

Health and Other Legislation Amendment Bill 2009

Explanatory Notes for Amendments to be moved during consideration in detail by the Honourable Paul Lucas MP

Title of the Bill

Health and Other Legislation Amendment Bill 2009

Objective of the Amendments

Nursing Tribunal

The objective of the amendments is to omit two references to the Nursing Tribunal which the Bill inserts into the *Health Practitioners (Professional Standards) Act 1999* (the Professional Standards Act).

Limited Practice

The objectives of the amendments are to provide guidance on the practices of the medical profession in which retired medical practitioners may engage under the *Medical Practitioner Registration Act 2001* (the Act), and to formally recognise the arrangement for registering retired medical practitioners to ensure appropriate transition to the National Registration and Accreditation Scheme for Health Professions (the National Scheme).

Mandatory Reporting

The objective of the amendments is to ensure that the obligation on medical practitioners under the Act to report 'reportable misconduct' by other medical practitioners is consistent with the reporting obligation for health professionals proposed under the National Scheme.

Achievement of the Objectives

Nursing Tribunal

Section 392 of the Professional Standards Act provides that a person must not disclose information about another person's affairs acquired in performing functions under the Act. Subsection (3) provides a range of exemptions, including the circumstances in which disclosure may be permitted and the bodies to which disclosure may be made. Information may currently only be disclosed to the Queensland Nursing Council (QNC) and the Nursing Tribunal, constituted under the *Nursing Act 1992*, if authorised by the Minister on public interest grounds under subsection (j).

This has been found in practice to present an unnecessary impediment to the swift and effective investigation and resolution of disciplinary matters which fall under both the Professional Standards Act and the Nursing Act. For example, where an investigation into suspected misconduct by a doctor (governed in disciplinary matters by the Professional Standards Act) also reveals suspected misconduct by a nurse (governed in these matters by the Nursing Act), the investigator is currently required to obtain the Minister's authorisation before disclosing the information to the QNC or Nursing Tribunal.

Clause 42 of the Bill therefore amends section 392 of the Professional Standards Act to allow confidential information obtained under that Act to be disclosed to the Queensland Nursing Council and the Nursing Tribunal if the disclosure is necessary to allow these bodies to perform their functions under the Nursing Act. Clause 43 inserts definitions of 'Nursing Tribunal' and 'Queensland Nursing Council'.

However, the Queensland Civil and Administrative Tribunal (QCAT), created under the *Queensland Civil and Administrative Tribunal Act 2009* and invested with jurisdiction in relation to disciplinary matters arising under the Professional Standards Act and the Nursing Act through amendments to these Acts effected by the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Act 2009*, will replace the Nursing Tribunal from its commencement on 1 December 2009. A head of power authorising disclosure of confidential information to the Nursing Tribunal will therefore not be necessary from that time.

As QCAT will be a disciplinary body in relation to matters arising under both the Professional Standards Act and the Nursing Act, it has been identified that confidential information may be disclosed to it under the existing exemption in section 392(3)(b) of the Professional Standards to

enable it to perform its disciplinary functions under either Act. No additional head of power is therefore required to enable confidential information to be disclosed to QCAT in performing its functions under the Nursing Act.

The proposed amendments therefore omit the reference to the Nursing Tribunal from clause 42 of the Bill and the definition of 'Nursing Tribunal' from clause 43 of the Bill.

Limited Practice

Section 10B of the *Medical Practitioner Registration Regulation 2002* (the Regulation) provides authority for the Medical Board of Queensland to waive the registration and renewal fees for retired medical practitioners who seek registration. The fee waiver may only be granted to retired medical practitioners who hold a pensioner concession card or a seniors card, and only where the Medical Board of Queensland is satisfied that the registrant will not earn an income from the practice of the profession.

There are no conditions or limitations placed upon the scope of practice in which a retired medical practitioner registered with a fee waiver may engage.

The National Scheme which is to be fully implemented by 1 July 2010 will provide for the transition of retired general and specialist registrants with specified conditions and limitations on scope of practice, to the category of Limited Registration (public interest occasional practice). Only three jurisdictions, Western Australia, Australian Capital Territory and New South Wales, currently formally recognise and provide conditions on, retired general and specialist registrants.

As the arrangement in Queensland does not formally provide for any limitations on registration of retired medical practitioners, these registrants will be required to either drop registration or transition to full general or specialist registration when the National Scheme commences on 1 July 2010.

This disadvantages Queensland's retired medical practitioners significantly and does not afford these registrants with the same rights at transition as other registrants.

In addition, the lack of formal limitations on scopes of practice for retired medical practitioners has the potential to place the public at risk should a retired practitioner's competency and skills base not remain contemporary.

The amendment rectifies this problem by formally implementing limitations on scopes of practice for retired medical practitioners who have been registered with a fee waiver under section 10B of the Regulation.

Mandatory Reporting

Clause 61 of the Bill amends the Act to require a registrant (ie. medical practitioner) who reasonably suspects, or becomes aware, that another registrant has engaged in ‘reportable misconduct’, to give written notice of the misconduct to the Medical Board of Queensland.

The provisions of clause 61 were drafted to be consistent with the national approach to mandatory reporting for health professionals endorsed by the Australian Health Ministers on 5 March 2009 as part of the implementation of the National Scheme.

On 6 October 2009, the *Health Practitioner Regulation National Law Bill 2009* (the National Law Bill), the second-stage legislation to implement the National Scheme, was introduced into the Queensland Parliament.

The National Law Bill includes mandatory reporting provisions that vary from the policy approach initially endorsed by Health Ministers by:

- exempting health practitioners from the reporting obligation in specified circumstances where they obtain information about reportable misconduct in connection with legal proceedings or the provision of legal advice, or where they know, or reasonably believe, that the reportable misconduct has previously been reported; and
- requiring only serious misconduct to be reported (ie. involving a significant departure from accepted professional standards) by health professionals.

The proposed amendments to clause 61 of the Bill ensure consistency with the mandatory reporting provisions in the National Law Bill.

Consistency with Fundamental Legislative Principles

Nursing Tribunal

The amendments will not have the effect of authorising the disclosure of confidential information to any additional bodies. The amendments are therefore consistent with Fundamental Legislative Principles.

Limited Practice

The amendment to introduce formal limitations on the scope of practice for retired medical practitioners is to take effect on all existing registrants that meet the description immediately upon commencement. That is, it may be perceived that the limitations are being applied retrospectively.

However, this inconsistency with Fundamental Legislative Principles is considered justified for three reasons:

1. the risk to a patient from a retired medical practitioner who engages in significant medical practice, without appropriate competency and without continuing professional development, can be extreme. The fundamental principle of registration is to protect the public by ensuring that health care is delivered by registrants in a ‘professional, safe and competent way...’;
2. ethical standards of the professional already impose limitations on what is considered acceptable practice by retired medical practitioners, that are similar to those proposed in the amendment; and
3. the amendment will ensure parity with medical practitioners in other jurisdictions when the National Scheme commences on 1 July 2010.

This amendment may also be inconsistent with Fundamental Legislative Principles as the new section specifically does not allow appeals or reviews (other than under the *Judicial Review Act 1991*) for decisions concerning conditions imposed by the board. However, the inconsistency is considered justified because:

1. registrants subject to the limitations are not receiving an income from the practice of the profession, and therefore conditions will not be impacting on income;
2. the registrants do not pay a fee and therefore the costs of the board defending a decision would be subsidised by practising registrants; and
3. the amendment does not prevent these registrants from seeking full general or specialist registration and resuming full practice.

Mandatory Reporting

The amendments to amend the mandatory reporting clauses in the Bill are consistent with Fundamental Legislative Principles.

Consultation

Nursing Tribunal

As this is a technical amendment only, consultation is not required.

Limited Practice

Detailed consultation on the amendment was undertaken with the Australian Medical Association Queensland and the Medical Board of Queensland.

Mandatory Reporting

Key stakeholders, including medical professional bodies and medical indemnity insurers, were consulted about the issues addressed in the proposed amendments for mandatory reporting, through the public release of an exposure draft of the National Law Bill in June 2009.

Notes on Provisions

Amendment 1 amends clause 42 to omit the reference to the Nursing Tribunal which that clause inserts into the section 392 of the Professional Standards Act.

Amendment 2 amends clause 43 to omit the definition of ‘Nursing Tribunal’ which that clause inserts into the Schedule (Dictionary) to the Professional Standards Act.

Amendment 3 inserts two new clauses, clause 60A and clause 60B.

Clause 60A amends the heading of Division 10A of the Act to reflect the inclusion of a provision concerning limited registration into the division.

Clause 60B inserts a new subdivision 1AA and new section 150AD into the Act to identify those registrants (limited registrants) that are registered with a waiver of fee as provided for in the Regulation.

Subsection (2) applies limitations to the practice of the profession for limited registrants. The limitations only permit limited registrants to refer a person to another registrant or prescribe a scheduled medicine that has been previously prescribed within the last 12 months, by another registrant who is not a limited registrant.

Scheduled medicine is defined in subsection (7) as meaning only a restricted drug, that is not a restricted drug of dependency, a controlled drug or a poison as defined in the *Health (Drugs and Poisons) Regulation 1996*. It is not considered appropriate that retired medical practitioners registered as limited registrants should be able to prescribe restricted drugs of dependency, controlled drugs or poisons.

Subsection (3) allows the board to impose further conditions on the limited registrant's registration that the board considers necessary or desirable for the registrant to competently and safely practise the profession. This is to allow the board to impose any conditions necessary to protect the public from harm through, for example, loss of competency or development of impairment.

Subsection (4) provides that a limited registrant may apply to the board for a review of a condition imposed under subsection (3).

Subsection (5) provides that a limited registrant may not seek appeal or review of a decision of the board to impose a condition or a decision of the board on an application for review under subsection (4).

Subsection (6) retains a right of review under the *Judicial Review Act 1991*.

Amendment 4 amends clause 61 by inserting new subsections 166(4), (5) and (6) in the Act.

Subsection (4) specifies that the obligation under subsection (2) to give written notice about reportable misconduct does not apply if the first registrant knows, or reasonably believes, a notice has already been given to the board.

Subsection (5) specifies the circumstances in which, for subsection (1), the first registrant does not 'form the relevant suspicion' about the second registrant (ie. become aware, or reasonably suspect, the second registrant has engaged in reportable misconduct) and therefore has no reporting obligation under subsection (2). These circumstances exist where the first registrant:

- is employed or otherwise engaged by a professional indemnity insurer and suspects or becomes aware that the second registrant has engaged in reportable misconduct as a result of a disclosure made during legal proceedings or in the provision of legal advice arising from the insurance policy; or
- suspects or becomes aware that the second registrant has engaged in reportable misconduct when providing advice about the misconduct

for the purposes of legal proceedings or the preparation of legal advice; or

- is also a lawyer and suspects or becomes aware that the second registrant has engaged in reportable misconduct when providing legal services to the second registrant in relation to legal proceedings or the preparation of legal advice in which the reportable conduct is an issue.

Subsection (6) defines the phrase ‘forms the relevant suspicion’. It also inserts a replacement definition of ‘harm’ which varies from the current definition to the extent that a detrimental effect on a person’s physical or psychological wellbeing does not need to be ‘of a significant nature’ to constitute harm.

Amendment 5 amends paragraph (c)(ii) in the definition of ‘reportable conduct’ in section 166(4) by inserting a reference to ‘significant harm’. The purpose of the amendment is to ensure that, despite the new definition of ‘harm’, paragraph (c) retains the same meaning and applies only to practice of the profession that causes, or is likely to cause, significant harm.

Amendment 6 amends paragraph (d)(i) in the definition of ‘reportable conduct’ in section 166(4) so that paragraph (d) only applies to practice of the profession that ‘significantly’ departs from accepted professional standards. The new definition of ‘harm’ means that, in contrast to paragraph (c), paragraph (d) applies to practice that causes, or is likely to cause, any harm (whether significant or not).