**Proposed Amendments to the HPR National Law**

The ***Health Practitioner Regulation National Law*** (the National Law) has been uniformly enacted by each Australian State and Territory, with slight differences, save for the NSW and Queensland versions which deal with complaints against health professionals within their pre-existing complaints structures.

The Queensland version has been used in this paper for reference: <http://classic.austlii.edu.au/au/legis/qld/consol_act/hprnl509/>

The following Proposed Amendments are required to be uniformly replicated in each version of the National Law in force in each State and Territory of Australia. All Proposed Amendments are coloured red.

**Informed Consent & Medical Exemptions**

**Laws of the States and Territories**

Each State and Territory version of the National Law includes an equivalent section 10, which reads:

####  10 [Law binds the State](http://classic.austlii.edu.au/au/legis/qld/consol_act/hprnl509/s10.html)

 (1) This Law binds the State.

(2) In this section—

**"State"**means the Crown in right of this jurisdiction, and includes—

(a) the Government of this jurisdiction; and

(b) a Minister of the Crown in right of this jurisdiction; and

(c) a statutory corporation, or other entity, representing the Crown in right of this jurisdiction.

***Proposed Amendments***

Insert new subsection 10(3) to read; Insert new subsection 10(4).

Section 10 to instead read:

####  10 Law binds the State

 (1) This Law binds the State.

(2) In this section—

**"State"**means the Crown in right of this jurisdiction, and includes—

(a) the Government of this jurisdiction; and

(b) a Minister of the Crown in right of this jurisdiction; and

(c) a statutory corporation, or other entity, representing the Crown in right of this jurisdiction.

(3) The State will create no Law, Act, Regulation, Order, or Statutory Instrument that conflicts in any manner with:

1. Subsection 11(5A); or
2. Section 25A; or
3. Subsection 32(2A); or
4. Subsection 35(1)(c).

(4) A medical exemption issued under section 25A(d), or subsections 11(5A)(d) or 32(2A)(d), shall serve as a legal exemption to any Law, Act, Regulation, Order, or Statutory Instrument of the State, requiring as a condition of employment, or requiring as a condition of entry to and staying upon any premises, that a person employee contractor or subcontractor first evidence they have received a drug or substance, or undertaken a therapy or course of treatment, where the medical exemption is issued in respect of the same drug or substance or therapy or course of treatment.

**The Ministerial Council**

Each State and Territory version of the National Law includes an equivalent section 11, which reads:

####  11 [Policy directions](http://classic.austlii.edu.au/au/legis/qld/consol_act/hprnl509/s11.html)

(1) The Ministerial Council may give directions to the National Agency about the policies to be applied by the National Agency in exercising its functions under this Law.

(2) The Ministerial Council may give directions to a National Board about the policies to be applied by the National Board in exercising its functions under this Law.

(3) Without limiting *subsections (1)*and *(2)*, a direction under this section may relate to—

(a) a matter relevant to the policies of the National Agency or a National Board; or

(b) an administrative process of the National Agency or a National Board; or

(c) a procedure of the National Agency or a National Board; or

(d) a particular proposed accreditation standard, or a particular proposed amendment of an accreditation standard, for a health profession.

(4) However, the Ministerial Council may give a National Board a direction under *subsection (3) (d)*only if—

(a) in the Council’s opinion, the proposed accreditation standard or amendment will have a substantive and negative impact on the recruitment or supply of health practitioners; and

(b) the Council has first given consideration to the potential impact of the Council’s direction on the quality and safety of health care.

(5) A direction under this section cannot be about—

(a) a particular person; or

(b) a particular qualification; or

(c) a particular application, notification, referred matter or proceeding.

*Editor’s note—*

This paragraph is an amended Queensland provision.

(6) The National Agency or a National Board must comply with a direction given to it by the Ministerial Council under this section.

***Proposed Amendment***

Following subsection 11(5) insert a new subsection 11(5A) to read:

(5A) No Ministerial Council direction, recommendation, or request may:

1. infringe upon the ethical and professional requirement on the part of all treating health practitioners to ensure informed consent is properly obtained from a patient or client; nor
2. limit or impede or obstruct a health practitioner from providing information reasonably believed by the health practitioner as necessary for a patient or client to receive before consenting to, or not consenting to, a procedure, treatment, therapy, course of action, intervention, or the administration or application of any substance to the patient or client, or those under the care of the patient or client; nor
3. limit or impede or obstruct a health practitioner from sharing information publicly, including the opinion of the health practitioner, being information reasonably believed by the health practitioner as capable of assisting any member of the public for the purpose of informed consent concerning any therapeutic or medical procedure, treatment, course of action, intervention, or concerning the administration, use, or application of any substance; nor
4. interfere with or prohibit or restrict any medical exemption issued by a medical health practitioner, nor sanction or interfere with any medical health practitioner issuing a medical exemption, when the medical exemption is issued for a drug or substance or therapy or course of treatment, which in the opinion of the health practitioner:
5. has associated Phase I, II, or III Clinical Trial data capable of being deemed inconclusive or deficient or incomplete or possibly affected by fraud, sufficient to raise doubt with respect to the Safety or Efficacy of the drug or substance or therapy or course of treatment; or

(ii) cannot be conclusively deemed Safe or Effective due to

insufficient long-term safety and efficacy data.

**AHPRA**

Each State and Territory version of the National Law includes an equivalent section 25:

####  25 [Functions of National Agency](http://classic.austlii.edu.au/au/legis/qld/consol_act/hprnl509/s25.html)

 The functions of the National Agency are as follows—

(a) to provide administrative assistance and support to the National Boards, and the Boards’ committees, in exercising their functions;

(b) in consultation with the National Boards, to develop and administer procedures for the purpose of ensuring the efficient and effective operation of the National Boards;

(c) to establish procedures for the development of accreditation standards, registration standards and codes and guidelines approved by National Boards, for the purpose of ensuring the national registration and accreditation scheme operates in accordance with good regulatory practice;

(d) to negotiate in good faith with, and attempt to come to an agreement with, each National Board on the terms of a health profession agreement;

(e) to establish and administer an efficient procedure for receiving and dealing with applications for registration as a health practitioner and other matters relating to the registration of registered health practitioners;

(f) in conjunction with the National Boards, to keep up-to-date and publicly accessible national registers of registered health practitioners for each health profession;

(g) in conjunction with the National Boards, to keep up-to-date national registers of students for each health profession;

(h) to keep an up-to-date and publicly accessible list of approved programs of study for each health profession;

(i) to establish an efficient procedure for receiving and dealing with matters referred to it by the health ombudsman about persons who are or were registered health practitioners and persons who are students;

*Editor’s note—*

This paragraph is a substituted Queensland provision.

(j) to provide advice to the Ministerial Council in connection with the administration of the national registration and accreditation scheme;

(k) if asked by the Ministerial Council, to give to the Ministerial Council the assistance or information reasonably required by the Ministerial Council in connection with the administration of the national registration and accreditation scheme;

(l) any other function given to the National Agency by or under this Law.

***Proposed Amendment***

Following section 25 insert a new section 25A to read:

 **25A Informed Consent and Medical Exemptions**

The National Agency shall not exercise any power or function that:

1. infringes upon the ethical and professional requirement on the part of all treating health practitioners to ensure informed consent is properly obtained from a patient or client; nor
2. limits or impedes or obstructs a health practitioner from providing information reasonably believed by the health practitioner as necessary for a patient or client to receive before consenting to, or not consenting to, a procedure, treatment, therapy, course of action, intervention, or the administration or application of any substance to the patient or client, or those under the care of the patient or client; nor
3. limits or impedes or obstructs a health practitioner from sharing information publicly, including the professional opinion of the health practitioner, being information reasonably believed by the health practitioner as capable of assisting any member of the public for the purpose of informed consent concerning any therapeutic or medical procedure, treatment, course of action, intervention, or concerning the administration, use, or application of any substance; nor
4. interferes with or prohibits or restricts any medical exemption issued by a medical health practitioner, or sanctions or interferes with any medical health practitioner issuing a medical exemption, when the medical exemption is issued for a drug or substance or therapy or course of treatment, which in the opinion of the health practitioner:
5. has associated Phase I, II, or III Clinical Trial data capable of being deemed inconclusive or deficient or incomplete or possibly affected by fraud, sufficient to raise doubt with respect to the Safety or Efficacy of the drug or substance or therapy or course of treatment; or
6. cannot be conclusively deemed Safe or Effective due to

insufficient long-term safety and efficacy data.

**National Boards**

Each State and Territory version of the National Law includes an equivalent section 32:

####  32 [Powers of National Board](http://classic.austlii.edu.au/au/legis/qld/consol_act/hprnl509/s32.html)

(1) Subject to *subsection (2)*, a National Board has the powers necessary to enable it to exercise its functions.

(2) A National Board does not have power to—

(a) enter into contracts; or

(b) employ staff; or

(c) acquire, hold, dispose of, and deal with, real property.

(3) The National Board may exercise any of its functions in co-operation with or with the assistance of a participating jurisdiction or the Commonwealth, including in co-operation with or with the assistance of any of the following—

(a) a government agency of a participating jurisdiction or of the Commonwealth;

(b) a local registration authority;

(c) a co-regulatory authority;

(d) a health complaints entity;

(e) an educational body or other body established by or under a law of a participating jurisdiction or the Commonwealth.

(4) In particular, the National Board may—

(a) ask an entity referred to in *subsection (3)*for information that the Board requires to exercise its functions under this Law; and

(b) use the information to exercise its functions under this Law.

(5) An entity referred to in *subsection (3)*that receives a request for information from the National Board is authorised to give the information to the National Board.

***Proposed Amendment***

Insert new subsection 32(2A) to read:

 (2A) A National Board does not have power to:

1. infringe upon the ethical and professional requirement on the part of all treating health practitioners to ensure informed consent is properly obtained from a patient or client; nor
2. limit or impede or obstruct a health practitioner from providing information reasonably believed by the health practitioner as necessary for a patient or client to receive before consenting to, or not consenting to, a procedure, treatment, therapy, course of action, intervention, or the administration or application of any substance to the patient or client, or those under the care of the patient or client; nor
3. limit or impede or obstruct a health practitioner from sharing information publicly, including the professional opinion of the health practitioner, being information reasonably believed by the health practitioner as capable of assisting any member of the public for the purpose of informed consent concerning any therapeutic or medical procedure, treatment, course of action, intervention, or concerning the administration, use, or application of any substance; nor
4. interfere with or prohibit or restrict any medical exemption issued by a medical health practitioner, nor sanction or interfere with any medical health practitioner issuing a medical exemption, when the medical exemption is issued for a drug or substance or therapy or course of treatment, which in the opinion of the health practitioner;
5. has associated Phase I, II, or III Clinical Trial data capable of being deemed inconclusive or deficient or incomplete or possibly affected by fraud, sufficient to raise doubt with respect to the Safety or Efficacy of the drug or substance or therapy or course of treatment; or
6. cannot be conclusively deemed Safe or Effective due to

insufficient long-term safety and efficacy data.

Each State and Territory version of the National Law includes an equivalent section 35 which reads in part:

####  35 [Functions of National Boards](http://classic.austlii.edu.au/au/legis/qld/consol_act/hprnl509/s35.html)

 (1) The functions of a National Board established for a health profession are as follows—

(a) to register suitably qualified and competent persons in the health profession and, if necessary, to impose conditions on the registration of persons in the profession;

(b) to decide the requirements for registration or endorsement of registration in the health profession, including the arrangements for supervised practice in the profession;

(c) to develop or approve standards, codes and guidelines for the health profession, including—

(i) the approval of accreditation standards developed and submitted to it by an accreditation authority; and

(ii) the development of registration standards for approval by the Ministerial Council; and

(iii) the development and approval of codes and guidelines that provide guidance to health practitioners registered in the profession;

***Proposed Amendment***

Insert new beginning of subsection 35(1)(c).

Section 35 to instead read (in part):

####  35 Functions of National Boards

(1) The functions of a National Board established for a health profession are as follows—

(a) to register suitably qualified and competent persons in the health profession and, if necessary, to impose conditions on the registration of persons in the profession;

(b) to decide the requirements for registration or endorsement of registration in the health profession, including the arrangements for supervised practice in the profession;

(c) subject to subsection 32(2A), to develop or approve standards, codes and guidelines for the health profession, including—

(i) the approval of accreditation standards developed and submitted to it by an accreditation authority; and

(ii) the development of registration standards for approval by the Ministerial Council; and

(iii) the development and approval of codes and guidelines that provide guidance to health practitioners registered in the profession;

**Consultation with Members**

**Ministerial Council**

Each State and Territory version of the National Law includes an equivalent section 11 which reads in part:

####  11 [Policy directions](http://classic.austlii.edu.au/au/legis/qld/consol_act/hprnl509/s11.html)

(1) The Ministerial Council may give directions to the National Agency about the policies to be applied by the National Agency in exercising its functions under this Law.

(2) The Ministerial Council may give directions to a National Board about the policies to be applied by the National Board in exercising its functions under this Law.

.

.

(6) The National Agency or a National Board must comply with a direction given to it by the Ministerial Council under this section.

***Proposed Amendment***

####  11 Policy directions

(1) The Ministerial Council may give directions to the National Agency about the policies to be applied by the National Agency in exercising its functions under this Law.

(2) The Ministerial Council may give directions to a National Board about the policies to be applied by the National Board in exercising its functions under this Law.

 .

 .

(6) Any direction seeking to introduce or alter or remove a standard or code or guideline or position statement concerning one or more health profession will be subject to sections 30(3) and 35(3); otherwise the National Agency or the Agency Management Committee or a National Board must comply with a direction given to it by the Ministerial Council under this section.

**AHPRA**

Each State and Territory version of the National Law includes an equivalent section 30 which reads:

####  30 [Functions of Agency Management Committee](http://classic.austlii.edu.au/au/legis/qld/consol_act/hprnl509/s30.html)

(1) The functions of the Agency Management Committee are as follows—

(a) subject to any directions of the Ministerial Council, to decide the policies of the National Agency;

(b) to ensure that the National Agency performs its functions in a proper, effective and efficient way;

(c) any other function given to the Committee by or under this Law.

(2) The affairs of the National Agency are to be controlled by the Agency Management Committee and all acts and things done in the name of, or on behalf of, the National Agency by or with the authority of the Agency Management Committee are taken to have been done by the National Agency.

***Proposed Amendment***

Insert a new subsection 30(3) and (4) to read as follows:

(3) Where a direction issued under section 11 to the National Agency seeks to introduce or alter or remove a standard or code or guideline or position statement for a health profession, the Agency Management Committee together with the relevant National Board shall be subject to section 35(3)(a) as though the direction were a proposal by the National Board, to determine whether the Agency Management Committee should adopt or not adopt the direction.

(4) A proposed policy by the Agency Management Committee that intends to introduce or alter or remove a standard or code or guideline or position statement for a health profession, shall be subject to section 35(3)(a) as though the proposed policy were a proposal by the National Board of the health profession, to determine whether the Agency Management Committee should adopt or not adopt the proposed policy.

**National Boards**

Each State and Territory version of the National Law includes an equivalent section 35 which reads:

####  35 [Functions of National Boards](http://classic.austlii.edu.au/au/legis/qld/consol_act/hprnl509/s35.html)

(1) The functions of a National Board established for a health profession are as follows—

(a) to register suitably qualified and competent persons in the health profession and, if necessary, to impose conditions on the registration of persons in the profession;

(b) to decide the requirements for registration or endorsement of registration in the health profession, including the arrangements for supervised practice in the profession;

(c) to develop or approve standards, codes and guidelines for the health profession, including—

(i) the approval of accreditation standards developed and submitted to it by an accreditation authority; and

(ii) the development of registration standards for approval by the Ministerial Council; and

(iii) the development and approval of codes and guidelines that provide guidance to health practitioners registered in the profession;

(d) to approve accredited programs of study as providing qualifications for registration or endorsement in the health profession;

(e) to oversee the assessment of the knowledge and clinical skills of overseas trained applicants for registration in the health profession whose qualifications are not approved qualifications for the profession, and to determine the suitability of the applicants for registration in Australia;

(f) to negotiate in good faith with, and attempt to come to an agreement with, the National Agency on the terms of a health profession agreement;

(g) to oversee the assessment and investigation of matters referred to it by the National Agency about persons who—

(i) are or were registered as health practitioners in the health profession under this Law or a corresponding prior Act; or

(ii) are students in the health profession;

*Editor’s note—*

This paragraph is an amended Queensland provision.

(h) to establish panels to conduct hearings about—

(i) health and performance and professional standards matters in relation to persons who are or were registered in the health profession under this Law or a corresponding prior Act; and

(ii) health matters in relation to students registered by the Board;

(i) to refer matters about health practitioners who are or were registered under this Law or a corresponding prior Act to responsible tribunals for participating jurisdictions or to the health ombudsman;

*Editor’s note—*

This paragraph is an amended Queensland provision.

(j) to oversee the management of health practitioners and students registered in the health profession, including monitoring conditions, undertaking and suspensions imposed on the registration of the practitioners or students;

(k) to make recommendations to the Ministerial Council about the operation of specialist recognition in the health profession and the approval of specialties for the profession;

(l) in conjunction with the National Agency, to keep up-to-date and publicly accessible national registers of registered health practitioners for the health profession;

(m) in conjunction with the National Agency, to keep an up-to-date national register of students for the health profession;

(n) at the Board’s discretion, to provide financial or other support for health programs for registered health practitioners and students;

(o) to give advice to the Ministerial Council on issues relating to the national registration and accreditation scheme for the health profession;

(p) if asked by the Ministerial Council, to give to the Ministerial Council the assistance or information reasonably required by the Ministerial Council in connection with the national registration and accreditation scheme;

(q) to do anything else necessary or convenient for the effective and efficient operation of the national registration and accreditation scheme;

(r) any other function given to the Board by or under this Law.

(2) For the purposes of *subsection (1) (g)*-(j), the Board’s functions do not include taking action referred to in those paragraphs in relation to behaviour by a registered health practitioner or student that occurred, or is reasonably believed to have occurred, in a co-regulatory jurisdiction unless the National Agency has referred the relevant matter to the Board.

***Proposed Amendment***

Insert a new section 35(3) to read as follows:

 (3) Subsection 35(1)(c) shall always be subject to the following –

1. Any National Board proposal to introduce or alter or remove a standard or code or guideline or position statement for the health profession shall:
2. be submitted to all registered practitioners in the profession via electronic mail simultaneously; and
3. allow a period of no less than 30 days for registered practitioners to either approve or disapprove of the proposed standard or code or guideline or position statement; and
4. should a majority of the registered practitioners approve or disapprove of the proposed standard or code or guideline or position statement, the National Board will adopt the majority position of the registered practitioners for adopting or not adopting the proposed standard or code or guideline or position statement.
5. If a majority of registered health practitioners propose:
6. a new standard or code or guideline or position statement; or
7. amending an existing standard or code or guideline or position statement; or
8. removing an existing standard or code or guideline or position statement;
* the National Board of the registered health practitioners must submit the proposal to all the registered practitioners in the profession in accordance with subsection (3)(a) above, as though the proposal were by the National Board of the health profession.
1. A direction involving a standard or code or guideline or position statement issued to a National Board under section 11, shall be subject to subsection (3)(a) as though the direction were a proposal by the National Board, to determine whether the National Board will adopt or not adopt the direction.

**Legal Costs & Lost Income**

Each State and Territory version of the National Law includes an equivalent:

 **Part 8 –** [**HEALTH, PERFORMANCE AND CONDUCT**](http://classic.austlii.edu.au/au/legis/qld/consol_act/hprnl509/index.html#s11)

Under each Part 8 version of the National Law is variously included a Division entitled:

 **Miscellaneous**

***Proposed Amendment***

Insert a new section under the **Miscellaneous** Division of **Part 8** for each State and Territory to read as follows:

 **[Section TBC] Legal Costs and Lost Income**

1. Where any notification, matter, complaint, action, investigation, inspection, immediate action, health assessment, performance assessment arising under this Part 8 against a health practitioner fails to make substantive adverse findings against the health practitioner, the health practitioner may apply to their National Board for the payment of reasonable legal costs incurred in defending, and the loss of income incurred by the health practitioner in defending and discharging allegations brought against them under this Part 8.
2. Where a National Board fails to make a reasonable offer of payment within 28 days of a health practitioner submitting a completed application for legal costs and lost income under (1), the health practitioner will be entitled to apply to the responsible tribunal or Court in their jurisdiction for an assessment of legal costs and lost income for the purposes of subsection (1), where the costs for an assessment under this subsection shall be payable as directed by the tribunal or Court.