Health Practitioner Regulation National Law (WA) Amendment Bill 2017

EXPLANATORY MEMORANDUM

Introduction

The Bill amends the Health Practitioner Regulation National Law (National Law) as agreed by the Council of Australian Governments Health Council, sitting as the Australian Health Workforce Ministerial Council (COAG Health Council), on 29 May 2017.

Please note that references to the COAG Health Council and the Ministerial Council are the same.

The amendments are specifically to the Health Practitioner Regulation National Law (WA) Act 2010 (WA National Law)

The Bill includes the following key reforms to the WA National Law:

- national regulation of paramedics, including the establishment of a Paramedicine Board of Australia
- enabling the COAG Health Council to make changes to the structure of National Boards by regulation following consultation
- recognition of nursing and midwifery as two separate professions, rather than a single profession, with the professions continuing to be regulated by the Nursing and Midwifery Board of Australia
- improvements to the complaints (notifications) management, disciplinary and enforcement powers of National Boards to strengthen public protection and ensure fairness for complainants (notifiers) and practitioners, and
- technical amendments to improve the efficiency and effectiveness of the National Law.

Background

Western Australia, through the Council of Australian Governments (COAG), is a party to an Intergovernmental Agreement (IGA) that created a single national registration and accreditation system (National Scheme) for health professionals. COAG signed the IGA on 26 March 2008.

Queensland is the host jurisdiction for the National Law under the *Health Practitioner Regulation National Law Act 2009* (Qld). Under the IGA, proposed amendments to the National Law must be approved by the COAG Health Council sitting as the Australian Health Workforce Ministerial Council (Ministerial Council).

The majority of the jurisdictions adopt the National Law with the exception of Western Australia and South Australia. Western Australia must pass its own separate legislation and South Australia adopts the National Law by way of regulations.

From 1 July 2010, the National Scheme created a single national registration and accreditation system for ten health professions - chiropractors; dentists (including dental hygienists, dental prosthetists and dental therapists); medical practitioners; nurses and midwives; optometrists; osteopaths; pharmacists; physiotherapists; podiatrists; and psychologists.

Another four professions joined the National Scheme on 1 July 2012 - Aboriginal and Torres Strait Islander health practitioners, Chinese medicine practitioners, medical radiation practitioners and occupational therapists.

To facilitate the National Scheme, WA introduced the Health Practitioner Regulation National Law (Western Australia) (WA National Law) into the Parliament of Western Australia, which was passed as corresponding legislation by the WA Parliament before it came into operation in WA. The schedule in the WA National Law contains the Health Practitioner Regulation National Law (National Law) as enacted by participating jurisdictions. WA joined the National Scheme on 18 October 2010.

The National Scheme and National Law ensure that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered. It allows health practitioners to have a single registration recognised anywhere in Australia and provides mechanisms for detecting and addressing practitioner health, conduct or performance issues. The scheme is a 'protection of title' model, with powers to prosecute persons who falsely hold out to be registered or use a restricted professional title. It also enables the continuous development of a flexible, responsive and sustainable health workforce and innovation in the education of health practitioners and service delivery by health practitioners.

Some local modifications apply in certain States and Territories. In particular, New South Wales' and Queensland's complaints handling and disciplinary functions operate under "co-regulatory" arrangements which are recognised by the National Law.

The National Law defines 'Ministerial Council' as the Australian Health Workforce Ministerial Council comprising Ministers of the governments of the participating jurisdictions and the Commonwealth with portfolio responsibility for health. The structure and names of Ministerial Councils are revised by COAG from time to time. The 'Australian Health Workforce Ministerial Council' no longer exists as a separate Ministerial Council and its work has been included in the ambit of the COAG Health Council. As advised above, the COAG Health Council and the Ministerial Council are the same entity.

An amendment is contained in the Bill to ensure that the definition of Ministerial Council means the COAG Health Council or a successor of the COAG Health Council (regardless of the name of the successor body) when constituted by Ministers of the governments of the participating jurisdictions and the Commonwealth with portfolio responsibility for health.

The explanatory memorandum's clause notes refer to the COAG Health Council/Ministerial Council.

Independent Review of the National Registration and Accreditation Scheme for Health Professions (Independent Review)

The IGA requires that the National Scheme is reviewed after three years of operation. In 2014, Mr Kim Snowball was appointed by the Ministerial Council to undertake the review. Mr Snowball is a former Director General of the Department of Health in Western Australia.

The final report of the Independent Review made 33 recommendations. The COAG Health Council/Ministerial Council responded to the report on 7 August 2015 by accepting nine recommendations, accepting 11 recommendations in principle, not accepting six recommendations and deferred decisions on seven recommendations pending further advice. The COAG Health Council's/Ministerial Council full response is available at:

http://www.coaghealthcouncil.gov.au/Portals/0/The%20Independent%20Review%20of%20the%20National%20Registration%20and%20Accreditation%20Scheme%20for%20Health%20Professions.pdf

The implementation of the COAG Health Council's/Ministerial Council response to the Independent Review is occurring in two stages. The first stage consists of the amendments to the National Law being progressed in this Bill.

The amendments in the Bill arising from the COAG Health Council's/Ministerial Council response to the independent review include:

- enabling the COAG Health Council/Ministerial Council to make changes to the structure of National Boards by regulation following consultation
- recognition of nursing and midwifery as two separate professions, rather than a single profession, with the professions continuing to be regulated by the Nursing and Midwifery Board of Australia
- improvements to the complaints (notifications) management, disciplinary and enforcement powers of National Boards to strengthen public protection and ensure fairness for complainants (notifiers) and practitioners, and
- technical amendments to improve the efficiency and effectiveness of the National Law

The second stage of reforms resulting from the Independent Review requires extensive stakeholder consultation to be undertaken, with consultation expected to commence in late 2017.

National Regulation of Paramedics

On 6 November 2015, the COAG Health Council/Ministerial Council announced its intention for paramedics to be regulated as part of the National Scheme. On 7 October 2016, the COAG Health Council/Ministerial Council agreed to proceed with the inclusion of paramedics in the National Scheme and noted that paramedics would be registered in all jurisdictions.

The regulation of paramedics as part of the National Scheme is expected to:

- protect the public by:
  - establishing minimum qualifications and other requirements for the registration of a person as a paramedic

- providing powers to deal effectively with paramedics who have an impairment that affects their practice, are poorly performing or who engage in unprofessional conduct or professional misconduct, and
- preventing persons who are not qualified, registered and fit to practise from using the title 'paramedic' or holding themselves out to be registered if they are not

o facilitate the provision of high quality education and training in paramedicine through the accreditation of training programs for registration purposes

o improve transparency and accountability in the delivery of public and private sector paramedicine services, and

o provide a suitable regulatory framework for the public and private sector paramedic workforce.

The Bill establishes the Paramedicine Board of Australia (Paramedicine Board), which will be responsible for regulating paramedics with administrative and other support provided by the Australian Health Practitioner Regulation Agency (AHPRA) (new section 307). The Bill also amends the National Law to require people who use the title 'paramedic' to be registered (amendment to section 113).

Paramedics will be subject to the same regulatory arrangements as the other health professions regulated under the National Law, including registration processes, accreditation of training programs, national standards, and procedures for managing the health, performance and conduct of registered paramedics (with complaints handling and disciplinary functions undertaken in Queensland and New South Wales under their co-regulatory models). To achieve this, the definition of 'health profession' in the National Law is amended to add 'paramedicine' as a profession regulated by the National Law (amendment to section 5).

Qualifications for Registration as a Paramedic

Under the National Law and Bill, there will be three main pathways to be '*qualified'* for general registration as a paramedic, as follows:

o Pathway 1 – '*Approved qualification'* under section 53 of the National Law – an individual holds an '*approved qualification'* or otherwise qualifies for registration under section 53(b), (c) or (d), such as holding a qualification that is substantially equivalent to or based on similar competencies to an approved qualification (more details are provided below about the procedures for the Board approving programs of study leading to an 'approved qualification' under the heading Accreditation arrangements for paramedicine and 'approved programs of study').

o Pathway 2 – grandfather arrangements under new section 311 – an individual meets one of the criteria outlined under this '*grandfather'* clause, which will apply for three years from the *'participation day'.*

- Pathway 3 – holds a Diploma of Paramedical Science issued by the Ambulance Service of New South Wales under clause 51, new section 312 – as agreed by the COAG Health Council on 7 October 2016, the Bill recognises that a person who holds a Diploma of Paramedical Science, Diploma of Paramedical Science (Ambulance), Advanced Diploma of Paramedical Science (Ambulance), Diploma in Paramedical Science (Pre-Hospital Care) or Advanced Diploma Paramedical Sciences (Pre-Hospital Care) issued by the Ambulance Service of NSW will be qualified for general registration in paramedicine under the National Law.

All applicants for registration in paramedicine will be required to meet the registration standards to be developed by the Paramedicine Board, regardless of which pathway they use to seek registration.

Registration Fees for Paramedics

The National Scheme is self-funded from fees paid by registrants. Registration fees are set by the National Board and AHPRA and vary between professions based on the cost of regulating each profession under the National Law. The fees vary depending on factors such as the size of the profession, the risks associated with practice, the level and complexity of complaints and notifications and the capital reserves needed to ensure sustainability of the operations of the National Board. The National Law requires that registration fees are reasonable having regard to the efficient and effective operation of the National Scheme (see section 3(3)(b) of the National Law).

Pursuant to section 26 of the National Law, AHPRA and the National Boards must enter into a 'health profession agreement' that makes provision for:

- the National Board's annual budget
- fees payable by health practitioners, and
- the services to be provided to the National Board by AHPRA to enable the National Board to carry out its functions.

Copies of the 'health profession agreements' between AHPRA and the current National Boards are available at:

http://www.ahpra.gov.au/Publications/Health-profession-agreements.aspx

As occurs with other professions, AHPRA and the Paramedicine Board will enter into a 'health profession agreement' after the establishment and appointment of the Board (subject to passage of the Bill). As outlined above, registration fees for paramedics will be decided as part of the health profession agreement.

Registration fees for each profession are published on each of the National Board's websites. In 2016/17, National Boards and AHPRA agreed the following general registration fees for their respective professions:

Health profession	Registration Fee
Aboriginal and Torres Strait Island Health Practice	$120
Chinese Medicine	$579
Chiropractic	$566
Dental:	
- Dentists/Specialists	$628
- Dental prosthetists	$558
- Hygienists/Therapists	$310
Medical	$724
Medical Radiation	$180
Nursing and Midwifery	$150
Occupational Therapy	$110
Optometry	$300
Osteopathy	$376
Pharmacy	$328
Physiotherapy	$110
Podiatry	$378
Psychology	$449

It is important to note that registration fees for paramedics will be set independently of the fees for other professions, by agreement between the Paramedicine Board and AHPRA.

In addition to annual registration fees, paramedics will also be required to pay a one-off application fee for first time registrants. This fee covers the costs associated with processing an application and assessing a person's eligibility and suitability for registration. This includes verification of the practitioner's identity and assessment and verification of qualifications, training and/or expertise as a paramedic, and covers the cost of a criminal history check in Australia, and confirmation of registration with international regulatory bodies as needed.

Registration fees are generally paid by the registrant and as such can usually be claimed as an employment expense for taxation purposes.

Role of Paramedicine Board until 'participation day'

On 8 April 2016, the COAG Health Council/Ministerial Council approved a project plan for implementation of national registration for paramedics, with registration expected to commence in the second half of 2018.

This Bill defines the 'participation day' as a day prescribed by regulation after which an individual may be registered in paramedicine under the National Law (new section 306). In practice, the 'participation day' is planned to be the date on which registration for paramedics will commence or 'go live'. The Bill sets out the functions of the Paramedicine Board until the 'participation day' (new section 308).

Subject to passage of the Bill in Queensland, the members of the Paramedicine Board will be appointed as soon as possible to enable the Board to work with AHPRA to prepare the profession for national regulation. During this period, the Board must develop mandated registration standards to recommend to the COAG Health Council/Ministerial Council for approval (see sections 12 and 38 of the National Law and the new section 308(3)(a)). The registration standards set requirements for professional indemnity insurance arrangements, criminal history of applicants, continuing professional development, English language skills and recency of practice. It is expected that other registration standards and codes may also need to be developed, for example, to support the transition of the existing paramedic workforce into the scheme and set requirements for professional conduct.

In order to ensure a smooth transition, the Bill gives the Board the necessary functions and powers during the period leading up to the 'participation day', including developing and consulting on draft registration standards, codes and guidelines, recognising qualifications for registration, and considering national accreditation arrangements for the profession (new sections 308 to 311).

Accreditation Arrangements for Paramedicine and 'approved programs of study'

The Paramedicine Board may do anything under part 6 of the National Law in relation to accreditation for paramedicine new section 308(3)(d)). Pursuant to section 43 of part 6 of the National Law, a National Board must decide whether an accreditation function is to be exercised by an external accreditation entity or a committee established by the Board (which is defined in section 5 of the National Law as the 'accreditation authority'). The remainder of part 6 sets out the processes associated with accreditation, including:

- development of accreditation standards (section 46)
- approval of accreditation standards by a National Board (section 47)
- accreditation of programs of study by an accreditation authority in accordance with approved accreditation standards (section 48), and
- approval of accredited programs of study by a National Board based on a report provided by an accreditation authority (section 49).

Power for COAG Health Council/Ministerial Council to make changes to the structure of National Boards by regulation following consultation

The structure of National Boards for the health professions regulated under the National Law is currently fixed, with each registered profession having its own National Board specified in section 31 of the National Law. The Independent Review found that five health professions accounted for 87.5 per cent of registrants and 95.5 per cent of complaints and notifications in 2012-13 (these professions were dental, medical, nursing/midwifery, pharmacy and psychology). The remaining nine professions account for 12.5 per cent of registrants and less than 5 per cent of complaints and notifications (referred to in the report as the "low regulatory workload professions").

The Independent Review recommended consolidating the nine low regulatory workload National Boards into a single National Board. On 8 April 2016, the COAG Health Council/Ministerial Council decided not to accept this recommendation. It decided that efficiencies can and should be achieved by streamlining existing committee and operational arrangements under all the National Boards. However, the COAG Health Council/Ministerial Council did not rule out the possibility that changes may be required in the future to ensure the governance arrangements for the National Scheme continue to be fit for purpose. Therefore, the COAG Health Council/Ministerial Council agreed to amend the National Law so that changes to the governance and membership of National Boards could be made by regulation.

To achieve this flexibility, the Bill requires that National Boards for each health profession be provided for in regulations, rather than specified in the National Law (replacement of section 31). Under section 245 of the National Law, regulations are made or amended by the COAG Health Council/Ministerial Council.

The new section 31 in the Bill also states that the regulations may:

- continue existing National Boards
- establish a Board for a health profession or two or more health professions, or
- dissolve a Board if another Board is established for that profession.

These powers provide flexibility for the COAG Health Council/Ministerial Council to consolidate or separate National Boards as needed, to effectively manage changes in the governance, membership, cost effectiveness and efficiency of the Boards.

There are no current proposals to change the structure of National Boards. The new section 31(4) provides that before a regulation is made to consolidate or separate National Boards, the Ministers comprising the COAG Health Council/Ministerial Council must undertake public consultation on the proposed regulation.

Recognition of Nursing and Midwifery as Two Separate Professions

The significant majority of midwives in Australia hold dual registration as nurses and midwives (approximately 30,000). However, there are approximately 3,000 registered midwives who are qualified to practice as midwives only. In recent years, direct entry training programs for midwifery, and the introduction of alternative maternity choices for women, mainly in metropolitan areas, have seen a growth in the proportion of registered midwives who do not hold concurrent registration as a nurse.

The Independent Review recommended that the National Law be amended to reflect that nursing and midwifery are two professions regulated by one National Board. The Bill amends the National Law to recognise that nursing and midwifery are separate professions. However, these professions will continue to be regulated by the Nursing and Midwifery Board of Australia. Separate registers already exist for nurses and midwives and these registers will continue to be maintained.

The recognition of nursing and midwifery as separate professions in the National Law does not affect scope of practice issues for the professions and the respective roles of nurses and midwives remain unchanged.

Improvements in Complaints (Notifications) Management, Disciplinary and Enforcement Powers of National Boards

The National Law provides for complaints about registered health practitioners and are referred to as 'notifications' (see sections 140 to 147 of the National Law).

The National Law contains provisions dealing with the notifications process and disciplinary and enforcement powers to address practitioner health, performance and conduct issues. The amendments in the Bill will improve notifications management and disciplinary and enforcement powers of National Boards to strengthen public protection and ensure fairness for complainants (also known as 'notifiers') and practitioners. Details of the improvements are outlined under each of the headings below.

Part 1: Preliminary

Clause 1 - Short Title

Provides that the Bill, once enacted, will be known as the *Health Practitioner Regulation National Law (WA) Amendment Act 2017.*

Clause 2 - Commencement

Makes provision for the commencement of the Act. Different Parts of the Act, and different sections will come into effect on different days to provide for when the Queensland *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2017* comes into operation and is applied nationally across Australian jurisdictions. The different commencement days are to reflect the requirement for the WA Act to come into operation on the same day or shortly after the Queensland Act.

2(a) Part 1 will come into effect on the day the Act receives the Royal Assent in WA.

2(b) Part 2 will come into effect other than sections 9(3) – (6), 10-22, 25, 27-35, 36(b)-(d), 38, 39, 40(1) and (3), 41(1) and (3), 42(1), 43-47, 49, 51-54, 55(a), 56-70, 71(1), 72-87 and 89-96

(i) If the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2017* (Queensland) section 3 comes into effect on or before the assent day – on the day after assent day; or
This means that Part 2 in the WA Act will come into operation in WA on or after WA's assent day if the Queensland Act has already commenced except for the sections listed in 2(b).

(ii) Otherwise – on the day on which the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2017* (Queensland) section 3 comes into operation.

This means that Part 2 in the WA Act will come into operation on the day on which the Queensland Act commences (except for the sections listed in 2(b)).

2(c) section 38 will come into operation 28 days after assent day in WA

2(d) the remaining sections of the Act will come into operation on a day to be fixed by proclamation and different days may be fixed for different sections.

This means that the sections may commence at different times.

Part 2: *Health Practitioner National Law (WA) Act 2010* amended

Division 1 - Local application provisions of the Health *Practitioner Regulation National Law (WA) Act 2010* amended

Clause 3 - Provisions amended

Clause 3(1) provides for the sections in Part 2 Division 1 to apply to Western Australia. Part 2 does not apply to the Schedule to the *Health Practitioner Regulation National Law (Western Australia) Act 2010.*

Clause 3(2) amends the local application provisions in Part 2 of the *Health Practitioner Regulation National Law (Western Australia) Act 2010* that apply in Western Australia.

Clause 4 - Section 4 amended

Clause 4(1) provides for the sections in Part 2 Division 1 to apply exclusively to Western Australia. Part 2 does not apply to the Schedule to the *Health Practitioner Regulation National Law (Western Australia) Act 2010.*

Clause 4(2) amends the local application provisions in Part 2 of the *Health Practitioner Regulation National Law (Western Australia) Act 2010* that apply in Western Australia.

Clause 5 - Section 10 amended

This clause deletes the term “CrimTrac” and inserts “the ACC”. The amendment is to section 10(2)(b) in Part 3 and provides for when the Police Commissioner in Western Australia may give criminal history information to the Australian Crime Commission (ACC). The CrimTrac Agency was merged into the ACC from 1 July 2016 under the *Australian Crime Commission Amendment (National Policing Information) Act 2016* (Cth). The reference to CrimTrac requires amendment to reflect the correct title of the agency.

Clause 6 - Part 4 Division 1 deleted

Division 2 - Health Practitioner Regulation National Law amended

Clause 6 deletes Part 4 Division 1, which was a list of WA Acts, Codes of Practice, Regulations and Rules which were all repealed as they were no longer valid under the *Health Practitioner Regulation National Law (Western Australia)* when commencement began on 18 October 2010.

Clause 7 – Provisions amended

Clause 7 provides that Division 2 amends the Schedule to the *Health Practitioner Regulation National Law (Western Australia) Act 2010* to provide for the amendments detailed in the following clauses.

Clause 8 – Section 3 amended

Clause 8 amends section 3 to delete the words "*and are of an appropriate quality*" and inserts "*consistent with best practice principles*". The amendment is to reflect the wording which has been moved from section 4(5) in Part 2 into the guiding principles of the national registration and accreditation scheme "*consistent with best practice principles"*.

A best practice is a technique or methodology that, through experience and research, has proven to reliably lead to a desired result. A commitment to using the best practices in any field is a commitment to using all the knowledge and technology at one's disposal to ensure success. The term is used frequently in the field of health care. The purpose of moving the words from Part 2 are to ensure that the differences that are applicable in WA can be located in the Schedule rather than in different parts of the Act.

Clause 9 – Section 5 amended

Amends section 5 - Terms used

In alphabetical order

Clause 9(1) Deletes the definition of CrimTrac and Ministerial Council.

Clause 9(2) Inserts a new definition of "*ACC*" to refer to the Australian Crime Commission established under section 7 of the *Australian Crime Commission Act 2002* (Cth).

Clause 9(2) The definition of "Ministerial Council" is changed to mean the COAG Health Council, or a successor of the COAG Health Council (regardless of the name of the successor body) when constituted by Ministers of the governments of the participating jurisdictions and the Commonwealth.

This definition requires amendment because the structure and names of Ministerial Councils are revised by COAG from time to time. The Australian Health Workforce Ministerial Council no longer exists as a separate Ministerial Council and its work has been included in the ambit of the COAG Health Council. Appendix 11 of the final report of the Independent Review recommended an amendment to the definition to reflect the changes in the name.

Clause 9(3) Inserts a new definition for prohibition order.

The new definition is in response to recommendation 29 of the Independent Review that the National Law prohibition order powers be amended to provide the means for Tribunals to prohibit the person from providing any type of health service, to establish an offence for breaching a prohibition order and to provide for mutual recognition of prohibition orders issued by jurisdictions.

The purpose of the new definition is to facilitate mutual recognition of prohibition orders issued in any participating jurisdiction. The new definition makes it clear that in addition to including a decision by a responsible tribunal of "*this jurisdiction*" (meaning the State Administrative Tribunal in WA) under section 196(4)(b), it also extends to a decision by a responsible tribunal of "*another participating jurisdiction*" under section 196(4)(b) as it applies in the other jurisdiction.

This will ensure, for example, that a "*prohibition order*" made under the National Law as it applies in South Australia is captured by the definition of "*prohibition order*" for the purpose of applying the new section 196A of the National Law in Queensland. The new section 196A that is inserted by clause 72 makes it an offence to contravene a prohibition order.

Therefore, it would be an offence to engage in conduct in Queensland which contravenes a prohibition order made in South Australia.

The definition also refers to prohibition orders made in the co-regulatory jurisdictions of New South Wales and Queensland, under section 149C(5) of the *Health Practitioner Regulation National* Law (New South Wales) and a decision under section 107(4)(b) of the *Health Ombudsman Act 2013* (Qld), respectively.

Clause 9(4) deletes, the definition of National Board and inserts a new definition.

The new definition refers to National Health Practitioner Boards continued or established by regulations. The new definition is related to the amendments to section 31. This provides a flexible approach to enable the Ministerial Council to change the structure of National Boards by regulation (subsidiary legislation). The regulations will provide for each National Board.

Clause 9(5) amends the definition of accreditation committee as a consequence of the amendment to section 31 for National Boards. This amendment refers to a profession because in the future a National Board may regulate more than one health profession. The Ministerial Council approved changes being made to the structure of National Boards by regulations. However, no changes are proposed at this time. Therefore, references to "*the health profession"* require amendment to "*a health profession*".

Clause 9(6)(a) amends the definition of *"health profession*" to reflect that "*nursing*" and "*midwifery*" are separate professions; this amendment implements recommendation 27 of the report of the Independent Review: that the National Law be amended to reflect and recognise that nursing and midwifery are two distinct professions regulated by one National Board.

Previously, nurses held dual registration in nursing and midwifery. Direct entry midwifery qualifications are now available and this means that midwives who choose to undertake a midwifery qualification instead of a dual qualification are registered as a midwife. The separation of the two professions clearly reflects that difference.

Clause 9(6)(b) amends the definition of "health profession" to add "paramedicine". This has the effect of making paramedicine one of the health professions regulated by the National Law.

Clause 10 – Section 7 amended

Clause 10 amends section 7 to reflect that an entity established by or under the National Law has effect in WA.

Clause 11 – Section 14 amended

Clause 11 amends section 14. This amendment is as a consequence of the amendment to section 31 which provides for the establishment of National Boards. The Ministerial Council approved that changes can be made to the structure of National Boards by regulations. Although, no change to the structure of National Boards is proposed at this time – a National Board may be established for two or more health professions in the future. Therefore, references to "the health profession" require amendment to "a health profession".

The National Law specifies the professions regulated under the National Scheme in the definition of '*health profession'* in section 5. This means any change to add a profession to, or remove a profession from, the National Scheme would require the agreement of the COAG Health Council and amendment to the National Law. Appropriate consultation would also need to be undertaken prior to this type of change occurring.

Clause 12 – Section 15 amended

Clause 12 amends section 15 as explained above further detailed information is provided in clause 11.

Clause 13 – Section 26 amended

Clause 13 amends sections 26(1)(a) as explained above in clause 11.

Clause 14 – Section 31 replaced

31. Regulations must provide for National Boards

31A. Status of National Boards

Clause 14 replaces section 31. The structure of National Boards for the health professions regulated under the National Law is currently fixed, with each registered profession having its own National Board specified in section 31 of the National Law.

The Independent Review found that five health professions accounted for 87.5 per cent of registrants and 95.5 per cent of complaints and notifications in 2012-13 (these professions were dental, medical, nursing/midwifery, pharmacy and psychology). The remaining nine professions account for 12.5 per cent of registrants and less than 5 per cent of complaints and notifications (referred to in the report as the "*low regulatory workload professions*").

The Independent Review recommended consolidating the nine low regulatory workload National Boards into a single National Board. On 8 April 2016, the COAG Health Council decided not to accept this recommendation. It decided that efficiencies can and should be achieved by streamlining existing committee and operational arrangements under all the National Boards. However, the COAG Health Council did not rule out the possibility that changes may be required in the

future to ensure the governance arrangements for the National Scheme continue to be fit for purpose. Therefore, the COAG Health Council agreed to amend the National Law so that changes to the governance and membership of National Boards could be made by regulation.

To achieve this flexibility, the Bill requires that National Boards for each health profession be provided for in regulations, rather than specified in the National Law. Under section 245 of the National Law, regulations are made or amended by the COAG Health Council.

These powers provide flexibility for the COAG Health Council to consolidate or separate National Boards as needed, to effectively manage changes in the governance, membership, cost effectiveness and efficiency of the Boards. There are no current proposals to change the structure of National Boards.

The National Law specifies the professions regulated under the National Scheme in the definition of 'health profession' in section 5. This means any change to add a profession to, or remove a profession from, the National Scheme would require the agreement of the COAG Health Council and amendment to the National Law. Appropriate consultation would also need to be undertaken prior to this type of change occurring.

Details of the replacement of section 31 are provided below and provide that the regulations must provide for a National Health Practitioner Board for each health profession. This amendment inserts a new section 31(2) to provide that the regulations may:

- continue an existing National Board for a health profession
- establish a National Board for a health profession or for two or more health professions, or
- dissolve a National Board for a health profession if it is replaced by another Board established for that profession.

These provisions provide flexibility to change the structure of National Boards by regulations made by the Ministerial Council.

A new section 31(3) provides that regulations may make transitional arrangements for a new National Board structure. This includes that the regulations may provide for anything necessary or convenient to make provision to allow, facilitate or provide for:

- the continuation, establishment or dissolution of a National Board
- the completion of a matter started by the existing National Board before the commencement
- the effect of anything done by an existing National Board before the commencement, and
- the transfer of matters from a dissolved Board to a replacement Board.

A new section 31(4) provides that before a regulation is made to consolidate or separate National Boards, the Ministers comprising the COAG Health Council must

undertake public consultation on the proposed regulation. A new section 31(5) provides that a failure to consult does not affect the validity of the regulation.

The definition of "existing Board" in new section 31(6) is "*a National Health Practitioner Board in existence immediately before the commencement*". "*Commencement*" is defined in [clause] 12 of schedule 7 of the National Law as *"… the time at which this … provision comes into operation".* As well as referring to the National Boards mentioned in current section 31 of the National Law, the definition of "*existing Board*" is intended to capture the "*Paramedicine Board of Australia"* established in clause 88 of the Bill (new section 307).

Clause 88 will commence on Royal Assent of the Bill, while clause 9(4) commences on proclamation. As such, by the time clause 9(4) of the Bill commences, the "*Paramedicine Board of Australia*" will be in existence and therefore captured by the definition of "*existing Board".*

Clause 14 also inserts a new section 31A (Status of National Board). Section 31A replicates what is currently contained in section 31(2) and (3) of the National Law.

Clause 15 – Section 33 amended

Clause 15 amends section 33(5) of the National Law - membership of National Boards.

Clause 15(1)(a) self-explanatory formatting.

15(1)(b) amends section 33(5) to provide that if a National Board is established for two or more health professions, then the practitioner members would comprise one practitioner member from each health profession that will be responsible for regulating the health professions for which the Board is established. This means a member from each health profession for which the National Board is established will be appointed.

Clause 15(2) inserts a new section 33(9A) to provide that the regulations may prescribe matters relating to the composition of practitioner members for a National Board established for two or more health professions. This power allows Ministers to make regulations about the representation of practitioners on a multi-profession National Board. As with all changes to the National Law and regulations, any such regulation would require the approval of Health Ministers.

Clause 16 – Section 34 amended

Clause 16(1) deletes section 34(2) and inserts a new section 34(2) to provide that a person is eligible to be appointed as a practitioner member of a National Board if the person is a registered health practitioner in a health profession for which the Board is established. Clause 13(4) of schedule 7 of the National Law provides that in the National Law, "*words in the singular include the plural*". As a result, the effect of new section 34(2) is that a person is eligible to be appointed as a practitioner member of a National Board if the person is a registered health practitioner in any health profession for which the Board is established.

Clause 16(2) replaces and inserts a new section 34(3) in a similar way to make it clear that a person is eligible to be appointed as a community member only if the

person is not, and has not at any time been, a health practitioner in a health profession for which the Board is established. For example - if the person is a physiotherapist they cannot be appointed to the role of community member on the Physiotherapy Board of Australia.

Clause 16(3) replaces, section 34(4)(a) to make it clear that a person is not eligible to be appointed as a practitioner member of a National Board if the person has, whether before or after the commencement of this Law, as a result of misconduct, impairment or incompetence, ceased to be registered as a health practitioner in a health profession for which the Board is established. For example, if a Board member is registered in two health professions regulated by a National Board and loses registration in only one of those professions due to misconduct, impairment or incompetence, this would be sufficient to make them ineligible to be appointed or to continue as a Board member.

Clause 17 – Section 38 amended

Clause 17(a) amends section 38(1) to provide that the National Board may be comprised of more than one profession if there is a change to the structure of National Boards under section 31. (See clause 14 for further information).

Clause 17(b)

Clause 17(b) is a similar amendment to section 38 and is as a result of the amendments to section 31 of the National Law, which contemplates that a National Board may be established for two or more health professions. The Ministerial Council approved changes being made to the structure of National Boards by regulations. However, no changes are proposed at this time. Therefore, references to "*the Board*" require amendment to reflect *"in a health profession* for which the Board is established."

Clause 18 – Section 39 amended

Clause 18 amends the Examples in section 39. The current Example in section 39 is retained as the first Example.

The Bill includes a second Example in section 39 which provides that a National Board may, to assist health practitioners in providing practice information to a National Board under the new section 132, develop guidelines about the information that must be provided to the Board. The guidelines will contain practical information about how the concept of '*practice information'* in the National Law applies to common employment, contracting and volunteering arrangements.

Clause 19 – Section 41 amended

Clause 19 amends section 41 as a consequence of the amendment to section 31 which provides for the establishment of National Boards. The amendments to section 31 contemplate that a National Board may be established for two or more health professions. The Ministerial Council approved changes being made to the structure of National Boards by regulations. However, no changes are proposed at this time. Therefore, references to "*the Board*" require amendment to reflect "*in a health profession for which the Board is established."*

Clause 20 – Section 49 amended

Clause 20 amends section 49 as a consequence of the amendment to section 31 which provides for the establishment of National Boards. The amendments to section 31 contemplate that a National Board may be established for two or more health professions. The Ministerial Council approved changes being made to the structure of National Boards by regulations. However, no changes are proposed at this time. Therefore, references to "*the Board*" require amendment to reflect "*in a health profession."*

The National Law specifies the professions regulated under the National Scheme in the definition of 'health profession' in section 5. This means any change to add a profession to, or remove a profession from, the National Scheme would require the agreement of the COAG Health Council and amendment to the National Law. Appropriate consultation would also need to be undertaken prior to this type of change occurring.

Clause 21 – Section 51 amended

Clause 21 amends section 51 as explained above in clause 20.

Clause 22 – Section 56 amended

Clause 22 amends section 56 to enable a National Board to decide an application for registration, with registration to commence up to 90 days after the day the National Board makes the decision.

Section 56(2) of the National Law currently provides that a health practitioner's registration takes effect when the Board makes the decision to grant registration. This requirement creates administrative challenges, particularly for processing applications for registrants moving from student to general registration, interns moving to general registration and internationally qualified practitioners trying to meet the multiple requirements of National Boards, employers and immigration authorities.

Appendix 11 of the report of the Independent Review states: *"There are a number of instances when it would be of value for the Board to commence registration on a date to be determined."* The Bill implements this change.

Clause 23 – Section 65 amended

Clause 23 amends section 65 to enable a health practitioner who holds general or limited registration in one division of the register for a profession to obtain limited registration in another division of the register for the same profession, if they are not qualified for general registration under the other division and they otherwise meet the qualification and other requirements for limited registration.

A number of health professions under the National Law have "*divisions"* within the National Register to designate practitioners of different types. For example, the Register of Dental Practitioners has divisions for dentists, dental therapists, dental hygienists, dental prosthetists and oral health therapists. The Register of Medical Radiation Practitioners has divisions for diagnostic radiographers, nuclear medicine technologists and radiation therapists. Details of the divisions for the professions of

Chinese medicine practitioners and nurses are set out in section 222 of the National Law.

Section 65(1)(a) currently provides that a person is only eligible for limited registration if the person is not qualified for general or specialist registration. For professions with several divisions of registration, this means it is not possible for a practitioner who holds general or limited registration in one division of the register to be granted limited registration in another division of the same profession. This is problematic for those upskilling and limits workforce flexibility. For example, a person may hold general or limited registration as a dental therapist or hygienist and require limited registration as a dentist to undertake post-graduate training or supervised practice to qualify for general registration as a dentist.

Appendix 11 of the report of the Independent Review referred to the issue in a similar way: "*At this stage, it is not possible to obtain limited registration in a different sub-type within the same profession (s.65(1)). This has a negative effect on individuals who are registered, for example, as a dental hygienist but who then want to undertake limited registration, for example, for the purpose of undertaking examinations to progress to become eligible for registration as a dentist*." The Bill implements this change.

Clause 24 – Section 71 replaced

71. Limited registration not to be held for more than one purpose

Clause 24 replaces section 71 of the National Law as a result of the amendments to section 65 referred to above.

Section 71 of the National Law currently states that an individual may not hold limited registration in the same health profession for more than one purpose under division 4 of Part 7 at the same time.

Under new sections 71(1) and (2), the National Law continues to apply as is for health professions that do not have divisions of the register. However, for professions that have divisions, new sections 71(3) and (4) provide that health practitioners may not hold limited registration in the same division of the register for their profession for more than one purpose under division 4 of Part 7 at the same time. For example as detailed above, a person may hold general or limited registration as a dental therapist or hygienist and require limited registration as a dentist to undertake post-graduate training or supervised practice to qualify for general registration as a dentist.

Clause 25 – Section 77 amended

Clause 25 amends section 77 as a consequence of the amendment to section 31 which provides for the establishment of National Boards. The Ministerial Council approved that changes can be made to the structure of National Boards by regulations. However, no changes are proposed at this time. The amendments to section 31 contemplate that a National Board may be established for two or more health professions. Therefore, the provision needs to reflect not "*the profession*" but "*a profession*". This would cover if a multi profession National Board was established in the future.

Clause 26 – Section 79 amended

Clause 26 amends the reference to "CrimTrac" in section 79 and replaces it with "ACC" to reflect the merger of the CrimTrac agency into the Australian Crime Commission. There are no changes to the procedures for criminal history checking under the National Law as a result of this change of name.

Clause 27 – Section 83 amended

Clause 27 amends section 83(1). This amendment is as a consequence of the amendment to section 31 which provides for the establishment of National Boards. The Ministerial Council approved that changes can be made to the structure of National Boards by regulations. Although, no change to the structure of National Boards is proposed at this time – a multi profession National Board may be established in the future if approved by the Ministerial Council. Therefore, the provision needs to reflect not "*the profession*" but "*a profession*". This would cover if a multi profession National Board was established in the future.

Clause 28 – Section 88 amended

Clause 28 amends section 88(1)(a) as detailed above.

Clause 29 – Section 92 amended

Clause 29 amends section 92(2) in similar terms to that explained above. If there was a change to the structure of National Boards then the notice would be issued by that new Board, which may be different to the National Board that registered the person.

Clause 30 – Section 94 amended

Clause 30 amends section 94(1). See explanation in clause 27 above.

Clause 31 – Section 95 amended

Clause 31 amends section 95 and relates to the title of the Nursing and Midwifery Board of Australia. This is a consequential amendment as a result of the recognition of the two separate health professions and the endorsement of a nurse practitioner.

Clause 32 – Section 96 amended

Clause 32 amends section 96 to make a consequential amendment to reflect that National Boards will be prescribed in regulations made under section 31. The clause replaces the reference to "Nursing and Midwifery Board of Australia" with a reference to "National Board for the midwifery profession". The definition of "National Board" in the Bill refers to National Boards continued or established by regulations made under section 31. As there are no current plans to change the structure of National Boards, the reference to the "National Board for the midwifery profession" will be a reference to the Nursing and Midwifery Board of Australia.

Clause 33 – Section 97 amended

Clause 33 amends section 97 as a consequence of amendments to section 31 which provides for the establishment of National Boards. The Ministerial Council approved

that changes can be made to the structure of National Boards by regulations. Although, no change to the structure of National Boards is proposed at this time – a multi profession National Board may be established in the future if approved by the Ministerial Council. Therefore, the provision needs to reflect not "the Board" but "in a health profession for which the Board is established". This would apply if a multi profession National Board was established in the future

Clause 34 – Section 98 amended

Clause 34 amends section 98(1) as explained above.

Clause 35 – Section 107 amended

Clause 35 amends section 107 in similar terms to that explained above.

Clause 36 – Section 113 amended

Clause 36 section 113(3) in the Table

(a) In the row for Medical delete "medical practitioner" and insert medical practitioner, physician. This moves the protected title of physician from Part 2 to the Schedule of the National Law to enable users of the legislation to locate specific references to WA amendments by including them in the Schedule.

(b) Insertion of "nursing" and "midwifery" as separate professions. The following protected titles will continue to apply to the following professions:
Midwifery – midwife, midwife practitioner

Nursing – nurse, registered nurse, nurse practitioner, enrolled nurse

(c) Self-explanatory - formatting

(d) Amends the Table of protected titles to include the profession "paramedicine" and the corresponding protected title "paramedic".

The issue of whether the title "midwife practitioner" needs to be kept in the National Law and is being considered as part of the second stage of amendments to the National Law and may be deleted at a later date.

Clause 37 – Section 118 amended

This clause amends section 118 to make a technical amendment to correct a drafting error.

Section 118(1) makes it an offence for a person who is not a specialist health practitioner to claim they are a specialist health practitioner. Section 118(2) makes it an offence for a person to claim an association with a specialist health practitioner when the other person is not a specialist health practitioner.

Section 118(2)(a) uses the correct formulation "in relation to another person who is not a specialist health practitioner". Section 118(2)(b) currently only refers to "in relation to another person". This clause amends section 118(2)(b) to use the correct formulation "in relation to another person who is not a specialist health practitioner".

Clause 38 – Section 123A inserted

123A. Restricted birthing practices

Clause 38 inserts a new section 123A to provide for restricted birthing practices. This amendment will restrict the care of a woman during the three stages of labour to a registered midwife or registered medical practitioner. The three stages of labour are generally accepted as the first stage: the start of regular contractions up until the cervix is fully dilated; second stage is the time when the cervix is fully dilated up until the birth; third stage is after the birth ending with the delivery of the placenta.

Students who are undertaking an approved programme of study in the medical or midwifery profession may also undertake the restricted birthing practice.

In the case of an emergency a person who assists a woman until such time as a medical practitioner or midwife arrives would not be penalised. However, if neither practitioner arrives in time for the restricted birthing practice there is no penalty.

If a medical practitioner or midwife undertakes further training or upskilling under the supervision of a medical practitioner or midwife from the relevant health profession, the restricted birthing practice can be performed.

For example if an overseas midwife requires upskilling for registration purposes.

A penalty of $30,000 is prescribed. This would apply to persons that are not in one of the categories set out in 123A(2)(a)-(e).

Other persons that provide emotional support at the time of birth are still able to do so.

Clause 39 – Section 124 amended

Clause 39 amends section 124 as a consequence of amendments to section 31 which provides for the establishment of National Boards. The Ministerial Council approved that changes can be made to the structure of National Boards by regulations. Although, no change to the structure of National Boards is proposed at this time – a multi profession National Board may be established in the future if approved by the Ministerial Council. Therefore, the provision needs to reflect not "the Board" but "in a health profession for which the Board is established". This would apply if a multi profession National Board was established in the future

Clause 40 – Section 125 amended

Clause 40 amends section 125 as explained above.

Amends section 125 of the National Law.

Clause 40 amends section 125(1) and is a minor technical amendment.

Clause 40(2) amends section 125(2)(b) to provide that an adjudication body may decide whether or not the procedures in Part 7, Division 11, Subdivision 2 of the National Law apply "when imposing the condition or at a later time".

Clause 40(3) amends section 125(6) of the National Law to give National Boards discretion to decide a "*review period*" when a National Board decides to change a

registration condition or an undertaking under section 125. The clause also amends section 125 to provide that if the National Board decides a review period, the Board must give written notice of the details of the review period to the practitioner or student at the same time as giving them notice of the Board's decision under section 125(6A).

Clause 41 – Section 126 amended

Clause 41(1) amends section 126(1) as a consequence of amendments to section 31 which provides for the establishment of National Boards. The Ministerial Council approved that changes can be made to the structure of National Boards by regulations. Although, no change to the structure of National Boards is proposed at this time – a multi profession National Board may be established in the future if approved by the Ministerial Council.

Clause 41(2) amends section 126(3)(5) similar to the amendment referred to above in clause 40(2). However it would apply to the National Board.

Clause 41(3) amends section 126(6) to give National Boards a discretion to decide a "review period" when a National Board decides to change a registration condition under section 126. The clause also inserts section 126 (6A) to provide that if the National Board decides a review period, the Board must give written notice of the details of the review period to the practitioner or student at the same time as giving them notice of the Board's decision.

Clause 42 – Section 127 amended

Clause 42(1) amends section 127(1)(a) and (b) as a consequence of amendments to section 31 which provides for the establishment of National Boards. The Ministerial Council approved that changes can be made to the structure of National Boards by regulations. Although, no change to the structure of National Boards is proposed at this time – a multi profession National Board may be established in the future if approved by the Ministerial Council.

Clause 42(2) amends section 127(3)(b) to reflect current WA drafting practices.

Clause 43 – Section 127A inserted

127A. When matters under this Subdivision may be decided by review body of a co-regulatory jurisdiction

Clause 43 inserts a new s 127A that provides a power for a National Board to refer a matter to a "*review body*" of a co-regulatory jurisdiction if the National Board considers that a change or removal of a condition or a change or revocation of an undertaking should be decided by the review body. This provision will usually apply where a practitioner has moved to a co-regulatory jurisdiction and has commenced practising in that jurisdiction.

Sections 125(2)(b) and 126(3)(b) of the National Law recognise that a condition may be imposed on a health practitioner's registration by an adjudication body in a co-regulatory jurisdiction. These provisions of the National Law also recognise that the adjudication body for a co-regulatory jurisdiction may decide whether the review process in Part 7, Division 11, Subdivision 2 of the National Law should apply or not

– that is, whether a practitioner or student should be able to apply to the relevant National Board to change or remove a condition.

However, no provision is made in the National Law or the laws of co-regulatory jurisdictions for the reverse situation. That is, where a condition is imposed on a health practitioner's registration in a jurisdiction that is not a co-regulatory jurisdiction, but there is a need for a review body in a co-regulatory jurisdiction to review the condition. For example, this situation may arise if the practitioner moved their principal place of practice from a jurisdiction that is not a co-regulatory jurisdiction to a co-regulatory jurisdiction (for example, a practitioner had a condition imposed on their registration in South Australia, but moves their practice from South Australia to New South Wales).

This issue was identified by the National Boards and AHPRA and is referred to in Appendix 11 of the report of the Independent Review, as follows: "Co-regulatory issues – under sections 125(2)(b), 126(3)(b) and 127(3)(b), there is no equivalent section in the National Law (NSW) to allow a co-regulatory jurisdiction to change a condition imposed by an adjudication body in a National Board jurisdiction (Part 8) if the adjudication body decided, when imposing the condition, that the subdivision applied."

The new section 127A is applicable in co-regulatory jurisdictions only. Section 127A provides that if a review body of a co-regulatory jurisdiction is to decide a matter instead of the Board, the review body must decide the matter under the laws of the review body's jurisdiction.

"*Review body*" is defined as an entity declared by an Act or regulation of a co-regulatory jurisdiction to be a review body for the purposes of section 127A. In New South Wales, it is expected that the review body will be a Health Professional Council or the Civil and Administrative Tribunal of New South Wales. This will need to be declared in an Act or regulation in New South Wales.

It is unnecessary for Queensland to prescribe any '*review bodies'* for this new provision, as the Queensland co-regulatory arrangements currently allow for transfer of matters between National Boards and the Health Ombudsman and appeal of National Board decisions to the Queensland Civil and Administrative Appeals Tribunal.

New South Wales may also make further changes to its own State-based laws to provide for this situation from a co-regulatory perspective. For example, it is expected that NSW will seek to amend its laws to provide that an "undertaking" given in another jurisdiction will be converted to a "condition" when the matter is referred to a NSW review body under this provision, as the National Law as it applies in New South Wales does not provide for undertakings to be given.

Clause 44 – Section 129 amended

Clause 44 amends section 129(2) as a consequence of amendments to section 31 which provides for the establishment of National Boards. The Ministerial Council approved changes being made to the structure of National Boards by regulations. Although, no change to the structure of National Boards is proposed at this time – a

multi profession National Board may be established in the future if approved by the Ministerial Council.

Clause 45 – Section 130 amended

Clause 45 amends section 130 as explained in clause 44.

Clause 46 – Section 131 amended

Clause 46 amends section 131 as explained above in clause 44.

Clause 47 – Section 132 replaced

132. National Board may ask registered health practitioner for practice information

Clause 47 replaces section 132. Section 132 of the National Law currently allows a National Board to ask a registered health practitioner to inform the Board if the practitioner is employed by another entity and the employer's details. The term *'employer'* has been interpreted narrowly to only mean those in strict '*employer-employee*' relationships.

This issue was identified by the National Boards and AHPRA and referred to in Appendix 11 of the report of the Independent Review, as follows: "*s.206 requires that notice of a decision to take action against a registered health practitioner is communicated to the practitioner's employer. This definition might be expanded to require notice to all places of practice – making it clear that s.206 applies equally to contractual arrangements."*

The new section 132 of the National Law applies to a broad range of different practice arrangements under which a health practitioner may be engaged, including where the practitioner is an employee, contractor, volunteer, partner in a partnership, where a practitioner is a member of a practice involving a '*service company'* arrangement, the practitioner is self-employed or working in an honorary capacity. The changes will mean that no matter what type of arrangements are in place for the engagement of a practitioner, the practitioner must provide details of the arrangements under which they are engaged and practising, which is referred to as a requirement to provide 'practice information' in the Bill. '*Practice information'* is defined in new section 132(4).

Section 132(4)(a) covers other arrangements that may not fall within paragraphs (b), (c) or (d), such as arrangements involving the use of "service companies" to operate a business or partnership arrangements.

Section 132(4)(b) of the definition covers self-employed practitioners who practice alone.

It is expected that most practitioners will fall within section 132(4)(c) of the definition of '*practice information'* in section 132(4). Paragraph (c) covers employment arrangements, contracts for services and other arrangements or agreements (this covers, for example, practitioners who are '*credentialed'* to practice in a hospital, franchising arrangements and other contractual arrangements).

Section 132(4)(d) of the definition of '*practice information'* in section 132 covers voluntary and honorary appointments and arrangements, such as where a practitioner is volunteering for a charity or sporting club or holds an honorary appointment.

A definition of "*premises at which the practitioner practices*" is also included in the new section 132(4) to make it clear that practitioners are not required to provide information about the residential addresses of clients or patients where a practitioner provides a 'house call' service or otherwise visits residential premises.

The National Boards and AHPRA will develop guidelines to assist practitioners about *'practice information'* to be provided to the Boards. The National Boards are empowered to make guidelines under section 39 of the National Law and the insertion of a new Example stating that a National Board may develop guidelines about 'practice information' to be provided under section 132 (see the amendments to section 39 in clause 18).

The guidelines will contain practical information about how the concept of 'practice information' in the National Law applies to common employment, contracting and volunteering arrangements. As with all guidelines developed by National Boards under the National Law, the Board must ensure there is wide-ranging consultation about their content (see section 40 of the National Law) and stakeholders will be consulted during their development.

Clause 48 – Section 135 amended

Clause 48 amends the reference to "*CrimTrac*" in section 135 of the National Law and replaces it with "*ACC*" to reflect the merger of the CrimTrac agency into the Australian Crime Commission. There are no changes to the procedures for criminal history checking under the National Law as a result of this change of name.

Clause 49 – Section 137 amended

Clause 49 amends section 137 as a consequence of amendments to section 31 which provides for the establishment of National Boards. The Ministerial Council approved changes being made to the structure of National Boards by regulations. Although, no change to the structure of National Boards is proposed at this time – a multi profession National Board may be established in the future if approved by the Ministerial Council.

Clause 50 – Section 141 amended

Clause 50 inserts a paragraph after section 141(4)(c). This paragraph already exists in Part 2 and provides the exemption for a treating health practitioner. The paragraph has been repositioned to assist the public, health practitioners and others to locate the WA specific amendments.

Clause 51 – Section 143 amended

Clause 51 amends section 143(3) (a) as a consequence of amendments to section 31 which provides for the establishment of National Boards. The Ministerial Council approved changes being made to the structure of National Boards by regulations. Although, no change to the structure of National Boards is proposed at this time – a

multi profession National Board may be established in the future if approved by the Ministerial Council.

Clause 52 – Section 148 amended

Clause 52 amends section 148(1) as explained above.

Clause 53 – Section 149 amended

Clause 53 amends section 149 as explained in clause 51.

Clause 54 – Section 150 amended

Clause 54 amends section 150 in similar terms to that explained in clause 51.

Clause 55 – Section 151 amended

Clause 55 amends section 151(1)(c) in similar terms to that explained above in relation to National Board amendments to section 31 in clause 14

Clause 55 also amends section 151(1)(e) which currently sets out one of the grounds as: "*the subject matter of the notification is being dealt with, or has already been dealt with, adequately by another entity"*. The use of the word "*adequately*" places an obligation on the National Board to enter into an assessment about the performance of another entity and whether it has dealt with a matter "*adequately"*. It is not the National Board's role to review the performance or conduct of other entities in handling complaints or notifications. As such, this clause removes the word "*adequately*" from new section 151(1)(e)(i).

This clause also adds the following grounds upon which a National Board may decide to take no further action in relation to a notification:

- if a National Board has referred the subject matter of a notification to another entity to be dealt with by that entity (for example, where the Board refers a matter to a health complaints entity within a State or Territory) (In WA, the health complaints entity is the Health and Disability Services Complaints Office), or
- if the health practitioner to whom the notification relates has taken appropriate steps to remedy the issue the subject of the notification and the Board reasonably believes no further action is required in relation to the notification.

Clause 56 – Section 155 amended

Clause 56 amends section 155 in the definition of "*immediate action*". Sections 155, 156 and 159 of the National Law do not explicitly provide for a National Board to revoke one type of "*immediate action*" they have taken and substitute another form of *"immediate action*". For example, a National Board may wish to revoke the suspension of a practitioner's registration and substitute a condition of registration (or vice versa). This may occur, for example, if new information suggests that a condition imposed on registration would be sufficient to protect public safety. Similarly, new information may suggest that a condition is no longer sufficient to protect public safety and the practitioner's registration needs to be suspended.

This issue was identified by the National Boards and AHPRA and referred to in Appendix 11 of the report of the Independent Review, as follows: "There is no avenue for ending a suspension imposed under section 156 (immediate action). This is problematic as a National Board may want to end a suspension or revoke an undertaking not to practice; and impose conditions.

To address this issue, this clause amends the definition of "*immediate action*" in section 155 to clarify that immediate action also includes:

- revoking a suspension and imposing a condition on registration, if immediate action had previously been taken suspending a health practitioner's or student's registration, and
- suspending registration instead of a condition, if immediate action had previously been taken imposing a condition on a health practitioner's or student's registration

Clause 57 – Section 156 amended

Clause 57 amends section 156(1) this is a minor consequential amendment as a result of changes to section 31.

Clause 57 amends section 156(1)(d) this is a minor drafting amendment to facilitate the inclusion of the Example.

Clause 57 also inserts a new paragraph after paragraph (d). New paragraph 156(1)(e) broadens the grounds on which a National Board may take immediate action against a health practitioner or student. This enables a National Board to take action if it reasonably believes the immediate action is in the public interest. See clause 56 for further detailed information on "*immediate action*".

The threshold for immediate action in its current form in section 156 may constrain a National Board from taking swift action where it is warranted to protect public health, public safety or the public interest. For example, if a practitioner has been charged with a serious crime, and the relationship between the alleged crime and the practitioner's practice is not yet well established, the *"public interest"* may require a National Board to constrain the practitioner's practice until the criminal matter is resolved, both for the protection of the public and for public confidence in the health profession.

This amendment broadens the grounds on which a National Board may take immediate action or to enable immediate action to be taken by a National Board if it reasonably believes the immediate action is in the public interest (see clause 56, amendment to section 156). The National Law as it applies in NSW contains a similar *"public interest"* test for immediate action (see section 150 of the *Health Practitioner Regulation National Law (New South Wales)*.

The National Board will always seek to respond in a way that is proportionate to the risk posed.

A decision by a National Board to impose a condition on a person's registration or to suspend registration is subject to a *'show cause'* process (see section 157 of the National Law). As part of the show cause process, the National Board must have

regard to any submissions made by a registered health practitioner in deciding whether to take immediate action (see section 157(3)). The National Board's decision is also subject to appeal to the appropriate responsible tribunal (see section 199(1)(e) and (h) of the National Law).

Clause 58 – Section 159A inserted

159A. Board may give information to notifier about immediate action

Clause 58 inserts a new section 159A to provide that, after deciding to take immediate action against a registered health practitioner or student, a National Board has discretion to inform a notifier of the Board's decision to take immediate action and the reasons for the decision. This amendment will give National Boards more flexibility about when to provide information to notifiers and enable more complete information to be provided than is currently the case.

As part of implementing these changes, the National Boards and AHPRA will develop a common protocol to ensure appropriate information is disclosed to notifiers at appropriate times, while also taking into account privacy concerns of practitioners and patients. At times, this will need to be considered on a case by case basis, depending on the individual circumstances of the case.

The Final Report of the Independent Review identified key concerns raised by stakeholders in all jurisdictions about notifications by notifiers, including:

- poor communication with both notifiers and practitioners
- outcomes not being well explained to notifiers, and
- consumer notifiers commonly feel they are denied the opportunity to prevent others from experiencing the harm they experienced because the system does not explain its actions.

Recommendation 9(g) of the Final Report stated: "*the [National Law] to be amended so that notifiers personally impacted by practitioner conduct can be informed in confidence by the National Board about the process, decision and rationale for the decision regarding their case. This complements the amendments to the National Law approved by Ministerial Council in 2011 as detailed in Appendix 11."* The COAG Health Council accepted this recommendation.

Clause 59 – Section 160 amended

Clause 59 amends section 160 as a result of the amendments to section 31 of the National Law. The Ministerial Council approved changes being made to the structure of National Boards by regulations. Although, no change to the structure of National Boards is proposed at this time – a multi profession National Board may be established in the future if approved by the Ministerial Council.

Clause 60 – Section 167A inserted

167A. Board may give information to notifier about result of investigation

Clause 60 inserts a new section 167A to provide that, after considering an investigator's report and making a decision under section 167 of the National Law, a

National Board has discretion to inform a notifier of the Board's decision and the reasons for the decision in relation to a registered health practitioner or student.

This amendment relates to decisions following an investigator's report and will give National Boards more flexibility about when to provide information to notifiers and enable more complete information to be provided than is currently the case. As part of implementing these changes, the National Boards and AHPRA will develop a common protocol to ensure appropriate information is disclosed to notifiers at appropriate times, while also taking into account privacy concerns of practitioners and patients. At times, this will need to be considered on a case by case basis, depending on the individual circumstances of the case.

Recommendation 9(g) of the Final Report stated: *"the [National Law] be amended so that notifiers personally impacted by practitioner conduct can be informed in confidence by the National Board about the process, decision and rationale for the decision regarding their case. This complements the amendments to the National Law approved by Ministerial Council in 2011 as detailed in Appendix 11."* The COAG Health Council accepted this recommendation.

Clause 61 – Section 171 amended

Clause 61 makes consequential amendments to section 171 as a result of the amendments to section 31 of the National Law.

Section 171 provides that if the National Board requires a registered health practitioner or student to undergo an assessment, AHPRA must appoint an assessor chosen by the Board to carry out the assessment. There are certain criteria for determining how an assessor may be appointed and section 171(2)(b) currently provides that for a performance assessment, the assessor must be a registered health practitioner who is a member of the health profession for which the National Board is established. As a result of the amendments to section 31, which contemplate that a National Board may be established for two or more health professions, section 171(2)(b) is amended to provide that for a performance assessment, the assessor must be a member of the same health profession as the registered health practitioner or student undergoing assessment. This is a drafting change only and retains the underlying policy of the section.

Clause 62 – Section 177A inserted

177A. Board may give information to notifier about decision following assessor's report

Clause 62 inserts a new section 177A to provide that, after considering an assessor's report and making a decision under section 177 of the National Law, a National Board has discretion to inform a notifier of the Board's decision and the reasons for the decision.

This amendment relates to decisions following an assessor's report and provides National Boards with more flexibility about when to provide information to notifiers and enable more complete information to be provided than is currently the case. As part of implementing these changes, the National Boards and AHPRA will develop a common protocol to ensure appropriate information is disclosed to notifiers at

appropriate times, while also taking into account privacy concerns of practitioners and patients. At times, this will need to be considered on a case by case basis, depending on the individual circumstances of the case.

Recommendation 9(g) of the final report stated: "*the [National Law] be amended so that notifiers personally impacted by practitioner conduct can be informed in confidence by the National Board about the process, decision and rationale for the decision regarding their case. This complements the amendments to the National Law approved by Ministerial Council in 2011 as detailed in Appendix 11*." The COAG Health Council accepted this recommendation.

Clause 63 – Section 178 amended

Clause 63 amends section 178 as a result of the amendments to section 31. The Ministerial Council approved changes being made to the structure of National Boards by regulations. Although, no change to the structure of National Boards is proposed at this time – a National Board may be established for two or more health professions.

Clause 64 – Section 180 replaced

180. Notice to be given to health practitioner or student and notifier

Clause 64 amends section 180. Currently, section 180(1) only requires notice to be given of decisions under section 179(2). However, a National Board may also make a decision under section 178(2) (for example, if section 179 does not apply, as provided for in section 179(3)).

This issue was referred to in Appendix 11 of the report of the Independent Review. This clause makes a minor amendment to section 180(1) to clarify that notice must be given of decisions made under both sections 178(2) and 179(2).

Section 180(1)(b) of the National Law currently requires notifiers to be informed of the ultimate outcome of a notification. However, section 180(2) limits the information to be provided to notifiers "*to the extent the information is available on the National Board's register".*

This clause replaces section 180(2) with a new provision which gives a National Board discretion to inform a notifier of the reasons for the Board's decision and removes the limitation that previously applied.

Recommendation 9(g) of the Final Report stated: *"the [National Law] be amended so that notifiers personally impacted by practitioner conduct can be informed in confidence by the National Board about the process, decision and rationale for the decision regarding their case. This complements the amendments to the National Law approved by Ministerial Council in 2011 as detailed in Appendix 11."* The COAG Health Council accepted this recommendation.

Clause 65 – Section 181 amended

Clause 65 amends section 181 to provide that a National Board must establish a health panel if the suspension of a practitioner's or student's registration is to be reconsidered under section 191(4A) or 191A(2)(c). The Board may appoint the same

panel or a different panel to the one that originally imposed the suspension, depending on the availability of panel members.

Currently, under section 181 of the National Law, a National Board may establish a health panel if the Board reasonably believes a registered health practitioner or student has or may have an impairment. "*Impairment" is defined in section 5 of the National Law as a "… physical or mental impairment, disability, condition or disorder (including substance abuse or dependence) that detrimentally affects or is likely to detrimentally affect … a person's capacity to practise … or a student's capacity to undertake clinical training…".*

If a health panel established under section 181 is satisfied a health practitioner or student has an impairment, the panel can decide to suspend the practitioner's or student's registration under section 191(3)(b) of the National Law. For conduct and performance matters, only a responsible tribunal can decide to suspend a practitioner's or student's registration (see section 196(2)(d) of the National Law). Currently, a health practitioner or student may seek a review of a suspension by a health panel through an appeal to the relevant tribunal under section 199(1)(j).

However, the National Law does not provide any express mechanism for the decision to be reviewed or for the suspension to be revoked (other than the general power to amend or revoke a decision in clause 23 of schedule 7). This leaves uncertainty for practitioners and students about the length of time a suspension will remain in place.

To address this issue, the Bill amends section 191 of the National Law to provide that if a health panel suspends a practitioner's or student's registration, it must also decide a date by which the suspension be reconsidered, to be known as the 'reconsideration date' (insertion of new section 191(4A)). This will provide practitioners or students affected by a suspension with a degree of certainty that their suspension will be reviewed at an appropriate time.

This clause also makes consequential amendments to section 181(2), (4) and (5) as a result of the amendments to section 31, which contemplates that a National Board may be established for two or more health professions. The amendments to these sections replace references to "*a registered health practitioner in the health profession for which the Board is established*" with references to "*a registered health practitioner in the same health profession as the registered health practitioner or student the subject of the hearing".* These are drafting changes only and they retain the underlying policy of the section.

Clause 66 – Section 182 amended

Clause 66 makes consequential amendments to section 182 as a result of the amendments to section 31, which contemplate that a National Board may be established for two or more health professions. The new section 182(4) inserted by this clause replaces the reference to *"persons who are registered health practitioners in the health profession for which the Board is established*" with a reference to "*persons who are registered health practitioners in the same health profession as the registered health practitioner the subject of the hearing*". This is a drafting change only and retains the underlying policy of the section

Clause 67 – Section 184 amended

Clause 67 amends section 184 to provide that if a panel is established to review a suspension under section 181(1A), the panel may decide the matter on the basis of documents, without parties, their representatives or witnesses appearing at a hearing if it considers it appropriate to do so (this is often referred to as making a decision "*on the papers*"). The panel is required to give a written notice to the practitioner or student that it intends to proceed this way.

If the health practitioner or student gives a written notice to the panel within 14 days requesting a hearing (rather than having the panel decide the matter "on the papers") and the health practitioner or student gives an undertaking to be available for the hearing within 28 days, the panel must conduct a hearing.

If the health practitioner or student does not request a hearing within 14 days, the panel may proceed to decide the matter "*on the papers*". The power to decide a matter "*on the papers*" is proposed to be used by a panel particularly for circumstances where a practitioner has elected not to continue active involvement in the suspension process, or where a practitioner has a long term illness that does not allow them to be able to participate in a hearing.

Clause 68 – Section 191 amended

Clause 68 amends section 191 of the National Law to insert a new section (4A). Section 191(4A) provides that if a health panel suspends a health practitioner's or student's registration, it must also decide a date by which the suspension be reconsidered, to be known as the *"reconsideration date".*

The National Law does not provide any express mechanism for the decision to be reviewed or for the suspension to be revoked (other than the general power to amend or revoke a decision in clause 23 of schedule 7). This leaves uncertainty for practitioners and students about the length of time a suspension will remain in place.

This amendment will provide practitioners or students affected by a suspension with a degree of certainty that their suspension will be reviewed at an appropriate time.

This issue was identified by National Boards and AHPRA and referred to in Appendix 11 of the report of the Independent Review, as follows: *"… if a health panel suspends a practitioner under section 191(3)(b), there is no requirement under the National Law for the panel to set a review period. We think this would be of benefit*."

Clause 69 – Section 191A and 191B inserted

Clause 69 inserts new sections 191A and 191B

191A. Decision of panel after reconsideration of suspension

Section 191A applies if the suspension of a health practitioner's or student's registration is reconsidered by a health panel established under section 181(1A). On reconsidering the suspension, section 191A allows the panel to:

- revoke the suspension, or

- revoke the suspension, impose conditions on the person's registration under section 191(3)(a) in place of the suspension, and decide a review period for the conditions under section 191(4), or
- not revoke the suspension and decide a new reconsideration date.

191B. Change of reconsideration date for suspension of resignation

This clause also inserts a new section 191B to provide for changes to the reconsideration date if a suspension is to be reconsidered. Under section 191B(2), a health panel may decide an earlier reconsideration date if:

- the health practitioner or student advises the panel of a material change in the practitioner's or student's circumstances and requests an earlier reconsideration date because of the change, and
- the panel is reasonably satisfied that an earlier reconsideration date is necessary because of the change of circumstances.

Under section 191B (4), a health panel may decide a later reconsideration date if the panel is satisfied it is necessary to reconsider the suspension. Examples of when a panel may be reasonably satisfied a later reconsideration date may be needed would include:

- if the practitioner's or student's attendance at the hearing is required and they are unwell, the panel may decide it is preferable to wait until they are well enough to participate in the hearing
- if the practitioner's or student's evidence to the panel requires further review by the panel and this cannot be completed prior to the due date, or
- if a panel member becomes unwell and time is needed to find a suitable replacement.

If a panel changes the reconsideration date under section 191B, the panel must give notice of its decision and reasons for the decision under sections 191B(3)(a) and (5). The panel must also notify a refusal of an earlier reconsideration date and the reasons for the panel's decision under section 191B(3)(b).

Under section 191B(6), the suspension of a health practitioner's or student's registration remains in force until the panel makes a decision to revoke the suspension.

The National Law does not provide any express mechanism for the decision to be reviewed or for the suspension to be revoked (other than the general power to amend or revoke a decision in clause 23 of Schedule 7). This leaves uncertainty for practitioners and students about the length of time a suspension will remain in place.

This amendment will provide practitioners or students affected by a suspension with a degree of certainty that their suspension will be reviewed at an appropriate time.

Clause 70 – Section 192 amended

Clause 70(1) amends section 192(1) to update the references to include 191 and 191A. to provide that as soon as practicable after making a decision under section

191 or 191A, a panel must give notice of its decision to the National Board that established it.

Clause 70(2) amends section 192(4) with a new provision which gives a National Board discretion to inform a notifier of the reasons for a panel's decision and removes the limitation that previously applied.

Currently section 192(2)(b) of the National Law requires notifiers to be informed of the outcome of a notification. Section 192(4) limits the information to be provided to notifiers "*to the extent the information is available on the National Board's register".*

Clause 71 – Section 196 amended

Clause 71(2) amends section 196(4)(b) to allow a responsible tribunal to issue a prohibition order to prohibit a person from providing any health service or a specified health service or using any protected title or a specified title.

The provision also clarifies that the prohibition orders may be for a stated period or may be permanent. This approach aligns with section 149C(5) of the *Health Practitioner Regulation National Law (New South Wales)*.

These amendments potentially infringe a person's right to practice a health profession or earn a living through their profession or training. The amendments have a greater reach than current provisions by giving greater flexibility to make appropriate orders where a person is not a fit and proper person to continue providing any kind of health service.

The cancellation of registration and making of a prohibition order under section 196(4)(b) of the National Law would only occur in the most serious cases, usually where practitioners have engaged in serious conduct, which may include sexual boundary violations, criminal offences or professional incompetence resulting in serious harm or death of a patient. The orders are made by the "*responsible tribunal*" in each jurisdiction (for example, the State Administrative Tribunal in WA) after hearing all of the evidence in relation to a particular person. The responsible tribunal is in the best position to make appropriate orders based on the facts and circumstances of each case.

This issue was identified as part of the Independent Review of the National Scheme and recommended in the Final Report of the independent review. The amendments ensure the public is protected where a person is not a fit and proper person to continue providing any kind of health service.

Clause 72 – Section 196A inserted

196A. Offences relating to prohibition orders

Clause 72 inserts a new section 196A. Section 196A makes it an offence to contravene a prohibition order with a maximum penalty of $30,000. The clause also includes subsidiary offences related to prohibition orders, which are similar to offences that apply in New South Wales under sections 102(2) and 103(2) of the *Public Health Act 2010* (NSW).

The National Law does not currently contain any offences for a person who does not comply with a prohibition order made under section 196(4)(b). The making of a prohibition order has limited protective effect if there are no offences for breach of an order.

As outlined above, prohibition orders are made under section 196(4)(b) only in the most serious cases, usually where practitioners have engaged in serious conduct, which may include sexual boundary violations, criminal offences or professional incompetence resulting in serious harm or death of a patient. A prohibition order is made by the responsible tribunal in each jurisdiction and it is expected that a person will comply with the order.

Contravening a prohibition order is considered a very serious offence. The penalty was set at $30,000 to be equivalent to the highest maximum penalties for the most serious offences in the National Law, such as using a restricted title (section 113), holding out to be a registered health practitioner (section 116) or undertaking restricted practices (sections 121, 122 and 123).

Clause 72 also contains in section 196A(2) conditions that a person who is the subject of a prohibition order must meet before providing health services or advertising a health service. A penalty for this section is also included: $5,000 for an individual or $10,000 for a body corporate.

Clause 73 – Section 199 amended

Clause 73 amends section 199 to provide that if a health panel reconsiders a suspension of registration, a decision by the health panel not to revoke the suspension is subject to appeal to the appropriate responsible tribunal.

If a further health assessment is needed before reconsidering a suspension, the National Board would be able to rely on its existing power under section 169 to require a health practitioner or student to undergo a health assessment.

Clause 74 – Section 206 amended

Clause 74 amends section 206 and is related to the amendments to section 132. The amendments in this clause ensure that where health, conduct or performance action is being taken against a health practitioner, a National Board is able to inform all places at which the person practices.

The amendment to section 206 makes it clear that a National Board is able to inform a place of practice regardless of whether it was notified of the place of practice by the practitioner or the Board became aware of a person's place of practice through other means.

If practice information given to a Board under section 132, or information of which the Board becomes aware, is information referred to in section 132(4)(c) or (d) (that is, it relates to a contract of employment, contract for services, an arrangement or agreement with an entity or a voluntary or honorary appointment), then the National Board must inform the employer or other entity, of health, conduct or performance action being taken against a health practitioner.

If practice information given to a Board under section 132 is information referred to in section 132(4)(a) (that is, it relates to a self-employed practitioner who shares premises with other registered health practitioners and shares the costs of the premises), then the National Board has a discretion whether to inform the other practitioners of health, conduct or performance action being taken against a health practitioner. Depending on the risks to the public, the circumstances of the case and the particular arrangements of the practice, it may or may not be appropriate to notify other health practitioners working at the same premises

Clause 75 – Part 10 Division 1A inserted

Division 1A – Australian Information Commissioner

212A. Application of Commonwealth AIC Act

Clause 75 inserts a new Part 10, Division 1A. This amendment is a consequential amendment as a result of the *Australian Information Commissioner Act 2010* (Cth) (AIC Act) and *Freedom of Information Amendment (Reform) Act 2010* (Cth) (FOI Reform Act).

Appendix 11 of the report of the Independent Review states: "*Subsequent to the commencement of the National Scheme, the Commonwealth enacted legislation to reform the Commonwealth freedom of information arrangements. The legislative amendments commenced on 1 November 2010. The legislation includes the enactment of the Australian Information Commissioner Act 2010 which, among other things, establishes the positions of Information Commissioner and Freedom of Information Commissioner.*"

"The National Law is to be amended to adopt the reformed Commonwealth legislation under the National Scheme. This requires an amendment to the existing provisions in relation to the Privacy Act by removing reference to the Office of the Privacy Commissioner and the Privacy Commissioner, which are no longer established under that Act. An equivalent provision to those currently in place in relation to the Privacy Act, FOI Act and Ombudsman Act are also required in the National Law for the Australian Information Commissioner Act."

This clause applies the AIC Act to the National Scheme and makes related technical amendments. The clause provides that for the purposes of applying the AIC Act:

- a reference to the "*Office of the Australian Information Commissioner*" should be taken to be a reference to the "*Office of the National Health Practitioner Privacy Commissioner",* and
- a reference to the "*Information Commissioner*" (as defined in section 3A of the AIC Act) should be taken to be a reference to the "*National Health Practitioner Privacy Commissioner".*

The clause also includes sections 212A(2)(c) and (3) which are similar to sections 213(2)(c) and (3) and 215(2) and (3). These sections provide that modifications may be made to the AIC Act by a regulation made under the National Law.

Clause 76 – Section 213 amended

Clause 76 (1) makes consequential amendments to section 213(2) as a result of the AIC Act. The Privacy Act 1988 (Cth) and AIC Act no longer refer to the "*Privacy Commissioner" b*ut now refer only to the "*Commissioner"* as defined in section 3A of the AIC Act.

Currently, section 213(2) refers to the '*National Health Practitioners Privacy Commissioner'.* For alignment with the name of the National Law and the Australian Health Practitioner Regulation Agency (AHPRA), as well as to recognise that it is not the Privacy Commissioner for health practitioners, but rather for the National Scheme, this clause makes a minor amendment to change the references to '*National Health Practitioners Privacy Commissioner'* to '*National Health Practitioner Privacy Commissioner'.*

Clause 76(2) makes a minor drafting amendment reflect the correct paragraph in section 213(3).

Clause 77 – Section 215 amended

Clause 77 makes consequential amendments to section 215 as a result of the AIC Act and FOI Reform Act.

The FOI Reform Act amended the *Freedom of Information Act 1982* and *Privacy Act 1988* (Cth). The amendments made by the FOI Reform Act currently do not apply to the National Law because sections 12 and 18 of the *Health Practitioner Regulation National Law Regulation* provide that they do not apply.

After the amendments commence in the National Law the change will provide for the application of the AIC Act and FOI Reform Act, it is planned that sections 12 and 18 of the *Health Practitioner Regulation National Law Regulation* will be removed. This will mean that the FOI Reform Act will apply to the National Scheme.

The most significant consequence of the FOI Reform Act applying to the National Scheme will be that the National Health Practitioner Ombudsman and Privacy Commissioner will take on a new role of undertaking external, merits review of FOI decisions made by AHPRA.

Consequential amendments will also be required to the *Health Practitioner Regulation National Law Regulation* to ensure that the AIC Act and FOI Reform Act apply appropriately to the National Scheme. Subject to passage of this Bill, these consequential changes will be made after this Bill is passed.

Clause 78 – Section 217 amended

Clause 78 amends section 217(2) as a consequence of the amendments to section 31 which provides for National Boards in the National Law, the amendments contemplate that a National Board may be established for two or more health professions.

Clause 79 – Section 222 replaced

222. Public national registers

Clause 79 replaces section 222. Section 222 currently sets out which National Board keeps each public national register of practitioners registered by the Board. As a consequence of the amendments being made to section 31, which provides for National Boards to be provided for in regulations, an amendment to section 222 is also required to provide that the Board which keeps each register must be prescribed in regulations.

However, the remainder of section 222, including the names of each of the public national registers and their divisions are retained in section 222.

There are no current proposals to change the structure of National Boards. Similarly, there are no current proposals to change the arrangements for the keeping of national registers by each National Board.

This clause also makes minor amendments to section 222 to provide that the registers should include details of persons subject to prohibition orders. Further details regarding this aspect are provided below in the entry for amendments to section 227.

Clause 80 – Section 222 amended

Clause 80 amends section 222 to include the Register of Paramedics in the table of public national registers. This amendment is made separately as it will need to commence on the '*participation day'* for the inclusion of paramedics in the National Scheme. '*Participation day'* is defined in clause 88.

Clause 81 – Section 223 amended

Clause 81 amends section 223 to provide that the specialists' registers should include details of persons subject to prohibition orders or whose registration has been cancelled by an adjudication body. Further details about this are provided below in clause 83.

Clause 82 – Section 226 amended

Clause 82 makes minor consequential amendments to section 226 to reflect the changes made to section 31 for National Boards.

Clause 83 – Section 227 replaced

227. Register about former registered health practitioners

Clause 83 amends section 227 to require the public registers kept by National Boards under section 222 and 223 to include a copy of a prohibition order for each person subject to such an order. Currently, the National Law does not require or empower National Boards to keep a register of prohibition orders issued under section 196(4)(b). This amendment and related amendments to sections 222 and 223 ensure that National Boards can keep registers of prohibition orders.

This will protect the public by ensuring they have access to information about persons who are subject to prohibition orders and ensure accountability of those persons who have had a prohibition order made against them.

Clause 84 – Section 232 amended

Clause 84 amends section 232(1)(b) as a result of the amendments to section 31, which contemplate that a National Board may be established for two or more health professions. The Ministerial Council approved changes being made to the structure of National Boards by regulations. However, no change to the structure of National Boards is proposed at this time. Therefore, references to "*the Board"* require amendment to reflect "*in a health profession for which the Board is established."*

Clause 85 – Section 233 amended

Clause 85 amends section 233(1)(a) as a result of the amendments to section 31, which contemplate that a National Board may be established for two or more health professions. The Ministerial Council approved changes being made to the structure of National Boards by regulations. However, no change to the structure of National Boards is proposed at this time. Therefore, references to "*the health profession"* require amendment to "*a health profession".*

Clause 86 – Section 235 amended

Clause 86 amends section 235(2)(a), this is a minor drafting amendment to remove an "s" from the word practitioner.

Clause 87 – Section 284 amended

Clause 87 amends section 284(5). This is a consequential amendment as a result of the recognition of the two separate professions and that midwives are registered by the National Board for midwifery. Private midwifery does not include nursing and the reference to nursing is therefore removed.

This change is needed as a result of the amendments to section 31 which require that National Boards for each health profession are dealt with in the regulations.

Clause 88 – Part 13 Division 1 inserted

Part 13 – Transitional and other provisions for *Health Practitioner Regulation National Law (WA) Amendment Act 2017*

Division 1 – Paramedicine Board and registration of paramedics

Clause 88 inserts a new Part 13. Division 1 of Part 13 is titled "Paramedicine Board and registration of paramedics" which:

- establishes the Paramedicine Board of Australia (Paramedicine Board)
- provides powers and functions of the Paramedicine Board until the participation day, and
- provides for a number of transitional and other matters for the health profession of paramedicine.

Clause 88 includes a new section 306 Definitions

In its Communique of 8 April 2016, the COAG Health Council announced its intention that national registration for paramedics would commence in the second half of 2018. The "*participation day*", which is defined in section 306, will be prescribed in a regulation made under the National Law once there is sufficient certainty about the proposed date on which paramedics are to be registered. This date will be decided by the Ministerial Council in conjunction with the Paramedicine Board and AHPRA.

At the same time as the participation day is prescribed, it is proposed that an amendment will be made to the regulations to continue the "*Paramedicine Board of Australia"* under the regulations as a National Board. This will also apply to all other National Boards, which are being prescribed in the regulations under section 31.

When the Paramedicine Board is prescribed in the regulations; the Paramedicine Board will have all the powers of a National Board under the National Law on the date prescribed as the participation day. Similarly, all provisions of the National Law applying to National Boards will apply to the Paramedicine Board. Until the participation day, the functions and powers of the Paramedicine Board will be governed by the provisions in clause 88 of the Bill (Part 13, Division 1).

In practice, the '*participation day'* is planned to be the date on which registration for paramedics will commence or 'go live'. The Bill sets out the functions of the Paramedicine Board until the 'participation day'

Clause 88 inserts a new section 307 to establish the Paramedicine Board of Australia for the health profession of paramedicine. This is the same as all other National Boards under the National Law, this new section provides that the Board is a body corporate with perpetual succession, has a common seal, may sue and be sued in its corporate name and the Board represents the State. These matters are currently provided for in section 31(2) and (3) of the National Law for other National Boards.

The new section provides that it applies until the Paramedicine Board is continued in force by a regulation made under section 31. As outlined above, this regulation is expected to be made at the same time as the regulation to prescribe the participation day that registration of paramedics commences.

Clause 88 inserts a new section 308 to provide that sections 32, 33, 34, 37, 40, 234 and Schedule 4 of the National Law apply to the Paramedicine Board until the participation day.

These provisions deal with:

- section 32 – powers of National Boards
- section 33 – membership of National Boards
- section 34 – eligibility for appointment to National Boards
- section 37 – delegation of functions by National Boards
- section 40 – consultation about registration standards, codes and guidelines
- section 234 – general duties of persons exercising functions under this Law
- schedule 4 – constitution, functions and powers, and procedures of National Boards.

Additionally, section 308 provides that, despite section 34, the COAG Health Council may appoint practitioner members to the Board who the Council is satisfied have skills and experience in paramedicine relevant to the Board's functions. This clause is required because paramedics will not be registered until after the participation day, which means that upon establishment of the Board, there will be no registered paramedics to appoint as practitioner members.

A WA health practitioner member (paramedic) will be appointed to the Paramedicine Board of Australia. WA is a large participating jurisdiction and is therefore entitled to have a representative on the Board.

Clause 88 sets out in section 308 the other functions of the Paramedicine Board until the participation day. As outlined above, after the participation day, the Paramedicine Board will have all of the functions and powers of a National Board, once it is prescribed in regulations.

Subject to passage of the Bill, the members of the Paramedicine Board will be appointed as soon as possible to enable the Board to work with AHPRA to prepare the profession for national regulation. During this period, the Board must develop mandated registration standards to recommend to the COAG Health Council for approval (see sections 12 and 38 of the National Law and clause 88, new section 308(3)(a)).

The registration standards set requirements for professional indemnity insurance arrangements, criminal history of applicants, continuing professional development, English language skills and recency of practice. It is expected that other registration standards and codes may also need to be developed, for example, to support the transition of the existing paramedic workforce into the scheme and set requirements for professional conduct.

In order to ensure a smooth transition, the Bill gives the Board the necessary functions and powers during the period leading up to the *'participation day'*, including developing and consulting on draft registration standards, codes and guidelines, recognising qualifications for registration, and considering national accreditation arrangements for the profession (see clause 88, new sections 308 to 311).

Clause 88 inserts a new section 309. The Paramedicine Board is established under section 307. As such, it does not fall within the definition of "*National Board*" in section 5. For this reason, section 309 provides that the Paramedicine Board is taken to be a National Board for certain provisions of the National Law. This will ensure, for example, that the Ministerial Council and AHPRA may treat the Paramedicine Board as a National Board for the purposes of their powers.

Clause 88 inserts a new section 310 to provide for the Paramedicine Board to approve, or refuse to approve, a Council of Ambulance Authorities (CAA) accredited program of study as providing a qualification for the purposes of registration in paramedicine until the relevant day. An approval of a program of study under section 310(1):

- may be granted subject to the conditions the Paramedicine Board considers necessary or desirable in the circumstances, and

- does not take effect until the program is included in the list published under section 310(3).

A "*CAA accredited program of study*" means a program of study accredited by the Council of Ambulance Authorities Inc. and published on the Council's website:

- Immediately before the commencement, or
- Between the commencement and the participation day.

A '*program of study'* approved by a National Board under section 49(1) is defined as an 'approved program of study' under section 5 of the National Law. An '*approved qualification*' is defined in section 5 as a qualification obtained by completing an '*approved program of study'*. As outlined above, an individual who holds an '*approved qualification'* is qualified for general registration in a health profession under section 53(a).

It is expected that one of the first matters to be decided by the Paramedicine Board, after it is established, will be the appointment of an accreditation authority under section 43. The accreditation authority will be tasked with developing accreditation standards and following the accreditation process in Part 6.

However, based on experience with the entry of four additional health professions to the National Scheme in 2012 (Aboriginal and Torres Strait Islander health practice, Chinese medicine, medical radiation practice and occupational therapy), it is expected that the accreditation process provided for in Part 6 will take approximately two to three years to be completed. This means it will not be possible to complete the accreditation process before the '*participation day'*.

In order to ensure that the Paramedicine Board can approve programs of study before the full accreditation process has been completed, a transitional provision has been included in the Bill (see clause 88, new section 310). This transitional provision allows the Paramedicine Board to approve, or refuse to approve, programs of study as providing a qualification for registration in paramedicine, based on the programs of study accredited by the Council of Ambulance Authorities Inc (CAA) prior to the commencement of the Bill, or between commencement and the 'participation day'.

The CAA is the current accrediting body for programs of study for paramedicine and its membership includes the ambulance authorities of each State and Territory.

A '*program of study'* approved by the Paramedicine Board under new section 310 is taken to be an '*approved program of study'* for the National Law (see section 310(4)). Under the definition of '*approved qualification'*, such a qualification is obtained by completing an '*approved program of study'*. This means that a person who completes or has completed a program of study approved by the Paramedicine Board under section 310 will be qualified for general registration under section 53(a), because they hold an 'approved qualification'.

Clause 88 inserts a new section 311 to provide for a grandfather provision for qualifications for the existing paramedic workforce to enable them to obtain registration under the National Scheme, for a period of three years from the participation day. Section 312, outlined below, deals with practitioners who hold a Diploma of Paramedical Science issued by the Ambulance Service of New South Wales.

Section 311 provides that an individual who applies for registration in paramedicine before the "*relevant day*" (a defined term meaning the period of three years from the participation day) is qualified for general registration in paramedicine if the individual:

- holds a qualification or has completed training in paramedicine, whether in a participating jurisdiction or elsewhere, that the Paramedicine Board considers is adequate for the purposes of practising the profession
- holds a qualification or has completed training in paramedicine, whether in a participating jurisdiction or elsewhere, and has completed any further study, training or supervised practice in the profession required by the Paramedicine Board for the purposes of this section, or
- has practised paramedicine during the 10 years before the participation day for a consecutive period of five years or for any periods which together amount to five years and satisfies the Paramedicine Board that he or she is competent to practise paramedicine.

Once established, the Paramedicine Board will need to decide the qualifications which are adequate for obtaining registration under this grandfather provision.

This provision will apply despite section 53 of the National Law.

It is important to note that all of the other eligibility requirements for registration, set out in section 52 of the National Law will apply to people seeking registration under the grandfather provisions.

Clause 88 inserts new section 312. On 7 October 2016, the COAG Health Council agreed to "*include a provision in the National Law which specifies that despite section 53 (which sets out the qualifications required for general registration), a person is qualified for general registration if they hold the Ambulance Service of New South Wales paramedic qualification*".

Section 312 of the Bill implements this decision and provides an individual is qualified for general registration in paramedicine for the purposes of section 52(1)(a) if they hold a Diploma of Paramedical Science, Diploma of Paramedical Science (Ambulance), Advanced Diploma of Paramedical Science (Ambulance), Diploma in Paramedical Science (Pre-Hospital Care) or Advanced Diploma Paramedical Sciences (Pre-Hospital Care) issued by the Ambulance Service of New South Wales. This provision does not have an expiry date.

The new section will also apply if the name of the Diploma of Paramedical Science is changed in future or if the qualification is delivered by another training entity in place of the Ambulance Service of New South Wales. The Bill achieves this by stating the Diploma of Paramedical Science includes a qualification that replaces the existing diploma and is prescribed by regulation and is issued by the Ambulance Service of New South Wales. The Ambulance Service of New South Wales is defined in the new section 306.

Section 312 applies despite section 53 of the National Law.

Section 53(b) of the National Law provides that an individual is qualified for general registration in a health profession if the individual holds a qualification a National

Board considers to be substantially equivalent to, or based on similar competencies as, an "*approved qualification*". The Bill declares that section 312 does not make a Diploma of Paramedical Science issued by the Ambulance Service of New South Wales an "*approved qualification*" for section 53(b).

The Paramedicine Board will decide what qualifications are "*approved qualifications*" for section 53(a) and (b) after it is established. A person will only be qualified for general registration in paramedicine under section 53(b) if they hold a qualification which is substantially equivalent to or based on similar competencies as, an "approved qualification" decided by the Board.

Section 312 does not provide grounds for an individual to be qualified for general registration in paramedicine if they hold a qualification which is substantially equivalent to or based on similar competencies as, the Diploma of Paramedical Science issued by the Ambulance Service of New South Wales.

Clause 88 inserts a new section 313 to provide that a Diploma of Paramedical Science issued by the Ambulance Service of New South Wales is taken to be an approved program of study for part 7, division 7, subdivisions 1 and 3. This will ensure, for example, that details of students enrolled in the Diploma of Paramedical Science issued by the Ambulance of New South Wales can be obtained under section 88 of the National Law and those students can be registered under section 89.

Clause 88 inserts a new section 314 to provide that an individual may apply to the Paramedicine Board for registration in paramedicine before the participation day and after the day decided by the Board under section 308(3)(c).

If the Paramedicine Board grants an application for registration under part 7 before the participation day, the registration period does not start until the participation day and may be for a period of up to two years. Section 314 applies despite section 56.

The power to allow the first registration to be for a period more than 12 months is to ensure that registrants can be placed on the correct registration *"cycle*" to ensure that their registration is aligned to a common registration date with other registrants.

Clause 88 inserts a new section 315. It is expected that the vast majority of applications for registration of paramedics will be decided by the participation day. However, experience in registering the fourteen health professions has demonstrated that there may be some late applications from applicants applying for registration. This may result in all of the applications not being processed and decided by the participation day.

To deal with this situation, the Bill includes section 315 which provides that if a person has applied to the Paramedicine Board for registration before the participation day, but the Board has not decided the application by the participation day, the applicant does not commit an offence against section 113 or 116 while the application is being decided. That is, the person can take and use the title 'paramedic' and hold themselves out as a paramedic while the application is being decided.

Under section 85, if a National Board does not make a decision about an application for registration within 90 days after the application is received, the Board is taken to refuse the application. This means that section 315 can only apply for a maximum period of 90 days.

Clause 88 inserts a new section 316 to provide a 90 day "*transitional period*" from the participation day during which an individual who is eligible for registration in paramedicine does not commit an offence against section 113 or 116 by taking or using the title 'paramedic' or holding themselves out as a paramedic.

The effect of this provision is that if an eligible paramedic submits a late application, the applicant can be assured that no enforcement action can be taken against them provided they submitted their application within 90 days after the participation day.

AHPRA's practical experience of registering other professions is that no matter how effective the communication strategy is for members of the profession, there will always be a small number of applicants who submit late applications. This provision is intended to provide certainty for both AHPRA and the practitioner about possible enforcement action during the transitional period.

Clause 88 inserts a new section 317 that if the Bill is passed by the Queensland Parliament, the changes will apply automatically in all other States and Territories, except for Western Australia which must pass its own separate legislation, and South Australia where regulations must be made to adopt the changes.

It is possible that Western Australia may not have passed its own separate legislation and South Australia may not have had the regulations adopted by the participation day.

If this occurs, a Western Australian or South Australian paramedic who operates across State borders or who is assisting with an emergency in another State or Territory would commit an offence against the holding out and protection of title provisions of the National Law if they took or used the title "*paramedic*" or held themselves out as a paramedic in another State or Territory.

To address this possibility, the Bill includes section 317 which applies to an individual who:

- Usually practices paramedicine in a participating jurisdiction that has not enacted provisions about paramedicine similar to the Bill.
- Temporarily takes or uses a title or does anything else relating to paramedicine in another jurisdiction that would contravene section 113 or 116
- Complies with any regulation made under the National Law about temporarily taking or using a title or doing anything else relating to paramedicine in another jurisdiction.

If the person complies with the requirements of any regulation made under the National Law, the person would not commit an offence against section 113 or 116. A regulation would be made if this situation arises, which would specify operational matters, such as ensuring that paramedics who are practising in another jurisdiction

are identified and approved to practice in the other jurisdiction under appropriate operational arrangements.

Clause 89 – Part 13 Division 2 inserted

Division 2 – Other transitional provisions

321. Offences relating to prohibition orders made before commencement

Clause 89 inserts a new section 321, which confirms that section 196A applies to a prohibition order made before the commencement. Prohibition orders are made by responsible tribunals (in WA the responsible tribunal is the State Administrative Tribunal) and are expected to be complied with. Although section 196A will apply to prohibition orders made before the commencement, the offence in section 196A will only apply to conduct that contravenes a prohibition order after the commencement.

Clause 90 – Sections 318 to 320 inserted

318. Deciding review period for decision on application made under section 125 before commencement

Clause 90 inserts a new section 318, which applies if before the commencement, a registered health practitioner or student applied to a National Board under section 125 of the National Law to change or remove a condition or change or revoke an undertaking.

If the application had not been decided by the Board immediately before commencement and after the commencement, the Board's decision results in a registration or endorsement being subject to a condition, or an undertaking is still in place, then the National Board may decide a review period for the condition or undertaking under section 125(6) and give the registered health practitioner or student notice under section 125(6A).

319. Deciding review period for decision after notice given under section 126 before commencement

Clause 90 inserts new section 319, which applies if before the commencement, a National Board had given notice to a registered health practitioner or student under section 126 of the National Law about changing a condition on the practitioner's or student's registration.

If immediately before commencement, the Board had not made a decision in relation to the matter and after commencement, the Board's decision results in the practitioner's or student's registration being subject to a condition, then the National Board may decide a review period for the condition under section 126(6) and give the registered health practitioner or student notice under section 126(6A).

320. Membership of continued National Boards

Clause 90 inserts a new section 320 to apply if a person holds office as a member of a National Board immediately before the commencement and the Board is continued in force after the commencement by a regulation made under section 31.

Section 320 confirms the person continues to hold office as a member of the continued Board after commencement of the Bill on the terms and conditions that applied to the person's appointment before commencement and until the office of the member becomes vacant under the National Law. Section 320 also confirms that a person who is Chairperson of a National Board immediately before the commencement continues to hold office as Chairperson of the continued Board after the commencement.

If the process for appointing a person as a member of a National Board is started but not completed before the commencement, section 320 confirms that the process may continue after commencement and the person may be appointed as a member of the continued Board.

Clause 91 – Sections 322 and 323 inserted

322. Register to include prohibition orders made before commencement

Clause 91 inserts a new section 322, which confirms that a National Board may record the names of persons subject to a prohibition order made before the commencement in the register. Similarly, a National Board may also include copies of prohibition orders made before the commencement in the register. This is to ensure that relevant up to date information is available on the register.

323. Public national registers

Clause 91 inserts a new section 323, which confirms that a register kept under section 222 or 223 immediately before the commencement continues and is the register that must be kept for the health profession immediately after the commencement.

NB: In WA, the National Law appears as a Schedule and additional Schedules are amended by these clauses.

Clause 92 – Schedule 2 clause 4 amended

Clause 92 amends Schedule 2 in clause 4 which relates to the Agency Management Committee and makes a minor consequential amendment to Schedule 2 as a result of the amendments to section 31. The amendment clarifies that a member of the Agency Management Committee can be removed from office if they are registered in more than one health profession and cease to be registered in either or any of the health professions based on the member's misconduct, impairment or incompetence.

Clause 93 – Schedule 4 clause 2 amended

Clause 93 makes a minor drafting amendment to Schedule 4, clause 2.

Clause 93 makes minor consequential amendments to Schedule 4, clause 4 in relation to National Boards as a result of the amendments to section 31.

Clause 2 of Schedule 4 deals with the term of office of members of National Boards. It currently provides that a member holds office for the period not exceeding three years stated in their instrument of appointment.

The amendments to section 31 give the COAG Health Council the power to dissolve a Board for a health profession if another Board is established for that health profession (for example, the newly established Board may be for more than one health profession). In such a case, the membership of the Board would need to be reconsidered. To allow for this, the Bill amends clause 2 of schedule 4 to provide that a Board member's term of office ends if the National Board is dissolved by regulations made under section 31.

Clause 94 – Schedule 4 clause 4 amended

Clause 4(2)(b) of Schedule 4 provides that the Chairperson of the COAG Health Council may remove a Board member from office if the member ceases to be a registered health practitioner as a result of the member's misconduct, impairment or incompetence. The Bill amends this clause to provide that if a Board member ceases to be a registered health practitioner in any health profession in which they are registered due to misconduct, impairment or incompetence, they may be removed from office by the Chairperson of the Ministerial Council.

Clause 95 – Schedule 4 clause 10 amended

Clause 95 amends Schedule 4, clause 10 as a result of the amendments to section 31 of the National Law, which contemplates that a National Board may be established for two or more health professions. The Ministerial Council approved changes being made to the structure of National Boards by regulations. However, no change to the structure of National Boards is proposed at this time. Therefore, references to *"the health profession*" require amendment to "*a health profession*".

Clause 96 – Schedule 4 clause 11 amended

Clause 96 amends Schedule 4, clause 11. See explanation above in Clause 95.

Clause 97 – Various penalties amended

This is a minor amendment to reflect current WA drafting practices to each of the subsections and Schedules listed in the table.

Part 3 – Consequential amendments to other Acts

Clause 98 – *Blood Donation (Limitation of Liability) Act 1985* amended

Clause 98 deletes the term midwifery in section 11(1) (e) as the paragraph relates to registered nurses only not midwives and is a consequence of the recognition of nursing and midwifery as separate professions.

Clause 99 – *Children and Community Services Act 2004* amended

Clause 99 amends section 124A in the terms used

In the definition of midwife the reference is amended to reflect that a midwife is registered in the midwifery profession and is a consequence of the recognition of nursing and midwifery as separate professions.

This is a similar amendment to the above and is applicable to the definition of nurse registered in the nursing profession.

Clause 100 – *Civil Liability Act 2002* amended

The amendments are minor in nature.

It is proposed to remove any doubt in the future in relation to the definition of medical qualifications and the application of Part 1D to good Samaritans.

An amendment is included in clause 100 to section 5AB in the definition of medical qualifications. This means that in section 5AB in paragraph (a) that the definition of medical qualifications will cover an individual who is registered under the *Health Practitioner Regulation National Law (Western Australia*) in any of the health professions. This definition will apply to for example, midwifery, nursing, paramedicine or Aboriginal and Torres Strait Islander health practice to name a few of the fourteen health professions.

In paragraph (c) the term "paramedic" has been removed. This is because paramedics will be registered under the *Health Practitioner Regulation National Law (Western Australia)* on participation day. Participation day is to be decided by the Paramedicine Board of Australia and will be prescribed in the regulations.

Clause 100 amends section 5PA in the definition of health profession by separating the reference to nursing and midwifery in recognition of the two health professions.

The word paramedicine is inserted due to the inclusion of paramedics in the National Scheme and the health profession is paramedicine.

Clause 101 – *Constitution Acts Amendment Act 1899* amended

Clause 101 amends Schedule V of the Act. Schedule V lists bodies that must be vacated on election. The Health Practitioner National Boards are listed by title. To avoid any uncertainty due to the changes being made to section 31 to provide in part for Health Practitioner National Boards by regulation, a generic definition has been included to provide that the boards are established under the *Health Practitioner Regulation National Law (Western Australia).*

This will also alleviate the need for the requirements set out under section 42 of the Act that amendments to Schedule V are made by Order in Council by the Governor and can only be made if the making of that Order has been recommended by resolution passed by both Houses of the Legislature.

Clause 102 – *Corruption, Crime and Misconduct Act 2003* amended

Clause 102 amends section 54(1) in the definition of registered nurse by deleting the term "midwifery". This is a consequence of the recognition of the two health professions as separate health professions. There is no material change to the structure of the National Board or health professions.

Clause 103 – *Court Security and Custodial Services Act 1999* amended

Clause 103 amends section 3 in the definition of nurse to delete the term "midwifery". This is a consequence of the recognition of the two health professions as separate health professions. There is no material change to the structure of the National Board or health professions.

Clause 104 – *Criminal Investigation (Identifying People) Act 2002* amended

Clause 104 amends the definition of nurse in section 52 to delete the term "midwifery". This is a consequence of the recognition of the two health professions as separate health professions. There is no material change to the structure of the National Board or health professions.

Clause 105 – *Criminal Investigation Act 2006* amended

Clause 105 amends the definition of midwife in section 73 to reflect that a midwife is registered in the midwifery profession and is a consequence of the recognition of nursing and midwifery as separate professions. The amendments are in keeping with current drafting practices.

Similarly, the definition of nurse in section 73 is also amended to delete the term "midwifery" on the basis of the information provided above.

Clause 106 – *Declared Places (Mentally Impaired Accused) Act 2015* amended

Clause 106 amends section 25 in the definition of nurse to update the references to reflect the provisions for a nurse practitioner and registered nurse.

Clause 107 – *Firearms Act 1973* amended

Clause 107 amends the definition of nurse in section 23B(3) to delete the term "midwifery". This is a consequence of the recognition of the two health professions as separate health professions. There is no material change to the structure of the National Board or health professions.

Clause 108 – *Health (Miscellaneous Provisions) Act 1911* amended

Clause 108 amends the definition of midwife in section 3(1) to reflect that a midwife is registered in the midwifery profession and is a consequence of the recognition of nursing and midwifery as separate professions. The amendments are in keeping with current drafting practices

Similarly, the definition of nurse in section 3(1) is also amended to delete the term "midwifery" on the basis of the information provided above.

Additionally, the definition of nurse practitioner has also been amended in section 3(1) to reflect the terminology used in the *Health Practitioner Regulation National Law (Western Australia)* of endorsement.

Clause 109 – *Health and Disability Services (Complaints) Act 1995* amended

Clause 109 amends section 3(1) in the definition of registration board to provide that a National Health Practitioner Board is established under the *Health Practitioner Regulation National Law (Western Australia).* Schedule 1 is deleted. Schedule 1 lists the title of each National Health Practitioner Board. This will ensure that the reference remains up to date due to amendments made to section 31 in the *Health Practitioner Regulation National Law (Western Australia).*

Clause 110 – *Mandatory Testing (Infectious Diseases) Act 2014* amended

Clause 110 amends the definition of nurse in section 4 to delete the term "midwifery". This is a consequence of the recognition of the two health professions as separate health professions. There is no material change to the structure of the National Board or health professions

Clause 111 – *Mental Health Act 2014* amended

Clause 111 amends the definition of nurse in section 4 to delete the term "midwifery". This is a consequence of the recognition of the two health professions as separate health professions. There is no material change to the structure of the National Board or health professions

Clause 112 – *Oaths, Affidavits and Statutory Declarations Act 2005* amended

Clause 112 amends Schedule 2 by:

- inserting a definition for midwife
- deleting the term of midwifery from the reference to nurse in item 27
- including a definition for paramedic in item 28A

The amendments above reflect the recognition of nursing and midwifery as two separate provisions and the inclusion of paramedics in the National Scheme. The paramedicine profession is the health profession.

Clause 113 – *Prostitution Act 2000* amended

Clause 113 amends the definition of registered nurse in section 29(7) to delete the term "midwifery". This is a consequence of the recognition of the two health professions as separate health professions. There is no material change to the structure of the National Board or health professions.

Clause 114 – *Public Health Act 2016* amended

Clause 114 amends the definition of midwife in section 4(1) to reflect that a midwife is registered in the midwifery profession and is a consequence of the recognition of nursing and midwifery as separate professions. The amendments are in keeping with current drafting practices

Similarly, the definition of nurse in section 4(1) is also amended to delete the term "midwifery" on the basis of the information provided above.

Additionally, the definition of nurse practitioner has also been amended in section 4(1) to reflect the terminology used in the Health Practitioner Regulation National Law (Western Australia) of endorsement.

Clause 115 – *Radiation Safety Act 1975* amended

Clause 115 amends section 26(2)(a) to streamline the provision in relation to a nurse practitioner. A new section 26(2B) is inserted to define a nurse practitioner using the terminology in the *Health Practitioner Regulation National Law (Western Australia).* There is no material difference to provision.

Clause 116 – *Rail Safety National Law (WA) Act 2015* amended

Clause 116 amends section 9(1) in the definition of registered nurse to delete the term “midwifery”. The amendment is in recognition of nursing and midwifery as two separate health professions.

In the Schedule, Section 248(3) is also amended to reflect that the section applies to the nursing profession only.

Clause 117 – *Road Traffic Act 1974* amended

Clause 117 amends section 65 in the definition of nurse practitioner to reflect the terminology used in the *Health Practitioner Regulation National Law (Western Australia)* of endorsement.

Additionally the definition of registered nurse is also amended to delete the term midwifery in recognition of the nursing and midwifery profession as two separate health professions.