



## Changes to the regulation of health practitioners

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Earlier in 2022, the *Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022* was introduced into the Queensland Parliament. The aim of the Bill was to implement a range of reforms to improve the regulation of Australia's health professions, including:

- strengthening public safety and confidence in the health services;
- improve governance of the National Scheme; and
- enhancing the effectiveness of the National Scheme.

On 21 October 2022, the [Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022](#) (the Act) was given assent. The Act amends the *Health Practitioner Regulation National Law* (National Law) and also makes related amendments to the *Health Ombudsman Act 2013*.

Some of the relevant changes are outlined below.

### The National Law

Australia's National Scheme for health professions commenced in 2010 with the adoption of the National Law by all participating jurisdictions. Queensland is the host jurisdiction for the National Law. The National Law is not a law of the Commonwealth however, States and Territories implement similar or parallel legislation to achieve the common purpose.

# Co-regulatory arrangements

Queensland is a co-regulatory jurisdiction under the National Law.

There are 16 National Boards who are the principal regulatory decision-makers for each registered health profession.

Queensland's co-regulatory model means there are two entities:

1. the Office of the Health Ombudsman (OHO); and
2. the Australian Health Practitioner Regulation Agency (AHPRA),

that deal with notifications about a registered health practitioner's health, conduct or performance. These notifications are referred to as 'complaints' under the *Health Ombudsman Act*.

AHPRA supports the National Boards, of which there are 16 (such as the Medical Board, Nursing and Midwifery Board and Psychologist Board).

Under the *Health Ombudsman Act*, the OHO has primary responsibility for managing complaints about registered health practitioners. The OHO also regulates unregistered health practitioners, such as speech pathologists, massage therapists and naturopaths.

Notifications about registered health practitioners are made to OHO, and in appropriate circumstances, OHO may refer matters to the National Agency.

The National Agency deals with matters involving a practitioner's health and with less serious conduct and performance issues, while OHO retains responsibility for investigating and prosecuting the most serious allegations of misconduct.

## Paramount principles

Under the National Law, there are guiding principles and objectives, which guide all regulatory decision-making. The Act introduces (for Qld), a new paramount principle, making protection of public confidence in the safety of services provided by registered health practitioners and students, a further paramount consideration.

## Public statements

The Act empowers AHPRA and the Health Ombudsman to issue public statements about persons, including registered practitioners, who are the subject of investigations or disciplinary proceedings, and whose conduct poses a serious risk to public health and safety.

Whilst the decision to issue a public statement will be subject to a show cause process and subsequently an appeal to a relevant tribunal, it is alarming that such public statements can be made prior to an investigation concluding and when a person is only

subject to a complaint. It raises concerns about the possible irrevocable reputational damage that may be caused to a practitioner, especially if the allegations are later found to be unsubstantiated.

## Penalties

The Act increases the maximum penalties applicable for both advertising and inciting offences under the National Law.

The maximum penalty for breaching advertising restrictions will be raised from \$5,000 for an individual and \$10,000 for a body corporate to \$60,000 for an individual and \$120,000 for a body corporate. The maximum penalty for direct and incite offences will also be increased from \$30,000 for an individual and \$60,000 for a body corporate to \$60,000 for an individual and \$120,000 for a body corporate.

These reforms are directed at deterring unscrupulous practices.

Additionally, the Act increases the penalties under the *Health Ombudsman Act* for contravening an Interim Prohibition Order (IPO) and Prohibition Order. The penalties are raised from 200 penalty units to 450 penalty units or three years imprisonment.

## Disclosure of information

National Boards have the power to require a registered health practitioner to provide information about their current employment and practice arrangements.

That power has been extended to allow the National Boards to request information about former practice arrangements including entities that previously had an employment or other practice arrangement with the practitioner, and other registered health practitioners with whom they previously shared premises and the costs of premises.

The National Board may then notify these persons if action is being taken against a registered practitioner. The power to notify affected persons is discretionary and available only if the Board reasonably believes the practitioner's conduct posed a risk of harm at the time of the prior employment, practice arrangement, or sharing of premises.

Similar amendments are also made to the *Health Ombudsman Act* to enable the Health Ombudsman to notify previous employers and those who share or have shared premises with a practitioner, about particular serious matters or tribunal decisions.

## Undertakings

The Act amends the National Law to allow National Boards to accept an undertaking from a person when deciding the person's application for registration.

Under the existing law, National Boards can impose a condition on a practitioner's registration but cannot accept an undertaking during the registration process. In many cases, an undertaking would be enough to restrict the practitioner's practice without a condition being required.

The Bill will allow National Boards to accept undertakings from practitioners applying for registration, endorsement of registration and renewal of registration.

## Allowing regulators a discretion not to refer disciplinary matters to a tribunal

The Act inserts a new section, s 193A, to the National Law, allowing National Boards to decide not to refer matters to a tribunal where there is no public interest in such a referral.

Under the previous legislation, National Boards were required to refer all professional misconduct cases to a responsible tribunal. They did not have any discretion to take any other action or to decide not to take any further steps with respect to the matter.

In certain cases, a National Board may now form a reasonable belief that there is no public interest in referring a matter to a tribunal and that there is no risk to the health and safety of the public in not referring the matter. This may occur, for example, where the health practitioner agrees to tender their registration and cease practicing.

## Other changes

The Act also includes changes in relation to:

- mandatory reporting obligations for employers
- scheduled medicine offences; and
- powers to issue Interim Prohibition Orders.

## Get help from a health lawyer

Gilshenan &Luton assists both registered and unregistered health practitioners, as well as Hospital Health Services, in all dealings with the Health Ombudsman and AHPRA. If you are ever the subject of a criminal or disciplinary investigation, you should contact our office immediately so that we can provide you with advice and guide you through the process.

## Contacting Gilshenan &Luton

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