quality and Complaints Commission, to give notice to relevant national boards of any practitioner health, conduct or

performance issues raised during statutory conciliation and other processes. In a joint letter to the Ministerial Council of 27 October 2009, the health complaints entities (excepting NSW) identified that this requirement may inadvertently undermine the statutory privilege attached to the conciliation process by the legislation of each participating jurisdiction. For example, Part 6 of the *Health Quality and Complaints Commission Act 2006* affords privilege over the entire conciliation process. To require an entity to nevertheless disclose this information to a national board could subvert the intent behind this privilege by discouraging practitioners from participating fully and frankly in conciliation processes.

As it is not the policy intent of section 150(5) of the National Law to undermine statutory privilege, but rather to support the flow of relevant information between health complaints entities and national boards, the Ministerial Council has agreed to exempt conciliation from the requirement to give notice under section 150(5). As Queensland hosts the National Law, any amendment to the National Law is required to be considered by Queensland Parliament. In accordance with the procedure established under the COAG IGA, Part 4 of the current Bill effects this agreed amendment.

It is anticipated that further emergent issues involved in the transition of multiple professions from a Queensland-based registration scheme to the National Scheme, in addition to those addressed through the National Law Act and the current Bill, may be identified following commencement of the National Law.

To enable these transitional issues to be addressed rapidly, and to prevent them from interfering with the smooth and timely entry into operation of the National Scheme, Part 4 also inserts a regulation-making head of power into the Health Practitioner Regulation National Law Act. This head of power provides for the Governor in Council to make a transitional regulation about a matter for which provision is necessary to achieve the transition of relevant health professions to the National Scheme. As discussed below, this regulation-making head of power is subject to strict limitations, including automatic expiry after three years.

<u>Disclosure of protected information</u>

Subject to specified exemptions, a person is prevented by section 392 of the Professional Standards Act from disclosing information acquired about another person's affairs as a result of performing functions under that Act. It has become apparent that the exemptions are not broad enough to enable

boards for State-registered health professions investigating the health or performance of registrants under the Act to alert health services and other relevant bodies in a timely manner of threats to public health or patient safety revealed by their investigations.

The only relevant exemption in these circumstances is a public interest disclosure authorised by the Minister. This imposes an involved and unnecessary additional step which potentially delays the health service or other body in taking appropriate steps to mitigate the identified risk. Further, this situation is also inconsistent with the way similar matters are treated under the National Law. A national board which reasonably believes a practitioner poses a risk to public health or patient safety may, under section 220 of the National Law, give written notice of the matter to a Commonwealth or State entity responsible for taking action in relation to the risk.

The commencement of the National Law provides an appropriate opportunity to address this issue and to ensure the capacity of State boards to respond to risks to public health and patient safety are consistent with those of their national counterparts. Part 5 of the Bill therefore amends the Professional Standards Act to insert an additional exemption to the requirement to maintain confidentiality to allow a State board to disclose its reasonable belief that a practitioner poses a risk to public health or patient safety.

QIMR Act amendments

To enhance the QIMR's effective operation, Part 10 of the Bill amends the Act to provide flexibility in the term of appointment of the QIMR Director and enables the function of approving agreements and arrangements entered into by the QIMR to be exercised by Queensland Health's Director-General rather than the Minister.

## Cost of implementation

As noted in the Explanatory Notes to the Health Practitioner Regulation National Law Bill 2009, COAG has previously agreed to a contribution by governments of $19.8 million to transition to the National Scheme by 1 July 2010. It is intended that the scheme, once implemented, will be self-funding.

The transfer of responsibility for administering the pharmacy ownership restrictions under the Pharmacists Registration Act, from the Pharmacists Board of Queensland to Queensland Health, will involve additional costs

for Queensland Health which will be met from Queensland Health's existing budget. However, these costs may not be on-going as Queensland Health's role is an interim arrangement pending a review being undertaken to determine the most effective and efficient regulatory framework for pharmacy ownership. Also, the Bill includes a potential cost recovery mechanism by providing a head of power for pharmacy owners to be charged a fee for notifying Queensland Health about changes of ownership.

Other than as outlined above, no additional costs to government arise from the current Bill.

## Consistency with fundamental legislative principles

National scheme legislation

The Bill makes consequential amendments stemming from implementation of a national scheme. The Explanatory Notes for the previous two Bills for the National Scheme, the Health Practitioner Regulation (Administrative Arrangements) National Law Bill 2008 and the Health Practitioner Regulation National Law Bill 2009, discuss whether national scheme legislation has sufficient regard for the institution of Parliament. Those Notes observe that the Scrutiny of Legislation Committee (the SLC) has previously noted that national scheme legislation may raise concerns about the authority of a State government to respond to, or distance itself from, the actions of a joint Commonwealth and State regulatory authority and the effect of executive pressure upon Parliaments to merely ratify the legislation. The SLC considered these concerns as they arise in relation to the previous two Bills for the National Scheme in its Alert Digests No. 12 of 2008 and No. 10 of 2009.

The Notes for the previous Bills further observe that the introduction of national scheme legislation in a State or Territory Parliament for adoption by other participating States and Territories is a standard approach to implementing national schemes in areas, like health, where relevant legislative powers rest with the States and Territories, and not with the Commonwealth. In the case of the National Scheme, the Notes identify that Queensland Parliament remains sovereign. This sovereignty arises both because Queensland is the host jurisdiction for the national scheme legislation and because the power to decide whether to apply or to continue applying the National Law in Queensland rests with Queensland Parliament.

In its consideration of Health Practitioner Regulation National Law Bill, Parliament was satisfied that the benefits of the National Scheme, such as improved safeguards, reduced red tape, greater efficiency and improved workforce mobility, are sufficient to justify Queensland's application of national scheme legislation. Parliament consequently endorsed Queensland's entry into the National Scheme.

It is considered that, as the current Bill only makes those administrative and consequential amendments required to give effect to Parliament's decision to host and apply the National Law, no new fundamental legislative principles regarding national scheme legislation arise.

Regulation-making head of power

Part 4 inserts a regulation-making head of power into the Health Practitioner Regulation National Law Act. The inclusion of this power raises the issue of whether the legislation has sufficient regard to the institution of Parliament by sufficiently subjecting the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly as provided for in section 4(4)(b) of the *Legislative Standards Act 1992*.

The implementation of the National Scheme requires the complex transition of eight separate registration schemes into one national scheme. A number of transitional issues have already been identified and, in some cases, require a consistent approach across participating jurisdictions. Other transitional issues are relevant to only one or some jurisdictions. With the exception of the Northern Territory, all other jurisdictions have consequently included a similar regulation-making head of power in their adopting or corresponding legislation for the National Scheme. The National Law also contains a similar power, which provides for provisions of a savings or transitional nature to allow or facilitate the implementation of the National Scheme.

The power enables a transitional provision to have retrospective operation to a day not earlier than the day that Queensland participates in the National Scheme, which is 1 July 2010. This retrospectivity is necessary to ensure the smooth transition from the current State-based registration scheme to the National Scheme from 1 July 2010.

The ability to make a regulation under the Queensland Act will enable Queensland-specific transitional issues to be addressed, to facilitate full implementation of the National Scheme in Queensland. The following safeguards have been incorporated into the power:

- the power is limited to a regulation providing for a matter of a transitional or savings nature. This restricts the matters for which a regulation may be made;
- the power is subject to a 'sunset' clause, which provides for the expiry of the power on 30 June 2013. This approach is consistent with the approach taken for the regulation-making power under the Health Practitioner Regulation National Law (section 305) and, while the period until expiry is not as long as that prescribed in section 305 (five years), will ensure that transitional issues can be addressed for professions entering the National Scheme at a later date (1 July 2012); and
- regulations made under the provision will be subject to the application of section 50 of the *Statutory Instruments Act 1992*, enabling a motion for disallowance.

Civil liability

Clause 117 of the Bill inserts a provision in the Pharmacists Registration Act that specifies that an official is not civilly liable for an act done, or omission made, honestly and without negligence under the Act. An 'official' means the chief executive, an inspector, an officer of Queensland Health, a health service employee appointed under the *Health Services Act 1991* or another person acting under the direction of a person in one of the aforementioned categories.

The question arises as to whether there is adequate justification for the conferral of this immunity. It is not considered appropriate for an individual to be made civilly liable as a consequence of exercising their functions or powers under the Act, if exercised honestly and without negligence. As such, the provision prevents civil liability from attaching to an official and instead, such liability attaches to the State. This is consistent practice where legislation creates functions or powers exercisable by an individual.

Similarly, clause 57 inserts a new section 405U into the Professional Standards Act. This new section transfers liability for acts done or omissions made by persons acting under that Act or under a repealed health practitioner registration Act from the relevant Queensland registration board to the National Agency. This does not affect the scope of the existing vesting of liability in the relevant board, but simply nominates the appropriate body under the National Scheme in which liability should

instead be vested. For the reasons outlined above, it is considered that this transfer of liability is proportionate and appropriate.

## Consultation

Extensive consultation was undertaken nationally prior to the signing of the COAG agreement on 26 March 2008 and during development of the two previous pieces of legislation for the National Scheme. This included the release of a series of consultation papers, release of exposure draft legislation, the holding of numerous State, Territory and National forums and meetings with representatives of key professional and consumer organisations.

Consultation was overseen by the following Intergovernmental committees:

- the National Registration and Accreditation Implementation Project (NRAIP) Governance Committee, comprising Australian Health Ministers' Advisory Council (AHMAC) members or their deputies; and
- the Legislative Drafting Group, appointed by Health CEOs, comprising senior policy and legislation officials from each jurisdiction's health department.

The following key stakeholders have been consulted on the development of the current Bill:

- Australian Health Practitioner Regulation National Agency;
- Australian Friendly Societies Pharmacies Association;
- Mater Misericordiae Health Services Brisbane Ltd;
- Office of the Health Practitioner Registration Boards;
- Office of the Medical Board;
- Queensland Institute of Medical Research;
- Queensland Nursing Council;
- Pharmaceutical Society of Australia; and
- Pharmacy Guild of Queensland.

# Notes on Provisions

## Part 1 Preliminary

### Name of the Act

Clause 1 provides that the short title of the proposed Act is the *Health Legislation (Health Practitioner Regulation National Law) Amendment Act 2010*.

### Commencement

Clause 2 provides for the commencement of the proposed Act. All provisions, other than the following, commence on 1 July 2010:

- clause 118, which inserts new section 208A into the Pharmacists Registration Act to require the Pharmacists Registration Board to give documents or information to the chief executive about the ownership of pharmacies;
- Part 8, which makes transitional amendments to the Nursing Act; and
- Part 10, which makes amendments to the QIMR Act.

Parts 8 and 10 and clause 118 commence on the day on which the Act receives Royal Assent.

## Part 2 Amendment of Ambulance Service Act 1991

### Act amended

Clause 3 provides that Part 2 of the Act and the Schedule amend the *Ambulance Service Act 1991*.

Where a bill makes a variety of amendments to an Act, some of which are significant and others minor or consequential, it is consistent with contemporary drafting practice to address the more significant amendments

in a standalone part of the bill and the minor or consequential amendments in a separate schedule. Accordingly, only the significant amendments to the Ambulance Service Act are addressed in Part 2, with further consequential amendments addressed in the Schedule.

## Amendment of s 36L (Definitions for div 5)

For the purposes of Part 4A, Division 5, clause 4 inserts the following new definitions into section 36L of the Act:

- 'excluded notifiable conduct' means conduct by a registered health practitioner which corresponds to either the first or second category of 'notifiable conduct' under section 140 of the National Law, or which corresponds to the fourth category but is not serious enough to place the public at risk of substantial harm;
- 'impairment' is given the meaning it carries under the National Law;
- 'National Agency' is given the meaning it carries under the National Law;
- 'public risk notifiable conduct' means conduct by a registered health practitioner which corresponds to the third category of 'notifiable conduct' under section 140 of the National Law, or which corresponds to the fourth category and is serious enough to place the public at risk of substantial harm; and
- 'registered health practitioner' is given the meaning it carries under the National Law.

## Amendment of s 36M (Disclosure of information—RCA team member or relevant person)

An RCA is clearly within the intended scope of the exemption to mandatory notification under section 141(4)(d) of the National Law. However, in the same circumstances, the risk of harm to the public which the mandatory requirement to notify under Part 8, Division 2 of the National Law is in part intended to mitigate outweighs the benefits of maintaining confidentiality in relation to the information gleaned by RCA teams. In particular, where a practitioner's conduct places the public at risk of substantial harm because they have an impairment (the third category of 'notifiable conduct' under section 140 of the National Law), or at risk of substantial harm because of a significant departure from accepted professional standards (the most potentially serious type of conduct within

the fourth category under section 140 of the National Law), the risk is sufficient to require this conduct to be notified even where the notifying practitioner forms the requisite reasonable belief on the basis of information gleaned as a member of an RCA team.

Clause 5 therefore inserts an additional purpose for which a member of an RCA team may disclose information under section 36M(1) of the Ambulance Service Act to allow a registered health practitioner participating in an RCA team under the Act to notify the National Agency that another health practitioner has behaved in a way which constitutes public risk notifiable conduct. This has the effect of permitting a member of an RCA team who forms a reasonable belief that another practitioner's conduct either falls within the third category of notifiable conduct for the purposes of the National Law, or falls within the fourth category and is serious enough to place the public at risk of substantial harm, to notify the National Agency of this, notwithstanding that the belief was formed while performing functions as a member of the RCA team.

## Insertion of new s 36NA

Clause 6 deals with all other conduct which may be notifiable conduct for the purposes of the National Law. This clause inserts a new section 36NA, which provides that a registered health practitioner who, as a member of an RCA team, forms a reasonable belief that another practitioner has behaved in a way which constitutes excluded notifiable conduct must not disclose the information which forms the basis of the belief (including to the National Agency). This has the effect of enlivening the available exemption under section 141(4)(d) of the National Law only where a member of an RCA team forms a reasonable belief that another practitioner's conduct falls within either the first or second category of notifiable conduct for the purposes of the National Law, or which falls within the fourth category but is not serious enough to place the public at risk of substantial harm.

## Amendment of sch (Dictionary)

Clause 7 amends the Schedule (Dictionary) to the Act to signpost that, for the purposes of Part 4A, Division 5, the terms 'excluded notifiable conduct', 'impairment', 'National Agency', 'public risk notifiable conduct' and 'registered health practitioner' are defined in section 36L of the Act.

# Part 3 Amendment of Dental Technicians and Dental Prosthetists Registration Act 2001

## Act amended

Clause 8 provides that Part 2 of the Act and the Schedule to the Act amend the *Dental Technicians and Dental Prosthetists Registration Act 2001*.

Dental prosthetists, registered under the Dental Technicians and Dental Prosthetists Registration Act, are being transitioned to National Scheme on its commencement. However, dental technicians, who are also registered under this Act, are not currently proposed to be transitioned to National Scheme. The application of the Dental Technicians and Dental Prosthetists Registration Act to dental prosthetists is therefore to be rescinded from 1 July 2010, with the Act limited in the professions to which it applies to dental technicians only.

This has the effect that dental technicians will continue to be registered under a Queensland-specific registration Act. A person who held general, provisional general or special purpose registration as a dental technician under the pre-amended Act continues to hold registration in the same category, and subject to the same conditions, under the amended Act.

Consistent with contemporary drafting practice, the bulk of the amendments to the Dental Technicians and Dental Prosthetists Registration Act (renamed as the Dental Technicians Act) are located in the Schedule to this Bill. Amendments addressed in the Schedule make those terminological and definitional changes required to reflect:

- the restricted application of the Act to dental technicians only;
- where necessary, the new distribution of registration and accreditation responsibilities following commencement of the National Law and the assumption of registration responsibilities in relation to dental technicians by the renamed Dental Technicians Board of Queensland;
- the recent renaming of the Health Insurance Commission as Medicare Australia, and the renaming of its creating Act as the *Medicare Australia Act 1973* (Cwlth).

## Amendment of long title

Clause 9 reflects the reduction in the Act's scope to the registration of dental technicians only by removing reference to dental prosthetists from the Act's long title.

## Amendment of s 1 (Short title)

Clause 10 similarly reflects the reduction in the scope of the Act by amending its short title to the *Dental Technicians Registration Act 2001*.

## Amendment of s 7 (Objects of Act)

Similarly, clause 11 reflects the restriction of the Act's application by replacing a reference to 'professions' with a reference to 'profession' in the objects of the Act in section 7, and a reference to the 'Dental Technicians and Dental Prosthetists Board' with a reference to the 'Dental Technicians Board'.

## Amendment of s 124 (Notification of certain events to interstate regulatory authorities and other entities)

Clause 12 makes several consequential amendments to section 124 of the Act. Subsection (2) of this section requires the Dental Technicians and Dental Prosthetists Board to notify each interstate regulatory authority with which they are aware a registrant under the Act is also registered if the registrant's registration is cancelled or conditions are imposed on, or removed from, the registrant's registration. In recognition that a person registered as a dental technician under this Act may simultaneously be registered as a dental prosthetist or another category of dental registrant under the National Law, subclause (1) amends subsection (2) to also require the Board to give notice of these events to the National Agency.

Subsection (3) provides that the Board may also give notice of these events to a range of other bodies. Subclause (2) replaces the reference to 'other State regulatory authorities' in subsection (3)(b) with a reference to 'other regulatory authorities'. This recognises that the registration functions performed by a significant number of the other State health practitioner registration boards currently caught by the definition of 'State regulatory authorities' in subsection (6) will be performed following commencement of the National Law by national boards. This amended reference is

considered a more appropriate means of identifying the remnant State registration boards.

Subclause (3) replaces a reference in subsection (3)(g) to 'the Health Insurance Commission' with a reference to 'Medicare Australia'. This reflects the renaming of this body by the amendment and renaming of the *Health Insurance Commission Act 1973* (Cwlth) as the *Medicare Australia Act 1973* (Cwlth).

Subclause (4) removes the redundant definition of 'State regulatory authorities' from section 124. Subclause (5) replaces this with a definition of 'regulatory authorities', and also inserts a definition of 'National Agency' for the purposes of subsection (2).

## Insertion of new pt 10, div 4

Clause 13 inserts a new Part 10, Division 4 into the Act to deal with transitional issues. New section 241 identifies that any reference in new Division 4 to 'commencement' is a reference to the commencement of this Division, and that a reference to the 'pre-amended Act' is a reference to the Dental Technicians and Dental Prosthetists Registration Act in the form it was in prior to the commencement of this Division.

Part 2 of the pre-amended Act creates the Dental Technicians and Dental Prosthetists Board of Queensland and invests it with registration and accreditation functions in relation to both professions. Under the National Law, however, equivalent functions in relation to dental prosthetists will from 1 July 2010 be performed by the Dental Board of Australia. The Schedule to the Bill therefore amends section 9(1) of the Act, which creates the Dental Technicians and Dental Prosthetists Board of Queensland, to instead create the Dental Technicians Board of Queensland from commencement. The renamed Board will continue to perform its existing registration and accreditation functions under the amended Act in relation to dental technicians only.

The renamed Board will continue to have the same powers and functions as under the pre-amended Act. New section 242 provides that those members of the Dental Technicians and Dental Prosthetists Board of Queensland who were appointed as prosthetist registrant members under section 16(b) of the pre-amended Act will cease to hold office from 1 July 2010. All other members will continue as members of the renamed Board, with the terms of their appointments continuing until they would have expired under the pre-amended Act.

New section 243 clarifies that the change of name of the Board does not affect its legal personality or the rights, liabilities or entitlements it accrued, or were accrued in relation to it, under the pre-amended Act. New section 244 clarifies that any reference in legislation to the 'Dental Technicians and Dental Prosthetists Board' is also, if appropriate, taken to be a reference to the renamed Dental Technicians Board.

# Part 4 Amendment of Health Practitioner Regulation National Law Act 2009

## Act amended

Clause 14 provides that Part 4 of the Bill amends the *Health Practitioner Regulation National Law Act 2009*.

## Insertion of new s 9A

Clause 15 inserts new section 9A into the National Law Act to provide a head of power for the Governor in Council to make a transitional regulation.

This amendment is necessary to facilitate the implementation of the National Scheme in Queensland. For this reason, the power includes an ability for a regulation to have retrospective application. However, retrospectivity is only allowed to a day not earlier than the commencement of the provision.

The ability to make a regulation containing provisions of a transitional nature may be used to allow or facilitate the change from the operation of a law in Queensland to the operation of the National Law. The power is therefore limited to only transitional matters. Furthermore, the clause provides that the ability to make a regulation, and any regulation made under the power, expires on 30 June 2013. This time period will cover the initial transition of the first ten health professions into the National Scheme from 1 July 2010, and the transition of additional professions from 1 July 2012.

## Amendment of schedule (Health Practitioner Regulation National Law)

Clause 16 amends section 150(5) of the National Law (scheduled to the National Law Act) to explicitly exempt conciliation from that set of actions of a health complaints entity which may raise a health, conduct or performance issue which must be notified to the relevant National Board. Section 150(5) requires health complaints entities (including Queensland's Health Quality and Complaints Commission) to provide written notice to the relevant National Board of issues about the health, conduct or performance of a registered health practitioner raised by an investigation, or conciliation or other action of the entity. By restricting the application of this section to investigations and actions other than conciliation, the amendment maintains intact the statutory privilege attached to conciliation processes by the relevant legislation of each participating jurisdiction.

# Part 5 Amendment of Health Practitioners (Professional Standards) Act 1999

## Act amended

Clause 17 provides that Part 5 of the Act and the Schedule amend the *Health Practitioners (Professional Standards) Act 1999* (the Professional Standards Act).

## Amendment of long title

Clause 18 inserts an additional limb into the long title of the Act indicating that one of the purposes of the Act is to provide for particular matters about QCAT proceedings or Court of Appeal appeals relating to National Scheme registrants. This reflects that the insertion of new Part 12A by Bill expands the purpose of the Act to also prescribe those procedural, evidentiary and other machinery matters relating to the proceedings of QCAT in relation to matters arising under the National Law, and to provide for appeals from QCAT decisions in relation to National Scheme registrants.

The National Law leaves jurisdictions free to prescribe the procedures of responsible tribunals when conducting disciplinary proceedings. It is Queensland's intention that the majority of procedures as prescribed under the Professional Standards Act also apply to proceedings by QCAT in its capacity as a responsible tribunal. For the purposes of disciplinary proceedings arising under the National Law, these matters have been consolidated in a standalone Part 12A which only applies to matters arising under the National Law.

## Amendment of s 4 (The legislative scheme)

Clause 19, subclause (1) amends section 4 to provide that the Professional Standards Act, other than new Part 12A, forms part of a legislative scheme consisting of that Act, the remaining Queensland health practitioner registration Acts and the Health Practitioner Registration Boards (Administration) Act. Subclause (2) inserts a new subsection providing that Part 12A forms part of a legislative scheme consisting of that part and the National Law.

This has the effect of identifying that the Professional Standards Act, other than new Part 12A, and the Health Practitioner Registration Boards (Administration) Act continue to apply to registrants under the renamed Dental Technicians Registration Act, Medical Radiation Technologists Registration Act, Occupational Therapists Registration Act and Speech Pathologists Registration Act. Further, this has the effect of identifying that Part 12A applies to National Scheme registrants only.

Equivalent matters to those dealt with in relation to State-registered professions by the Professional Standards Act (other than new section 12A) and the Health Practitioner Registration Boards (Administration) Act are dealt with in relation to National Scheme registrants by the National Law. However, the National Law leaves jurisdictions free to prescribe the procedures of responsible tribunals when conducting disciplinary proceedings. It is Queensland's intention that the majority of those procedural, evidentiary and other machinery matters relating to the functioning of QCAT as prescribed under the Professional Standards Act also apply to proceedings by QCAT in its capacity as a responsible tribunal. For the purposes of disciplinary proceedings arising under the National Law, these matters have been consolidated in a standalone Part 12A which only applies to matters arising under the National Law.

### Amendment of s 5 (Relationship with Health Quality and Complaints Commission Act)

Clause 20 amends section 5 to provide that this Act is to be read in conjunction with the Health Quality and Complaints Commission Act. While the Health Quality and Complaints Commission created under that Act will continue to exercise functions in relation to National Scheme registrants, the National Law prescribes the interactions of health complaints entities with bodies created under the National Law. It is therefore unnecessary for the Professional Standards Act to prescribe these functions in relation to National Scheme registrants, and no provisions to this effect are included in new Part 12A.

### Replacement of pt 1, div 2, hdg (Objects)

Clause 21 removes the current heading to Part 1, Division 2 of the Act, 'Objects', and replaces it with a new heading, 'Main objects of this Act'.

## Amendment of s 6 (Objects of Act)

Clause 22 similarly replaces the reference to the objects of the Act in the body of section 6 (Objects of Act) with a reference to the main objects of the Act.

The objects of the Act in section 6 will apply to State-registered registrants in full, but to National Scheme registrants in part only. This amendment accordingly identifies that, while achievement of all objects listed in section 6 is the primary intent of the Act in relation to the majority of the professions to which it applies, it can also carry a more limited intent achieved through more limited means in relation to some of the professions to which it applies.

## Amendment of s 7 (How objects are to be primarily achieved)

Clause 23 similarly amends section 7 (How objects are to be primarily achieved) to replace the reference to the objects of the Act with a reference to the main object of the Act. This amendment identifies that the primary means under section 7 of achieving the objects of the Act listed in section 6 will be relevant in full to State-registered registrants, but in part only to National Scheme registrants.

## Amendment of s 12 (Delegation of certain powers)

Subclause (1) of clause 24 removes a reference to the MBQ from section 12, which allows boards to delegate certain powers to nominated persons. As the MBQ will be abolished on commencement of the National Scheme and its functions transferred to the Medical Board of Australia created under the National Law, this reference will be redundant.

Subclauses (2) and (3) remove subsection 12(3) and part of subsection (4), which deal with delegation of powers by the MBQ.

Subclause (4) renumbers subsection (4) as subsection (3) as a consequence of the removal of existing subsection (3) by subclause (2).

## Omission of pt 2, div 3, sdiv 1A (Preliminary)

Clause 25 omits Part 2, Division 3, Subdivision 1A (Preliminary). This subdivision provides several definitions which relate to the establishment and operation under Division 3 of professional conduct review panels for professions currently registered under the Dental Practitioners Registration

Act. As these professions are to be transitioned to the National Scheme from 1 July 2010, with equivalent functions performed by panels established by national boards under the National Law, these definitions will no longer be necessary.

## Amendment of s 18 (Restrictions on membership of panel)

Clause 26 omits subsection 18(1A), which restricts the membership of a professional conduct review panel dealing with disciplinary proceedings in relation to dental auxiliary registrants registered under the Dental Practitioners Registration Act. As dental auxiliary registrants are being transitioned to the National Scheme from 1 July 2010, this subsection is no longer necessary.

## Amendment of s 23 (Appointment of secretary)

Clause 27, subclause (1) amends section 23 (Appointment of secretary) to provide that a person is not qualified for appointment as the secretary of professional conduct review panels if the person is a member of a national board. This is in keeping with the existing intent of the provision, which seeks to avoid any possible or perceived conflict of interest by ensuring the secretary, who performs administrative rather than disciplinary functions in relation to panels, is not a member of a body which deals with disciplinary proceedings against registrants and is therefore able to remain impartial.

Subclause (2) removes a redundant reference to the OMB, and inserts a reference to the National Agency. This has the effect of disqualifying a member of the staff of the National Agency from appointment as secretary of professional conduct review panels. Again, this is in keeping with the existing intent of the provision to ensure that the secretary is a person who does not deal directly with the registration of health practitioners.

## Amendment of s 25 (Functions of secretary)

Clause 28 removes a reference to the executive officer of the OMB from section 25(g) of the Act. As this position is being abolished on commencement of the National Scheme and its functions transferred to the executive officer of the Medical Board of Australia, the reference will become redundant from that time.

## Omission of pt 2, div 4, sdiv 1 (Constitution of tribunal)

Clause 29 omits Part 2, Division 4, Subdivision 1 of the Act, which provides for the constitution of QCAT when hearing matters under the Professional Standards Act. As the same matter is provided for in identical terms under section 213 of the Act, this subdivision is redundant.

## Renumbering of pt 2, div 4, sdiv 2 (Functions of tribunal)

Clause 30 renumbers Part 2, Division 4, Subdivision 2 of the Act as Subdivision 1. This renumbering is necessary due to the omission of Subdivision 1 by clause 29.

## Renumbering of pt 2, div 4, sdiv 3 (Assessors)

Clause 31 renumbers Part 2, Division 4, Subdivision 3 of the Act as Subdivision 2. This renumbering is necessary due to the omission of Subdivision 1 by clause 29.

## Amendment of s 39 (Panels of assessors)

Clause 32 omits the list of professional panels of assessors created under subsections (i) to (xiii) of section 39(b), and replaces these with a list establishing the following panels of assessors:

- a dental technicians panel of assessors;
- a medical radiation technologists panel of assessors;
- an occupational therapists panel of assessors; and
- a speech pathologists panel of assessors.

The primary functions of a professional panel of assessors under the Professional Standards Act are to furnish members of professional conduct review panels under Part 2, Division 3 and to assist QCAT in hearing disciplinary matters under section 31.

For the sake of clarity and convenience, all provisions of the Act relevant to tribunal proceedings in relation to disciplinary matters arising under either a State Act or the National Law have been duplicated and, with appropriate minor amendments, consolidated in new Part 12A of the Act. Part 12A deals with matters arising under the National Law only, leaving all other parts of the Act to continue dealing with matters arising under State legislation.

New section 398ZL, which provides for the creation of panels of assessors for National Scheme professions, has been included in new Part 12A. Accordingly, this clause restricts section 39(b) to provide for the establishment of panels for State-registered professions only.

### Amendment of s 40A (Temporary appointment of panel of assessors)

Clause 33 replaces two references to 'registrar' in section 40A with references to 'principal registrar'. This reflects the terminology of the QCAT Act, which consistently uses 'principal registrar' to refer to the officer intended here.

### Amendment of s 41 (Disqualification from membership of panel of assessors)

Section 41(a)(iii) of the Professional Standards Act provides that an individual is disqualified from membership of a panel of assessors if the individual is, or has been, registered as a health practitioner under the law of another State or a foreign country that corresponds to a health practitioner registration Act. Clause 34, subclause (1) inserts an additional limb into subsection (iii), providing that an individual is also disqualified if they are, or have been, registered under the National Law or a law of a foreign country that corresponds to the National Law.

This clause does not affect the scope of the disqualification in any way. Rather, it simply continues the current intent of the provision to exclude any current or past registrants, under any registration scheme, from membership of public panels.

Section 41(b)(iii) disqualifies an individual from membership of a professional panel of assessors if the individual is registered to practise the profession in another State and that registration is cancelled, suspended or subject to conditions or the individual has entered an undertaking with a local registration authority. Subsection (ii) disqualifies registrants generally (including those registered in other professions) on similar grounds.

As subsection (ii) therefore applies to National Scheme registrants, it is unnecessary for subsection (iii) to also apply to National registrants. Subclause (2) accordingly restricts the application of subsection (iii) to registrants in interstate schemes only.

Subclause (3) inserts a new subsection (2) providing definitions of 'board', 'registrant', 'registrant's board' and 'registration' for the purposes of section 41. The effect of these definitions is that, unless otherwise specified, a person who would be disqualified from membership of a panel for matters relating to their registration under a State Act is similarly disqualified for the same matters relating to their registration under the National Law.

### Amendment of s 42 (Procedure for recommending members of panels of assessors)

Clause 35, subclauses (1) and (2) replace references in section 42 to sections 41(a) and (b) with references to sections 41(1)(a) and (b). This reflects the insertion of a new subsection (2) into section 41 by clause 35, which has the effect of renumbering existing sections 41(a) and (b) as 41(1)(a) and (b).

### Amendment of s 45 (Vacation of office)

Clause 36 amends the example given for section 45(2)(b) to clarify that a person is also unfit to hold office as a member of a professional panel of assessors if disciplinary action is taken against them under the National Law. This reflects the existing intent of the example and the section to which it relates, which is to identify that a registrant is disqualified from membership of a panel on disciplinary grounds arising under any health practitioner registration scheme.

### Amendment of s 73 (Who may be appointed as investigator)

Section 73 provides for the appointment of investigators by registration boards, including by the MBQ. As the MBQ and the OMB are being abolished on commencement of the National Law, references to these bodies in section 73 will be redundant and are therefore removed by clause 37. Equivalent matters to those dealt with by section 73 are dealt with in relation to the Medical Board of Australia under the National Law.

### Replacement of s 76 (Failure to return identity card)

Clause 38 replaces section 76 with an otherwise equivalent new section that no longer applies to the investigators appointed by the MBQ. As the MBQ will be abolished on the commencement of the National Scheme and its

functions transferred to the Medical Board of Australia created under the National Law, it will not be necessary for this provision to apply to the MBQ.

## Amendment of s 98 (Dealing with forfeited things etc.)

Clause 39, subclauses (1) and (2) amend section 98 to remove references to the executive officer of the MBQ. As the MBQ will be abolished on the commencement of the National Scheme and its functions transferred to the Medical Board of Australia created under the National Law, these references will be redundant.

## Amendment of s 213 (Allocation of matters and constitution of the tribunal)

Clause 40, subclause (1) amends section 213(2) by replacing a reference to the constitution of the tribunal by a judicial member with a reference to the constitution of the tribunal by one judicial member. This removes all doubt that the intent of this provision is that QCAT, in conducting disciplinary proceedings under the Professional Standards Act, is to at all times be constituted by the same judicial member.

Subclause (2) removes a definition of 'judicial member', which is otherwise adequately defined under the QCAT Act.

## Amendment of s 217 (Compulsory conference)

Clause 41, subclause (1) replaces a reference in section 217 to QCAT 'holding' a compulsory conference with a reference to QCAT 'directing' the parties to a disciplinary proceeding to attend a compulsory conference. This more accurately reflects the operation of the QCAT Act, under which QCAT is constituted.

Section 217(2) currently permits QCAT to require that the assessors appointed to assist the tribunal also take part in a compulsory conference. Subclause (2) inserts several new subsections entitling a party to a dispute to object to an assessor who took part in the compulsory conference subsequently assessing the tribunal. New subsection (3) requires QCAT to advise the parties of their right to object to an assessor assisting the tribunal, and new subsection (5) provides that this right must be exercised within a specified time period. New subsection (6) alternatively entitles an

assessor who took part in a compulsory conference to be excused from assisting QCAT in the hearing.

This more closely aligns parties' rights in relation to assessors who take part in a compulsory conference with their rights in relation to tribunal members and adjudicators who preside at compulsory conference. Under section 73 of the QCAT Act, parties may object to a member or adjudicator in this situation subsequently constituting the tribunal that hears the matter.

Parties are given this right because, under section 74, anything said or done during a conference is inadmissible in evidence. Parties may consider that a member or adjudicator, who, through presiding at the conference, has had access to sensitive or incriminating information, is consequently compromised in their ability to hear the matter impartially and decide it on the evidence presented. In these circumstances, considerations of natural justice require that the member or adjudicator not participate further in the proceeding if requested by one of the parties.

As assessors are appointed to advise the tribunal about questions of fact, it is considered that the same considerations of natural justice arise, and that parties should have the same rights in relation to assessors as they have in relation to members and adjudicators in similar circumstances.

## Amendment of s 219 (Procedure for hearing by tribunal)

Clause 42 amends section 219 to remove a requirement that QCAT, if asked to do so by a party to a proceeding, must tell the party of the effect that section 381C (Effect on specialist registration if general registration suspended or cancelled) or 381G (Effect on specialist registration if general registration suspended or cancelled) may have on the registrant's registration. Both sections deal specifically with the effect of disciplinary matters on the registration of dental prosthetists. As all registration matters relating to dental prosthetists will be addressed under the National Law from 1 July 2010, these provisions are to be repealed. The reference to these provisions in section 219 will therefore be redundant.

## Amendment of s 263 (Records to be kept and made publicly available)

Clause 43, subclauses (1), (2) and (4)-(7) remove several references to the MBQ, the executive officer of the MBQ and the Medical Practitioners Registration Act from section 263. As the Medical Practitioner Registration Act will be repealed on the commencement of the National

Law, and the MBQ abolished and its functions (including those of its executive officer) transferred to the Medical Board of Australia, these references will be redundant. Subclause renumbers subsections 263(1)(c) and (d) as subsections (b) and (c) to reflect the removal of existing subsection (b) by subclause (2).

### Amendment of s 337 (Decisions that may be reviewed)

Clause 44, subclause (1) replaces an incorrect reference to section 336 in section 337(e) with a reference to section 331. Similarly, subclause (2) replaces an incorrect reference to section 353(2) in subsection (e) with a reference to section 353(1).

### Amendment of s 358 (Who may be appointed as inspector)

Clause 45 removes several references in section 358 to the MBQ and the executive officer of the OMB. As the MBQ and the OMB will abolished and their functions (including those of the OMB executive officer) transferred to the Medical Board of Australia on commencement of the National Law, these references will be redundant.

### Amendment of s 361 (Failure to return identity card)

Clause 46 removes redundant references to the MBQ and the executive officer of the OMB from section 361.

### Amendment of s 367B (Appointments and authority)

Clause 47 removes a redundant reference to the executive officer and staff of the OMB from section 367B(2) and renumbers subsections affected by its removal.

### Amendment of s 367C (Signatures)

Clause 48 removes redundant references to the executive officer and staff of the OMB from section 367C.

### Amendment of s 367D (Evidentiary provisions)

Clause 49 removes a redundant reference to the executive officer of the OMB from section 367D.

### Amendment of s 375 (Inspection of code etc.)

Clause 50 removes redundant references to the executive officer and office of the OMB from section 375 and renumbers subsections affected by the removal.

### Omission of pt 12, div 2A (Provisions about certain registrants)

Clause 51 omits Part 12, Division 2A from the Act. This division deals with the effects of disciplinary action involving persons who are both general and specialist registrants under the Dental Technicians and Dental Prosthetists Registration Act, or who are both dental technicians and dental prosthetists under that Act. Specialist registration is only available to dental prosthetists under that Act.

As dental prosthetists are being transitioned to the National Scheme on 1 July 2010 and the Act restricted to dental technicians only, there will be no further disciplinary action involving persons who are both general and specialist registrants or both dental technicians and dental prosthetists under that Act after that time. This leaves Part 12, Division 2A redundant.

### Amendment of s 382 (Board member, executive officer or executive officer (medical) may give chief executive certain information)

Clause 52 removes several redundant references to the executive officer of the OMB from section 382.

### Amendment of s 386A (Protection of officials from liability)

Clause 53 removes redundant references to the MBQ and the executive officer of the OMB from section 386A.

### Amendment of s 392 (Confidentiality)

Clause 54 amends section 392 (Confidentiality) to accommodate the redistribution of roles and responsibilities effected by the commencement of the National Scheme. Section 392 restricts the disclosure of information about another person's affairs acquired by a relevant person in performing functions under the Act. As a person performing functions under new Part 12A will be performing functions in relation to National Scheme registrants, section 392 will continue to have some application to

information arising in relation to National Scheme registrants. That is, it is intended to apply, where relevant, to information acquired under either Part 12A or the remainder of the Act.

Subclause (1) clarifies that section 392 applies to persons performing functions under new Part 12A, but only in relation to information that is not protected information within the meaning of section 214 of the National Law. Part 10, Division 2 of the National Law establishes confidentiality requirements in relation to protected information under that Act. Section 392 is only intended to apply to information about the affairs of National Scheme registrants which is not otherwise protected information for the purposes of the National Law, and which is therefore not subject to the confidentiality requirements of the National Law. For example, information regarding a disciplinary matter of which a relevant person becomes aware in the course of performing functions in relation to a QCAT proceeding conducted under new Part 12A.

Subclause (2) expands the available exemption under section 392(3)(a), which permits disclosure of information otherwise protected by the section to the extent necessary to perform a person's functions under the Act or a health practitioner registration Act, to include disclosure in the performance of functions under the National Law.

Subclause (3) expands the available exemption under section 392(3)(b), which permits disclosure to a disciplinary body, to include disclosure to a disciplinary body under the National Law, such as a national board, a panel established by a national board or QCAT when dealing with disciplinary matters arising under the National Law.

Subclause (4) omits section 392(3)(c), which allows disclosure to the QNC. The QNC is being abolished and its functions transferred to the Nursing and Midwifery Board of Australia, which is adequately captured in subsection (b) as amended.

Subclause (5) expands the available exemption under section 392(3)(e), which permits disclosure authorised under this Act or another Act, to include disclosure authorised under the National Law.

Subclause (6) clarifies that the available exemption under section 392(3)(i), which permits disclosure of information relating to disciplinary proceedings which were open to the public, includes disciplinary proceedings in relation to both State-registered professions (under Part 9) and National Scheme professions (under Part 12A).

Subclause (7) expands the available exemption under section 392(3)(j), which permits disclosure of publicly-accessible information included in a board's register, to include disclosure of information included in a national board's register.

Subclause (8) replaces a reference to section 392(3)(l) in section 392(3)(k) with a reference to section 392(3)(l). This is necessary to reflect the renumbering of sections 392(d) to (l) as sections 392(c) to (k) by subclause (9).

Subclause (9) renumbers section 392(3), subsections (d) to (l) as subsections (c) to (k). This reflects the removal of existing section 392(3)(c) by subclause (4).

Subclause (10) amends section 392(4), which requires the Minister to notify a registrant's board of a decision to allow information about the registrant's affairs to be disclosed on public interest grounds, to similarly require a National Scheme registrant's board to be notified in these circumstances. This subclause also corrects an incorrect reference to section 392(3)(j) with a reference to section 392(3)(k) (itself renumbered from section 392(3)(l) by subclause (9)).

Subclause (11) amends section 392(5)(a), which defines a 'relevant person' for the purposes of the section as including a member of a board, to include a person who is or was a member of a former board. This recognises that a number of existing State boards will be abolished on the commencement of the National Law, and ensures the confidentiality provisions continue to apply to the members of these abolished boards.

Subclause (12) replaces section 392(5)(j), which defines a 'relevant person' for the purposes of the section as including the executive officer or a staff member of the OMB, with a new subsection defining a 'relevant person' as including the former executive officer or staff of the OMB. This recognises that the OMB will be abolished on the commencement of the National Law, and ensures the confidentiality provisions continue to apply to the former executive officer and staff of this abolished entity.

Subclause (13) inserts definitions for the purposes of section 392.

## Insertion of new s 392A

Clause 55 inserts a new section 392A (Disclosure to protect health or safety of patients or other persons). This new section provides that a State board which reasonably believes that a registered health practitioner poses a risk

to public health or patient safety may give written notice of that risk to a Commonwealth or State entity responsible for taking action in relation to that risk.

This mirrors the power of a national board under the National Law to disclose, in appropriate circumstances, registrant information it is otherwise required to keep confidential, making an equivalent power available to State boards.

## Insertion of new pt 12A

While the National Law prescribes the substantive matters that a responsible tribunal (which, in Queensland's case, is QCAT) may hear and the decisions it may make on hearing these, it otherwise leaves each jurisdiction free to prescribe the form, constitution and procedures of the responsible tribunal for that jurisdiction (though not inconsistently with the National Law). It also leaves jurisdictions free to prescribe the further review and appeal of decisions of responsible tribunals. The substantive powers and the procedures of national boards and panels in hearing disciplinary matters are wholly prescribed under the National Law.

Clause 56 inserts a new Part 12A, 'Provisions about proceedings relating to NRAS registrants'. This part reproduces (with appropriate minor amendments) those provisions in Parts 2, 6 and 9 of the Professional Standards Act which deal with procedural and ancillary matters in relation to disciplinary proceedings against registrants, and applies these to disciplinary proceedings against National Scheme registrants arising under Part 8 of the National Law . Part 12A has no application to State-registered professions, in relation to which equivalent matters will continue to be prescribed under other parts of the Act. In line with the treatment of matters currently arising under the Professional Standards Act, Part 12A also provides for the further review of certain QCAT disciplinary decisions (tribunal review decisions) and the appeal of certain QCAT decisions.

Part 12A provides for the following matters:

- Division 1 (Preliminary) – preliminary matters, clarifying that the part applies to QCAT proceedings relating to registrants under the National Law and providing definitions for that part;
- Division 2 (Jurisdiction of tribunal) – acknowledgement that QCAT jurisdiction in relation to National Scheme registrants arises under both the National Law (original and review jurisdiction) and this part (original jurisdiction to review tribunal review decisions);

- Division 3 (Applying for review of tribunal review decision, and decisions a tribunal may make) – procedural requirements for applying for review of tribunal review decisions;
- Division 4 (Procedures etc. applying to all NRAS disciplinary proceedings) – procedural requirements for the conduct of tribunal proceedings, including the constitution of the tribunal by one judicial member, the use and functions of assessors assisting QCAT, the conduct of hearings and the power of QCAT to make interim orders;
- Division 5 (Additional procedures) – notice requirements and other procedural matters;
- Division 6 (Provisions about decisions) – the giving of notice and the implementation of decisions;
- Division 7 (Appeals to Court of Appeal from decisions of tribunal) – appeals of certain QCAT decisions to the Court of Appeal; and
- Division 8 (General matters) – general matters, including the establishment of the following panels of assessors for National Scheme professions:
    - a chiropractors panel of assessors;
    - a dentists or dental auxiliaries panel of assessors;
    - a dental prosthetists panel of assessors;
    - a medical practitioners panel of assessors;
    - a nursing and midwifery panel of assessors;
    - an optometrists panel of assessors;
    - an osteopaths panel of assessors;
    - a pharmacists panel of assessors;
    - a physiotherapists panel of assessors;
    - a podiatrists panel of assessors; and
    - a psychologists panel of assessors.

### Insertion of new pt 13, div 5

Clause 57 inserts a transitional Division 5 dealing with existing bodies, officeholders, proceedings and other matters established, appointed or

commenced under the Professional Standards Act or the Nursing Act in relation to professions transitioning to the National Scheme from 1 July 2010.

New section 405L inserts several definitions for Division 5.

New section 405M provides that an existing panel of assessors for a transitioning profession is taken to be the panel of assessors for that profession under new Part 12A.

Section 289 of the National Law provides for complaints or proceedings commenced but not completed under a law of a participating jurisdiction by commencement day (in Queensland's case, 1 July 2010) to continue to be dealt with as if that law had not been repealed. New section 405N also applies section 289 of the National Law to complaints, proceedings and appeals commenced but not completed under the Professional Standards Act despite that Act not having been repealed.

New section 405O further applies section 289 of the National Law to disciplinary matters and related proceedings or appeals commenced under the Professional Standards Act or the Nursing Act despite no complaint or notification having been received by the relevant registration board. This catches up situations where the relevant board commences proceedings because of relevant information that has become known to it other than through a complaint or notification.

New section 405P provides that existing tribunal proceedings and existing appeals underway on Queensland's participation day must continue to be dealt with as if the Act or Acts under which they were commenced had not been amended or repealed. The new section further provides that the relevant national board takes the place in any proceedings of the State board which it succeeds.

New section 405Q provides that the appointment under the Act of investigators by State boards which are abolished on commencement day ends at that time. The investigator must provide to the relevant national board all documents and other things relating to complaint and non-complaint disciplinary matters taken under section 289 of the National Law to be being dealt with by that Board.

New section 405R provides that the appointment under the Act of inspectors by State boards which are abolished on commencement day ends at that time, and that any investigation being conducted by the person ends at that time. The section further clarifies that the inspector may make

a voluntary notification to the relevant national board of any information gleaned by them in the course of conducting an investigation under the Professional Standards Act.

New section 405S requires that certain records, which otherwise would have been required to be provided to the relevant State board, must, from commencement day, be provided to its succeeding national board.

New section 405T requires that registrants, who would otherwise have been required to give notice of certain matters to the relevant State board, must, from commencement day, give notice of those matters to the succeeding national board.

New section 405U transfers liability for acts done or omissions made by persons acting under that Act or under a repealed health practitioner registration Act from the relevant Queensland registration board to the National Agency. This does not affect the scope of the existing vesting of liability in the relevant board, but simply nominates the appropriate body under the National Scheme in which liability should instead be vested.

New section 405V deals with penalties payable in relation to offences against the Professional Standards Act or a repealed health practitioner registration Act. Where a court has not finished hearing a proceeding for an offence brought by a former board, any penalties which the relevant Act provides must be ordered paid to the board must instead be ordered paid to the relevant national board.

## Amendment of schedule (Dictionary)

Clause 58 inserts definitions of relevant terms into the Schedule to the Act. The definition of 'health practitioner registration Act' differs from the definition inserted by the Schedule to the Bill into other Acts consequentially amended, in that it catches up Queensland registration Acts only (and not the National Law). This is consistent with the intent of the amendments the Bill makes to the Professional Standards Act, and has the effect that those parts of the Act which are expressed to operate in relation to matters under health practitioner registration Acts apply to State-registered professions only. The definition of 'Health Practitioner Regulation National Law' is consistent with the definition inserted into the *Acts Interpretation Act 1954* by the Schedule to the Bill.

# Part 6 Amendment of Health Services Act 1991

## Act amended

Clause 59 provides that Part 6 of the Act and the Schedule amend the *Health Services Act 1991*.

## Amendment of s 2 (Definitions)

Clause 60 inserts the following new definitions into section 2 of the Health Services Act:

- 'excluded notifiable conduct' means conduct by a registered health practitioner which corresponds to either the first or second category of 'notifiable conduct' under section 140 of the National Law, or which corresponds to the fourth category but is not serious enough to place the public at risk of substantial harm;
- 'impairment' is given the meaning it carries under the National Law;
- 'National Agency' is given the meaning it carries under the National Law;
- 'public risk notifiable conduct' means conduct by a registered health practitioner which corresponds to the third category of 'notifiable conduct' under section 140 of the National Law, or which corresponds to the fourth category and is serious enough to place the public at risk of substantial harm; and
- 'registered health practitioner' is given the meaning it carries under the National Law.

## Amendment of s 33 (Disclosure etc. of information)

The purpose for which QACs may be established, and the significant protections afforded to them, place QACs clearly within the intended scope of the exemption to mandatory notification under section 141(4)(d) of the National Law. However, in certain circumstances, the risk of harm to the public which Part 8, Division 2 of the National Law is in part intended to mitigate outweighs the benefits of maintaining confidentiality in relation to the information gleaned by QACs. In particular, where a practitioner's conduct places the public at risk of substantial harm because they have an

impairment (the third category of 'notifiable conduct' under section 140 of the National Law), or at risk of substantial harm because of their significant departure from accepted professional standards (the most potentially serious type of conduct within the fourth category under section 140 of the National Law), the risk is sufficient to require this conduct to be notified even where the notifying practitioner forms the requisite reasonable belief on the basis of information gleaned as a member of a QAC.

Clause 61 therefore inserts an additional purpose for which information may be recorded and disclosed under section 33(1) of the Health Services Act to allow a registered health practitioner to notify the National Agency that another health practitioner has behaved in a way which constitutes public risk notifiable conduct. This has the effect of permitting a member of a QAC who forms a reasonable belief that another practitioner's conduct either falls within the third category of notifiable conduct for the purposes of the National Law, or falls within the fourth category and is serious enough to place the public at risk of substantial harm, to notify the National Agency of this, notwithstanding that the belief was formed while performing functions as a member of the QAC.

### Insertion of new s 33A

Clause 62 deals with all other conduct which may be notifiable conduct for the purposes of the National Law. This clause inserts a new section 33A, which provides that a registered health practitioner who, as a member of a QAC, forms a reasonable belief that another practitioner has behaved in a way which constitutes excluded notifiable conduct must not disclose the information which forms the basis of the belief (including to the National Agency). This has the effect of enlivening the available exemption under section 141(4)(d) of the National Law only where a member of a QAC forms a reasonable belief that another practitioner's conduct falls within either the first or second category of notifiable conduct for the purposes of the National Law, or which falls within the fourth category but is not serious enough to place the public at risk of substantial harm.

### Amendment of s 38S (Disclosure of information—RCA team member or relevant person)

Similar to a QAC, an RCA is clearly within the intended scope of the exemption to mandatory notification under section 141(4)(d) of the National Law. However, in the same circumstances as is the case in relation to QACs, the risk of harm to the public which Part 8, Division 2 of

the National Law is in part intended to mitigate outweighs the benefits of maintaining confidentiality in relation to the information gleaned by RCA teams. In particular, where a practitioner's conduct places the public at risk of substantial harm because they have an impairment (the third category of 'notifiable conduct' under section 140 of the National Law), or at risk of substantial harm because of their significant departure from accepted professional standards (the most potentially serious type of conduct within the fourth category under section 140 of the National Law), the risk is sufficient to require this conduct to be notified even where the notifying practitioner forms the requisite reasonable belief on the basis of information gleaned as a member of an RCA team.

Clause 63 therefore inserts an additional purpose for which a member of an RCA team may disclose information under section 38S(1) of the Health Services Act to allow a registered health practitioner to notify the National Agency that another health practitioner has behaved in a way which constitutes public risk notifiable conduct. This has the effect of permitting a member of an RCA team who forms a reasonable belief that another practitioner's conduct either falls within the third category of notifiable conduct for the purposes of the National Law, or falls within the fourth category and is serious enough to place the public at risk of substantial harm, to notify the National Agency of this, notwithstanding that the belief was formed while performing functions as a member of the RCA team.

## Insertion of new s 38TA

Clause 64 deals with all other conduct which may be notifiable conduct for the purposes of the National Law. This clause inserts a new section 38TA, which provides that a registered health practitioner who, as a member of an RCA team, forms a reasonable belief that another practitioner has behaved in a way which constitutes excluded notifiable conduct must not disclose the information which forms the basis of the belief (including to the National Agency). This has the effect of enlivening the available exemption under section 141(4)(d) of the National Law only where a member of an RCA team forms a reasonable belief that another practitioner's conduct falls within either the first or second category of notifiable conduct for the purposes of the National Law, or which falls within the fourth category but is not serious enough to place the public at risk of substantial harm.

# Part 7 Amendment of Medical Radiation Technologists Registration Act 2001

## Act amended

Clause 65 provides that Part 7 of the Bill and the Schedule to the Bill amend the *Medical Radiation Technologists Registration Act 2001*.

## Amendment of s 72 (Meaning of recency of practice requirements)

Clause 66 removes section 72(2)(b) of the Act and renumbers the remaining subsections. Section 72(2)(b) provides for requirements to be made about the nature and extent of any continuing professional education undertaken by an applicant for renewal of general registration. As a separate head of power regarding continuing professional development is being inserted into the Act, this provision will be redundant.

## Insertion of new s 72A

Clause 67 inserts a new section 72A into the Act defining the meaning of 'continuing professional development requirements' for applicants for renewal of general registration. Continuing professional development requirements, for a profession, will be the requirements, prescribed under a regulation, that if satisfied, demonstrate that an applicant for renewal of general registration in the profession has undertaken adequate continuing education or training in the profession.

## Amendment of s 74 (Procedural requirements for applications)

Clause 68 amends section 74(5)(b) to require applicants to specify, on the approved form, any continuing professional development requirements they are required to have satisfied in order to renew their general registration. This will ensure that in addition to recency of practice requirements that are required to be satisfied, the applicants' continuing professional development activities are considered in assessing their application for renewal of general registration.

## Amendment of s 76 (Inquiries into applications)

Clause 69 amends section 76(1)(c) to include continuing professional development as a matter about which the board must be satisfied before deciding an application for renewal of general registration. If the board is not satisfied that the applicant has satisfied recency of practice or continuing professional development requirements for the profession to which the application relates, that board may, by written notice given to the applicant, require the applicant to undergo a written, oral or practical examination.

## Amendment of s 77 (Decision)

Clause 70, subclause (1) amends section 77(2) to include continuing professional development as a matter to which the board must have consideration, and be satisfied that the applicant has satisfied for the profession to which the application relates.

Subclause (2) amends section 77(3) to provide that the board must decided to renew the applicant's general registration if there no practice requirements or continuing professional development requirements for the profession relevant to the applicant.

## Amendment of s 78 (Recency of practice requirements are not satisfied)

Clause 71 makes a number of amendments to section 78 to include continuing professional development requirements.

Subclause (1) broadens the scope of section 78 by removing 'recency of practice' from the heading. This will have the effect of incorporating both recency of practice and continuing professional development requirements into the scope of this section, ensuring consistency between the Act and the National Scheme.

Subclause (2) includes continuing professional development requirements in section 78(1). This inclusion will mean that section 78 will apply if the board is not satisfied that an applicant for renewal of general registration has satisfied recency of practice and continuing professional development requirements for the profession to which the application relates.

Subclause (3) enables the board to renew an applicant's general registration with registration practice conditions that the board considers will

sufficiently address the extent to which the applicant has not satisfied recency of practice and continuing professional development requirements.

## Amendment of s 82 (Procedural requirements for applications)

Clause 72 amends section 82(3)(b) to require applicants to specify, on the approved form, any continuing professional development requirements they are required to have satisfied in order to restore their general registration. This will ensure that in addition to recency of practice requirements that are required to be satisfied, the applicants' continuing professional development activities are considered in assessing their application for renewal of general registration.

## Amendment of s 85 (When recency of practice conditions take effect)

Clause 73 amends section 85 to specify when registration of practice conditions will take effect if the board decides to restore the applicant's general registration. The clause removes 'recency of practice' from the heading of the section to broaden its scope to include continuing professional development. Registration of practice conditions includes recency of practice and continuing professional development requirements.

## Amendment of s 123 (Application of div 4, divs 2 and 3)

Clause 74 amends section 123 to broaden its scope to specify that both recency of practice and continuing professional development requirements will apply to the renewal of a special purpose registration.

## Amendment of sch 1 (Decisions for which information notices must be given)

Clause 75 amends Schedule 1 of the Act to refer to registration practice conditions, rather than recency of practice conditions. This has the effect of expanding the scope of decisions for which information notices must be given to include both recency of practice and continuing professional development.

### Amendment of sch 3 (Dictionary)

Clause 76 amends Schedule 3 of the Act to remove the definition of 'recency of practice conditions', and inserts definitions of 'continuing professional development requirements' and 'registration practice conditions'.

## Part 8 Amendment of Nursing Act 1992

### Act amended

Clause 77 provides that Part 8 amends the *Nursing Act 1992*.

### Amendment of s 4 (Definitions)

Clause 78 amends section 4 to signpost that, for the purposes of new transitional Part 9, Division 7 inserted by the Bill, the following terms used in that division are defined in section 160:

- protected document;
- protected information; and
- relevant person.

### Insertion of new pt 9, div 7

Clause 79 inserts a new Part 9, Division 7 into the Act to prescribe transitional arrangements to support the smooth transition of nurses and midwives, currently registered, enrolled and authorised under the Nursing Act, to the National Scheme from its commencement.

Protected information (new sections 160, 162 and 163)

New section 160 defines 'protected document' broadly as any document made or obtained by a person in their capacity as a relevant person. Similarly, 'protected information' is defined broadly as any information disclosed to or obtained by a person in their capacity as a relevant person, and includes a range of registration information about registrants under the Act. A 'relevant person' is defined as a member of the QNC, a member of a committee of the QNC, a QNC employee or any person performing functions or exercising powers under the Act or for the purposes of the Act.

These terms are used in new sections 162 and 163 inserted into the Act by this clause.

New section 162 provides that a relevant person may disclose a protected document or protected information to the National Agency, its employees or agents if a member of the QNC is satisfied that the disclosure is necessary for the National Agency to perform its functions or exercise its powers under the national Law. In similar terms, new section 163 provides that a relevant person may disclose a protected document or protected information to the Nursing and Midwifery Board if a member of the QNC is satisfied that the disclosure is necessary for that Board to perform its functions or exercise its powers under the National Law.

The National Agency is the successor to the administrative functions performed by the QNC in relation to the registration of nurses and midwives. Similarly, the Nursing and Midwifery Board is the successor to the registration and accreditation currently performed by the QNC in relation to nurses and midwives.

To enable the smooth transfer of registration and accreditation functions from the QNC to the Nursing and Midwifery Board (supported by the National Agency) from 1 July 2010, new sections 162 and 163 provide an appropriate means for the QNC to disclose protected documents and other relevant registrant information to its successors. As the transfer of protected documents and information relating to registrants under the Nursing Act needs to occur prior to commencement of the National Law to enable registration and accreditation functions to continue uninterrupted at that time, Part 8 consequently commences on assent.

Extension of registration period (new section 161)

Section 269 of the National Law provides that a person who, immediately before the participation day for a participating jurisdiction (1 July 2010 in the case of nurses and midwives), held general registration under a law of that jurisdiction is taken from the participation day to hold general registration under the National Law. Section 280(2) provides that the registration of a person so taken to be registered under the National Law expires at the end of the day on which it would have expired under the law of the participating jurisdiction or on which an annual registration fee would have become payable.

Section 74(3) of the Nursing Act currently provides that the registration or enrolment or a nurse, or the authorisation of a midwife, who fails to pay the annual licence fee within a period prescribed under a regulation must be

immediately cancelled by the QNC. Section 14 of the *Nursing Regulation 2005* provides that this period ends on 30 June.

Consequently, some doubt arises as to whether a current registrant, enrolee or authorised person under the Nursing Act who fails to pay the annual licence fee by 30 June 2010 can be taken to be registered under the National Law from 1 July 2010, and consequently whether they are entitled to apply for renewal of their registration under the National Law.

To remove all doubt, this clause inserts a new section 161 into the Nursing Act to provide that the registration or enrolment of a nurse or the authorisation of a midwife under the Nursing Act expires at the end of the day of 1 July 2010.

# Part 9 Amendment of Pharmacists Registration Act 2001

### Act amended

Clause 80 specifies that Part 9 of the Bill amends the *Pharmacists Registration Act 2001*.

### Amendment of long title

Clause 81 amends the long title of the Act to clarify that Act regulates pharmacy business ownership and no longer provides for the registration of pharmacists.

### Amendment of s 1 (Short title)

Clause 82 amends the short title of the Act to *Pharmacy Business Ownership Act 2001*.

### Omission of ss 4, 5 and 7

Clause 83 omits sections 4, 5 and 7 as they relate to the registration of pharmacists which is no longer within the scope of the Act.

### Replacement of s 8 (Objects of Act)

Clause 84 amends section 8 to specify that the objects of the amended Act are to promote the professional, safe and competent provision of pharmacy services and to maintain public confidence in the pharmacy profession. These objects are to be achieved mainly by limiting who may own a pharmacy business, limiting the number of pharmacy businesses that may be owned by a person and providing for compliance with the Act to be monitored and enforced.

### Amendment of s 9 (Definitions)

Clause 85 amends section 9 to omit the reference to Schedule 4 as there will be only one schedule in the amended Act.

### Omission of pts 2 and 3

Clause 86 omits Parts 2 and 3 which provide for the establishment of the Pharmacists Board of Queensland (the Board) and for the registration of pharmacists. As the Pharmacy Board of Australia will have responsibility for the registration of pharmacists under the National Law, these Parts are redundant.

### Replacement of pt 4, hdg (Obligations of registrants and other persons)

Clause 87 omits the current heading to Part 4 'Obligations of registrants and other persons', and replaces it with a new heading, 'Ownership of pharmacy business'. This reflects the new purpose of this part in the Act as amended.

### Omission of pt 4, divs 1 to 6

Clause 88 omits Part 4, Divisions 1 to 6 which deal with matters regarding obligations of pharmacists and other persons relating to the practice of pharmacy. As these matters are addressed under the National Law, the provisions are redundant.

## Omission of pt 4, div 6A, hdg (Ownership of pharmacy business)

Clause 89 omits the heading for Part 4, Division 6A as the provisions in Division 6A and section 141 will become a new Part 2 of the Act as renumbered by clause 101.

## Amendment of s 139A (Definitions)

Clause 90 amends section 139A to reflect that the definitions in the section are for terms in the new Part 2. The clause also replaces the definition of 'relative' with a new definition that uses the term 'pharmacist' instead of 'registrant'. The use of the term 'pharmacist' is more appropriate given that the Act will no longer provide for the registration of pharmacists.

## Amendment of s 139B (Restriction on who may own pharmacy business)

Clause 91 amends section 139B to replace references to 'registrant' with 'pharmacist'.

## Amendment of s 139C (Registrant whose registration is suspended or cancelled may own pharmacy business for limited period)

Clause 92 amends section 139C in a number of respects. Subclauses (1), (2) and (5) replace references to 'registrant' with 'pharmacist' while subclause (3) amends section 139C(1)(b) so that the section applies when a pharmacist's registration is suspended or cancelled under the National Law, rather than under the Professional Standards Act.

Subclause (4) amends section 139C(2)-(5) to replace references to the Board with the chief executive. This means that the chief executive rather than the Board will have power to approve ownership of a pharmacy business continuing after a pharmacist's registration is suspended or cancelled under the National Law.

Subclause (6) amends section 139C(5)(b) to use the term 'pharmacy services' rather than 'professional services'.

### Amendment of s 139D (Person who stops being registrant's spouse may continue as director or shareholder for limited period)

Clause 93 amends section 139D to replace references to 'registrant' with 'pharmacist'. Subclause (3) amends section 139D(2)(b) to replace the reference to the Board with a reference to the chief executive. This means that the chief executive will have power to decide for what period a corporation may continue to own a pharmacy business in the circumstances to which section 139D applies.

### Amendment of s 139E (Executor, administrator or trustee of registrant's estate may own pharmacy business for limited period)

Clause 94 amends section 139E to replace references to 'registrant' with 'pharmacist'. Subclause (3) amends section 139E(2)(b) to replace the reference to the Board with a reference to the chief executive. This means that the chief executive will have power to decide for what period the executor, administrator or trustee of the estate of a deceased pharmacist may continue to operate a pharmacy business owned by the deceased pharmacist at the time of his or her death.

### Amendment of s 139G (Trustee, liquidator, receiver or administrator does not commit offence against s 139B)

Clause 95 amends section 139G to replace a reference to 'registrant' with 'pharmacist'.

### Amendment of s 139H (Restriction on number of pharmacy businesses in which a person may have a pecuniary interest)

Clause 96 amends section 139H(1) and (2) to replace references to 'registrant' with 'pharmacist'.

### Omission of pt 4, div 7, hdg (Other provisions)

Clause 97 omits the heading of Part 4, Division 7.

## Omission of s 140 (Payment, or acceptance of payment, for referrals prohibited)

Clause 98 omits section 140 as its subject matter relates to the professional conduct of pharmacists which is being addressed under the National Law.

## Amendment of s 141 (Pharmacy business to be carried on under supervision of registrant)

Clause 99, subclause (1) amends section 141 by replacing the reference to 'registrant' with 'pharmacist'. Subclause (2) amends section 141(2) and (3) by allowing the chief executive instead of the Board to approve the period in a day during which a pharmacy business need not be under the personal supervision of a pharmacist.

## Insertion of new ss 141A and 141B.

Clause 100 inserts new sections 141A and 141B.

Section 141A imposes an obligation on a person who starts to own, or ceases owning, a pharmacy business to notify the chief executive of the change of ownership. Section 141B imposes an obligation on a person who owns a pharmacy business to notify the chief executive of any change of 'ownership particulars' as defined in section 141B(2).

Both sections require the notice to be given within 21 days after the change of ownership, or ownership particulars, occurs and that the notice must be in the approved form and accompanied by the prescribed fee.

The provision of the information in the notices is necessary for the effective monitoring and enforcement of the ownership provisions and will also enable Queensland Health to respond to information requests from Medicare Australia in connection with its determination of applications under the *National Health Act 1953* (Cwlth) for approval to establish or relocate a pharmacy.

## Renumbering of pts 4 and 5

Clause 101 renumbers Parts 4 and 5 of the Act as Parts 2 and 3. This renumbering is necessary due to the repeal of those parts of the Act dealing with registration matters.

### Replacement of s 145 (Appointments)

Clause 102 replaces section 145, which currently allows the Board to appoint inspectors, with a new section that allows the chief executive to appoint officers of Queensland Health or health service employees (appointed under the Health Services Act) as inspectors. The section provides that a person may only be appointed as an inspector if the chief executive is satisfied the person has the necessary expertise or experience.

### Amendment of s 146 (Appointment conditions)

Clause 103 amends section 146(3) so that a notice of resignation by an inspector must be given to the chief executive instead of the Board.

### Amendment of s 147 (Identity cards)

Clause 104 amends section 147(1) so that identity cards must be issued to an inspector by the chief executive instead of the Board.

### Amendment of s 148 (Failure to return identity card)

Clause 105 amends section 148 so that identity cards must be returned by an inspector to the chief executive instead of the chairperson of the Board.

### Amendment of s 167 (Dealing with forfeited things etc.)

Clause 106 amends section 167 so that the forfeiture powers under the section are exercisable by the chief executive instead of the executive officer of the OHPRB. A cross reference to section 181 is also updated.

### Amendment of s 176 (Compensation)

Clause 107 amends section 176 so that claims for compensation that may be made under the section are to be made to the chief executive instead of the Board.

### Omission of pt 6, hdg (Reviews by QCAT)

Clause 108 omits the heading for Part 6 of the Act. The remaining section in Part 6 (section 181) will be incorporated in Part 3 as renumbered by clause 101.

## Replacement of s 181 (Who may apply for a review)

Clause 109 replaces section 181 with a new section that allows the owner of a thing forfeited to the State under section 165(1)(c) to apply to the QCAT for a review of the decision. Apart from section 165(1)(c), all other provisions in the Act that currently provide for reviewable decisions to be made are repealed by the Bill.

## Omission of s 182 (Particular matters relating to powers of QCAT)

Clause 110 omits section 182 as it deals with reviews of decisions under the Act that relate to the registration of pharmacists and therefore the section is redundant.

## Renumbering of pt 7 (Legal proceedings)

Clause 111 renumbers Part 7 of the Act as Part 4. This renumbering is necessary due to the repeal of those parts of the Act dealing with registration matters.

## Replacement of ss 187 and 188

Clause 112 replaces sections 187 and 188 with new sections that provide for formal matters that need not be proved in legal proceedings taken under the Act.

## Amendment of section 189 (Evidentiary provisions)

Clause 113, subclause (1) amends section 189 to replace the reference to 'executive officer' with 'chief executive'. Subclauses (2) and (3) omit sections 189(a)(iii) to (v) and 189(b) to (f), which refer to evidentiary matters that are not relevant to proceedings that may be brought under the amended Act. Subclause (4) renumbers sections 189(g) to (i) as sections 189(b) to (d) consequent to the omissions effected by clause (3).

## Replacement of s 190 (Indictable and summary offences)

Clause 114 replaces section 190 with a new section that specifies that an offence against the Act is a summary offence.

## Omission of ss 191 and 192

Clause 115 omits sections 191 and 192 which deal with indictable offences. As there will not be any indictable offences under the amended Act, these sections are redundant.

## Omission of s 195 (Penalties to be paid to board)

Clause 116 omits section 195 which will be redundant as it deals with proceedings brought by, and penalties recovered by, the Board.

## Replacement of pts 8 to 10

Clause 117 replaces Parts 8 to 10 of the Act with new Part 5 (comprising sections 198-202 that provide for miscellaneous matters) and new Part 6 (comprising sections 203-205 that are transitional provisions). The current Parts 8 and 9 are redundant as they deal with matters relating to the registration of pharmacists which are addressed under the National Law, while the current Part 10 comprises provisions of a savings and transitional nature that have taken effect.

Section 198(1) specifies that an 'official' (as defined in subsection (3)) is not civilly liable for an act done, or omission made, honestly and without negligence under the Act. Subsection (2) clarifies that if a liability that is prevented from attaching to an official, it attaches instead to the State.

Section 199 allows the chief executive to approve forms for use under the Act.

Section 200 allows the chief executive to delegate the chief executive's functions and powers under the Act to an appropriately qualified officer or employee of the Department of Health.

Section 201 allows the chief executive to disclose documents or information obtained under the Act to the Pharmacy Board of Australia or an entity established under the National Health Act (Cwlth). However, disclosure may be made only if the chief executive is satisfied that the documents or information will be collected, stored and used in a way that ensures protection of the privacy of persons to whom it relates and is necessary for the relevant entity to perform its functions.

The need for disclosure could arise where the Pharmacy Board of Australia seeks information about a pharmacist's pharmacy ownership interests that could be relevant to a complaint about the pharmacist which is being

investigated by the Pharmacy Board. The authority for disclosure will also enable Queensland Health to respond to requests from Medicare Australia in connection with applications it receives for approval to establish or relocate a pharmacy.

Statutory authorisation for the disclosure is necessary to ensure that disclosure by the chief executive does not contravene Queensland Health's obligation under the *Information Privacy Act 2009* to comply with the National Privacy Principles.

Section 202 allows the Governor in Council to make regulations under the Act. The matters that a regulation may be made about include fees payable under the Act.

Section 203 contains definitions of terms used in Part 6.

Section 204 specifies that records held by the Board under Part 4, Division 6A or 7 of the Act (as in force before commencement of the Bill) are taken to be records of Queensland Health.

Section 205 allows proceedings for offences in connection with Part 4 Division 6A or 7 of the pre-amended Act to be continued, or started by the Department of Health, as if the amending Act had not commenced.

Section 206 provides that a person appointed as an inspector under the pre-amended Act ceases to be an inspector from commencement, and is required to return their identity card to the chief executive under section 148 as amended by the Bill.

## Insertion of new s 208A

Clause 118 inserts a new section 208A that allows the chief executive to ask the Board to give documents or information about pharmacy ownership obtained by the Board under the Act. The Board must give the documents or information to the chief executive.

The purpose of the section is to ensure that, prior to the commencement of the amended Act on 1 July 2010, Queensland Health can obtain relevant information from the Board about who owns pharmacy businesses in Queensland. This will enable Queensland Health to have the necessary information systems in place by 1 July 2010 to enable it to effectively administer the Act.

The statutory requirement for disclosure will ensure that disclosure by the Board does not contravene its obligation under the Information Privacy Act to comply with the Information Privacy Principles.

### Replacement of schs 1 and 4

Clause 119 replaces Schedules 1 and 4 with a new Schedule that contains definitions of terms used in the Act.

## Part 10 Amendment of Queensland Institute of Medical Research Act 1945

### Act amended

Clause 120 specifies that Part 10 of the Bill amends *Queensland Institute of Medical Research Act 1945*.

### Amendment of s 9 (Council may carry out agreements)

Clause 121 replaces section 9(1A) with a new provision that requires all agreements and arrangements (entered into by the Council under section 9(1)), other than those between the Council and Queensland Health's chief executive on behalf of the State, must be subject to approval by Queensland Health's chief executive.

### Amendment of s 10 (Director and Deputy Director of Institute)

Clause 122 amends section 10 to allow the Governor in Council to appoint the Director of the QIMR for a period of not more than 7 years. As section 10(3) currently provides that the Director is entitled to hold office for 7 years, the amendment provides more flexibility by enabling an appointment to be made for a period of less than 7 years.

# Part 11 Repeal and amendment of other Acts

## Repeals

Clause 123 repeals the following Queensland health practitioner registration Acts which are being wholly replaced by the National Law on its commencement on 1 July 2010:

- Chiropractors Registration Act;
- Dental Practitioners Registration Act;
- Medical Practitioners Registration Act;
- Nursing Act;
- Optometrists Registration Act;
- Osteopaths Registration Act;
- Physiotherapists Registration Act;
- Podiatrists Registration Act; and
- Psychologists Registration Act.

This clause also repeals the Medical Board (Administration) Act, as those matters with which it deals will also be wholly dealt with under the National Law from its commencement.

## Acts amended in schedule

Clause 124, subclause (1) provides that the Schedule amends the Acts mentioned in the Schedule.

Where a bill makes a variety of amendments to an Act, some of which are significant and others minor or consequential, it is consistent with contemporary drafting practice to address the more significant amendments in a standalone part of the bill and the minor or consequential amendments separately in a schedule. In the case of Acts amended by the Bill in this way, subclause (2) confirms that the Schedule also amends those Acts which are provided elsewhere in the Bill to be amended by the Schedule.

## Schedule Acts amended

The Schedule to the Bill consequentially amends the following Acts:

- Acts Interpretation Act;
- Ambulance Service Act (also amended by Part 2 of the Bill);
- *Births, Deaths and Marriages Registration Act 2003*;
- *Chemical Usage (Agricultural and Veterinary) Control Act 1988*;
- *Child Care Act 2002*;
- *Child Protection Act 1999*;
- *Commission for Children and Young People Act and Child Guardian Act 2000*;
- *Coroners Act 2003*;
- *Corrective Services Act 2006*;
- *Cremations Act 2003*;
- *Criminal Law Amendment Act 1945*;
- *Dangerous Prisoners (Sexual Offenders) Act 2003*;
- Dental Technicians and Dental Prosthetists Registration Act (also amended by Part 3 of the Bill, and renamed the Dental Technicians Registration Act by that part);
- *Disability Services Act 2006*;
- *Disaster Management Act 2003*;
- *Drugs Misuse Act 1986*;
- *Education (General Provisions) Act 2006*;
- *Explosives Act 1999*;
- *Guardianship and Administration Act 2000*;
- *Health Act 1937*;
- Health Practitioners (Professional Standards) Act (also amended by Part 5 of the Bill);
- Health *Practitioners (Special Events Exemption) Act 1998*;

- *Health Quality and Complaints Commission Act 2006*;
- Health Services Act (also amended by Part 6 of the Bill);
- *Industrial Relations Act 1999*;
- *Jury Act 1995*;
- *Law Reform Act 1995*;
- *Liquor Act 1992*;
- *Mental Health Act 2000*;
- *Personal Injuries Proceedings Act 2002*;
- *Police Powers and Responsibilities Act 2000*;
- *Police Service Administration Act 1990*;
- *Prostitution Act 1999*;
- *Public Health Act 2006*;
- *Public Safety Preservation Act 1986*;
- *Public Service Act 2008*;
- *Radiation Safety Act 1999*;
- *Transplantation and Anatomy Act 1978*;
- *Transport Operations (Road Use Management) Act 1995*;
- *Victims of Crime Assistance Act 2009*;
- *Weapons Act 1990*; and
- *Workers' Compensation and Rehabilitation Act 2003.*

The Schedule inserts one or more of the following new definitions into each Act consequentially amended:

- 'Health Practitioner Regulation National Law' (inserted into the Acts Interpretation Act), meaning either the National Law as scheduled to the National Law Act and applied as a law of a participating jurisdiction (with or without modification), or a substantially corresponding law. This definition is broad enough to catch up all iterations of the National Law, including in its corresponding form in Western Australia and as modified in its application in a participating jurisdiction;

- 'health practitioner registration Act', meaning the National Law or one of the remaining four Queensland-based health practitioner registration Acts;
- 'registered health practitioner', meaning a person registered either under the National Law, other than as a student, or under one of the remaining four Queensland-based health practitioner registration Acts.
- 'medical practitioner' (inserted into the Acts Interpretation Act), meaning a person registered under the National Law to practise in the medical profession, other than as a student;
- one or more specified professions registered under either the National Law or a Queensland registration Act. In each case, these definitions follow the template established in the definition of 'medical practitioner' inserted into the Acts Interpretation Act;
- one or more specified categories of specialist registrant under the National Law. In each case, these definitions largely follow the template established in the definition of 'medical practitioner' inserted into the Acts Interpretation Act. In addition, the specified specialty is also defined by reference to the section of the National Law under which it is recognised;
- one or more of a variety of other related terms defined by reference to bodies or matters affected by the commencement of the National Law; or
- 'Medicare Australia', meaning Medicare Australia as established under the Medicare Australia Act (Cwlth). Insertion of this definition, which replaces existing definitions of 'Health Insurance Commission', has been necessitated by the renaming of the *Health Insurance Commission Act 1973* (Cwlth) as the Medicare Australia Act (Cwlth). All references in the body of the Acts to 'Health Insurance Commission' will similarly be updated.

From its commencement on 1 July 2010, the National Law replaces ten of the existing Queensland health practitioner registration Acts as the legislation under which affected practitioners are registered (including those nurses and midwives who are currently enrolled or authorised), and partially replaces an eleventh. It similarly replaces all interstate equivalents of these registration Acts. All other practitioners currently registered in Queensland will continue to be registered under either that part of the

eleventh of these registration Acts which is left undisturbed by commencement of the National Law or under one of the remaining three Queensland Acts.

Accordingly, where an Act consequentially amended currently uses a definition of 'registered health practitioner', 'health practitioner registration Act' or another related term which expressly refers to both Queensland health practitioner registration Acts and their interstate equivalents, the new definition to be inserted catches up exactly the same professions, categories of registrants within those professions and actual registrants as the current definition.

Where an Act consequentially amended currently uses a definition which only refers to one or more Queensland health practitioner registration Acts, the new definition to be inserted catches up not only those Queensland professions, categories and registrants which the current definition catches up, but also their interstate counterparts. This is consistent with the intent of the National Law.

Currently, an interstate registrant seeking to perform functions under Queensland law must first, unless explicitly allowed for under legislation, lodge a notice with the relevant Queensland registration board under section 19 of the *Mutual Recognition (Queensland) Act 1992* seeking to transfer their registration to this State under the relevant Queensland registration Act. The National Law removes all distinction based on the place of a person's registration, entitling registrants under the National Law to receive equal and undifferentiated recognition in every participating jurisdiction.

Accordingly, any definitions which sought to restrict their ambit to National Scheme registrants registered in Queensland alone would not be meaningful and would be inconsistent with the intent of the National Law.

As noted in Part 3 above, the Schedule also makes those terminological and definitional amendments to the Dental Technicians Registration Act (the renamed Dental Technicians and Dental Prosthetists Registration Act) required to reflect its restricted application to dental technicians only.

The Schedule also makes the following consequential amendments to the Health Practitioner Registration Boards (Administration) Act required to limit its application to those professions not transitioning to the National Scheme on 1 July 2010:

- removal of the reference to the Medical Board (Administration) Act from section 5 (The legislative scheme). This reflects the repeal of that Act on commencement of the National Law; and
- replacement of the existing definition of 'health practitioner registration Act' in the Schedule (Dictionary) to the Act with a definition which consists of the remaining four Queensland registration Acts only. Section 5 of the Act provides that the Act forms part of a legislative scheme consisting of this Act, the health practitioner registration Acts and the Professional Standards Act. Section 3(1) provides that the main object of the Act is to establish administrative arrangements to help the health practitioner registration boards, defined as boards established under health practitioner registration Acts, perform their functions. This new definition therefore has the effect of identifying the Act's restricted application to Queensland-registered professions and boards for these professions only.