

## Health insights

### National Boards armed with new public interest power to take immediate action against health practitioners

The Australian Health Practitioner Regulation Agency ('AHPRA') has applauded recent amendments<sup>1</sup> to the Health Practitioner Regulation Agency National Law Act 2009 (the 'National Law'), which it says will provide additional protections for the public. The amendments, passed in Queensland Parliament, will apply to all jurisdictions except for Western Australia and South Australia where separate legislation will be necessary to effect these changes.

Controversially, the power of the National Boards to take immediate action against registered health practitioners has been expanded where the Board forms the belief that such action is in the "public interest". The expansion of immediate action powers were passed despite opposition from some stakeholder groups such as the Australian Medical Association Queensland and the Queensland Nurses & Midwives' Union which raised concerns regarding the potential subjective and ambiguous manner in which a "public interest" test might be applied.

"Immediate action" is defined in the existing National Law as the suspension of, or imposition of a condition on, a health practitioner's registration (among other available restrictions, including for registered students). Until these amendments, immediate registration action has generally only been available to a National Board where it reasonably believes that, because of the conduct, performance or health of a practitioner, he or she poses a serious risk to persons and it is necessary to take the action to protect public health or safety (although there are a number of other circumstances in which immediate action may be taken).

The Health Practitioner Regulation National Law and Other Legislation Act 2017 (the 'Amending Act') broadens the powers for the National Boards to take immediate action against a practitioner, to include circumstances where the National Board "reasonably believes the action is otherwise in the public interest"<sup>2</sup>.



By Daniel Davison, Principal  
T 07 3220 9358  
E ddavison@meridianlawyers.com.au



By Anna Martin, Associate  
E amartin@meridianlawyers.com.au

This amendment reads like a “catch all” for the National Boards, enabling them to take immediate action where none of the other existing justifications are applicable. The Explanatory Notes for the Amending Act seek to reassure practitioners by providing an example of the circumstances in which the new power might be exercised:

*“For example, if a practitioner has been charged with a serious crime, and the relationship between the alleged crime and the practitioner’s practice is not yet well established, the ‘public interest’ may require a National Board to constrain the practitioner’s practice until the criminal matter is resolved, both for the protection of the public and for public confidence in the health profession.”<sup>3</sup>*

Nevertheless, given the potential enormous impact that immediate action measures can have on a health practitioner’s ability to continue practising, at least for the duration of a substantive investigation by AHPRA, the expansion of the National Boards’ powers to impose such restrictions is significant.

A further development of interest is the expansion of “prohibition orders”. Under the existing National Law, “prohibition orders” are orders which may be made by a responsible tribunal where a decision has been made to cancel a person’s registration (or if a person does not hold registration, disqualify the person from applying for registration for a specified period). If this occurs, the tribunal may impose a “prohibition order” on that person preventing them from using a “specified title” or from “providing a specified health service”<sup>4</sup>. While prohibition orders are imposed in extreme cases only, the newly endowed breadth of these orders both in terms of type and impact, is worth mentioning briefly.

The Amending Act expands the existing “prohibition order” powers to enable a tribunal to prohibit a person from providing any health service, or using any title, either permanently or for a specified period<sup>5</sup>. It also sets out a number of offences relating to the contravention of, and consequences which flow from, imposed prohibition orders. These include:

- Making it an offence to contravene a prohibition order, with a maximum penalty of \$30,000;<sup>6</sup>
- Requiring persons who are subjected to prohibition orders, and who intend to provide a health service, to give written notice of the order to the person receiving the health service and to their employer. The failure to do so is an offence with a maximum penalty of \$5,000<sup>7</sup>; and
- Making it an offence to advertise a health service to be provided by a prohibited person unless the advertisement states that the person is subject to a prohibition order, with a maximum penalty of \$5,000 for individuals, and \$10,000 for corporations<sup>8</sup>.

The offences described at (b) and (c) above will apply when the person who is subject to the prohibition order intends to provide any health service, not just the health service for which they were originally registered<sup>9</sup>.

Other changes include the establishment of a new Paramedicine Board of Australia, together with the forthcoming national registration of paramedic practitioners. Meridian Lawyers has previously produced publications regarding these developments, available for you to read: <http://www.meridianlawyers.com.au/review-mandatory-reporting-laws-treating-healthcare-professionals/>

The new amendments also move to recognise the professions of nursing and midwifery as two separate vocations, albeit governed by the one National Board (being the Nursing and Midwifery Board of Australia).

Meridian Lawyers is well placed to provide advice regarding all aspects of the National Law regulatory framework and impending changes, and has assisted many registered health practitioners subject to immediate registration action imposed by various National Boards.

**THIS ARTICLE WAS WRITTEN BY PRINCIPAL DANIEL DAVISON AND ASSOCIATE ANNA MARTIN. PLEASE CONTACT US IF YOU HAVE ANY QUESTIONS.**

- 
- <sup>1</sup> The amending legislation is titled Health Practitioner Regulation National Law and Other Legislation Act 2017. It has been passed by the Queensland Parliament and received royal assent on 13 September 2017.
  - <sup>2</sup> Health Practitioner Regulation National Law and Other Legislation Amendment Act 2017, s 24.
  - <sup>3</sup> Explanatory Notes for the Health Practitioner Regulation National Law and Other Legislation Amendment Act 2017, at page 13.
  - <sup>4</sup> Health Practitioner Regulation National Law Act (Qld) 2009, s 196(4)(b).
  - <sup>5</sup> Health Practitioner Regulation National Law and Other Legislation Amendment Act 2017, s 36.
  - <sup>6</sup> *Ibid*, s 37.
  - <sup>7</sup> *Ibid*.
  - <sup>8</sup> *Ibid*.
  - <sup>9</sup> This is confirmed by commentary provided in the Explanatory Notes: “a person subject to a prohibition order (referred to as a “prohibited person”) who fails to inform patients or employers of the prohibition order in writing prior to providing any health service, commits an offence...” pages 14 – 15.

Disclaimer: This information is current as of November 2017. These articles do not constitute legal advice and do not give rise to any solicitor/client relationship between Meridian Lawyers and the reader. Professional legal advice should be sought before acting or relying upon the content of these articles.