



Australian Capital Territory

# **Health Practitioner Regulation National Law (ACT) Act 2010**

**A2010-10**

**Republication No 1**

**Effective: 1 July 2010 – 11 October 2010**

Republication date: 1 July 2010

Act not amended  
(republication for new Act and modifications by  
SL2010-25)

Not all provisions are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Health Practitioner Regulation National Law (ACT) Act 2010* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 July 2010. It also includes any amendment, repeal or expiry affecting the republished law to 1 July 2010.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

# Health Practitioner Regulation National Law (ACT) Act 2010

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Australian Capital Territory

# Health Practitioner Regulation National Law (ACT) Act 2010

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An Act about health practitioner regulation, and for other purposes

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R1  
01/07/10

Health Practitioner Regulation National Law (ACT)  
Act 2010

page 1

Effective: 01/07/10-11/10/10

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Health Practitioner Regulation National Law (ACT) Act 2010*.

### 2 Commencement

- (1) This Act commences on—
- (a) 1 July 2010; or
  - (b) if, before 1 July 2010, the Minister fixes another day (not later than 1 July 2011) by written notice—the day fixed.

*Note 1* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

- (2) However, a date or time provided by a special commencement provision for an amendment made by this Act has effect as the commencement date or time of the amendment.
- (3) In this section:

***special commencement provision***, for an amendment made by this Act, is a provision, in brackets beginning with the text ‘commencement:’, at the end of the amendment.

#### **Example**

An amendment followed by ‘(commencement: 1 July 2012)’ means that the amendment commences on 1 July 2012.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to this Act.

### **3 Dictionary**

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act.

*Note 2* A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

### **4 Terms used in Health Practitioner Regulation National Law (ACT)**

Terms used in this Act and also in the *Health Practitioner Regulation National Law (ACT)* have the same meanings in this Act as they have in that Law.

### **5 Notes**

A note included in this Act is explanatory and is not part of this Act.

*Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

## Part 2 Adoption of Health Practitioner Regulation National Law

### 6 Application of Health Practitioner Regulation National Law

The Health Practitioner Regulation National Law, as in force from time to time, set out in the schedule to the Qld Act—

- (a) applies as a territory law, as modified by schedule 1; and
- (b) as so applying may be referred to as the *Health Practitioner Regulation National Law (ACT)*; and
- (c) so applies as if it were a part of this Act.

*Note* The Qld Act is accessible at [www.legislation.qld.gov.au](http://www.legislation.qld.gov.au)

### 7 Meaning of generic terms in Health Practitioner Regulation National Law for purposes of this jurisdiction

In the *Health Practitioner Regulation National Law (ACT)*:

*magistrates court* means the Magistrates Court.

*the State* means the Territory.

*this jurisdiction* means the ACT.

### 8 Responsible tribunal for Health Practitioner Regulation National Law (ACT)

The ACAT is declared to be the responsible tribunal for this jurisdiction for the *Health Practitioner Regulation National Law (ACT)*.

*Note* **Responsible tribunal**—see the *Health Practitioner Regulation National Law (ACT)*, s 5.



## 9 Exclusion of territory laws

The following territory laws do not apply to the *Health Practitioner Regulation National Law (ACT)* or to instruments made under that Law:

- (a) the *Annual Reports (Government Agencies) Act 2004*;
- (b) the *Auditor-General Act 1996*;
- (c) the *Criminal Code 2002*;
- (d) the *Financial Management Act 1996*;
- (e) the *Freedom of Information Act 1989*;
- (f) the *Legislation Act 2001*;
- (g) the *Ombudsman Act 1989*;
- (h) the *Public Sector Management Act 1994*.

*Note* The *Health Practitioner Regulation National Law (ACT)*, s 198 provides that the provisions about appeals in the Law apply despite the *ACT Civil and Administrative Tribunal Act 2008*, but does not otherwise limit that Act.

## 10 Regulation-making power

The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

## 11 Review of Act

- (1) The Minister must as soon as practicable after 1 July 2011—
  - (a) review the operation of this Act in relation to the relationship of the National Boards and the health complaints entity; and
  - (b) present a report of the review to the Legislative Assembly.
- (2) This section expires on 1 July 2012.

## Part 3 Local provisions

### Division 3.1 Amendment of legislation

#### 12 Legislation amended—sch 2

This Act amends the legislation mentioned in schedule 2.

### Division 3.2 Transitional provisions

#### 13 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.

#### **M** 13A Modification—sch 1

#### 14 Annual reports for old boards

- (1) This section applies if—
  - (a) a health profession board (the *old board*) under the *Health Professionals Act 2004* as in force immediately before the commencement of this Act ceases, or has ceased, to exist on or immediately before the commencement of this Act; and
  - (b) some or all of the functions of the board become, or have become, functions of a national board under the *Health Practitioner Regulation National Law (ACT)*.

- (2) The old board is taken to continue to exist under the *Health Professionals Act 2004*, as in force immediately before the commencement of this Act—
- (a) for the purpose of preparing the old board’s annual report for the financial year ending before the commencement of this Act; and
  - (b) for the time it takes to prepare the annual report.
- (3) This section expires 6 months after the day this Act commences.

**15 Expiry—pt 3**

This part expires 2 years after the day it commences.

**M** **Schedule 1** **Modifications—Health Practitioner Regulation National Law**

(see s 6)

**[1.1]** **New section 35A**

*insert*

**35A** **National Board consideration of criminal history**

- (1) In making a decision under this Act that relates to an individual's criminal history, a National Board must consider—
  - (a) the individual's criminal record; and
  - (b) the inherent requirements of the profession, division or recognised specialty, for which the individual is seeking registration; and
  - (c) whether or not there is a high degree of direct connection between the individual's criminal record and the inherent requirements of the profession, division or recognised specialty.
- (2) If guidelines have been made by the National Board for this section, the board must also consider the guidelines when making the decision.

**[1.2]** **Section 150 (1)**

*omit everything before paragraph (a), substitute*

- (1) If a National Board receives a complaint, the board must, as soon as practicable after its receipt—

**[1.3] New section 150 (4A)**

*insert*

- (4A) The action that may be taken in relation to a notification or complaint, or part of a notification or complaint, from most serious to least serious, is as follows:
- (a) deal with the notification or complaint, or part, under part 8, division 7 (Immediate action);
  - (b) refer the notification or complaint, or part, to the responsible tribunal under part 8, division 12 (Referring matter to responsible tribunals);
  - (c) refer the notification or complaint, or part, to the health complaints entity to be considered under the *Human Rights Commission Act 2005*;
  - (d) investigate the notification or complaint, or part, under part 8, division 8 (Investigations);
  - (e) deal with the notification or complaint, or part, as a professional standards matter under part 8, division 11 (Panels);
  - (f) deal with the notification or complaint, or part, as a health matter under part 8, division 11 (Panels);
  - (g) take action under part 8, division 10 (Action by National Board);
  - (h) decide to take no further action in relation to the notification, complaint, or part, in accordance with section 151 (When National Board may decide to take no further action).

Modification [1.4]

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**[1.4] Section 150 (5)***omit*

If an investigation, conciliation or other action taken by a health complaints entity

*substitute*

If an investigation or other action taken by a health complaints entity, other than a conciliation,

**[1.5] New section 150 (5A)***insert*

- (5A) If a notification or complaint is referred to the health complaints entity for consideration under subsection (4A) (c), the health complaints entity must report the results of the consideration to the National Board as soon as practicable.

**[1.6] Section 151 (1)***omit*

A National Board

*substitute*

Subject to section 150, a National Board

**[1.7] Section 152 (2)***substitute*

- (2) The notice must advise the registered health practitioner or student of—
- (a) the nature of the notification; and
  - (b) the powers that the board might exercise in relation to the notification; and

- (c) the procedural rights that the health practitioner or student has under this Act.
- (2A) If a National Board approves a form for the notice, the notice must be in the approved form.

**[1.8] Section 160 (1)**

*omit*

A National Board

*substitute*

Subject to section 150, a National Board

**[1.9] New section 166 (3)**

*insert*

- (3) The National Board to which the report is given must give a copy of the report to the health complaints entity as soon as practicable.

**[1.10] Section 167**

*omit everything before paragraph (a), substitute*

**167 Joint decision by National Board and health complaints entity**

- (1) The National Board must consider the investigator's report jointly with the health complaints entity and attempt to reach agreement on how the matter that is the subject of the report is to be dealt with.
- (2) After consideration under subsection (1), the National Board must decide—

**[1.11] New section 167 (3) and (4)**

*insert*

- (3) However, if the National Board and the health complaints entity are not able to reach agreement on how the matter is to be dealt with, the decision of the board under subsection (2) must be to take the most serious action proposed by either the board or the health complaints entity.
- (4) The actions that may be taken in relation to the matter, from most serious to least serious, are the actions set out in section 150 (4A).

**[1.12] New section 172 (2) (ca) and (cb)**

*insert*

- (ca) the powers that the board might exercise in relation to the assessment; and
- (cb) the procedural rights that the health practitioner or student has under this Act.

**[1.13] New section 172 (3)**

*insert*

- (3) If a National Board approves a form for the notice, the notice must be in the approved form.

**[1.14] Section 175**

*omit*

The assessor must

*substitute*

- (1) The assessor must



**[1.15] New section 175 (2)**

*insert*

- (2) If the report relates to a performance assessment, the National Board to which the report is given must give a copy of the report to the health complaints entity as soon as practicable.

**[1.16] Section 177**

*omit everything before paragraph (a), substitute*

**177 Joint decision by National Board and health complaints entity**

- (1) The National Board must consider the report and discussions held with the registered health practitioner or student under section 176 (3).
- (2) If the assessor's report relates to a performance assessment, the consideration must be joint consideration with the health complaints entity, and the National Board and health complaints entity must attempt to reach agreement on how the registered health practitioner or student is to be dealt with.
- (3) After consideration, the National Board may decide to—

**[1.17] New section 177 (4) and (5)**

*insert*

- (4) If the report relates to a performance assessment and the National Board and the health complaints entity are not able to reach agreement on what to do in relation to the registered health practitioner or student, the decision of the board under subsection (3) must be to take the most serious action proposed by either the board or the health complaints entity.
- (5) The actions that may be taken under subsection (4), from most serious to least serious, are the actions set out in section 150 (4A).

**[1.18] New section 178 (1A)***insert*

- (1A) This section also applies if—
- (a) on jointly considering a notification, complaint or other matter, the health complaints entity is satisfied on reasonable grounds that the National Board should take action under subsection (2) (a), (b) or (c) in relation to a registered health practitioner or student registered by the board; and
  - (b) the action proposed by the health complaints entity to be taken by the board is more serious than any other action proposed by the board to be taken.

**[1.19] New section 178 (4)***insert*

- (4) If this section applies in relation to a registered health practitioner or student registered by the board because of subsection (1A), the National Board must—
- (a) jointly consider with the health complaints entity the action to be taken under subsection (2) (a), (b) or (c); and
  - (b) take the action agreed after joint consideration.

**[1.20] New section 184 (3)***insert*

- (3) The panel must also give a copy of the notice to the health complaints entity as soon as practicable.

**[1.21] New section 185 (4)***insert*

- (4) A panel must have regard to evidence given by the health complaints entity under section 186A.

**[1.22] New section 186A***insert***186A Role of health complaints entity**

At a hearing of a panel, the health complaints entity may—

- (a) be represented; and
- (b) give evidence about the consideration of a complaint or other matter by the health complaints entity; and
- (c) be present at the hearing even if not giving evidence.

**[1.23] New section 192 (3A)***insert*

- (3A) The National Board must also, within 30 days after the panel makes its decision, give the health complaints entity a copy of the notice given to the registered health practitioner or student.

**M [1.23A] Section 289 (1)***substitute*

- (1) This section applies if, immediately before the participation day for a participating jurisdiction, a local registration authority for the jurisdiction had started but not completed dealing with a complaint or notification about a person registered or previously registered in a health profession by—
  - (a) the authority; or
  - (b) any other entity or former entity whose functions under a law of the jurisdiction included the registration of a person in a health profession.

**M [1.23B] Section 289 (2) (b)**

*substitute*

- (b) the notification is to continue to be dealt with under the Act of the participating jurisdiction applying to the notification immediately before the participation day, and any proceedings or appeal relating to the notification may be dealt with, as if that Act had not been repealed.’

**[1.24] Schedule 5, part 1, clause 2 (3)**

*substitute*

- (3) For subclauses (1) and (2), it is not a reasonable excuse for an individual to fail to give stated information, answer a question or produce a document only because giving the information, answering the question or producing the document might tend to incriminate the individual.
- (4) However—
- (a) the information, answer or document required to be given, answered or provided by the individual is not admissible in evidence against the individual in a criminal proceeding, other than a proceeding for—
- (i) an offence against this schedule; or
- (ii) an offence in relation to the falsity of the information, answer or document; and
- (b) evidence that was discovered as a result of the information or answer, and that could not have been discovered but for the giving of the information or answering of the question, is not admissible against the individual in a criminal proceeding.

**[1.25] Schedule 6, part 1, clause 2 (3)**

*substitute*

- (3) For subclauses (1) and (2), it is not a reasonable excuse for an individual to fail to give stated information, answer a question or produce a document only because giving the information, answering the question or producing the document might tend to incriminate the individual.
- (4) However—
- (a) the information, answer or document required to be given, answered or provided by the individual is not admissible in evidence against the individual in a criminal proceeding, other than a proceeding for—
    - (i) an offence against this schedule; or
    - (ii) an offence in relation to the falsity of the information, answer or document; and
  - (b) evidence that was discovered as a result of the information or answer, and that could not have been discovered but for the giving of the information or answering of the question, is not admissible against the individual in a criminal proceeding.

## Schedule 2      Consequential amendments

(see s 12)

### Part 2.16      Mental Health (Treatment and Care) Act 1994

**U** [2.106] Section 119 (3), new definition of *occupational therapist*

*insert*

*occupational therapist* means a person registered under the *Health Practitioner Regulation National Law (ACT)* to practise in the occupational therapy profession (other than as a student).

(commencement: 1 July 2012)

## Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACAT
- Magistrates Court
- Minister
- pharmacist
- territory law.

***Health Practitioner Regulation National Law (ACT)*** means the provisions applying in this jurisdiction because of section 6.

***Qld Act*** means the *Health Practitioner Regulation National Law Act 2009* (Qld).

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired



### 3 Legislation history

#### **Health Practitioner Regulation National Law (ACT) Act 2010 A2010-10**

notified LR 31 March 2010

s 1, s 2 commenced 31 March 2010 (LA s 75 (1))

amdt 2.106 commences 1 July 2012 (s 2 (2))

remainder commenced 1 July 2010 (s 2 (1) (a))

as modified by

#### **Health Practitioner Regulation National Law (ACT) (Transitional Provisions) Regulation 2010 SL2010-25 s 3**

notified LR 24 June 2010

s 1, s 2 commenced 24 June 2010 (LA s 75 (1))

s 3 commenced 1 July 2010 (s 2 and see Health Practitioner Regulation National Law (ACT) Act 2010 A2010-10 s 2 (1) (a))

### 4 Amendment history

#### **Review of Act**

s 11 exp 1 July 2012 (s 11 (2))

#### **Local provisions**

pt 3 hdg exp 1 July 2012 (s 15)

#### **Amendment of legislation**

div 3.1 hdg exp 1 July 2012 (s 15)

#### **Legislation amended—sch 2**

s 12 exp 1 July 2012 (s 15)

#### **Transitional provisions**

div 3.2 hdg exp 1 July 2012 (s 15)

#### **Transitional regulations**

s 13 exp 1 July 2012 (s 15)

#### **Modification—sch 1**

s 13A ins as mod SL2010-25 s 3 (see endnote 5)  
exp 1 July 2012 (see SL2010-25 s 4)

#### **Annual reports for old boards**

s 14 exp 1 January 2011 (s 14 (3))

#### **Expiry—pt 3**

s 15 exp 1 July 2012 (s 15)

## Endnotes

4 Amendment history

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### **Modifications—Health Practitioner Regulation National Law**

sch 1 mod SL2010-25 s 3 (see endnote 5)  
mod 1.23A, mod 1.23B exp 1 July 2012 (see SL2010-25 s 4)

### **Consequential amendments**

sch 2 hdg om LA s 89 (3)

### **Administrative Decisions (Judicial Review) Act 1989**

sch 2 pt 2.1 om LA s 89 (3)

### **Children and Young People Act 2008**

sch 2 pt 2.2 om LA s 89 (3)

### **Civil Law (Wrongs) Act 2002**

sch 2 pt 2.3 om LA s 89 (3)

### **Corrections Management Act 2007**

sch 2 pt 2.4 om LA s 89 (3)

### **Crimes Act 1900**

sch 2 pt 2.5 om LA s 89 (3)

### **Crimes (Forensic Procedures) Act 2000**

sch 2 pt 2.6 om LA s 89 (3)

### **Health Act 1993**

sch 2 pt 2.7 om LA s 89 (3)

### **Health Professionals Act 2004**

sch 2 pt 2.8 om LA s 89 (3)

### **Health Professionals Regulation 2004**

sch 2 pt 2.9 om LA s 89 (3)

### **Health Professionals (Special Events Exemptions) Act 2000**

sch 2 pt 2.10 om LA s 89 (3)

### **Health Records (Privacy and Access) Act 1997**

sch 2 pt 2.11 om LA s 89 (3)

### **Human Rights Commission Act 2005**

sch 2 pt 2.12 om LA s 89 (3)

### **Legislation Act 2001**

sch 2 pt 2.13 om LA s 89 (3)

### **Medicines, Poisons and Therapeutic Goods Act 2008**

sch 2 pt 2.14 om LA s 89 (3)

### **Medicines, Poisons and Therapeutic Goods Regulation 2008**

sch 2 pt 2.15 om LA s 89 (3)

**Mental Health (Treatment and Care) Act 1994**

sch 2 pt 2.16 amdts 2.105, 2.107-2.109 om LA s 89 (3)

**Public Health Act 1997**

sch 2 pt 2.17 om LA s 89 (3)

**Radiation Protection Act 2006**

sch 2 pt 2.18 om LA s 89 (3)

**Transplantation and Anatomy Act 1978**

sch 2 pt 2.19 om LA s 89 (3)

**Victims of Crime (Financial Assistance) Act 1983**

sch 2 pt 2.20 om LA s 89 (3)

**Victims of Crime Regulation 2000**

sch 2 pt 2.21 om LA s 89 (3)

**Workers Compensation Act 1951**

sch 2 pt 2.22 om LA s 89 (3)

**Workers Compensation Regulation 2002**

sch 2 pt 2.23 om LA s 89 (3)

**5 Modifications of republished law with temporary effect**

The following modifications affect this republication:

**Health Practitioner Regulation National Law (ACT)  
(Transitional Provisions) Regulation 2010 SL2010-25 s 3****3 Modification of Act, pt 3—Act, s 13 (2)**

The Act, part 3 applies as if the following section were inserted:

**‘13A Modification—sch 1**

The Act, schedule 1 applies as if the following modifications were inserted:

**[1.23A] Section 289 (1)***substitute*

## Endnotes

6 Uncommenced provisions

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- (1) This section applies if, immediately before the participation day for a participating jurisdiction, a local registration authority for the jurisdiction had started but not completed dealing with a complaint or notification about a person registered or previously registered in a health profession by—
- (a) the authority; or
  - (b) any other entity or former entity whose functions under a law of the jurisdiction included the registration of a person in a health profession.

### **[1.23B] Section 289 (2) (b)**

*substitute*

- (b) the notification is to continue to be dealt with under the Act of the participating jurisdiction applying to the notification immediately before the participation day, and any proceedings or appeal relating to the notification may be dealt with, as if that Act had not been repealed.’

## **6 Uncommenced provisions**

Schedule 2, pt 2.16, amdt 2.106 was uncommenced at the republication date but has been included in this republication with the symbol **U** immediately before the provision.

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