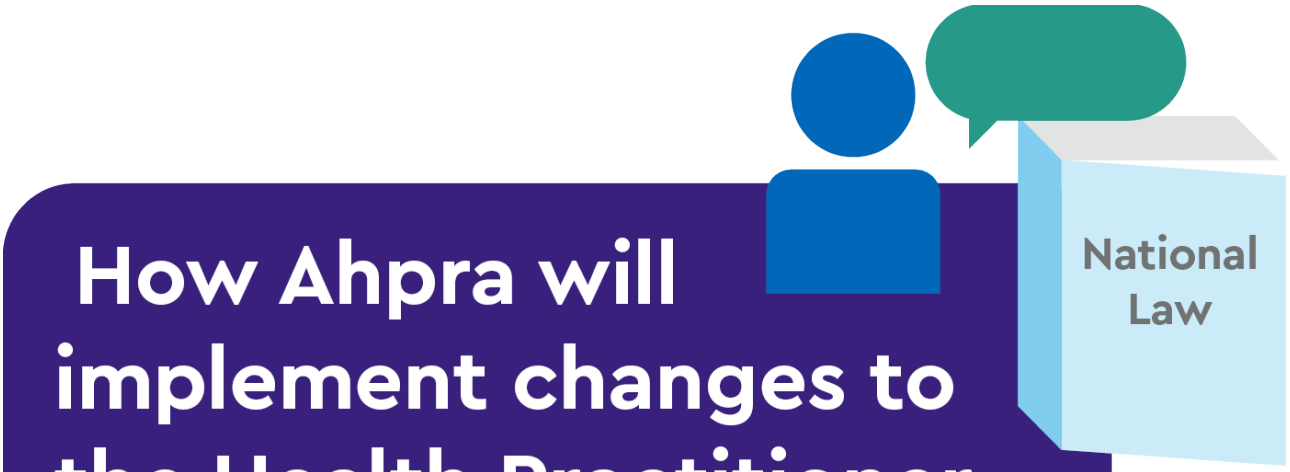
Ahpra & National Boards



How Ahpra will implement changes to the Health Practitioner Regulation National Law

An information guide

October 2022

Contents

Glossary

Ahpra	Australian Health Practitioner Regulation Agency
Assent	This is the legal term that is used when a legislative Bill has been debated and passed in parliament and signed by the Governor, the Bill becomes an Act of Parliament, and the Act becomes law. More information about *How laws are made* is available from the Queensland Government webpage. A factsheet about making of a law in Queensland Parliament is available from that webpage.
Jurisdictions	State, territory and Commonwealth health departments
Ministerial Council	Health Ministers from each state and territory and the Commonwealth
National Boards	15 National Boards established for the 16 registered health professions
National Law	Health Practitioner Regulation National Law, as in force in each state and territory
Passage	This is the legal term for when a Bill has been considered in detail by Parliament (debated) and the title is read for the third and final time – and the Bill is approved to become law.
Proclamation	This is the legal term for an instrument (called a proclamation) that is made by the Governor-in-Council. In Acts, provisions for the making of proclamations are usually limited to setting the date for the start of provisions of an Act that did not start on assent.
Tribunal	A state or territory civil and administrative tribunal that hears the most serious matters (and appeals) involving registered health practitioners under the National Law – for example, in Victoria it is the Victorian Civil and Administrative Tribunal (VCAT), while in Queensland it is the Queensland Civil and Administrative Tribunal (QCAT).

Background to the changes to the Health Practitioner Regulation National Law (the National Law)

The Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022 (the Bill) was introduced into the Queensland Parliament on 11 May 2022. As Queensland is the host jurisdiction for the National Law, the amendments must be introduced into the Queensland Parliament for review, debate and passage.[1]

The Bill makes changes to the National Law that were agreed to by Australian Health Ministers on 18 February 2022. The amendments strengthen public protection and increase public confidence in health services provided by practitioners registered under the National Scheme. They also implement reforms to improve governance and promote the efficient and effective operation of the National Scheme.

The Bill was reviewed by the Queensland Parliament's Health and Environment Committee, and the Committee's report is available on its website.

The Bill was debated and passed by the Queensland Parliament on 13 October 2022. The Bill is expected to achieve assent and become a law in late October 2022.

Purpose of this guide

The Australian Health Practitioner Regulation Agency (Ahpra) is tasked with implementing changes to the National Law.[2] This guide explains the changes, what we are doing to implement them, and what the changes will mean in practice. This is not a clause-by-clause explanation of the changes. That type of information is provided in the Explanatory notes prepared for the Bill.

More than 30 aspects of the National Law are affected. The changes are broadly grouped as follows:

1. Strengthening public safety and confidence – refocusing guiding principles and objectives of the National Scheme
2. Keeping the National Scheme fit for purpose – improvements to scheme governance and operation
3. Increasing regulatory responses to protect public safety and respond to public health risks
4. Improving information sharing to protect the public
5. Strengthening registration processes
6. Enhancing scheme efficiency and effectiveness
7. Minor, consequential, and technical changes.

This guide provides information on each of the changes within these groupings. It is intended for people and organisations that are familiar with the National Law, its requirements and operation.

Not all changes have started. Some of the more substantial ones, or ones requiring further work to implement, are scheduled to start later, on a date/s to be determined by governments. This supports a staged approach to implementation over about 12 months. Some of these delayed changes will likely start in the first half of 2023. Ahpra will publish start dates when they are available.

Please check our National Law amendments webpage for information.

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[1] Designating Queensland as host jurisdiction for the National Law is set out in the *Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions* (April 2008); accessible from the Ahpra website.

[2] The changes are made via the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022.*

1. Strengthening public safety and confidence – refocusing the guiding principles and objectives of the National Scheme

The objectives and guiding principles for the National Scheme are a key feature of the National Law because they guide all regulatory decision-making by entities in the National Scheme. This group of amendments updates these objectives and guiding principles.

1.1 New paramount principle: protection of the public and public confidence in the safety of services provided by registered health practitioners and students (Part 2)

Change starts on assent

Public protection is at the heart of the National Scheme. Our primary role is public protection and we adopt a risk-based approach to regulation, taking action that is proportionate to the risk of harm to patients and the public.

The change introduces a new paramount principle that makes protection of the public, and public confidence in the safety of services provided by registered health practitioners and students, the paramount considerations in all decision-making under the National Scheme.

Queensland and New South Wales have had public protection as the paramount principle for administering the National Scheme in their respective states for many years.

Implementing the change

Concepts of public interest and maintaining confidence in the health professions are not new to Ahpra and National Boards as regulators of health practitioners. For example, in 2019, Health Minister's gave Ahpra and National Boards a policy direction that the safety of the public is paramount in our work (see Policy Direction 2019-01 – Paramountcy of public protection when administering the National Scheme). Tribunals hearing the most serious cases about health practitioners already consider those principles on a regular basis. This amendment makes it clear in the National Law that public confidence and protection of the public comes first.

Ahpra has procedures and policies that apply nationally to our management of notifications (complaints) about health practitioners. For example, our published Regulatory guide sets out how Boards manage notifications about the health, performance and conduct of practitioners and includes guidance on considering the public interest and public confidence. We are updating our *Regulatory guide* to ensure it fully reflects the new paramount principle. Our decision-making is also guided by our Regulatory principles, which have been designed to encourage a culturally safe and responsive, risk-based approach to regulation across all professions in the National Scheme.

While we must consider the paramount principle in performing our functions, it does not exist in isolation. Ahpra and the National Boards also remain bound by other guiding principles in the National Law that state that restrictions are to be imposed on a practitioner only if it is necessary to ensure health services are provided safely and are of an appropriate quality.

What does this mean in practice?

Everyone should be able to feel confident that their registered health practitioners will provide safe healthcare. The change provides greater clarity and puts beyond doubt, that Ahpra, the National Boards, and state and territory tribunals, must place public protection and public confidence first in administering the scheme, making regulatory decisions, or otherwise using functions under the National Law. This includes decisions about new or revised accreditation and registration standards, new or revised professional codes of conduct, registration decisions, and decisions to take health, conduct or performance action against a practitioner.

1.2 New objective and guiding principle to enshrine cultural safety for Aboriginal and Torres Strait Islander Peoples (Part 3)

Change starts on assent

This change inserts a new objective for the National Scheme:

- To build the capacity of the Australian health workforce to provide culturally safe health services to Aboriginal and Torres Strait Islander Peoples.

And inserts a new guiding principle:

- The scheme is to ensure the development of a culturally safe and respectful health workforce that:
  - is responsive to Aboriginal and Torres Strait Islander Peoples and their health; and
  - contributes to the elimination of racism in the provision of health services.

Implementing the changes

The new objective and guiding principle is consistent with the National Scheme's Aboriginal and Torres Strait Islander Health and Cultural Safety Strategy 2020-2025 and our Statement of Intent, to ensure a culturally safe health workforce supported by nationally consistent standards, codes and guidelines across all professions in the National Scheme; and greater access for Aboriginal and Torres Strait Islander Peoples to culturally safe services of health professions regulated under the National Scheme.

The National Scheme recognises the principle of self-determination for Aboriginal and Torres Strait Islander Peoples and is led in its work in this area by the Aboriginal and Torres Strait Islander Health Strategy Group.[3]

The Strategy Group in partnership with the National Health Leadership Forum, through public consultation, established a **cultural safety definition** for the National Scheme:

- *Cultural safety is determined by Aboriginal and Torres Strait Islander individuals, families and communities.*
- *Culturally safe practice is the ongoing critical reflection of health practitioner knowledge, skills, attitudes, practising behaviours and power differentials in delivering safe, accessible and responsive healthcare free of racism.*

We have worked with our partners to embed cultural safety for Aboriginal and Torres Strait Islander Peoples in our policies and regulatory framework. Some examples include:

- our updated Regulatory principles
- the Nursing and Midwifery Board of Australia's professional codes for midwives and for nurses
- the Medical Board of Australia's professional code, Good medical practice, and
- the revised shared Code of conduct that took effect on 29 June 2022.[4]

Our published Regulatory guide has been updated to include the new objective and guiding principle.

What does this mean in practice?

We encourage you to read the joint statement between Ahpra, the Aboriginal and Torres Strait Islander Health Strategy Group and the National Health Leadership Forum on this important change as published on the Ahpra website.

[3] The Strategy Group comprises Aboriginal and Torres Strait Islander health sector leaders and representatives from accreditation entities, National Boards, Ahpra and the Chair of the Ahpra Board.

[4] The revised shared *Code of conduct* applies to the following professions: Aboriginal and Torres Strait Islander Health Practice, Chinese medicine, chiropractic, dental, medical radiation practice, occupational therapy, optometry, osteopathy, paramedicine, pharmacy, physiotherapy, and podiatry.

Registered health practitioners and registered students in Australia are familiar with concepts of cultural safety and all members of the National Scheme will continue to support Australia's registered health workforce to practise in a culturally safe way.

The new objective and guiding principle sets a clear expectation for all National Scheme entities to foster cultural safety for Aboriginal and Torres Strait Islander Peoples accessing health services, and to consider how regulatory decisions may affect the health and wellbeing of Aboriginal and Torres Strait Islander Peoples and their confidence in the safety of health services. Its inclusion ensures that all parts of the National Scheme – practitioners, regulators, accreditation authorities, educators and employers – are working within the same principle and toward the same objective.

This change reinforces that Aboriginal and Torres Strait Islander health consumers can expect that healthcare provided by a registered health practitioner is culturally safe and free of racism. If the care received fails to meet this expectation, it is within their rights to make a notification. If the notification enters the tribunal or court system, cultural safety is required to be taken into account as defined in the National Law.

2. Keeping the National Scheme fit for purpose – improvements to scheme governance and operation

There are a small number of changes designed to keep the National Law up to date, remove unnecessary provisions of the legislation, provide scope to streamline Ministerial Council approval of routine or minor changes to registration standards, and to provide better clarity about National Scheme governance and roles. Some of the changes in this section will start on a date/s to be fixed by proclamation and governments will decide the start date. Ahpra does not need to make any changes to support the delayed start of these changes.

2.1 Dissolving the Australian Health Workforce Advisory Council (Part 4)

Change starts on assent

The Australian Health Workforce Advisory Council (the Advisory Council) was established under the National Law to provide independent advice to the Ministerial Council on certain matters related to the National Scheme.

The *Review of governance of the National Registration and Accreditation Scheme* (governance review) concluded that the Advisory Council is not necessary for the effective governance of the National Scheme and recommended the change to remove the provisions establishing it. Ministers have a range of other mechanisms to obtain advice on workforce issues as needed. As the Advisory Council has not been operating since August 2012, Ahpra has not needed to make any changes to support this change.

What does this mean in practice?

The Ministerial Council will continue to have sources of advice on National Scheme matters:

- from within the National Scheme – from Ahpra and the National Boards
- from jurisdictions – Health Chief Executives Forum (HCEF) and its committees
- from stakeholders (including during consultations).

2.2 Renaming the Agency Management Committee (Part 5)

Change starts on assent

The National Law establishes the Ahpra Agency Management Committee to oversee Ahpra's operations and set the strategic direction for the National Scheme.[5] The inclusion of the word 'management' suggests that the committee's role is the operational management of Ahpra. This is not the case, and Health Ministers received feedback from stakeholders that the committee's title frequently confuses practitioners, registrants and the public about its role and lines of accountability.

The change is to rename the Agency Management Committee to the Agency Board to better reflect the body's role and functions, including governance for the National Scheme. As the Agency Management Committee is used throughout the National Law and in the Health Practitioner Regulation National Law Regulations, all references need to be updated. This renaming does not affect the validity of an appointment of a person to the committee before the renaming.[6]

Implementing the change

Ahpra has updated information published about the Ahpra Board to reflect this name change. Information on Ahpra board members appointed by the Ministerial Council is available on the Ahpra website.

What does this mean in practice?

The Ahpra Agency Management Committee is now known as the Australian Health Practitioner Regulation Agency Board – or Ahpra Board for short.[7] The functions of the Ahpra Board are clearly set out in the National Law and are separate to the powers for Ahpra (Part 4 of the National Law) and the functions and powers for National Boards (Part 5 of the National Law).

2.3 Updating the functions of the National Agency (Ahpra) (Part 6)

Change starts on assent

Part 4 of the National Law established the Australian Health Practitioner Regulation Agency (Ahpra) and sets out its functions and powers.

The governance review found that the role of Ahpra was not well articulated in the National Law and should reflect the broader role that Ahpra has in advising Health Ministers on all matters related to the National Scheme.

The change is to clarify that Ahpra has the function of providing advice to the Ministerial Council on all matters relating to the National Scheme (not only matters that pertain to the scheme's administration); and that it may do anything necessary or convenient for the effective and efficient operation of the National Scheme, within the scope of the National Law (amended section 25).

What does this mean in practice?

In practice, Ahpra provides a central line of accountability and advice to Health Ministers for the operation of the National Scheme as a whole. This role is not limited to administrative matters and can include providing advice on policy and broader regulatory matters. We perform a wide range of registration and notifications functions on behalf of National Boards, and we are held accountable for meeting ministerial expectations of the National Scheme. We also work collaboratively with the National Boards to regulate health practitioners.

[5] See Part 4 of the National Law.

[6] See new section 324 of the National Law.

[7] The Bill defines *Agency Board* to be the *Australian Health Practitioner Regulation Agency Board* established by section 29 of the National Law.

The change clarifies that Ahpra has the function of providing advice to the Ministerial Council on all matters relating to the National Scheme (not only matters that relate to the scheme's administration).

Doing 'anything necessary or convenient' for the scheme's effective and efficient operation within the scope of the National Law is a technical provision that is commonly used in legislation, including in Queensland.[8] This wording mirrors the function given to National Boards under the National Law. The scope of Ahpra's powers is not extended beyond what we already do in practice. The clarification recognises that Ahpra may do anything incidental or ancillary to fulfil the specific powers and functions conferred on it. For example, as part of our response to the COVID-19 pandemic, Ahpra worked with and on behalf of the National Boards to establish a pandemic sub-register to support a surge workforce in jurisdictions and to communicate with practitioners in response to requests from jurisdictions.

2.4 Redefining the Ministerial Council (Part 7)

Change has not yet started

The Ministerial Council comprises Health Ministers from each state and territory and the Commonwealth. The National Law sets out the powers of the Ministerial Council.[9]

The change is to update the definition of Ministerial Council in the National Law to reflect recent changes in the governance arrangements for federal intergovernmental relations. The amendments remove reference to the Council of Australian Governments (COAG), which has been dissolved. Instead, the Bill defines the Ministerial Council *as a body, however named, that is constituted by Health Ministers of the participating jurisdictions and the Commonwealth*.

What will this mean in practice?

Ministers currently meet as the Health Ministers Meeting to work on health issues of national importance which require cross-border collaboration and as the Ministerial Council for the National Scheme. The change in definition does not affect these meetings or membership.

2.5 Allowing the delegation of the Ministerial Council's power to approve registration standards (Part 7)

Change has not yet started

The Ministerial Council may approve a registration standard when approval of a standard has been recommended by the relevant National Board.[10]

Registration standards are developed by National Boards in consultation with the public, professions, and other stakeholders. Currently, even updates and other minor amendments with no significant policy implications must be approved by Health Ministers.

This change will allow the Ministerial Council to delegate its power to approve registration standards. This change was recommended by the governance review. The reason for the change is to streamline the process for approving registration standards and to reduce delays, particularly for minor or non-controversial changes.

This change **does not** apply to accreditation standards that are developed by accreditation authorities and are approved by National Boards (and not the Ministerial Council).

[8] For example, section 66 of the *Biosecurity Act 2014*, section 20 of the *Education (Queensland Curriculum and Assessment Authority) Act 2014*, and section 210 of the *Guardianship and Administration Act 2000*.

[9] See Part 2 of the National Law.

[10] See section 12 of the National Law.

What will this mean in practice?

This change gives the Ministerial Council **an option** to delegate the power to approve registration standards but does not identify who the delegate will be. The Explanatory Notes to the Bill state that: *the Ministerial Council may consider delegating certain powers to the Agency Management Committee (being renamed to the Agency Board) acting on the advice of the National Agency and jurisdictions, or to the Health Chief Executives Forum. Under section 29 of the National Law, a formal instrument of delegation will be established should Ministers choose to delegate these powers, and the Ministerial Council will retain its obligation to ensure that the function is properly exercised. Section 29 also prohibits sub-delegation of the powers.*

It would be usual process for an instrument of delegation to be developed by jurisdictions if Ministers want to use this delegation. If so, Ahpra and the National Boards expect there will be consultation by jurisdictions so that key stakeholders have an opportunity to provide feedback.

By giving Health Ministers an option to delegate approval of registration standards, we expect that their delegate will be able to make timely decisions about minor or routine changes to registration standards, to better support Health Ministers to focus their time on national health priorities and reforms. The National Law still requires National Boards to carry out wide-ranging consultation on new or proposed changes to registration standards, and this will not change. National Boards will still need to recommend the registration standards to Health Ministers or their delegate for approval. National Boards will not be able to approve their own registration standards.

3. Increasing regulatory responses to protect public safety and respond to public health risks

As the regulators of registered health practitioners, National Boards have powers to intervene where there is an ongoing risk to the public that requires regulatory oversight, or the performance or behaviour of the practitioner calls their overall fitness to practise into question. There are several changes to strengthen regulatory responses to risks to the public and provide Ahpra and the National Boards with a contemporary set of tools to help us do our job as risk-based regulators. We will work with our co-regulatory partners in Queensland and New South Wales to ensure unnecessary duplication is avoided and that there is clarity about when we will need to take steps to protect the public. Most changes in this section will start on a date/s to be fixed by proclamation. While governments will decide the start date, Ahpra will liaise with officials to ensure our implementation activities are ready before the changes start.

3.1 Advertising – use of testimonials and increased penalties for offences (Part 16)

Change to increase penalties started on assent

Change to use of testimonials in advertising withdrawn – change will not be made at this time

Penalties

It is currently an offence under the National Law for a person to advertise a regulated health service, or a business that provides a regulated health service in a way that —

(a) is false, misleading or deceptive or is likely to be misleading or deceptive; or

(b) offers a gift, discount or other inducement to attract a person to use the service or the business, unless the advertisement also states the terms and conditions of the offer; or

(c) uses testimonials or purported testimonials about the service or business; or

(d) creates an unreasonable expectation of beneficial treatment; or

(e) directly or indirectly encourages the indiscriminate or unnecessary use of a regulated health service.[11]

[11] See section 133 of the National Law.

The meaning of *regulated health services* is a service provided by, or usually provided by, a health practitioner. Prosecution of advertising offences occurs in state and territory courts.

The change that started on assent is to increase the **maximum** penalty that can be imposed by a court for proven breaches of the advertising restrictions from $5,000 to $60,000 for an individual; and from $10,000 to $120,000 for a body corporate (organisation). This increase brings the penalties into line with the penalties for other serious offences under the National Law, such as the deliberate misuse of a restricted professional title, and it emphasises the focus on deterring unscrupulous practices.

Use of testimonials in advertising of regulated health services

The change to remove the specific ban on testimonials was withdrawn from the Bill during debate in Queensland Parliament. This is consistent with the statement issued by the Health Ministers Meeting on 2 September 2022 about decisions Health Ministers made about cosmetic surgery. This means the current ban on use of testimonials in advertising of regulated health services under the National Law stays in place.

Implementing the change to penalties

We have updated references in our advertising documents to reflect the increase in maximum penalties.

What does this mean in practice?

Penalties

Enabling courts to impose a penalty that is in proportion to the offence sends a message that advertising offences are taken seriously, and this can act as a deterrent before serious breaches occur. The courts' existing discretion to impose penalties appropriate to individual circumstances remains unchanged.

Use of testimonials in advertising of regulated health services

Ahpra has an Advertising hub which contains information that practitioners and consumers may find helpful:

- National Boards' Guidelines for advertising a regulated health service (the advertising guidelines)
- laws and other guidance about how to advertise
- resources to help advertisers understand their obligations and to check their advertising is correct
- information for the public including about how to make a complaint and how we manage complaints about advertising.

The Independent review of the regulation of medical practitioners who perform cosmetic surgery report (the report) was published on the Ahpra website on 1 September 2022. The report includes recommendations specific to advertising and use of social media by the cosmetic surgery industry.

Ahpra and the Medical Board of Australia accepted all report recommendations and issued a media release that confirmed that we will enforce the ban on testimonials in cosmetic surgery advertising that mislead and deceive consumers and trivialise risk. Ahpra and the Medical Board welcomed Australian Health Ministers' support for cosmetic surgery reform to make cosmetic surgery safer.

On 5 September 2022, Ahpra stood up a Cosmetic Surgery Enforcement Unit to accelerate and step up our enforcement, including in the areas of advertising, social media and testimonials used to promote cosmetic surgery. Ahpra will also update and enforce advertising restrictions and use new technologies to audit social media, backed by tougher regulatory action. Any changes that need to be made to the advertising guidelines or supporting material will be accessible on our Advertising hub and will take account of the recommendations from the independent review report.

3.2 Increased penalties – direct/incite offences (Part 17)

Change starts on assent

It is currently an offence under the National Law for an individual person or an organisation to direct or incite a registered health practitioner to do anything, in the course of the practitioner's practice of the health profession, that amounts to unprofessional conduct or professional misconduct.[12] Prosecution of these offences takes place in state and territory courts.

The change is to increase the **maximum** penalty that can be imposed by a court for proven offences. The maximum penalty is increased from $30,000 to $60,000 for an individual; and from $60,000 to $120,000 for a body corporate (organisation). This increase brings the penalties into line with the penalties for other serious offences under the National Law and underscores the focus on deterring unscrupulous practices and behaviour.

What does this mean in practice?

Enabling courts to impose a penalty that is in proportion to the offence sends a message to people that direct or incite offences are taken seriously and this can act as a deterrent before they occur. Courts continue to retain their discretion to impose an appropriate penalty in individual circumstances.

3.3 Disciplinary action in relation to health practitioners while unregistered (Part 18)

Change has not yet started

Part 8 of the National Law sets out that health, conduct and performance provisions apply to persons who were formerly registered under the law and allows for notifications to be dealt with, and proceedings taken.[13] Part 7 of the National Law sets out registration matters including protected titles and practice restrictions.

The changes allow National Boards to take disciplinary actions against practitioners who continue to practise or use a protected title after their registration has lapsed. These actions can be taken under Part 8 and are in addition to, or in place of, action under Part 7 (registration action).[14] There is a corresponding change to a note that is included in sections 117, 118 and 119 of the National Law to clarify that a breach of these sections may also constitute *unprofessional conduct* for which health, conduct or performance action may be taken against a person who was previously a registered health practitioner.[15]

The change is not intended to prevent or discourage Ahpra from investigating and prosecuting offences or the National Boards from imposing conditions on a practitioner's registration in appropriate cases under Part 7 (registration actions). Ahpra and National Boards will retain these powers and will be able to apply them in addition to, or instead of, any disciplinary action taken by a Board in relation to the same conduct.

If a practitioner failed to renew their registration on time or their continuation of practice while not holding registration was brief and inadvertent, it may be unnecessarily punitive to prosecute the practitioner for an offence. Waiting to impose a condition when the practitioner applies to renew their registration could put the public at risk of harm until that action is taken. Depending on the circumstances, a more appropriate regulatory response may be for a National Board to immediately impose conditions or take other disciplinary action under Part 8 of the National Law.

[12] See section 136 of the National Law.

[13] See sections 138 and 139 of the National Law.

[14] See Part 7, Division 10 of the National Law.

[15] Section 117 (Claims by persons as to registration in particular profession or division); section 118 (Claims by persons as to specialist registration); and section 119 (Claims about type of registration or registration in a recognised specialty).

Implementing the change

The delayed start of this change gives Ahpra time to work with National Boards, make system changes, and review operational policies and procedures to support consistent regulatory decision-making across the country when these circumstances arise.

What will this mean in practice?

The changes will give National Boards a wider range of regulatory options to address situations in which a practitioner has continued to use a protected title and/or provide restricted health services while they are not registered. The changes will help ensure that National Boards can respond to a practitioner's failure to punctually renew their registration in a way that is in proportion to the severity of the conduct and takes into account other relevant considerations, including competing enforcement priorities and the need to provide effective deterrents to protect the public and promote confidence in the National Scheme.

3.4 Interim prohibition orders (Part 21)

Change has not yet started

National Boards are responsible for managing health, conduct and performance issues involving registered health practitioners.[16]

This change introduces a new section into the National Law that gives Ahpra and the National Boards the power to issue interim prohibition orders (IPOs) to unregistered practitioners, including practitioners whose registration has lapsed or been suspended, that will complement powers that we currently have to protect the public.[17]

An IPO issued by Ahpra or a National Board can prohibit or restrict a person from providing a specified health service or all health services and prohibit a person from using protected titles. This will allow us to take swift action to control a serious risk while other action is being finalised or a matter is handed over to another regulator better placed to carry out more comprehensive regulatory action.

The threshold for issuing an IPO is set at a high level, and requires Ahpra or a National Board to **form a reasonable belief** that:

- the person has contravened a relevant provision of the National Law ***or*** is the subject of an assessment, investigation or other proceeding under Part 8 of the National Law;[18]
- **and** the person poses a **serious risk** to persons;
- **and** it is necessary that the person be subject to an IPO to protect public health or safety.

There are also safeguards built into the legislation:

- a 'show cause' process is part of the process of issuing an IPO
- an IPO can only be issued before a show cause process if Ahpra or a National Board reasonably believes it is necessary to take such urgent action to protect public health or safety
- a decision to issue or extend an IPO will be subject to appeal.

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[16] There are different arrangements in place for managing notifications (complaints) in the co-regulatory jurisdictions of Queensland and New South Wales. In Queensland, the Health Ombudsman (OHO) receives all complaints and can refer matters to National Boards for action. Boards manage most health and performance issues that are reported to the OHO about registered health practitioners. In New South Wales, the relevant health professional councils work with the NSW Health Professional Councils Authority and the NSW Health Care Complaints Commission to manage complaints about conduct, health and performance of practitioners.

[17] See new Division 7A into Part 8 of the National Law.

[18] ***Relevant provision*** means any of the following provisions— (a) section 113 – restriction on use of protected title; (b) sections 115 to 119 – holding out and restrictions on use of specialist titles; (c) sections 121 to 123 – restricted acts; (d) section 133 - advertising; (e) section 136 – directing/inciting offence.

Implementing the change

The delayed start of this change gives Ahpra time to work with National Boards and make the necessary procedural and system changes to support the judicious use of this power.

We are revising our Regulatory guide to provide guidance on how we will use these powers in practice and we will consult widely with the professions and the community. The updated Regulatory guide will be published to ensure full transparency.

What will this mean in practice?

This power links back to the new paramount principle of protection of the public and public confidence in the safety of health services provided by practitioners. In practice, when the high threshold is met, we expect it will only be necessary to take this step in extraordinary situations that are very serious and when time is of the essence.

For example:

- National Boards can currently restrict a practitioner's registration if the practitioner poses a risk to public health and safety. But if a practitioner were to surrender their registration to avoid a restriction being imposed on their practice as a registered health practitioner, the power to issue an IPO would enable us to prevent the person offering health services in an unregistered capacity. This complements the powers we have with respect to registered practitioners.
- Ahpra has a criminal prosecution function (for offences against the National Law) and can investigate and prosecute unregistered people who hold themselves out as being a registered health practitioner (such as a fake dentist), use a protected title or perform protected services (such as dentistry). If Ahpra is investigating claims related to a fake dentist providing dental services without being registered, allowing this conduct to continue during the investigation puts the public at significant risk. We would be able to issue an IPO to stop that person continuing to engage in the conduct while the investigation and prosecution is in progress.

3.5 Prohibition orders (Part 22)

Editorial change started on assent
Change to allow restrictions on a practitioner's provision of health services has not yet started

The National Law currently sets out a range of decisions that a tribunal can decide to take after hearing a matter involving a registered health practitioner, including issuing a prohibition order.[19]

The types of matters that are brought to a tribunal are serious – for example, allegations of professional misconduct. Only a tribunal can cancel a practitioner's registration.

The first change to the National Law is to clarify that, if a responsible tribunal decides to cancel a person's registration or the person does not hold registration, the tribunal may decide to prohibit the person, either permanently or for a stated period, from *either or both* providing any health service or a specified health service, or from using any title or a specified title. This change started on assent.

The second change allows a tribunal to place **restrictions** on a practitioner's provision of health services. This complements the existing power of the tribunal to make an order that completely prohibits a practitioner from providing all or specified health services or using a protected title. This change aligns prohibition orders with interim prohibition orders (IPOs). It is also expected to increase flexibility for tribunals by permitting restrictions where an outright prohibition on performing a health service may not be necessary. For example, a restriction could be imposed requiring a practitioner performing specified health services to be under the direct supervision of another registered practitioner.

[19] See section 196 of the National Law.

Implementing the change

As the first change is an editorial clarification, Ahpra has not needed to make any changes to its policies or procedures to support it. Ahpra is reviewing its operational policies and procedures in readiness for the start of the second change.

What will this mean in practice?

Tribunals will have more flexibility to tailor decisions to individual circumstances, while ensuring the public is protected, when it is necessary to issue a prohibition order involving a practitioner.

3.6 Public statements (Part 23)

Change has not yet started

This change introduces a new division into the National Law that gives Ahpra and the National Boards the power to issue public statements to warn the public about serious risks posed by people, including registered practitioners, who are the subject of investigations or disciplinary proceedings.[20]

The threshold for issuing a public statement is set at a high level and requires Ahpra or a National Board to **form a reasonable belief** that:

- the person has contravened a relevant provision[21] of the National Law **or** is the subject of an assessment, investigation or other proceeding under Part 8 of the National Law;
- **and** that because of the conduct, performance or health, the person poses **a serious risk** to persons;
- **and it is necessary to issue a public statement** to protect public health or safety.

It is not a broad power to enable Ahpra or the National Boards to 'name and shame' registered health practitioners or other people being investigated before there is a tribunal outcome.

There are other safeguards built into the legislation:

- a 'show cause' process is part of the process before deciding to issue a public statement
- after the show cause process is completed and a decision is made to issue a public statement, we must then wait **at least 1 business day** before we can publish the statement
- a decision to issue a public statement will be subject to appeal to a relevant tribunal
- the public statement may be revised or revoked.

Implementing the change

The delayed start of this change gives Ahpra time to work with National Boards and make the necessary procedural and system changes to support the judicious and consistent use of this power.

We are revising our Regulatory guide to provide guidance on how we will use this power in practice and we will consult widely with the professions and the community. The updated Regulatory guide will be published to ensure full transparency.

What will this mean in practice?

When the high threshold is met, in a small number of circumstances, it would help us to protect the public if we could publicly explain risk and warn patients while continuing investigations or disciplinary proceedings.

[20] See new Division 7B of Part 8 of the National Law.

[21] ***Relevant provision*** means any of the following provisions— (a) section 113 – restriction on use of protected title; (b) sections 115 to 119 – holding out and restrictions on use of specialist titles; (c) sections 121 to 123 – restricted acts; (d) section 133 - advertising; (e) section 136 – directing/inciting offence.

For example:

- If, during an investigation of a registered health practitioner, we find that infection control procedures have not been followed. This poses a serious risk that patients have been exposed to an infectious disease. In addition to working with public health officers, Ahpra could issue a public statement if necessary to warn past or current patients of the potential health risks from the practitioner's unsafe practice and urge them to come forward to get healthcare immediately.
- If a practitioner has had their registration suspended by a tribunal but continues to practise in multiple states, a National Board could consider issuing a public statement to warn people that the practitioner is not a registered health practitioner.
- A person that is not, and never has been, a registered health practitioner continues to provide cosmetic injectables despite not having legal access to schedule 4 drugs, while being investigated by Ahpra. Continuing to do this poses a serious risk to the public, who are not aware the person is unregistered and who may continue, in good faith, to visit this person for treatments.

We expect the warning will be similar to other public statements or warnings that are issued by some state health complaints entities that have this ability. For example, in Victoria the Health Complaints Commissioner can issue public warning statements: https://hcc.vic.gov.au/orders-warnings.

Ahpra and the National Boards currently publish news items about tribunal and court outcomes as a way of raising awareness and informing the public and registered health practitioners about serious matters and actions taken to protect the public. We will continue to do this.

4. Improving information sharing to protect the public

There are changes to improve information sharing with and by Ahpra and the National Boards to protect the public. Most changes in this section will start on a date/s to be fixed by proclamation. While governments will decide the start date, Ahpra will liaise with officials to ensure implementation activities are ready before the changes start.

4.1 Reporting of scheduled medicine offences (Part 14)

Change has not yet started

Scheduled medicines

The National Law requires registered practitioners and students to tell the relevant National Board within seven days after they become aware that a relevant event has happened.[22] Examples include if the practitioner or student is charged with an offence punishable by 12 months imprisonment or more; if appropriate professional indemnity insurance arrangements are no longer in place in relation to the practitioner's practice of the profession; or if the practitioner's authority under state or territory legislation to administer, obtain, possess, prescribe, sell, supply or use a scheduled medicine or class of scheduled medicines is **cancelled or restricted**.

The change requires health practitioners and students to report to the relevant National Board **charges and convictions of offences related to regulated medicines and poisons**.

The Queensland Office of the Health Ombudsman, in its Investigation report: undoing knots constraining medicine regulation in Queensland, highlighted the risks that drug-impaired practitioners may present to themselves and the public. Many offences related to regulated medicines and poisons (scheduled medicines) are punishable by payment of a fine rather than imprisonment and are not reportable under the current National Law. As a result, National Boards may not be notified of a practitioner's or student's

[22] See section 130 of the National Law.

scheduled-medicine offence history, even though it may be relevant to the person's suitability to hold registration.

Because there are differences in the types of offences that exist under state and territory medicines and poisons laws, jurisdictions will have the opportunity to declare that certain offences defined under their laws **will not** be scheduled medicine offences for the new reporting requirements in the National Law. This will ensure that the new reporting requirements relate to relevant offences and are no broader than necessary to protect the public.

References to the repealed Medicare Act

Another **relevant event** that must currently be disclosed on annual renewal of registration (if it applies to the registered health practitioner) is if the practitioner's billing privileges were withdrawn or restricted under the *Medicare Australia Act 1973* (Cth) during the applicant's preceding period of registration because of the applicant's conduct, professional performance or health. Details must be provided at renewal of the withdrawal or restriction of the privileges. The change to the definition of **relevant event** includes updating references to the *Health Insurance Act 1973* (Cth) rather than the repealed Medicare Act. This change also includes a clarification that, when renewing their registration, the practitioner need not include information about a disqualification under the Health Insurance Act if the applicant is prohibited from doing so under that law. Please note the link between this change to section 130 and the consequent amendment to section 109 in Part 31.

Implementing the changes

The delayed start of the scheduled medicines change gives jurisdictions time to decide if they are going to declare whether certain offences under their medicines and poisons legislation will not be offences that need to be reported by registered practitioners and students to the relevant National Board. For example, because the offences are minor and do not raise concerns about a practitioner's conduct, health or performance.

As state and territory medicines and poisons legislation differ, Ahpra will continue to engage with jurisdictions to make sure that we understand the circumstances under which registered health practitioners and students will be obliged to report this new relevant event to National Boards, so we can help inform practitioners of their requirements.

Ahpra will make system changes to enable practitioners and students to make these reports and for us as regulators to record them and consider what action needs to be taken. We will review our procedures to provide clarity for our regulatory decision-makers.

What will this mean in practice?

The obligation to report relevant scheduled medicines offences is a new requirement for registered health practitioners and registered students. Ahpra will publish information before this change starts so practitioners and students have a better understanding of the obligations should they need to report a relevant event, including a scheduled medicines offence. As is currently the case, only a small number of registered health practitioners and students will ever need to let National Boards know that a relevant event has occurred.

For the public, early reporting of these charges and offences will allow National Boards to respond more quickly to risks posed to the public by practitioners or students who misuse scheduled medicines.

4.2 Previous practice information (Part 15) and Disclosure of information to protect the public (Part 27 & Part 28)

Changes have not yet started

The changes in these parts of the Bill are best read together. The changes are to:

a. provide discretion to National Boards to notify former employers and associates of action being taken against a practitioner
b. enable National Boards to disclose information about registered practitioners to employers and those who have a practice arrangement with the practitioner in certain circumstances; and

c. enable National Boards to disclose information about unregistered persons to employers and those who have a practice arrangement with the person in certain circumstances.

Requiring practice information and information about practice arrangements (Part 15)

National Boards may currently ask a registered health practitioner to provide **practice information** to the Board.[23] This notice may include a request for information about the practitioner's employment, the details of other registered health practitioners with whom the practitioner shares premises and associated costs, and the details of entities with which the practitioner has a contractual or other arrangement to provide services. A registered health practitioner must not, without reasonable excuse, fail to comply with the notice. If a National Board decides to take health, conduct or performance action involving a registered health practitioner, the Board can notify a practitioner's employer or associates that they share premises with, so steps can be taken to ensure that patients and the public are protected.

The changes effectively extend the National Boards' information-sharing abilities. To achieve this, the definition of **practice information** is broadened, and a new term **practice arrangement** is introduced.

Practice arrangement is intentionally broad to cover the wide range of ways in which health services are provided. It covers typical employment relationships, as well as other arrangements or agreements, regardless of whether the practitioner receives payment or is 'engaged by' an entity. For example, it would cover an arrangement between a private facility and a practitioner that allows a registered health practitioner to provide services at the facility. The contract or agreement must be directly related to the provision of a health service.

Enabling National Boards to disclose information to protect the public (Part 27 & Part 28)

About registered health practitioners

The change allows a National Board to notify employers or certain other associates of the practitioner about risks stemming from the registered practitioner's health, conduct or performance, before taking disciplinary action.[24]

A National Board must give written notice to a practitioner's current employer and to other relevant bodies that have a **current** practice arrangement, if the Board **reasonably believes** that the practitioner's health, conduct, or performance poses a **serious risk** to persons; **and** it is **necessary** to give notice to protect public health or safety.

This change will allow a National Board to share vital information in the small number of cases where it forms a reasonable belief that a practitioner poses a serious risk to the public, but the Board has not yet been able to take action, including where we are waiting for further information to bring a complex matter involving multiple issues and concerns before a disciplinary tribunal.

These changes also allow National Boards to respond to situations where the serious risk posed by a practitioner has occurred across different practice settings over an extended period.

There are limitations placed on using these powers to ensure that information is only shared when necessary to protect the public, and that any effects on a practitioner's privacy and reputation are no broader than necessary to respond to the specific risks identified.

Disclosures would generally only be made to people who are affected by, or in a position to mitigate, the risks posed by the practitioner to whom the disclosure relates. The information should only include information about the practitioner and about the risks believed to be posed by the practitioner. A National Board is not allowed to disclose personal health information about a patient.

A National Board may decide **not to share information** if it decides it is not in the public interest to do so, for example where sharing the information may affect an investigation or place a notifier at risk, or where the public interest is outweighed by the practitioner's right to privacy. Finally, a Board is not required to share

[23] See section 132 of the National Law.

[24] See new section 220A of the National Law.

information under this section if it has already shared the information with the entity under another provision of the National Law.

About unregistered persons

There is a similar change to enable Ahpra or a National Board to disclose information about an unregistered person who is being investigated or prosecuted under the National Law.[25]

Ahpra or a National Board may notify employers and certain other people about serious risks posed by unregistered people who are being investigated or prosecuted for a breach of the National Law, for example, for holding themselves out as registered practitioners. It is important to note that an unregistered person includes a person whose registration is suspended under the National Law.

The power to disclose information to these people and entities is **discretionary** and can only be used if Ahpra or a National Board **reasonably believes** that the person poses a **serious risk** and that it is *necessary* to give the notice to protect public health or safety.

The information given to the employer or other associates can include information about the unregistered person and the risks believed to be posed by the person. However, we are not allowed to disclose personal health information about a patient.

Implementing the changes

The delayed start of these changes gives Ahpra time to work with National Boards to make system changes and review operational policies and procedures.

We understand that practitioners want assurance that information will only be shared when it is necessary and appropriate, to protect the public. Ahpra is developing guidance and educational materials for employers and practitioners about how these powers are to be used in practice, and to help employers and associates manage disclosures.

What will this mean in practice?

As a result of the changes, a National Board will be allowed to ask a practitioner for information about places where they have worked previously **in addition** to their current practice, and to ask for this information **under a broader range of practice arrangements** than is currently the case.

The changes will provide better clarity for the National Boards and Ahpra by removing some ambiguity that currently exists about when we can disclose information to employers or associates to help ensure practitioners are practising safely.

For example:

- If a National Board could have notified an employer at an early stage of risks posed by a registered health practitioner who was later sentenced to imprisonment for infecting more than 50 patients with Hepatitis C in the course of his work as an anaesthetist, this may have helped lead to the earlier identification and treatment of victims.
- If Ahpra is investigating allegations that an unregistered person is holding themselves out as a psychologist. The person has rooms in a larger medical complex, and it is common for medical practitioners in the complex to refer patients to the person the subject of investigation. The new provision would enable Ahpra or a National Board to give written notice to those practitioners who are referring patients of the risks associated with referring patients to the allegedly unregistered person.

Notifying employers or other relevant people or entities that a practitioner is under investigation in relation to a relevant serious matter will allow them to take immediate steps to protect the public, such as contacting people who may be at risk; implementing restrictions or supervision requirements while the matter is investigated; and improving organisational policies, safety protocols and training requirements.

[25] See new section 220B of the National Law

Similarly, notifying employers and other associates that an unregistered person is under investigation or prosecution for an offence will allow them to take any action they consider necessary to protect the public, such as restricting that person's scope of practice.

Working together, these contemporary information-sharing provisions are to enable the National Boards and Ahpra to better protect the public when there is a serious risk posted by registered health practitioners and unregistered persons. The provision will improve our ability to work with employers and other regulators to identify serious risks to the public and remove unnecessary barriers to sharing information about practitioners who cause harm through successive workplaces.

4.3 Mandatory notification by employers (Part 19)

Change started on assent

Since 2010, there have been mandatory requirements for employers to notify Ahpra if the employer reasonably believes a health practitioner has behaved in a way that constitutes notifiable conduct.[26]

This change adds a notation that provides an example that may help employers understand the intention of this requirement. The example illustrates that an employer of a registered health practitioner must notify Ahpra if the employer takes action against a practitioner, such as withdrawing or restricting the practitioner's clinical privileges, because the employer reasonably believes the public is at risk of harm because the practitioner has significantly departed from accepted professional standards.

Employers may be unaware of their obligations, or confused about whether and under what circumstances a practitioner's behaviour meets the definition of notifiable conduct and must be reported.

What does this mean in practice?

This is not a substantial change to current obligations. We have reviewed our published information about employers' mandatory notification requirements to make sure our guidance is clear. We recommend that all employers of health practitioners read the employer guidance and other resources about mandatory notifications on the Ahpra website.

4.4 Alternative name (Part 29)

Change has not yet started

This change will enable registered health practitioners to nominate one alternative name that can appear alongside their legal name on the National Scheme's public register. For example, some practitioners adopt an anglicised name, or use their middle name, or their maiden name when they practice. This not only provides better flexibility for practitioners, it should also make it easier for the public to check their practitioner's registration on the register.

A National Board may refuse to record a nominated name in the register for several commonsense reasons, including if it is obscene or offensive, is too long, uses symbols without phonetic significance, includes a statement or phrase, or resembles a protected or specialist title.

Implementing the changes

The delayed start to this change gives Ahpra time to develop a process and operational procedures to support registered practitioners who want to nominate an alternative name. We also need to make system changes to support the alternative name being recorded on the public register.

[26] See section 142 of the National Law.

What will this mean in practice?

Ahpra will let registered health practitioners know when they can nominate one alternative name for inclusion on the register and what the process will be. If there is a change to the nominated alternative name, the practitioner will also need to write to the National Board about this.

While there may be a large volume of requests initially, in the future we expect this will become a routine change request that can be made at any time, including on application for registration or on renewal of registration.

Being able to search for a practitioner under both their legal and alternative name should help the public find the practitioner that they are looking for on the register. This change will mean that when a practitioner is practicing, they may only use a name that appears on the register.

4.5 Exclusion of information from public register (Part 30)

Change has not yet started

The National Law allows information about registered health practitioners to be published on the public register. [27] A National Board can currently exclude information about a registered health practitioner from the register at the request of a practitioner if the Board reasonably believes that the inclusion of the information would present a serious risk to the practitioner's health or safety.

This change broadens the reasons for a National Board to decide not to include, or to remove, information on the register at the request of a practitioner if the Board reasonably believes its inclusion in the public register would present a serious risk to the health or safety **of a member of the practitioner's family or an associate of the practitioner**. This includes risks such as those stemming from family, domestic or other violence.

The terms **associate** and **family** are intentionally broad and include friends; neighbours; colleagues of the practitioner; persons related by blood, marriage, adoption; persons in a de facto relationship with the practitioner; and persons connected to the practitioner through Aboriginal and Torres Strait Islander kinship ties.

Implementing the change

The delayed start to this change gives Ahpra time to develop a process and operational procedures to support this change for practitioners, to provide the necessary information that will help inform and support the Board to make a reasonable belief that it is necessary to exclude this information from the register.

For example, a National Board's reasonable belief may be based on documents such as a police report, court order or statutory declaration, or on the basis that a practitioner will shortly provide such documents.

A National Board will have discretion to include information in the register again if it no longer believes there is a serious risk to the health or safety of the practitioner, members of the practitioner's family, or an associate of the practitioner. National Boards will periodically review their decisions to exclude or remove information.

What will this mean in practice?

Ahpra will let registered health practitioners know when a request can be made to exclude information from the register because it would present a serious risk to the health or safety of a member of the practitioner's family or an associate of the practitioner. We recognise that the intention of this change is to ensure that practitioners will not face unnecessary barriers to having information removed in cases where another person's safety may be at risk.

[27] See sections 222 to 228 of the National Law. This includes information on the general register and the specialists register (for those Boards that have specialist registration for medical practitioners, dentists, and podiatric surgeons)

5. Strengthening registration processes

There are two changes designed to strengthen current registration processes and continue to protect the public. The changes will start on a date/s to be fixed by proclamation. While governments will decide the start date, Ahpra will liaise with officials to ensure implementation activities are ready before the changes start.

5.1 Withdrawal of a practitioner's registration (Part 11)

Change has not yet started

A key function for National Boards is to decide applications for registration from suitably qualified and competent persons in the health profession. Under the existing provisions of the National Law, a National Board cannot reconsider its decision to grant a practitioner's application for registration, even if the Board becomes aware later that the information on which the decision was based was false or misleading.

While a National Board can refuse to grant a subsequent application from the practitioner to renew their registration, the Board's only recourse in the meantime is to take disciplinary action under Part 8 of the National Law, such as suspending the practitioner and initiating proceedings before a tribunal. These proceedings may last many months.

The change is to provide National Boards with the ability to withdraw a practitioner's registration if the Board reasonably believes it was improperly obtained.[28] This will enable National Boards to respond more quickly and in a more proportionate way in those situations where a practitioner has been granted registration on the basis of information or documents that are later discovered to have been false or misleading.

To ensure procedural fairness, a decision to withdraw an improperly obtained registration is subject to a show cause process and can be appealed to a tribunal.

Implementing the changes

The delayed start gives Ahpra time to ensure this change is fully reflected in our updated operational policies and procedures.

What will this mean in practice?

Obtaining registration as a health practitioner based on false or misleading documents poses a risk to public health and can undermine public confidence in health services provided by the registered professions. Previously, only a tribunal could withdraw a practitioner's registration in this situation. This is a pragmatic change that will give the National Boards tools that we expect will help us deal with this situation more effectively and efficiently when it arises.

5.2 Renewal of registration after suspension period (Part 13)

Change has not yet started

Tribunals, health panels and National Boards can suspend a health practitioner's registration but only a tribunal can cancel a practitioner's registration. A suspended practitioner will remain suspended on the public register until the period of suspension ends or is otherwise revoked. The National Law provides that a suspended practitioner is taken not to be registered during the period of suspension (other than for purposes of part 8).[29] Health practitioners are required to renew registration annually, and if they do not, their registration will end one month after the period of registration ends.

[28] See new division 6A into part 7 of the National Law.

[29] See section 207 (effect of suspension) of the National Law.

This change will address the unintended consequence that a suspended practitioner cannot apply to renew registration and as a result their period of registration would otherwise end. This change clarifies that their registration will be reinstated when the suspension ends or is revoked.[30] It also requires them to apply to renew registration within one month of the end of a period of suspension.[31]

These practitioners will need to provide the same information required for all renewals, including a statement with information about their criminal history, continuing professional development and recency of practice.

Implementing the change

The delayed start to this change gives Ahpra time to update operational policies and procedures to accommodate the requirements for previously suspended practitioners to renew their registration.

What will this mean in practice?

The change applies to all practitioners whose registration is suspended and who are therefore not able to apply to renew registration. When the suspension ends or is revoked, their registration will be reinstated and they will need to apply to renew their registration. The National Boards will be able to receive up-to-date practice and personal information to inform a decision about the practitioner's continued suitability to practise the profession.

6. Enhancing scheme efficiency and effectiveness

The National Scheme is self-funded by fees paid by health practitioners. The guiding principles for the National Scheme state that the scheme is to operate in a transparent, accountable, efficient, effective and fair way; and that fees that are required to be paid are to be reasonable having regard to the efficient and effective operation of the scheme. Following recommendations from reviews of the scheme, changes are made to support Ahpra and the National Boards to streamline processes to help improve the scheme's efficiency and effectiveness. Most changes in this section will start on a date/s to be fixed by proclamation. While governments will decide the start date, Ahpra will liaise with officials to ensure our implementation activities are ready before the changes start.

6.1 Allowing flexibility in the timeframes for starting registration (Part 8)

Change has not yet started

The *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2017* included a minor change to the National Law to allow National Boards to decide an application for registration and for the registration to start up to 90 days after the date of the National Board's decision. This change has worked well for general registration.

The reason for that change was to provide greater flexibility to assist practitioners moving from student to general registration and to help internationally qualified practitioners trying to meet the multiple requirements of National Boards, employers and immigration authorities.

Similarly, this minor change will allow National Boards to post-date the start of other types of registration – that is, specialist, provisional, limited and non-practising registrations – up to 90 days after a registration decision is made.[32]

Implementing the change

[30] See new section 112B of the National Law.

[31] See new section 112B(2) of the National Law.

[32] See sections 61, 64, 72 and 76 of the National Law (section 56 for general registration).

Ahpra will make minor updates to procedures and system to accommodate this flexibility in National Boards' decision dates.

What will this mean in practice?

We expect this pragmatic change will be of benefit to practitioners and will resolve inconsistencies that Ahpra and the National Boards identified from only being able to post-date general registration and not the other registration types, by aligning timeframes with those available for general registration.

6.2 Increasing the use of undertakings (Part 9)

Change has not yet started

Under the National Law, National Boards can currently impose a condition on a practitioner's registration but cannot accept an undertaking during the registration process. Placing a condition on a practitioner's registration when they register or renew their registration can be time consuming and resource intensive. In our experience, in some cases an undertaking would be just as effective to restrict the practitioner's practice rather than needing to impose a condition on their registration.

The change will allow National Boards to accept an undertaking from a practitioner when they apply for registration, endorsement of registration, and/or renewal of registration. Undertakings are, like conditions, enforceable. The change will also allow a National Board to refuse to renew a practitioner's registration if the practitioner has contravened an undertaking they have given. Undertakings (like conditions) will appear on the public register.

Implementing the change

Ahpra will update procedures and systems and we will look at building on our published library of undertakings (for notifications) to accommodate use of undertakings at registration/renewal.

What will this mean in practice?

Allowing National Boards to accept undertakings from practitioners is expected to free up resources for managing other priorities. Practitioners may be more willing to provide an undertaking than have a condition imposed on their registration because this will avoid delays in registration and increase their involvement in the process.

6.3 Clarifying the process for changing or removing conditions on endorsements of registration (Part 10)

Change has not yet started

The National Law currently sets out a process for National Boards to change or remove a condition on registration, but it does not establish the process for changing or removing a condition *on endorsements* of registrations.

The change is to clarify that the process for a National Board to change or remove a condition on an endorsement is the same as for changing or removing a condition on registration.

Implementing the change

Ahpra will make minor updates to our procedures to reflect this clarification.

What will this mean in practice?

There is no effect on practitioners or the public, but it provides helpful clarity for Ahpra in administration of this process.

6.4 Removal of endorsement of registration for midwife practitioners (Part 12)

Change started on assent

When the National Scheme started in 2010, one practitioner was registered as a midwife practitioner under the *Nurses Act 1991* (NSW). This practitioner's registration was transitioned to the national register with an endorsement as a midwife practitioner. Since this time, the Nursing and Midwifery Board of Australia (the NMBA) has not approved any further midwife practitioner endorsements. The NMBA does not have a registration standard for endorsement as a midwife practitioner and there are no approved programs of study that qualify a midwife to practise as a midwife practitioner. Jurisdictions found no evidence that there is a current workforce need for this endorsement.

This change is to remove the provision of the National Law that allows for endorsements of registration for midwife practitioners.[33] A 'savings provision' is inserted to ensure that the sole registered midwife practitioner can continue to practice using that protected title. The midwife practitioner must still comply with the existing requirements for registration as a midwife with this endorsement.

What does this mean in practice?

There are no effects from this change for the public or midwives.

6.5 Allowing National Boards to require records at preliminary assessment (Part 20)

Change has not yet started

When a National Board receives a notification about a registered health practitioner, it will usually conduct a preliminary assessment. Preliminary assessment is used to determine if the notification is about a health practitioner or student in a profession that is regulated under the National Scheme; whether a ground for the notification exists; or whether the notification could also be made to a state or territory health complaints entity.

At this point, National Boards can ask a practitioner to provide information or documents that will help the Board to assess the notification. However, the Board cannot compel the practitioner to provide these. Relevant information could include clinical records and confidentiality restrictions mean that these records can only be provided if the notification was made by a patient and the patient consents to the disclosure of the records. This can result in practitioners being able to provide National Boards with this confidential information even if it would help to resolve the notification at an early point in the process. Instead, Boards may need to start an investigation so that this information can required to be disclosed and the Board can make an informed decision about what, if any, regulatory action is needed.

This change will allow National Boards to require practitioners to provide information or documents, including patient and practitioner records during a preliminary assessment of a notification.[34] The change clarifies that practitioners will not need to provide the information if it might incriminate them.

Implementing the change

The delayed start to this change gives Ahpra time to update operational policies and procedures to support this change and decision-making by National Boards.

What will this mean in practice?

The National Boards and Ahpra expect this change will result in a more efficient preliminary assessment process and support timely resolution of matters. This should improve the experience of both practitioners and notifiers. The change does not affect the types of documents or other information that National Boards can access – but it does bring forward the point in time at which National Boards can require the information to be produced.

[33] See Part 7, Division 8, Subdivision 3.
[34] See new sections 149A and 149B of the National Law.

6.6 Allowing National Boards to refer matters to other entities at preliminary assessment (Part 24)

Change has not yet started

Ahpra and National Boards receive and respond to notifications about registered health practitioners and students. Notifications can be made by anyone on grounds including concerns about a health practitioner's professional conduct, knowledge, skill or suitability to hold registration. Ahpra must refer notifications to the relevant National Board or, in Queensland and New South Wales (co-regulatory jurisdictions) to the co-regulatory authority.[35]

During preliminary assessment, a National Boards can refer a notification to another National Board if the notification relates to a person registered in the health profession for which the other Board was established. National Boards can also refer a notification to a state or territory health complaints entity if the notification would provide a ground for such a referral. These are the only circumstances that a Board can refer a notification to another entity at the preliminary assessment stage, even if the Board considers that the notification is best dealt with by another body.

This change will allow National Boards to refer matters to entities other than another National Board or health complaints entity, after preliminary assessment.[36] National Boards will also be able to ask the entity for information about how it has resolved the referred matter. This will allow National Boards to monitor the outcomes of referred matters and assist their decision-making on future referrals.

Implementing the change

The delayed start to this change gives Ahpra time to update operational policies and procedures to support this change and decision-making by National Boards.

What will this mean in practice?

The change does not limit the bodies that a National Board may refer a notification to. Based on our experience during the period without this power, the most common bodies for a referral will include other health regulators (such as state-based medicines and poisons regulators or a Commonwealth complaints body like the NDIS Quality and Safeguards Commission), health services or employers, the police or courts.

National Boards do not want to unnecessarily prolong notifications processes. Each year, National Boards deal with significant numbers of notifications that do not require regulatory action in relation to an individual practitioner. For example, it may be more appropriate to refer a notification about fees paid for a health service or waiting times to the practice or health service for resolution, or minor concerns about workplace behaviours involving a practitioner who supervises other practitioners to the employer of that practitioner.

If a National Board refers a notification to another entity, it may continue to deal with the notification or aspects of it when it raises issues about a practitioner's fitness to practise. For example, if a notification also raises concerns about fees paid or waiting times and an allegation of a failure to appropriately manage a patient, it may be appropriate for the National Board to continue to deal with the failure to manage a patient while referring the other issues to the local health service or facility.

Having this ability to refer a matter at the earlier point of preliminary assessment should improve consumers' notification experiences. It provides a mechanism for Ahpra to transfer a notification, instead of recommending that a notifier lodge their concerns with another entity. The change is intended to improve notification experiences for consumers when it is clear that another entity is better placed to respond to the issues raised. This will speed up the notification process and allow our resources to be used for more serious concerns that require actions under the National Scheme.

[35] In Queensland, this is the Health Ombudsman. In New South Wales it is the relevant professional council or the Health Care Complaints Commission.

[36] See new section 150A to the National Law.

6.7 Increasing the responsiveness of show cause processes (Part 25)

Change has not yet started

The National Law provides for a 'show cause' process to give a registered health practitioner or student an opportunity to make either a verbal or written submission to the Board, within a reasonable time specified in the notice, before the Board decides what health, conduct or performance action needs to be taken.

This change is to allow a National Board to take appropriate action against a registered health practitioner under the health, conduct and performance provisions of Part 8 of the National Law, even if the Board initially proposed to take a different regulatory action.[37]

Currently, once a National Board proposes to take action and initiates a show cause process it must either take the proposed action, or take no further action, or take a different relevant action under the same division of the National Law. This technicality can preclude the National Board from taking action under a **different** Division following the completion of the show cause process, such as investigating a matter under Division 8 or initiating a health or performance assessment under Division 9. Changing the proposed action may be appropriate where, for example, new information comes to light from a practitioner's submission in the show cause process that warrants further investigation or assessment.

In addition, when a National Board takes a relevant action under Division 10 of Part 8, the Board will no longer be exempt from the show cause process requirements of section 179 when it has already investigated the relevant matter or completed a health or performance assessment of the registered health practitioner or student.

Implementing the change

The delayed start to this change gives Ahpra time to update operational policies and procedures to support this change and decision-making by National Boards.

What will this mean in practice?

The changes allow a National Board to change its proposed disciplinary action after the completion of the show cause process. This will ensure that the most appropriate regulatory action is taken based on all relevant information available to the Board at any time. In practice, National Boards always afford practitioners opportunity to show cause, so this change brings the National Law into line with current practice.

[37] Sections 179 and 180 of the National Law are amended. Note that section 178 sets out the actions that may be taken by a National Board.

6.8 Giving regulators limited discretion not to refer matters to responsible tribunal (Part 26)

Change has not yet started

The National Law requires National Boards to refer professional misconduct cases to a responsible tribunal.[38] Boards do not have any discretion to take another action or to decide not to take any further steps with respect to the matter. Professional misconduct cases are the most serious of matters and it is usually appropriate to refer these matters to a tribunal.

The change is to provide National Boards with a limited discretion to decide not to refer a matter to a tribunal.[39] To protect the integrity of the National Scheme and the health and safety of the public, National Boards will only be able to exercise such discretion if they conclude that there is no public interest in referring the matter to a tribunal.

For example, a National Board is investigating concerns about conduct that occurred some years ago and the practitioner has decided to retire from practising the profession. If the Board is satisfied that the practitioner will not practise again and there is no ongoing risk to the public, there may be no public interest in referring the matter to a tribunal.

To determine whether there is public interest in referring a matter to the tribunal, National Boards will need to consider:

- whether failure to refer the matter to a tribunal will put the health and safety of the public at risk;
- the nature and seriousness of the conduct, including whether the practitioner engaged in wilful misconduct or has multiple notifications against them;
- whether the practitioner is still registered and, if not, the likelihood that the practitioner may seek registration in the future;
- whether failure to refer the matter to a tribunal would deprive the public of a benefit, including the benefit of a public decision on the matter; and
- any other matters the Board considers relevant.

To ensure the discretion not to refer matters to a responsible tribunal is exercised in a manner that is appropriate, accountable, and transparent, Ahpra will be required to publish information about these decisions in its annual report.

Implementing the change

The delayed start to this change gives Ahpra time to update operational procedures to support this change and engage with state and territory tribunals. Our systems will need be updated to be capable of recording these decisions, so that Ahpra can fully comply with the requirement to publish information in our annual reports.

What will this mean in practice?

Giving National Boards a limited discretion to decide not to refer certain matters to a tribunal will ensure that the most serious professional misconduct matters will continue to be heard by a tribunal, but resources will not be used pursuing matters where there is no risk to the public and no public interest in having the matter

[38] **Professional misconduct** of a registered health practitioner, includes—

(a) unprofessional conduct by the practitioner that amounts to conduct that is substantially below the standard reasonably expected of a registered health practitioner of an equivalent level of training or experience; and

(b) more than one instance of unprofessional conduct that, when considered together, amounts to conduct that is substantially below the standard reasonably expected of a registered health practitioner of an equivalent level of training or experience; and

(c) conduct of the practitioner, whether occurring in connection with the practice of the health practitioner's profession or not, that is inconsistent with the practitioner being a fit and proper person to hold registration in the profession.

[39] See new section 193A of the National Law.

heard by the tribunal. This will benefit tribunals, and also practitioners who have decided to cease practice and cease holding registration and will not pose a risk to the public. The public will continue to be protected, as the discretion for National Boards is limited and it must be based on there being **no** public interest in referring the matter to a tribunal.

7. Minor, consequently, and technical changes

A range of minor and technical amendments are made to correct typographical errors, to make terminology used in the National Law clearer or more consistent, to update references to other legislation, and to make some provisions contemporary as part of keeping the legislation up to date and fit for purpose. Most changes in this section will start on a date/s to be fixed by proclamation. Governments will decide the start date.

7.1 Various minor/technical changes to correct typographical errors or otherwise contemporise the National Law

Technical and typographic corrections started on assent
Minor changes have not yet started

The consequential amendment to the definition of 'suspension period' will start on proclamation and on the same date as Part 13 – renewal of registration following suspension period. A minor amendment in the Bill replaces phrases indicating that a person can inspect a document held by a regulator at a 'reasonable time and place' with a reference to 'at a reasonable time and in the reasonable way' decided by the Board. These changes reflect that document inspection and copying is now often done electronically, rather than in person. This change will start on a date to be fixed by proclamation.

Implementing the change

Ahpra will update our policies and procedures for investigators to reflect the updated document inspection provisions.

What will this mean in practice?

There is no impact for the public or registered health practitioners from these minor and technical changes being made to the National Law.

7.2 Consequential amendment of s.109 (annual statement) to update the National Law to reference the Health Insurance Act 1973 rather than the repealed Medicare Australia Act 1973

Change has not yet started

Currently when registered health practitioners apply for renewal of their registration, they complete a declaration (annual statement). One of the matters that must be declared (if applicable) is if the applicant's billing privileges were withdrawn or restricted under the *Medicare Australia Act 1973* (Cth) during the applicant's preceding period of registration because of the applicant's conduct, professional performance or health, and provide details of the withdrawal or restriction of the privileges.

The Medicare Act is also referenced in the National Law provision requiring a registered health practitioner to give a National Board notice of certain events within 7 days of becoming aware of their occurrence (see section 130 of the National Law, which is being updated by Part 14 of the Bill).

There has been some uncertainty and confusion about practitioner obligations as the Commonwealth Medicare Act was repealed some time ago. Therefore, a consequential amendment has been made to reflect the repeal of the Medicare Act and to insert a reference to the *Health Insurance Act 1973* (Cth).[40]

[40] See sections 109 and 130 of the National Law.

The change is made with the intention of replicating the existing obligations as closely as possible under current Commonwealth legislation. Applicants for renewal of registration must disclose, if applicable, as part of their annual statement, that during the applicant's previous period of registration, and because of the applicant's conduct, professional performance, or health:

- the applicant was disqualified under an agreement with the Director of the Professional Services Review under section 92 of the Health Insurance Act ; or
- the applicant was subject to a final determination under section 106TA of the Health Insurance Act following a Professional Standards Review Committee hearing that contained a direction under section 106U(1)(g) or (h) of that Act that the practitioner be disqualified.

The words 'conduct, professional performance or health' are a term used under the National Law and refer to circumstances in which action may be taken under Part 8 of the National Law.

This change also includes the clarification that an applicant for renewal need not include information about a disqualification under the Health Insurance Act if the applicant is prohibited from doing so under that law.

Implementing the change

We are updating our policies and procedures to refer to the Health Insurance Act so this consequential change is fully captured. The delayed start gives Ahpra time to inform registered health practitioners about this obligation and to update relevant registration and renewal documents.

Ahpra understands that the change to section 130 (which is included in Part 14 of the Bill) and this change will start at the same time on a date to be decided by governments.

What does this mean in practice?

The change ensures that the right Commonwealth legislation is referred to by the National Law, and Ahpra hopes this will resolve some confusion for registered health practitioners about their obligations. Registered health practitioners only need to make this declaration if it applies to their circumstances.
