

2009

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**HEALTH PRACTITIONER REGULATION NATIONAL LAW
(ACT) BILL 2009**

EXPLANATORY STATEMENT

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EXPLANATORY STATEMENT

BACKGROUND

The National Agreement

On 26 March 2008 the Council of Australian Governments (COAG) signed the 2008 *Intergovernmental Agreement for a National Registration and Accreditation Scheme for Health Professions* agreeing to fully implement a national scheme of registration and accreditation for health professions in Australia (the National Scheme) by 1 July 2010.

The COAG agreement may be accessed from the COAG website:
http://www.coag.gov.au/coag_meeting_outcomes/2008-03-26/docs/iga_health_workforce.rtf

Objectives and Principles of National Scheme

The objectives of the National Scheme are:

- (a) to provide for the protection of the public by ensuring that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered;
- (b) to facilitate workforce mobility across Australia by reducing the administrative burden for health practitioners wishing to move between participating jurisdictions or to practise in more than one participating jurisdiction;
- (c) to facilitate the provision of high quality education and training of health practitioners;
- (d) to facilitate the rigorous and responsive assessment of overseas-trained health practitioners;
- (e) to facilitate access to services provided by health practitioners in accordance with the public interest; and
- (f) to enable the continuous development of a flexible, responsive and sustainable Australian health workforce and to enable innovation in the education of, and service delivery by, health practitioners.¹

The guiding principles of the National Scheme are as follows:

- (a) the scheme is to operate in a transparent, accountable, efficient, effective and fair way;
- (a) fees required to be paid under the scheme are to be reasonable having regard to the efficient and effective operation of the scheme; and
- (b) restrictions on the practice of a health profession are to be imposed under the scheme only if it is necessary to ensure health services are provided safely and are of an appropriate quality.²

¹ Queensland Legislation, Office of the Queensland Parliamentary Counsel, *Health Practitioner Regulation National Law Act 2009* (Qld) Explanatory Statement <
<http://www.legislation.qld.gov.au/Bills/53PDF/2009/HealPraRegNLB09Exp.pdf>> 6 November 2009, 1-2.

² Queensland Legislation, Office of the Queensland Parliamentary Counsel, *Health Practitioner Regulation National Law Act 2009* (Qld) Explanatory Statement <
<http://www.legislation.qld.gov.au/Bills/53PDF/2009/HealPraRegNLB09Exp.pdf>> 6 November 2009, 2.

The national scheme is to initially apply to ten health professions, that is:

- the nine health professions registered in each State and Territory— medical, nursing and midwifery, pharmacy, physiotherapy, dental (dentists, dental prosthetists, dental therapists, dental hygienists), psychology, optometry, osteopathy and chiropractic; and
- podiatry (registered in every jurisdiction except the Northern Territory, where there are insufficient numbers to make registration viable).³

In addition, Health Ministers, through the Australian Health Workforce Ministerial Council (the Ministerial Council), have included four more health professions within the National Scheme.

The four partially regulated professions to be included from 1 July 2012, are as follows:

- Aboriginal and Torres Strait Islander health practice;
- Chinese medicine;
- medical radiation practice; and
- occupational therapy.⁴

The Implementation Process

The National Scheme implementation process includes three stages which will establish a national system of laws (the National Law) to facilitate the National Scheme, of which the first two stages would be hosted by Queensland. Anyone with functions under the National Law is required to exercise their functions having regard to the objectives and guiding principles previously stated.

Stage One

The first stage of the implementation of the National Scheme included passage of the *Health Practitioner Regulation (Administrative Arrangements) National Law Act 2008* (Qld) (National Act A). National Act A establishes the structural elements of the National Scheme and will enable the National Agency and National Boards to be operational on 1 February 2009 and 1 July 2009 respectively, with limited functions and powers necessary for the first stage implementation of the National Scheme.⁵

National Act A also establishes structural entities that will be provided with full functions and powers under National Act B. The structural entities established under National Act A include:

³ Queensland Legislation, Office of the Queensland Parliamentary Counsel, *Health Practitioner Regulation (Administrative Arrangements) National Law Act 2008* (Qld) Explanatory Statement < <http://www.legislation.qld.gov.au/Bills/52PDF/2008/HealPracAANLB08Exp.pdf>> 6 November 2009, 1.

⁴ Queensland Legislation, Office of the Queensland Parliamentary Counsel, *Health Practitioner Regulation (Administrative Arrangements) National Law Act 2008* (Qld) Explanatory Statement < <http://www.legislation.qld.gov.au/Bills/52PDF/2008/HealPracAANLB08Exp.pdf>> 6 November 2009, 3.

⁵ Queensland Legislation, Office of the Queensland Parliamentary Counsel, *Health Practitioner Regulation (Administrative Arrangements) National Law Act 2008* (Qld) Explanatory Statement < <http://www.legislation.qld.gov.au/Bills/52PDF/2008/HealPracAANLB08Exp.pdf>> 6 November 2009, 1.

- *Australian Health Workforce Ministerial Council* to approve registration standards, approve professions for specialist recognition, specialties and specialist titles, approve endorsements and issue policy directions as needed. The Ministerial Council has met regularly since the enactment of Act A in 2008 and comprises Ministers of the governments of participating jurisdictions, and the Commonwealth Minister, with portfolio responsibility for health.
- *Australian Health Practitioner Regulation Agency* (the National Agency) which is responsible for the administration of the National Scheme in accordance with the legislation and policy directions issued by the Ministerial Council. The Agency Management Committee has met regularly since its appointment on 5 March 2009. A national office for the Agency will be established in 2009, with local offices to follow.
- *National profession-specific boards* for the ten health professions that are within the initial scope of the National Scheme. Members were recently appointed by Ministerial Council under Act A, to the ten National Boards. The National Boards are the:
 - Chiropractic Board of Australia;
 - Dental Board of Australia (professions of a dentist, dental therapist, dental hygienist, dental prosthetist);
 - Medical Board of Australia;
 - Nursing and Midwifery Board of Australia;
 - Optometry Board of Australia;
 - Osteopathy Board of Australia;
 - Pharmacy Board of Australia;
 - Physiotherapy Board of Australia;
 - Podiatry Board of Australia; and
 - Psychology Board of Australia.⁶
- *National profession-specific boards* for the partially regulated health professions that have been added to the scope of the National Scheme since Act A and whose members will be appointed under the proposed National Law prior to commencement of the professions in the National Scheme on 1 July 2012:
 - Aboriginal and Torres Strait Islander Health Practice Board of Australia;
 - Chinese Medicine Board of Australia;
 - Medical Radiation Practice Board of Australia; and
 - Occupational Therapy Board of Australia.
- *Australian Health Workforce Advisory Council* (the Advisory Council), to provide independent advice to the Ministerial Council on matters related to the National Scheme. It is anticipated that COAG will make appointments to the Advisory Council under Act A towards the beginning of 2010, and these appointments will be continued under the transitional provisions of the National Law in the schedule to Bill B.⁷

⁶ Queensland Legislation, Office of the Queensland Parliamentary Counsel, *Health Practitioner Regulation (Administrative Arrangements) National Law Act 2008* (Qld) Explanatory Statement < <http://www.legislation.qld.gov.au/Bills/52PDF/2008/HealPracAANLB08Exp.pdf>> 6 November 2009, 4.

⁷ Queensland Legislation, Office of the Queensland Parliamentary Counsel, *Health Practitioner Regulation National Law Act 2009* (Qld) Explanatory Statement <

Stage Two

The second stage included passage of the *Health Practitioner Regulation National Law Act 2009* (Qld) (National Act B). National Act B continues the administrative arrangements established under National Act A, and covers the more substantial elements of the National Scheme, including registration and accreditation arrangements, complaints, conduct, health and performance arrangements, privacy and information sharing arrangements, and transitional arrangements.⁸

National Act B establishes the following functions and processes to protect the public and enhance the Australian health workforce:

- national registration standards and processes, including identity and criminal history checking, English language competence and currency of practice requirements to ensure a consistently high quality of registration occurs nationally;
- national requirements for registered health practitioners to only practice with appropriate professional indemnity insurance arrangements in place and to complete the continuing professional development requirements for their profession;
- national accreditation standards and functions that are largely independent of governments and will ensure a consistently high standard of accreditation occurs nationally;
- nationally consistent arrangements for receipt of complaints and notifications and dealing with the management of health, performance and conduct matters to ensure protection of the public;
- national mandatory reporting requirements obligating all registered health practitioners and their employers to report notifiable conduct on the part of a registered health practitioner to protect the public from harm;
- national requirements for the registration of students undertaking programs of study that lead to registration in a health profession;
- national mandatory reporting requirements obligating registered health practitioners and education providers to report a student who may place the public at substantial risk of harm in the course of undertaking clinical training in order to protect the public from harm;
- recognition of co-regulatory jurisdictions that will have jurisdiction specific arrangements for health, performance and conduct matters that are substantially equivalent to those of the National Scheme and ensure that decisions of co-regulatory authorities in those jurisdictions regarding registered health practitioners and students are implemented by the National Scheme to ensure protection of the public;
- privacy protections to ensure a nationally high standard of protection is provided to information related to functions under the scheme; and

<http://www.legislation.qld.gov.au/Bills/53PDF/2009/HealPraRegNLB09Exp.pdf>> 6 November 2009, 4-5.

⁸ Queensland Legislation, Office of the Queensland Parliamentary Counsel, *Health Practitioner Regulation National Law Act 2009* (Qld) Explanatory Statement < <http://www.legislation.qld.gov.au/Bills/53PDF/2009/HealPraRegNLB09Exp.pdf>> 6 November 2009, 2.

- transitional arrangements for existing registrants to transition to the National Scheme while maintaining the protection of the public and continuity of health services.

Stage Three

The third and final stage involves adoption and application of National Act B by all States and Territories, but not the Commonwealth. The Health Practitioner Regulation National Law (ACT) Bill 2009 (the ACT Bill C) represents the ACT's involvement in the third and final stage of the implementation process of the National Scheme.

The introduction of national law in a State or Territory Parliament for adoption by other participating States and Territories, is a standard approach to implementing national schemes in areas, like health, where Constitutional powers rest with the States and Territories, and not the Commonwealth.

Although national law may take a number of forms, concerns about abrogating the rights of Parliaments tend to be greatest when, as in this case, the proposed law includes pre-determined legislative provisions based on an agreement between governments.

The COAG agreement identifies Queensland as host of the proposed National Law. National Act B incorporates and builds on the legislative provisions of National Act A, which was designed to encompass the COAG agreement made between the Premiers and Chief Ministers of all States and Territories, and the Prime Minister of Australia. The regulatory model is one of federal co-operation by agreement between States and Territories. National Act B is not Commonwealth law, and participating States and Territories are not referring powers to the Commonwealth.

The institution of Parliament is supreme, and while participating Australian States and Territories are expected to bring adopting or corresponding legislation (Bills C) for passage through their respective Parliaments in time for commencement of the scheme on 1 July 2010; each participating jurisdiction is sovereign and will decide whether to pass Bills C to adopt and apply the National Law as a law of that jurisdiction.

The National Law represents an important step towards improving Australia's health system – through fully implementing the national registration and accreditation scheme for health practitioners. However, until the National Scheme's proposed implementation date of 1 July 2010, current State and Territory based regulation will continue to apply to registered health practitioners.

Introducing National Law for registration and accreditation for health practitioners is expected to provide improved safeguards for the public, reduce 'red tape', deliver improved administrative efficiency and consistency by moving from the current fragmented jurisdictional system to one national scheme, and promote a more flexible, responsive, and sustainable health workforce.

There are no other viable alternatives that would facilitate the achievement of these objectives.⁹

PRELIMINARY COMMENTS

ACT Bill C will adopt and apply National Act B. It is therefore important that issues relating to the interpretation and application of National Act B in the ACT be clarified.

Interpretation of National Act B

Given the nature of the National Scheme, consistency of interpretation across jurisdictions is paramount. Consequently, uniform interpretation provisions of a kind usually contained in the Interpretation Act of a State or Territory will apply as per Schedule 7 of National Act B.

The *Acts Interpretation Act 1954* (Cth) does not apply to the adopted National Act B. Similarly, the *Statutory Instruments Act 1992* (Cth) does not apply to the National Law, which includes uniform provisions for making, publishing, and disallowance of, a regulation made under the National Law (a National Law regulation). As appears in clause 10 of this Bill, the *Legislation Act 2001* (ACT) also does not apply to the National Law.

A National Law regulation may be disallowed in a participating jurisdiction by a House of the Parliament. However, if a regulation is disallowed under this process, it will not cease to have effect in any participating jurisdiction, unless the regulation is disallowed in a majority of the participating jurisdictions. This approach is consistent with the protocol for the development of national scheme legislation and is to ensure that national scheme legislation is applied consistently in each participating jurisdiction.

Importantly, the National Law tailors this application by providing that a reference to the Commonwealth Office of the Privacy Commissioner in the Commonwealth Act is as if it were a reference to the Office of the National Health Practitioners Privacy Commissioner. Further, the proposed legislation provides that the Commonwealth law applies with any other modifications made by the National Law regulations. The same approach is used in relation to Freedom of Information (section 215 of National Act B) and the Ombudsman (section 235 of National Act B).

This approach addresses concerns about having State law purport to unilaterally give functions to Commonwealth entities where there is no corresponding Commonwealth law providing for that entity to perform those functions for the purpose of the State law.¹⁰

⁹ Queensland Legislation, Office of the Queensland Parliamentary Counsel, *Health Practitioner Regulation National Law Act 2009* (Qld) Explanatory Statement <<http://www.legislation.qld.gov.au/Bills/53PDF/2009/HealPraRegNLB09Exp.pdf>> 6 November 2009, 6-7.

¹⁰ Queensland Legislation, Office of the Queensland Parliamentary Counsel, *Health Practitioner*

OVERVIEW

ACT Bill C is divided into two sections, an adoption section and a consequential amendment section. The adoption section adopts and brings into ACT law the National Law as contained in National Act B. The modification section sets out sections of the National Law in National Act B that will be slightly modified by ACT Bill C to accommodate ACT complaints handling mechanisms. The consequential amendment section contains amendments to other existing ACT legislation that will be affected by ACT Bill C, National Act A and National Act B.

DETAIL

Part 1 Preliminary

Clause 1 Name of Act

This is a technical clause and sets out the name of the proposed Act as the *Health Practitioner Regulation National Law (ACT) Act 2009*.

Clause 2 Commencement

This is a technical clause setting out when commencement of the Act will occur. It is intended that commencement can occur in three ways:

- All provisions, except special commencement provisions, will commence on 1 July 2010;
- All or some provisions, except special commencement provisions, can commence earlier than 1 July 2010 on a day fixed by the Minister by written notice;
- Special commencement provisions will commence on the day that is stated in brackets immediately after the provision.

Clause 3 Dictionary

This is a technical clause clarifying that the dictionary can be found at the end of the Act and is part of the Act.

Clause 4 Terms used in Health Practitioner Regulation National Law

This is a technical clause clarifying that the terms used in ACT Bill C have the same meaning as the terms appearing in B.

Regulation National Law Act 2009 (Qld) Explanatory Statement <
<http://www.legislation.qld.gov.au/Bills/53PDF/2009/HealPraRegNLB09Exp.pdf>> 6 November 2009,
 8-9.

Clause 5 Notes

This is a technical clause clarifying that a note in ACT Bill C is only explanatory and not intended to be part of the Act.

Part 2 Adoption of Health Practitioner Regulation National Law

Clause 6 Application of Health Practitioner Regulation National Law

This Clause adopts into ACT law the Health Practitioner Regulation National Law as appears in the *Schedule Health Practitioner Regulation National Law* of the National Act B. The reference to ‘the schedule to the Qld Act’ is a reference to the National Law as it appears in National Act B at the Schedule of the Health Practitioner Regulation National Law (Qld).

This clause sets out that while the National Law, as appears in the Schedule of National Act B, is adopted as is into ACT law; ACT Bill C modifies the National Law according to Schedule 1 of ACT Bill C.

The intention of the legislature is to preserve, as far as possible, the benefits of the current ACT complaints handling model, in particular the joint consideration process by the National Boards and the ACT health complaints entity. Preservation of the ACT complaints handling model is intended to strengthen the voracity of the National Law complaints handling model without limiting its intended purpose. Where there are inconsistencies in the scope, not the process or structure, of the ACT and National complaints handling models, the scope of the National complaints handling model is preferred. ‘Scope’ is intended to include, but is not limited to, what kind of complaints are intended to be captured by the complaints processes and what kind of consequences may be attracted by a contravention.

To avoid reproduction errors, which may lead to interpretation inconsistencies, the explanatory notes to the *Schedule Health Practitioner Regulation National Law* of National Act B are referred to directly as if they were the explanatory notes to ACT Bill C for the purpose of adopting the National Law into ACT law.

National Act B explanatory notes can be accessed at:

www.legislation.qld.gov.au/Bills/53PDF/2009/HealPraReqNLB09Exp.pdf.

National Act B can be accessed at:

www.legislation.qld.gov.au/Bills/53PDF/2009/HealPraReqNLB09.pdf

Each jurisdiction that adopts the National Law will have an equivalent provision in its adopting Act so that the National Law will be the law of each jurisdiction. The effect is that a person registered as a health practitioner under ACT Bill C or another corresponding State and Territory Bills C is registered nationally, rather than requiring registration in each jurisdiction and each of the entities created by the National Law is created by the law of each

jurisdiction. For example, each National Board will be a body of each of the jurisdictions in which the National Law is applied. Section 7 of the National Law clarifies that the effect is the creation of a single national entity rather than separate bodies in each jurisdiction.

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

This is a technical clause clarifying the generic meaning of terms used in B. Where B uses the term ‘magistrates court’, it is intended to refer to the Magistrates Court for the ACT. Where B uses the term ‘the State’, it is intended to refer to the Territory. Where B uses the term ‘this jurisdiction’, it is intended to refer to the ACT.

Clause 8 Responsible tribunal for Health Practitioner Regulation National Law

This clause provides that ACAT is the declared responsible tribunal for the purposes of ACT Bill C.

This declaration gives effect to the definition of *responsible tribunal* in section 5 of the National Act B. That definition provides that a responsible tribunal means a tribunal or court that has been declared by the Act applying the National Law in a participating jurisdiction to be the responsible tribunal for that jurisdiction. The responsible tribunal has jurisdiction to hear appeals against decisions made by National Boards, health panels and performance and professional standards panels in relation to registered health practitioners and students.

Administrative decisions and judicial reviews made under the *Administrative Decision (Judicial Review) Act 1989 (ACT)* are distinct and separate from the decisions and reviews made under the National Act B. See below at schedule 2, [2.1].

Clause 9 Exclusion of territory law

This is a technical clause clarifying which ACT legislation is not intended to apply to the National Law.

Clause 10 Regulation-making power

This clause has been included in ACT Bill C in recognition of the novelty of the National Law. It is intended that if inconsistencies, practical difficulties etc are identified following implementation of the National Law this clause permits amendments to ACT Bill C to clarify and/or resolve the inconsistency, inefficiency or impracticality etc.

Part 3 Local provisions

Division 3.1 Amendment of legislation

Clause 12 Legislation amended—sc 2

This is a technical clause clarifying that this part of ACT Bill C makes consequential amendments to existing legislation as listed in schedule 2 of ACT Bill C. See below at [2.1] to [2.132].

Clause 13 Transitional provisions

This is a technical clause enabling regulations to be made for the purpose of transitioning to the National Law. The intended purpose for the regulations is to allow the making of other transitional provisions, which are not considered in the ACT Bill C, and to modify the transition provision itself, if it is later identified to be inappropriate or inadequate. It is intended that any regulation modifying the transition provision itself has effect despite anything else that appears in ACT Bill C or another ACT law.

Clause 14 Annual reports for old boards

This clause contains a transitional provision to allow health profession boards under the Health Professionals Act 2004 who will be subsumed under the National Law following commencement, to prepare annual reports for the financial year ending before the commencement day. It is intended that until the health professional board finalises its annual report in accordance with the transitional provision, it will continue to exist under the *Health Professionals Act 2004*.

Clause 15 Expiry—pt 3

This is a technical clause clarifying that this part of ACT Bill C expires 2 years after the day it commences. It is intended that regulations needed to ACT Bill C will only be able to be made within the stated 2 year timeframe, unless a regulation is made, within time, to modify this time limit.

Schedule 1 Modifications of Health Practitioner Regulation National Law

[1.1] New section 35A

Where an assessor is assessing a person's particular criminal record, the mere fact of a criminal record does not determine a person's character and that, rather, the passage of time, among other factors, can make amends for past wrongdoing for the purposes of deeming the person suitable (*Avelaid v Dental Board of Victoria* [1999] VSC 255 at [28] per Coldrey J; *Z v Director General, Department of Transport* [2002] NSWADT 67 at [30]-[32]; *Good v Medical Board of Western Australia*, unreported, Supreme Court of Western Australia, 6 December 1994 at p4 per Anderson J; *In re Davis* (1947) 75 CLR 409 at 416 per Latham CJ).

An inherent requirement is something that is 'essential' to the position rather than incidental, peripheral or accidental. See for example *X v The Commonwealth* [1999] HCA 63 (2 December 1999) (X's Case), *Qantas Airways v Christie* (1998) 193 CLR 280 (Christie's Case) or *Mr Mark Hall v NSW Thoroughbred Racing Board*, HREOC Report No. 19 (Hall's Case) p32, 34.

The burden is on the decision maker to determine the inherent requirements of the particular position and consider their application to the specific employee before the inherent requirements exception may be invoked (Hall's Case p.36 and *Zraika v Commissioner of Police, NSW Police* (2004) NSW ADT 67).

The inherent requirements should be determined by reference to the specific job to be done and the surrounding context of the position, including the nature of the business and the manner in which the business is conducted (X's Case at p.208, Also Christie's Case, Hall's Case p.33).

There must be a strong correlation between the inherent requirements of the particular job and an individual's criminal record. There must be more than a 'logical link' between the job and a criminal record (Hall's Case p35-36; *Commonwealth v Bradley* (1999) 95 FCR at 237 per Black CJ. See also *Wall v NT Police Services*, Anti-Discrimination Commission, 14 March 2005. In this case the Anti-Discrimination Commissioner found that the NT Police had not demonstrated a strong correlation between the purported inherent integrity requirement of the police service and the complainant's spent criminal record.

[1.2] New section 150 (1)

This clause substitutes a new subsection 150 (1) to National Act B which requires the National Board to refer all complaints to the HSC.

[1.3] New section 150 (4A)

This clause inserts new section 150 (4A) to National Act B setting out the possible actions that may be taken in relation to a notification or complaint from most serious to least serious. The list is intended to be comprehensive and hierarchical. The list has been included to inform subsequent clauses regarding investigations, and health and performance assessments.

[1.4] Section 150 (5)

This clause modifies section 150 (5) of National Act B so that conciliations are not required to be notified by the ACT health complaints entity. The ACT health complaints entity is identified, for the time being, but is not exclusively, as the ACT Health Services Commissioner. It is intended that to encourage open, frank and uninhibited discussions at conciliations, the conciliation process and the results of the process should remain confidential to the parties. As such, mandatory disclosure of conciliations by the ACT health complaints entity would dilute efforts to encourage open and uninhibited discussions at conciliations and has been avoided by this amendment.

[1.5] Section 151 (1)

This clause modifies section 151 (1) of National Act B so that the decision of the National Board to take no further action is subject to the joint consideration process outlined in section 150.

[1.6] Section 152 (2)

This clause modifies section 152 (2) of National Act B so that there are no breaches of the natural justice human rights protected in the ACT by section 21 of the *Human Rights Act 2004*. The problem with the current provisions in the National Act B is that they do not require the notice to inform the person of what powers the Board might exercise and any procedural rights the person might have.

The modification by this clause in the ACT Bill C requires that an approved form be made for any notice that requires a person to attend for assessment and that the form must include any powers the Board might exercise and any procedural rights the person has under the law.

[1.7] Section 160 (1)

This clause modifies section 160 (1) of National Act B so that the decision of the National Board to investigate a registered health practitioner or student is subject to the joint consideration process outlined in section 150.

[1.8] New section 166 (3)

This clause inserts a new section to National Act B requiring the National Board to give a copy of the investigation report to the ACT Health Services Commissioner. It is intended that the ACT complaints handling model include a joint consideration process between the ACT health complaints entity and the National Boards. The clause is intended to facilitate the joint consideration process. While National Act B denotes the National Board as the main entity empowered to make decisions, it is intended that both the ACT health complaints entity and the National Boards be involved in the decision making process in determining the nature of the complaint. It is intended that the National Board will deal with matters relating to health practitioners and their conduct and the health complaints entity will deal with matters that are systemic or administrative in nature.

[1.9] Section 167

The clause modifies section 167 of National Act to require that the National Board and the ACT Health Services Commissioner jointly consider an investigator's report. This clause is intended to reflect the joint consideration process previously mentioned above at [1.3].

[1.10] New section 167 (3) and (4)

This clause inserts new sections 167 (3) and (4) to National Act B to provide direction in circumstances where the National Board and the ACT Health Services Commissioner cannot come to an agreement regarding actions to be taken following an investigation. New section 167 (3) directs the National Board and the ACT health complaints entity to take the most serious action proposed by either the National Board or the HSC. Relevant 'action' includes those listed under new section 150 (4A). 'Action' in this context is intended to mean a single action.

While options under section 167 to take no further action under National Act B are maintained, the overarching concept of joint consideration takes precedence. It is intended that while the National Board may decide to take no further action, if agreement cannot be obtained from the Health Service Commissioner, new section 167 (3) is to be relied upon to resolve the non-agreement.

[1.11] New Section 172 (2) (ca) and (cb)

This clause modifies section 172 (2) of National Act B so that there are no breaches of the natural justice human rights protected in the ACT by section 21 of the *Human Rights Act 2004*. The problem with the current provisions in the National Act B is that they do not require the notice to inform the person of what powers the Board might exercise and any procedural rights the person might have.

[1.12] New Section 172 (3)

The modification by this clause in the ACT Bill C requires that an approved form be made for any notice that requires a person to attend for assessment and that the form must include any powers the Board might exercise and any procedural rights the person has under the law.

[1.13] Section 175

This clause is a technical clause, which inserts a sub-section number to the words of the provision in preparation for inserting new section 175 (2) as enunciated below at [1.14].

[1.14] New section 175 (2)

This clause inserts a new section 175 (2) requiring that the National Board give the ACT health complaints entity a copy of a health or performance assessment report as soon as practicable. It is intended that 'as soon as practicable' in this context means sooner rather than later.

[1.15] Section 177

The clause modifies section 177 of National Act B to require that the National Board and the ACT Health Services Commission jointly consider an assessor's report in respect of a performance assessment. This clause is intended to reflect the joint consideration process previously mentioned above at [1.3].

[1.16] New section 177 (4) and (5)

This clause inserts new sections 177 (4) and (5) to National Act B to provide direction in circumstances where the National Board and the ACT health complaints entity cannot come to an agreement regarding actions to be taken following an investigation. New section 167 (3) directs the National Board and the ACT health complaints entity to take the most serious action proposed by either the National Board or the HSC. Relevant 'action' includes those listed under new section 150 (4A). 'Action' in this context is intended to mean a single action.

While options under section 177 to take no further action under National Act B are maintained, the overarching concept of joint consideration takes precedence. It is intended that while the National Board may decide to take no further action, if agreement cannot be obtained from the HSC, new section 177 (4) is to be relied upon to resolve the non-agreement.

[1.17] New section 178 (1A)

This clause inserts new section 178 (1A) to National Act B to include circumstances where upon joint consideration the ACT health complaints entity is satisfied on reasonable grounds that action should be taken against a

health practitioner and the action is more serious than any action proposed by the National Board. It is intended that the ACT health complaints entity be included in the decision making process as a reflection of the joint consideration process as outlined above at [1.5].

[1.18] New section 178 (4)

This clause inserts new section 178 (4) to National Act B to provide that if section 178 applies to a set of circumstance because of new section 178 (1A), then the National Board and the ACT health complaints entity must jointly consider the action to be taken and take the action agreed after joint consideration. There is no hierarchy of actions under these circumstances.

[1.19] New section 184 (3)

This clause inserts new section 184 (3) to National Act B to require a copy of a notice to be provided to the ACT health complaints entity as soon as practicable. It is intended that 'as soon as practicable' in this context means sooner rather than later.

[1.20] New section 185 (4)

This clause inserts new section 185 (4) to National Act B to require a panel to have regard to evidence given by the HSC.

[1.21] New section 186A

This clause inserts new section 186A to National Act B to enable the ACT health complaints entity to be represented, give evidence, or be present at a hearing of a panel. The involvement of the ACT health complaints entity is intended to ensure that there is a balanced, as far as possible, representation of relevant stakeholders.

New section 186A interacts with new section 185 (4) by enabling involvement by the ACT health complaints entity in three ways, as previously mentioned, but mandating that evidence given by the ACT health complaints entity be regarded by the panel. It is intended that the lowest threshold for involvement by the ACT health complaints entity is the consideration of evidence given by the Health service Commissioner. While the ACT health complaints entity may choose to provide evidence or not, the panel cannot ignore evidence provided by the ACT health complaints entity if it is given.

[1.22] New section 192 (3A)

This clause inserts new section 192 (3A) to National Act B to require that notice be provided to the ACT health complaints entity within 30 days after the panel makes its decision.

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

The investigator powers in schedule 5, part 1, clause 2, engage the right not to self-incriminate as the power requires a person to provide information on pain of being prosecuted for a criminal offence.

If the provision were left in its current form it would breach the *ACT Human Rights Act 2004*.

The issue was recently examined at great length in the case of *Re Application under the Major Crime (Investigative Powers) Act 2004* [2009] VSC 381. In that case the Chief Justice of the Supreme Court of Victoria gives a clear exposition of the right and a clear answer on what would be proportionate.

This clause modifies the National Act B to include a qualification on schedule 5, clause 2 that provides a direct use immunity of evidence derived from compelled testimony from criminal prosecution and a derivative use immunity of evidence derived from compelled testimony from criminal prosecution. As decided by the Victorian case, the derivative use immunity only needs to apply to evidence that could only have been discovered as a result of testimony from the individual. Evidence that could have been discovered without the testimony would still be admissible.

For example, if the person is asked to disclose where particular documents are in an office, the immunity would not apply as they could have been found by warrant. However, if the person discloses a particular conversation that only the person and another participated in, the testimony would be protected.

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

The inspector powers in schedule 6, part 1, clause 2, engage the right not to self-incriminate as the power requires a person to provide information on pain of being prosecuted for a criminal offence.

If the provision were left in its current form it would breach the *Human Rights Act 2004*.

The issue was recently examined at great length in the case of *Re Application under the Major Crime (Investigative Powers) Act 2004* [2009] VSC 381. In that case the Chief Justice of the Supreme Court of Victoria gives a clear exposition of the right and a clear answer on what would be proportionate.

This clause modifies the National Act B to include a qualification on schedule 6, clause 2 that provides a direct use immunity of evidence derived from compelled testimony from criminal prosecution and a derivative use immunity of evidence derived from compelled testimony from criminal prosecution. As decided by the Victorian case, the derivative use immunity only needs to apply to evidence that could only have been discovered as a result of testimony from the individual. Evidence that could have been discovered without the testimony would still be admissible.

For example, if the person is asked to disclose where particular documents are in an office the immunity would not apply as they could have been found by warrant. However, if the person discloses a particular conversation that only the person and another participated in, the testimony would be protected.

Schedule 2

Consequential amendments

Part 2.1

Administrative Decisions (Judicial Review) Act 1989

[2.1] Schedule 1, new item 9A

This clause inserts new item 9A to exclude the operation of the *Administrative Decisions (Judicial Review) Act 1989* (ACT) to the National Law. The intended purpose of this clause is to keep the administrative decisions and judicial reviews made under the National Law separate and distinct from those made under the *Administrative Decisions (Judicial Review) Act 1989* even though they may share a similar character.

Part 2.2

Children and Young People Act 2008

[2.2] Section 98

This clause amends section 98 to enable health professionals as well as health practitioners to exercise non-treating functions under the criminal matters chapters. While the National Law covers a substantial number of health practitioners, it does not cover all health professionals in the ACT. Health practitioners not covered by the National Law, who are distinguished as health professionals in this Bill, may still need to exercise non-treating functions under section 98 and this position is intended to be maintained with this amendment. For those health professionals that are not covered by the National Law, the *Health Professionals Act 2004* (ACT) provides the necessary regulating law.

[2.3] Section 208 (2) (b)

This clause amends section 208 (2) (b) to enable health professionals as well as health practitioners who are not non-treating health practitioners or non-treating health professionals to monitor a young detainee. As previously noted below at [2.8] while the National Law covers a substantial number of health practitioners, it does not cover all health professionals in the ACT. Health practitioners not covered by the National Law, who are distinguished

as health professionals in this Bill, may still need to exercise functions under section 208 and this position is intended to be maintained with this amendment.

[2.4] Section 211 (2) (a)

This clause amends paragraph 211 (2) (a) to refer to health practitioner rather than health professional. The amendment is necessary to ensure consistent terminology with the National Law.

[2.5] Section 530 (2), definitions of *non-treating doctor*, *non-treating health professional* and *non-treating nurse*

This clause amends the definitions of *non-treating doctor*, *non-treating health professional* and *non-treating nurse* to include health professionals as well as health practitioners. As previously noted below at [2.8] while the National Law covers a substantial number of health practitioners, it does not cover all health professionals in the ACT who are still intended to be regulated by the *Health Professionals Act 2004*.

[2.6] Division 16.4.3

This clause amends Division 16.4.3 to include health professionals as well as health practitioners. As previously noted below at [2.8] while the National Law covers a substantial number of health practitioners, it does not cover all health professionals in the ACT who are still intended to be regulated by the *Health Professionals Act 2004*.

[2.7] Dictionary, note 2

This is a technical clause and inserts *health practitioner* to note 2 of the Dictionary to flag that ‘health practitioner’ will be defined in the *Legislation Act 2001* (ACT). See new definitions in schedule 2, [2.72] of the explanatory statement.

[2.8] Dictionary, definition of *health professional*

This clause amends the definition of *health professional* to refer to a health professional registered under the *Health Professionals Act 2004* (ACT). While the National Law covers a substantial number of health practitioners, it does not cover all health professionals in the ACT who are still intended to be regulated by the *Health Professionals Act 2004*. For those health professionals that are not covered by the National Law, the *Health Professionals Act 2004* (ACT) provides the necessary regulating law.

The preservation of a definition of ‘health professional’ reflects the dual operation of the National Law and the *Health Professionals Act 2004* (ACT) which regulates different health service providers under separate schemes.

[2.9] Dictionary, definition of *health service*

This clause amends the definition of *health service* to include health professionals as well as health practitioners. As previously noted above at [2.8] while the National Law covers a substantial number of health practitioners, it does not cover all health professionals in the ACT who are still intended to be regulated by the *Health Professionals Act 2004*.

[2.10] Dictionary, new definition of *non-treating health practitioner*

This clause inserts a new definition of *non-treating health practitioner* to provide a definition for non-treating health practitioner, reflecting the dual existence of health professionals as well as health practitioners.

[2.11] Dictionary, definition of *paediatrician*

This clause amends the definition of *paediatrician* to mean a doctor registered under National Act B. The amendment is necessary to ensure consistent terminology with the National Law.

[2.12] Dictionary, definition of *psychiatrist*

This clause removes the definition of *psychiatrist* from the Dictionary because it is now defined under the *Mental Health (Treatment and Care) Act 1994* See [2.103]

[2.13] Further amendments, mentions of *health professional etc*

This clause contains a table to amend all other further mentions of health professionals in the *Children and Young People Act 2008* to clarify where health practitioners, or health professionals, or both apply.

The amendment reflects the dual operation of the National Law and the *Health Professionals Act 2004* (ACT) which regulates different health service providers under separate schemes. The amendment also reflects the note above at [2.8] stating that while the National Law covers a substantial number of health practitioners, it does not cover all health professionals in the ACT who are still intended to be regulated by the *Health Professionals Act 2004*.

Part 2.3 **Civil Law (Wrongs) Act 2002**

[2.14] Section 84 (3)

This clause amends the definition of *health service* to reflect the meaning prescribed under section 5 of the *Health Act 1993*. The amendment also includes services provided by health practitioners in addition to the prescribed definition that appears in the *Health Act 1993*.

Part 2.4**Corrections Management Act
2007****[2.15] Section 22**

This clause amends section 22 to refer to health practitioner rather than health professional. The amendment is necessary to ensure consistent terminology with the National Law.

[2.16] Section 65 (4), except note

This clause amends section 65 (4) to refer to health practitioner rather than health professional. The amendment does not apply to the note to section 65 (4). The amendment is necessary to ensure consistent terminology with the National Law as well as section 22—following amendment.

[2.17] Section 140 (4)

This clause amends section 140 (4) to refer to health practitioner rather than health professional. The amendment is necessary to ensure consistent terminology with the National Law as well as section 22 and section 65 (4)—following amendment.

[2.18] Dictionary, note 2

This is a technical clause and inserts *health practitioner* to note 2 of the Dictionary to flag that 'health practitioner' will be defined in the *Legislation Act 2001* (ACT). See new definitions in schedule 2, [2.72] of the explanatory statement.

[2.19] Dictionary, definitions of *health professional* and *health service*

This clause amends the definition of *health professional* and *health service* to reflect the meaning prescribed under section 5 of the *Health Act 1993*. The amendment also includes services provided by health practitioners in addition to the prescribed definition that appears in the *Health Act 1993*.

[2.20] Further amendments, mentions of *health professionals* etc

This clause contains a table to amend all other further mentions of health professionals in the *Corrections Management Act 2007* to health practitioner. The amendments are necessary to ensure consistent terminology with the National Law as well as sections 22, 65 (4) and 140 (4)—following amendment.

Part 2.5 Crimes Act 1900

[2.21] Sections 315, 315A and 315D

This clause amends sections 315, 315A and 315D to refer to practitioner rather than professional. The amendments are necessary to ensure consistent terminology with the National Law.

[2.22] Dictionary, note 2

This is a technical clause and inserts *health practitioner* to note 2 of the Dictionary to flag that ‘health practitioner’ will be defined in the *Legislation Act 2001* (ACT). See new definitions in schedule 2, [2.72] of the explanatory statement.

Part 2.6 Crimes (Forensic Procedures) Act 2000

[2.23] Sections 56 and 72

This clause amends sections 56 and 72 to refer to health practitioner rather than health professional. The amendments are necessary to ensure consistent terminology with the National Law.

[2.24] Dictionary, note 2

This is a technical clause and inserts *health practitioner* to note 2 of the Dictionary to flag that ‘health practitioner’ will be defined in the *Legislation Act 2001* (ACT). See new definitions in schedule 2, [2.72] of the explanatory statement.

[2.25] Dictionary, definition of *corrections health professional*

This clause amends the definition of *corrections health professional* to reflect the meaning of health practitioner as prescribed under section 22 of the *Corrections Management Act 2007*. The amendment is necessary to ensure consistent terminology with the National Law.

[2.26] Dictionary, definition of *health professional*

This clause removes the definition of *health professional* from the *Crimes (Forensic Procedures) Act 2000*. A definition of ‘health professional’ in the Act will become redundant following the adoption of the National Law into ACT law, given that all health practitioners referred to in the Act are captured entirely by the National Law.

Part 2.7 Health Act 1993

[2.27] Section 2, note 1

This clause amends section 2, note 1 to provide a different example other than an example about section 14 of the *Health Act 1993* which historically contained a definition of *health professional*. The amendment is necessary to ensure consistent terminology with the National Law. A reference to ‘health professional’ in the Act will have no utility following the adoption of the National Law into ACT law, given that health professionals will no longer be referred to in the Act—follow the amendments.

[2.28] Section 6 (1), definition of *health facility*, paragraph (d)

This clause amends section 6 (1) to refer to health practitioner rather than health professional. The amendment is necessary to ensure consistent terminology with the National Law.

[2.29] Section 7, definition of *health service provider*, paragraph (a)

This clause amends paragraph 7 (a) to refer to health practitioner rather than health professional. The amendment is necessary to ensure consistent terminology with the National Law.

[2.30] Sections 45 and 72

This clause amends sections 45 and 75 to refer to health board rather than health professional board. The amendments are necessary to ensure consistent terminology with the National Law.

[2.31] Section 122, note

This clause amends the note to section 122 to refer to health board rather than health professional board. The amendment is necessary to ensure consistent terminology with the National Law.

[2.32] New part 8A

This clause inserts new part 8A to introduce an offence prohibiting a person intentionally providing a regulated health service while that person is not a health practitioner. The offence attracts a penalty of 50 penalty units, imprisonment for 6 months or both.

The example of Dr W that appears in new part 8A, section 127 (1) is not exhaustive. Other examples may include, but are not limited to, circumstances where person A living in Canberra who is not registered as a medical doctor under the National Scheme, provides medical advice or services to person B also living in Canberra. Or Person A provides medical advice by video link or any other electronic medium to person C who lives in Perth.

New section 127 (2) outlines exceptions to the rule in section 127 (1). It is intended under paragraph 127 (2)(a) that where health services are required urgently under emergency situations no offence will apply to a Good Samaritan who provides a regulated health service while unregistered to provide the health service. The ordinary meaning of 'emergency' is intended to apply, not specialists, or health practitioner specific meanings of emergency. This interpretation is intended to avoid confusion and inconsistency in the application of this paragraph and is also intended as a protection for members of the broader community as well as the Good Samaritan in circumstances of emergency, where the scope of the relevant assistance 'should' not go beyond the capabilities of an ordinary citizen.

'Should' has been used to note the intention that cases of emergency be considered on a case-by-case basis considering all factors, including, but not limited to, the health condition of the person requiring assistance, the degree of seriousness of the health condition, the impact of the surrounding environment, etc. It is not intended that the Good Samaritan's qualifications, skills or training in the provision of relevant assistance or services under the circumstances be relevant to an assessment of the quality or kind of service provided. While the quality and kind of service provided is relevant it is not of primary consideration when applying this paragraph.

Other exceptions include the provision of manufactured aids to rehabilitation or surgical prosthetics and orthotics; this includes advertisement and promotion of these services etc.

New paragraph 127 (2) (c) has been included to exclude culpability from people providing health services that are usually and ordinarily provided by non-health practitioners. It is intended that where there are silences or gaps in health legislation, namely this Act, the *Health Professionals Act 2004*, National Act B and other relevant legislation, regarding which health services are exempt from the offence under new section 127 (1), the test is to determine whether the health service is firstly a regulated health service and secondly, if it is not a regulated service, is a kind that can and is ordinarily performed by non-health practitioners. Where the health service is or has the implication of being a regulated health service, then the exemption does not apply, unless the other two exemptions under paragraphs 127 (2) (a) and (b) apply. Where the health service is not regulated, and the health service can or is ordinarily performed by non-health practitioners, then the exemption applies.

It is intended that this exemption is to be considered on a case-by-case basis giving regard to relevant factors as mentioned for exemption 127 (2) (a). Where it is difficult to determine whether a health service can or is ordinarily performed by non-health practitioners, evidence from experts and specialists may be used to indicate whether the health service can or is ordinarily performed by non-health practitioners.

The explanations provided in this section are intended to apply specifically to this Act and this Act alone. There is no intention that the explanation of various words in this paragraph be implied or applied to other Acts, unless the legislature specifically requires it.

The amendment reflects the concurrent operation of the National Law, the *Health Act 1993* (ACT) and the *Health Professionals Act 2004* (ACT). It is intended that where the National Law does not impose criminal consequences for inappropriate provision of regulated health services by unregistered health practitioners, that the ACT offence provided under section 72 of the *Health Professionals Act 2004* be retained. Given that the *Health Professionals Act 2004* only covers health professionals that are not covered under the National Law and it is the intention of the legislature that the offence under section 72 of the *Health Professionals Act 2004* apply to all health professionals as well as health practitioners, as is the current status quo—prior to amendments—Section 72 has been relocated to the *Health Act 1993* and applies to all health practitioners.

[2.33] Part 9 heading

This clause amends Part 9 to ensure that the status quo regarding pharmacy premises is maintained.

Section 128 links the definition of community pharmacy to the definition currently located in the *Medicines, Poisons and Therapeutic Goods Act 2008*. As a consequence the existing location of the definition in section 129 (3) is no longer necessary and is removed by clause [2.34] below.

Section 128A and section 128B are a straight relocation of identical provisions in Schedule 5, sections 5.6 and 5.3 respectively of the health professionals regulation 2004. This clause amends Part 9 by inserting the current provisions regarding pharmacy premises and the ownership requirements for corporate pharmacy that are currently located in the Health Professionals Regulation 2004 which will be repealed after the National Law is adopted. These provisions require that a pharmacist have direct, personal control in the operation of a community pharmacist for the protection of the community.

Where it is not in the interest of the community that a pharmacy be operated by an inappropriately qualified or unregistered person, or be located in a premises inappropriate for the dispensation of medicine, then the operation of such a pharmacy would be considered as going against the intentions of the section.

While section 128B(2) enables the Minister to approve standards about premises for community services by notifiable instrument following relevant assessments of community interests and stakeholder interests, the Minister may not approve standards that would allow the operation of a pharmacy in a supermarket. These provisions do not extend or reduce the current protections for community pharmacy.

[2.34] Section 129 (3), definition of *community pharmacy*

This clause omits the duplicate definition of community pharmacy as foreshadowed in clause [2.33] above.

[2.35] Dictionary, note 2

This is a technical clause and inserts *health practitioner* and *pharmacist* to note 2 of the Dictionary to flag that ‘health practitioner’ and ‘pharmacist’ will be defined in the *Legislation Act 2001* (ACT). See new definitions in schedule 2, [2.72] of the explanatory statement.

[2.36] Dictionary, new definitions of *community pharmacy* and *health board*

This clause inserts a new definition of *community pharmacy* to signpost that the definition appears at section 128.

This clause also inserts a new definition of *health board* to include a national board under National Act B and a health professional board under the *Health Professionals Act 2004* (ACT).

The amendments reflect the dual operation of the National Law and the *Health Professionals Act 2004*, which regulates different health service providers under separate schemes. The amendment also reflects the note above at [2.8] stating that while the National Law covers a substantial number of health practitioners, it does not cover all health professionals in the ACT who are still intended to be regulated by the *Health Professionals Act 2004*.

[2.37] Dictionary, definitions of *health profession board* and *health professional*

This clause removes the definitions of *health profession board* and *health professional* to reflect the intention of the amendments at above at [2.36].

Part 2.8 Health Professionals Act 2004**[2.38] Section 14 (1)**

This clause inserts the word regulated to health profession under section 14 (1). The amendments are necessary to ensure consistent terminology with other ACT legislation.

[2.39] Section 14 (2)

This clause removes section 14 (2), which provides a meaning of *health professional*. The health professionals listed under section 14 (2) will be fully subsumed under the National Law.

[2.40] Section 17 (2), example and note

This clause removes section 17 (2) and the example and note to section 17 (2) which provides a meaning of *health professional*. The health professionals listed under section 14 (2) will be fully subsumed under the National Law.

[2.41] Section 18 (1), example

This clause amends section 18 (1) and the example to section 18 (1) to refer to ‘health professional’ rather than ‘doctor’. It is intended that doctors will be fully regulated under the National Law.

The amendment reflects the dual operation of the National Law and the *Health Professionals Act 2004* which regulates different health service providers under separate schemes. The amendment also reflects the note above at [2.8] stating that while the National Law covers a substantial number of health practitioners, it does not cover all health professionals in the ACT who are still intended to be regulated by the *Health Professionals Act 2004*.

[2.42] Section 38 (2), examples and note

This clause removes section 38 (2) and the example and note to section 38 (2) which outlines what a reviewer is permitted to do when reviewing the professional practice of a health professional. The example and note will no longer be relevant once National Law B is adopted into ACT law.

[2.43] Section 72 and example

This clause removes the offence committed by unregistered people providing regulated health services under section 72. Section 72 has been replaced by new Part 8A of the *Health Act 1993*.

The amendment reflects the concurrent operation of the National Law, the *Health Act 1993* (ACT) and the *Health Professionals Act 2004* (ACT). It is intended that where the National Law does not impose criminal consequences for inappropriate provision of regulated health services by unregistered health practitioners, that the ACT offence provided under section 72 of the *Health Professionals Act 2004* be retained.

Given that the *Health Professionals Act 2004* only covers health professionals that are not covered under the National Law and it is the intention of the legislature that the offence under section 72 of the *Health Professionals Act 2004* apply to all health professionals as well as health practitioners, as is the current status quo—prior to amendments—Section 72 has been relocated to the *Health Act 1993* and applies to all health practitioners.

[2.44] Section 81, new note 2

The clause insert new note 2 to section 81 clarifying that where a complaint is referred to a health profession board by the Human Rights Commission, the board is not required to send a notice.

This amendment clarifies the intention that there are two meanings of ‘report’ under the Act, one relating to reporting mechanisms under Division 9.2 of the Act and the other relating to complaints mechanisms under the *Human Rights Commission Act 2005*. While reporting under Division 9.2 requires notification under the Act, a complaint referred by the Human Rights Commission follows a separate notification system to the one under Division 9.2 of the Act.

[2.45] Dictionary, definition of *report*

This clause amends the Dictionary definition of report to clarify that ‘report’ has two meanings under the Act, one relating to reporting mechanisms under Division 9.2 of the Act and the other relating to complaints mechanisms under the *Human Rights Commission Act 2005*.

Part 2.9 **Health Professionals Regulation 2004**

[2.46] Schedule 1

This clause amends schedule 1 to only include dental technicians, veterinary surgeons and medical radiation scientists. The intended effect of this amendment is to ensure that health professionals not covered by the National Law are still covered by the *Health Professionals Act 2004 (ACT)*. The amendment also reflects the note above at [2.8] stating that while the National Law covers a substantial number of health practitioners, it does not cover all health professionals in the ACT who are still intended to be regulated by the *Health Professionals Act 2004*.

[2.47] Schedules 2 to 7

This clause removes schedules 2 to 7 referring to medical practitioners, nurses, midwives, pharmacists, dentists, dental hygienist, dental therapists and psychologists. These practitioners are now covered under the National Law.

[2.48] Schedules 8

This clause amends schedule 8 to ensure that definitions of and references to ‘dental technician’, ‘dental prosthetist’, and ‘dentist’ reflect the dual operation of the National Law and the *Health Professionals Act 2004 (ACT)* which regulate different health service providers under separate schemes. While it is intended that dentists and dental prosthetists will be regulated under the

National Law, dental technicians will be regulated under the *Health Professionals Act 2004*.

Qualification requirements, maintenance and demonstration of professional development, continued competency and currency of practice requirements, insurance policy requirements and conditional registration requirements and registration end dates for dentists and dental prosthetists have therefore been removed from schedule 8.

[2.49] Schedules 9 to 11

This clause removes schedules 9 to 11 referring to podiatrists, physiotherapists and optometrists. These practitioners are now covered under the National Law.

[2.50] Schedules 13 and 14

This clause removes schedules 13 to 14 referring to chiropractors and osteopaths. These practitioners are now covered under the National Law.

[2.51] Dictionary

This clause removes the definitions of:

Australian Medical Council
chiropractor
close relative
community pharmacy
competency standards
dental care provide
dental hygienist
dental procedure
dental therapist
dentist
dentist procedure
enrolled nurse
general dental procedure
medical board
medical practitioner
midwife
nurse
nurse practitioner
nursing and midwifery regulatory authority
optometrist
optometrist restricted medicines authority
osteopath
pharmacist
pharmacy
physiotherapist

The amendment reflects the intention to adopt the National Law. The terms appearing in the above list will have no utility in the Act following adoption of the National Law given that the ten professions covered by the Act will now be regulated under National Act B.

Part 2.10 **Health Professionals (Special Events Exemptions) Act 2000**

[2.52] Section 11 (1)

This clause amends section 11 (1) to refer to National Act B rather than the *Health Professionals Act 2004 (ACT)*. The amendment reflects the intention to adopt National Act B into ACT law. Following adoption, references to the *Health Professionals Act 2004* would be incorrect.

[2.53] Section 12 (1) and (2)

This clause amends sections 12 (1) and (2) to refer to National Act B rather than the *Health Professionals Act 2004 (ACT)*. The amendment reflects the intention to adopt National Act B into ACT law. Following adoption, references to the *Health Professionals Act 2004* would be incorrect.

Part 2.11 **Health Records (Privacy and Access) Act 1997**

[2.54] Section 16D (4) (b)

This clause amends section 12 to clarify that only a health service provider, other than a student, registered with the registration board established for the medical profession can interpret a health record for a consumer.

[2.55] Schedule 1, principle 4.1, example and note

This clause removes the example and note to schedule 1, principle 4.1 which refers to the *Health Professionals Act 2004*. The amendment reflects the intention to adopt National Act B into ACT law. Following adoption, references to the *Health Professionals Act 2004* would be incorrect.

[2.56] Dictionary, definition of *registration board*

This clause amends the definition of registration board to include a national board under National Act B and a health professional board under the *Health Professionals Act 2004 (ACT)*.

The amendment reflects the dual operation of the National Law and the *Health Professionals Act 2004* which regulates different health service providers under separate schemes. The amendment also reflects the note above at [2.8] stating that while the National Law covers a substantial number of health practitioners, it does not cover all health professionals in the ACT who are still intended to be regulated by the *Health Professionals Act 2004*.

Part 2.12 **Human Rights Commission Act 2005**

[2.57] Section 7 (3)

This clause amends section 7 (3) to include a health professional or a health practitioner.

The amendment reflects the dual operation of the National Law and the *Health Professionals Act 2004* which regulates different health service providers under separate schemes. The amendment also reflects the note above at [2.8] stating that while the National Law covers a substantial number of health practitioners, it does not cover all health professionals in the ACT who are still intended to be regulated by the *Health Professionals Act 2004*.

[2.58] Section 14 (1), note

This clause inserts a new dot point to the note to section 14 (1) to clarify that the Human Rights Commission has functions under National Act B.

[2.59] Section 25 (1) (b), new note

This clause inserts a new note to paragraph 25 (1) (b) to include a reference to National Act B to flag that National Act B contains functions relating to the Health Services Commissioner.

[2.60] Section 39 (1) (b) (iv)

This clause amends section 39 (1) (b) (iv) to refer to the National Law as well as the *Health Professionals Act 2004* (ACT).

The amendment reflects the dual operation of the National Law and the *Health Professionals Act 2004*, which regulates different health service providers under separate schemes. The amendment also reflects the note above at [2.8] stating that while the National Law covers a substantial number of health practitioners, it does not cover all health professionals in the ACT who are still intended to be regulated by the *Health Professionals Act 2004*.

[2.61] Section 39, new note

This clause inserts a guiding note to section 39 to aid with the complaints handling process regarding health practitioners. The note reflects the joint consideration process between the ACT health complaints entity and the National Boards. While National Act B denotes the National Board as the main entity empowered to make decisions, it is intended that both the ACT health complaints entity, which is intended in the *Human Rights Commission Act 2005* to be the Health Services Commissioner, and the National Boards be involved in the decision making process.

[2.62] Section 45 (3) (a) (iii)

This clause amends sub-paragraph 45 (3) (a) (iii) to include a national board established under National Act B. The amendment has the effect that the Health Services Commissioner does not have to consider a complaint if the complaint is being considered by, amongst other unchanged entities list under paragraph 45 (3) (a), a national board established under National Act B.

[2.63] Section 47, new note

This clause inserts a guiding note to section 47 to aid with the complaints handling process regarding health practitioners. The note reflects the joint consideration process between the ACT health complaints entity and the National Boards. While National Act B denotes the National Board as the main entity empowered to make decisions, it is intended that both the ACT health complaints entity, which is intended in the *Human Rights Commission Act 2005* to be the Health Services Commissioner, and the National Boards be involved in the decision making process. It is intended that the National Board will deal with matters relating to health practitioners and their conduct and the health complaints entity will deal with matters that are systemic or administrative in nature.

[2.64] Section 78 (1) (e)

This clause amends paragraph 78 (1) (e) to include a national board established under National Act B. The amendment has the effect that the Health Services Commissioner close a complaint if the complaint is being considered by, amongst other unchanged entities list under section 78 (1), a national board established under National Act B.

[2.65] New Section 80 (1) (c)

This clause inserts a new subparagraph in section 80 to allow the HSC to report back to the National board if a complaint was referred to the HSC by a National Board under National Act B.

[2.66] Section 92 (1)

This clause substitutes a new subsection to ensure that any complaint involving a registered health practitioner received by the HSC is referred to the national boards established under National Act B.

[2.67] Section 95 (2)

This clause inserts the words 'and the *Health Practitioner Regulation National Law (ACT)*' in subsection 95(2) in recognition that complaints can be made direct to the national boards established under National Act B.

[2.68] Dictionary, note 2

This is a technical clause and inserts *health practitioner* to note 2 of the Dictionary to flag that 'health practitioner' will be defined in the *Legislation Act 2001 (ACT)*. See new definitions in schedule 2, [2.72] of the explanatory statement.

Part 2.13**Legislation Act 2001****[2.69] Dictionary, part 1, definition of *dental prosthetist***

This clause amends the definition of *dental prosthetist* to refer to National Act B rather than the *Health Professionals Act 2004*. The amendment reflects the intention to adopt National Act B into ACT law. Following adoption, references to the *Health Professionals Act 2004* would be incorrect.

[2.70] Dictionary, part 1, definition of *dentist*

This clause amends the definition of *dentist* to refer to National Act B rather than the *Health Professionals Act 2004*. The amendment reflects the intention to adopt National Act B into ACT law. Following adoption, references to the *Health Professionals Act 2004* would be incorrect.

[2.71] Dictionary, part 1, definition of *doctor*

This clause amends the definition of *doctor* to refer to National Act B rather than the *Health Professionals Act 2004*. The amendment reflects the intention to adopt National Act B into ACT law. Following adoption, references to the *Health Professionals Act 2004* would be incorrect.

[2.72] Dictionary, definition of *enrolled nurse*

This clause amends the definition of *enrolled nurse* to refer to National Act B rather than the *Health Professionals Act 2004*. The amendment reflects the intention to adopt National Act B into ACT law. Following adoption, references to the *Health Professionals Act 2004* would be incorrect.

[2.73] Dictionary, part 1, new definitions

This clause inserts new definitions to the Dictionary to include meanings for *health practitioner* and *Health Practitioner Regulation National Law (ACT)* (referred throughout this explanatory statement as ACT Bill C). ‘Health practitioner’ is intended to mean a person registered under National Act B. ‘*Health Practitioner Regulation National Law (ACT)*’ is intended to be the schedule of National Act B (referred interchangeably throughout this explanatory statement as the National Law). It is also intended that ‘*Health Practitioner Regulation National Law (ACT)*’ also include Schedule 1 of ACT Bill C. ‘*Health Practitioner Regulation National Law (ACT)*’ will be used interchangeably with ‘National Law’ to indicate one and the same thing.

[2.74] Dictionary, part 1, definition of *midwife*

This clause amends the definition of *midwife* to refer to National Act B rather than the *Health Professionals Act 2004*. The amendment reflects the intention to adopt National Act B into ACT law. Following adoption, references to the *Health Professionals Act 2004* would be incorrect.

[2.75] Dictionary, part 1, definition of *nurse* and note

This clause amends the definition of *nurse* and the note immediately below the definition of *nurse* to refer to National Act B rather than the *Health Professionals Act 2004*. The amendment reflects the intention to adopt National Act B into ACT law. Following adoption, references to the *Health Professionals Act 2004* would be incorrect.

[2.76] Dictionary, part 1, definition of *nurse practitioner* and note

This clause amends the definition of *nurse practitioner* and the note immediately below the definition of *nurse practitioner* to refer to National Act B rather than the *Health Professionals Act 2004*. The amendment reflects the intention to adopt National Act B into ACT law. Following adoption, references to the *Health Professionals Act 2004* would be incorrect.

[2.77] Dictionary, part 1, definition of *optometrist*

This clause amends the definition of *optometrist* to refer to National Act B rather than the *Health Professionals Act 2004*. The amendment reflects the intention to adopt National Act B into ACT law. Following adoption, references to the *Health Professionals Act 2004* would be incorrect.

[2.78] Dictionary, part 1, definition of *pharmacist*

This clause amends the definition of *pharmacist* to refer to National Act B rather than the *Health Professionals Act 2004*. The amendment reflects the intention to adopt National Act B into ACT law. Following adoption, references to the *Health Professionals Act 2004* would be incorrect.

Part 2.14**Medicines, Poisons and
Therapeutic Goods Act 2008****[2.79] Section 6 (3)**

This clause amends section 6 (3) to include a health professional or a health practitioner.

The amendment reflects the dual operation of the National Law and the *Health Professionals Act 2004*, which regulates different health service providers under separate schemes. The amendment also reflects the note above at [2.8] stating that while the National Law covers a substantial number of health practitioners, it does not cover all health professionals in the ACT who are still intended to be regulated by the *Health Professionals Act 2004*.

[2.80] Section 7 (1)

This clause amends section 7 (1) to include a health professional or a health practitioner.

The amendment reflects the dual operation of the National Law and the *Health Professionals Act 2004*, which regulates different health service providers under separate schemes. The amendment also reflects the note above at [2.8] stating that while the National Law covers a substantial number of health practitioners, it does not cover all health professionals in the ACT who are still intended to be regulated by the *Health Professionals Act 2004*.

[2.81] Section 138 (2), except note

This clause amends section 138 (2) without amending the note to section 138 (2) to include a notification under the National Act B and a report under the *Health Professionals Act 2004* (ACT). The intended effect of this amendment is to ensure that this Act does not interfere with the powers and functions created under National Act B and those that exist in the *Health Professionals Act 2004*.

The amendment reflects the dual operation of the National Law and the *Health Professionals Act 2004*, which regulates different health service providers under separate schemes. The amendment also reflects the note above at [2.8] stating that while the National Law covers a substantial number of health practitioners, it does not cover all health professionals in the ACT who are still intended to be regulated by the *Health Professionals Act 2004*.

[2.82] New sections 149 (2) (c) and 152 (3) (c)

This clause amends sections 149 (2) (c) and 152 (3) (c) to refer to the *Health Practitioner Regulation National Law (ACT)* (see above at [2.72]) rather than the *Health Professionals Act 2004*. The amendment reflects the intention to

adopt National Act B into ACT law. Following adoption, references to the *Health Professionals Act 2004* would be incorrect.

[2.83] Section 195 (4) (f)

This clause amends section 195 (4) (f) to include a national board under the National Law or a health professional board under the *Health Professionals Act 2004*.

The amendment reflects the dual operation of the National Law and the *Health Professionals Act 2004*, which regulates different health service providers under separate schemes. The amendment also reflects the note above at [2.8] stating that while the National Law covers a substantial number of health practitioners, it does not cover all health professionals in the ACT who are still intended to be regulated by the *Health Professionals Act 2004*.

[2.84] Dictionary, note 2

This is a technical clause and inserts *health practitioner* to note 2 of the Dictionary to flag that 'health practitioner' will be defined in the *Legislation Act 2001* (ACT). See new definitions in schedule 2, [2.72] of the explanatory statement.

Part 2.15

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

[2.85] Section 10 (4), example 1

This clause amends example 1 to section (10) (4) to refer to the National Law rather than the *Health Professionals Act 2004*. The amendment reflects the intention to adopt National Act B into ACT law. Following adoption, references to the *Health Professionals Act 2004* would be incorrect.

[2.86] Part 2.2

This clause amends Part 2.2 to clarify that medicine authorisations made under the Act are subject to restrictions and conditions imposed under the National Law as well as the restrictions and conditions imposed under the *Health Professionals Act 2004*.

The amendment reflects the dual operation of the National Law and the *Health Professionals Act 2004*, which regulates different health service providers under separate schemes. The amendment also reflects the note above at [2.8] stating that while the National Law covers a substantial number of health practitioners, it does not cover all health professionals in the ACT who are still intended to be regulated by the *Health Professionals Act 2004*.

[2.87] New section 110 (2)

This clause is consistent with the current restrictions on pharmacy premises now relocated in Part 9 of the *Health Act 1993* and prevents a pharmacist from supplying a medicine to a corporation that is not a complying pharmacy corporation (as defined in Part 9 of the *Health Act 1993*) or a registered pharmacist.

[2.88] Section 121 (3), definition of *authorised prescriber*

The clause amends the definitions of authorised prescriber under section 121 (3) to include a person who is authorised under another territory law. The intended effect of this amendment is to capture authorisations under the National Law, the *Health Professionals Act 2004*, this Act and any other Act that may contain authorisations. Authorisations for controlled medicines are also included in the definition to clarify that an authorised prescriber of a controlled medicine is also an authorised prescriber for the purpose of prescribing pharmaceutical medicines.

[2.89] Section 121, note 1

This clause removes note 1 to section 121, which refers to the *Health Professionals Act 2004*. The amendment reflects the intention to adopt National Act B into ACT law. Following adoption, references to the *Health Professionals Act 2004* would be incorrect.

[2.90] Section 400 (1)

This clause amends section 400 (1) to include a health professional or a health practitioner.

The amendment reflects the dual operation of the National Law and the *Health Professionals Act 2004*, which regulates different health service providers under separate schemes. The amendment also reflects the note above at [2.8] stating that while the National Law covers a substantial number of health practitioners, it does not cover all health professionals in the ACT who are still intended to be regulated by the *Health Professionals Act 2004*.

[2.91] Section 400 (1), note

This clause amends section 400 (1) to include a reference to health professionals as well as health practitioners.

The amendment reflects the dual operation of the National Law and the *Health Professionals Act 2004* which regulates different health service providers under separate schemes. The amendment also reflects the note above at [2.8] stating that while the National Law covers a substantial number of health practitioners, it does not cover all health professionals in the ACT who are still intended to be regulated by the *Health Professionals Act 2004*.

[2.92] Section 400, example 1

This clause amends the first example to section 400 to include a reference to a health professional as well as a health practitioner.

The amendment reflects the dual operation of the National Law and the *Health Professionals Act 2004*, which regulates different health service providers under separate schemes. The amendment also reflects the note above at [2.8] stating that while the National Law covers a substantial number of health practitioners, it does not cover all health professionals in the ACT who are still intended to be regulated by the *Health Professionals Act 2004*.

[2.93] Section 500 (1) and (2)

This clause amends section 500, subsections (1) and (2) to include where appropriate a reference to a health professional as well as a health practitioner.

The amendment reflects the dual operation of the National Law and the *Health Professionals Act 2004*, which regulates different health service providers under separate schemes. The amendment also reflects the note above at [2.8] stating that while the National Law covers a substantial number of health practitioners, it does not cover all health professionals in the ACT who are still intended to be regulated by the *Health Professionals Act 2004*.

[2.94] Schedule 1, part 1.4

This clause amends schedule 1, part 1.4 to refer to a health professional or a health practitioner employed at an institution. The intended effect of the amendment is to clarify that both health professionals and health practitioners may be employed at institutions, which may be required to provide authorisations for their employees to deal with medicines, poisons or therapeutic goods.

The amendment reflects the dual operation of the National Law and the *Health Professionals Act 2004*, which regulates different health service providers under separate schemes. The amendment also reflects the note above at [2.8] stating that while the National Law covers a substantial number of health practitioners, it does not cover all health professionals in the ACT who are still intended to be regulated by the *Health Professionals Act 2004*.

[2.95] Schedule 1, part 1.8, item 1, column 3, paragraph (b)

This clause amends schedule 1, part 1.8, item 1, column 3, paragraph (b) to refer to the Optometry Board of Australia rather than schedule 11 of the *Health Professionals Regulations 2004*. The amendment reflects the intention to adopt National Act B into ACT law. The Optometry Board of Australia is established under the National Scheme. Following adoption, references to schedule 11 of the *Health Professionals Regulation 2004* would be incorrect.

[2.96] Schedule 1, table 2.2, item 5, column 3

This clause amends schedule 1, table 2.2, item 5, column 3 to remove the reference to the Optometrists Registration Board under *Optometrists Act 2002* (NSW), the Australian and New Zealand College of Ophthalmologists, the School of Vision Science, and the University of New South Wales.

The reference is intended to be to the Optometry Board of Australia only. The amendment reflects the intention to adopt National Act B into ACT law. The Optometry Board of Australia is established under the National Scheme. Following adoption, references to schedule 11 of the *Health Professionals Regulation 2004* would be incorrect.

[2.97] Dictionary, note 2

This is a technical clause and inserts *enrolled nurse* to note 2 of the Dictionary to flag that 'enrolled nurse' will be defined in the *Legislation Act 2001* (ACT). See new definitions in schedule 2, [2.72] of the explanatory statement.

[2.98] Dictionary, note 3

This is a technical clause and inserts *health practitioner* to note 3 of the Dictionary to flag that 'health practitioner' has the same meaning in this Act as it does in the *Medicine, Poisons and Therapeutic Goods Act 2008*, which is defined in the *Legislation Act 2001* (ACT).

[2.99] Dictionary, definition of *enrolled nurse (medications)*

This clause amends the definition of *enrolled nurse (medications)* to refer to the National Law rather than the *Health Professionals Act 2004*. The amendment reflects the intention to adopt National Act B into ACT law. Following adoption, references to the *Health Professionals Act 2004* would be incorrect.

[2.100] Dictionary, definition of *health profession*

This clause amends the definition of *health profession* to mean a health profession under the National Law as well as the *Health Professionals Act 2004*.

The amendment reflects the dual operation of the National Law and the *Health Professionals Act 2004*, which regulates different health service providers under separate schemes. The amendment also reflects the note above at [2.8] stating that while the National Law covers a substantial number of health practitioners, it does not cover all health professionals in the ACT who are still intended to be regulated by the *Health Professionals Act 2004*.

[2.101] Dictionary, definitions of *intern*

This clause amends definition of *intern* to mean a doctor or pharmacist holding limited or provisional registration to practice under the National Law rather than the *Health Professionals Act 2004*. The amendment reflects the intention to adopt National Act B into ACT law. Following adoption, references to the *Health Professionals Act 2004* would be incorrect for doctors and references not referring to the National Law would be incorrect for pharmacists, given that pharmacists will also be covered under the National Law, with the exception of community pharmacy locations and premises, which are intended to be regulated under the *Health Act 1993*—following amendment. See above at [2.33 and 2.81].

[2.102] Dictionary, definitions of *specialist* and *specialist area*

This clause amends the definition of specialist and specialist area to refer to the *Health Professionals Act 2004*. The amendment reflects the intention to adopt National Act B into ACT law. Following adoption, references to the *Health Professionals Act 2004* would be incorrect.

[2.103] Dictionary, definition of *trainee*, except examples and note

This clause amends the definition of *trainee* without changing the examples and note to the definition, by inserting a reference to the National Law. The amendment reflects the intention to adopt National Act B into ACT law. Following adoption, it is intended that trainees will be regulated under the National Law.

[2.104] Further amendments, mentions of *health professionals* etc

This clause contains a table to amend all other further mentions of ‘health professionals’ in the *Medicines, Poisons and Therapeutic Goods Regulation 2008* to clarify where health practitioners, or health professionals, or both apply.

The amendment reflects the dual operation of the National Law and the *Health Professionals Act 2004* (ACT) which regulates different health service providers under separate schemes. The amendment also reflects the note above at [2.8] stating that while the National Law covers a substantial number of health practitioners, it does not cover all health professionals in the ACT who are still intended to be regulated by the *Health Professionals Act 2004*.

Part 2.16 Mental Health (Treatment and Care) Act 1994

[2.105] **Section 119 (2)**

This clause amends section 119 (2) to refer to 'nurse' rather than 'mental health nurse'. It is intended that all classification of nurses will come under the National Law and mental health nurse will no longer be referred to under this Act. See below at [2.105 and 2.106].

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

This clause inserts a new definition of *occupational therapist* to section 119 (3) to mean a person registered under the National Law, as of 1 July 2012, to practise as an occupational therapist. The amendment will not commence until 1 July 2012.

[2.107] **Dictionary, note 2**

This is a technical clause and inserts *nurse* to note 2 of the Dictionary to flag that 'nurse' is defined in the *Legislation Act 2001* (ACT). See new definitions in schedule 2, [2.70] of the explanatory statement.

[2.108] **Dictionary, definition of *mental health nurse* and note**

This clause removes from the Dictionary, the definition of *mental health nurse*. It is intended that all classification of nurses will come under the National Law and mental health nurse will no longer be referred to under this Act. See above at [2.103].

[2.109] **Dictionary, definition of *psychiatrist***

This clause amends the Dictionary definition of *psychiatrist* to mean a doctor registered under the National Law rather than the *Health Professionals Act 2004*. The amendment reflects the intention to adopt National Act B into ACT law. Following adoption, references to the *Health Professionals Act 2004* would be incorrect.

Part 2.17 Public Health Act 1997

[2.110] **Section 102 (4) and (5)**

This clause amends sections 102 (4) and (5) to refer to unprofessional conduct provisions under the National Law as well as the *Health Professionals Act 2004*.

The amendment reflects the dual operation of the National Law and the *Health Professionals Act 2004* (ACT) which regulates different health service providers under separate schemes. The amendment also reflects the note above at [2.8] stating that while the National Law covers a substantial number of health practitioners, it does not cover all health professionals in the ACT who are still intended to be regulated by the *Health Professionals Act 2004*.

[2.111] Dictionary, definition of *counsellor*, paragraph (a)

This clause amends the Dictionary definition of counsellor to mean a person registered under the National Law rather than the *Health Professionals Act 2004*. The amendment reflects the intention to adopt National Act B into ACT law. Following adoption, references to the *Health Professionals Act 2004* would be incorrect.

Part 2.18 Radiation Protection Act 2006

[2.112] Section 68 (2) (b)

This clause amends section 68 (2) (b) to refer to the National Law rather than the *Health Professionals Act 2004*. The amendment reflects the intention to adopt National Act B into ACT law. Following adoption, references to the *Health Professionals Act 2004* would be incorrect.

[2.113] Section 115 (4) (c)

This clause amends sections 115 (4) (c) to refer to a national board under the National Law as well as a health profession board under the *Health Professionals Act 2004*. Given the unique situation in the ACT, it is intended that there will be two sets of boards in existence, one established under the National Law and the other remaining as part of the *Health Professionals Act 2004*.

The amendment reflects the dual operation of the National Law and the *Health Professionals Act 2004* (ACT) which regulates different health service providers under separate schemes. The amendment also reflects the note above at [2.8] stating that while the National Law covers a substantial number of health practitioners, it does not cover all health professionals in the ACT who are still intended to be regulated by the *Health Professionals Act 2004*.

Part 2.19 Transplantation and Anatomy Act 1978

[2.114] **Section 24 (2) (a) (iii)**

This clause amends section 24 (2) (a) (iii) to refer to a nurse rather than a register nurse. The amendment is necessary for consistency with the definitions that appear on the *Legislation Act 2001* (ACT). See amended definition of nurse at above schedule 2, [2.70] of the explanatory statement.

[2.115] **Section 25 (1) (a) (iii)**

This clause amends section 25 (1) (a) (iii) to refer to a nurse rather than a register nurse. The amendment is necessary for consistency with the definitions that appear on the *Legislation Act 2001* (ACT). See amended definition of *enrolled nurse* and *nurse* above at [2.70 and 2.73] of the explanatory statement.

[2.116] **Dictionary, note 2**

This is a technical clause and inserts two new dot points to include *doctor* and *enrolled nurse* to note 2 of the Dictionary to flag that ‘doctor’ and ‘enrolled nurse’ are defined in the *Legislation Act 2001* (ACT). See definitions above at [2.70] and [2.73] of the explanatory statement.

[2.117] **Dictionary, definitions of *enrolled nurse, medical practitioner* and *registered nurse***

This clause removes the Dictionary definitions of *enrolled nurse, medical practitioner* and *registered nurse*. ‘Registered nurse’ is no longer a term used in any health legislation. ‘Enrolled nurse’ is defined in the *Legislation Act 2001* (ACT), see above at [2.70]. ‘Medical practitioner’ is replaced with ‘doctor’ and is defined under the *Legislation Act 2001*, see above at [2.69]

[2.118] **Further amendments, mentions of *medical practitioner* etc**

This clause contains a table to amend all other further mentions of ‘medical practitioner’ in the *Transplantation and Anatomy Act 1978* so that references to ‘medical practitioner’ are replaced by a reference to ‘doctor’. It is intended that the terms ‘medical practitioner’ no longer be used in health legislation to improve consistency between different pieces of health legislation.

Part 2.20 **Victims of Crime (Financial Assistance) Act 1983**

[2.119] Section 30 (1)

This clause amends section 30 (1) to refer to health practitioner rather than health professional. The amendment is necessary to ensure consistent terminology with the National Law and other ACT legislation—following amendment.

[2.120] Dictionary, note 2

This is a technical clause and inserts *health practitioner* to note 2 of the Dictionary to flag that ‘health practitioner’ will be defined in the *Legislation Act 2001* (ACT). See new definitions above at [2.72] of the explanatory statement.

[2.121] Dictionary, definition of *health professional*

This clause removes the Dictionary definition of health professional. It is intended that only health practitioners, and not health professionals, will have functions under the Act following adoption of the National Law into ACT law.

Part 2.21

Victims of Crime Regulation 2000

[2.122] Sections 8 (1) (e) and 11 (2) (b)

This clause amends sections 8 (1) (e) and 11 (2) (b) to refer to a health practitioner member rather than health professional member. The amendment is necessary to ensure consistent terminology with the National Law.

Note that ‘health profession’ referred in section 8 (1) (e) is intended to have the meaning provided in National Act B at the Dictionary and for health professions not covered in National Act B, the *Health Professions Act 2004*. It is intended that the definition of ‘health profession’ that appears in the *Health Professions Act 2004* only applies to health professions not covered under the National Law and is not intended to be implied to the definition of ‘health profession’ in National Act B.

[2.123] Section 41 (b)

This clause amends section 41 (b) to refer to services provided by health practitioners rather than health professionals. The amendment is necessary to ensure consistent terminology with the National Law.

[2.124] Section 43 (d)

This clause amends section 43 (d) to refer services provided by health practitioners rather than health professionals. The amendment is necessary to ensure consistent terminology with the National Law.

[2.125] Dictionary, note 2

This is a technical clause and inserts *health practitioner* to note 2 of the Dictionary to flag that ‘health practitioner’ will be defined in the *Legislation Act 2001* (ACT). See new definitions above at schedule 2, [2.72] of the explanatory statement.

[2.126] Dictionary, definitions of *health professional*, *health professions member* and *health professions service*

This clause amends the definitions of *health professional*, *health professions members* and *health professions service* to refer to ‘practitioner’ rather than ‘profession’. The amendment is necessary to ensure consistent terminology with the National Law.

[2.127] Dictionary, definition of *psychologist*

This clause amends the Dictionary definition of *psychologist* to mean a person registered under the National Law rather than the *Health Professionals Act 2004*. The amendment reflects the intention to adopt National Act B into ACT law. Following adoption, references to the *Health Professionals Act 2004* would be incorrect.

Part 2.22 Workers Compensation Act 1951

[2.128] Dictionary, definition of *chiropractor*

This clause amends the Dictionary definition of *chiropractor* to refer to the National Law rather than the *Health Professionals Act 2004*. The amendment reflects the intention to adopt National Act B into ACT law. Following adoption, references to the *Health Professionals Act 2004* would be incorrect.

[2.129] Dictionary, definition of *osteopath*

This clause amends the Dictionary definition of *osteopath* to refer to the National Law rather than the *Health Professionals Act 2004*. The amendment reflects the intention to adopt National Act B into ACT law. Following adoption, references to the *Health Professionals Act 2004* would be incorrect.

[2.130] Dictionary, definition of *physiotherapist*

This clause amends the Dictionary definition of *physiotherapist* to refer to the National Law rather than the *Health Professionals Act 2004*. The amendment reflects the intention to adopt National Act B into ACT law. Following adoption, references to the *Health Professionals Act 2004* would be incorrect.

Part 2.23 Workers Compensation Regulation 2002

[2.131] New section 22 (2A) and (2B)

This clause inserts new sections 22 (2A) and (2B) as a transitional provision to clarify that before 1 July 2012, a person is qualified to provide occupational therapy if the person is a member of the Australian Association of Occupational Therapists. It is intended that occupational therapists will be regulated under the National Law when the National Law commences in the ACT (anticipated to be 1 July 2010) and this amendment will no longer have effect.

[2.132] Table 22, item 1, column 3

This clause amends table 22, item 1, column 3 of section 22 to refer to the National Law rather than the *Health Professionals Act 2004*. The amendment reflects the intention to adopt National Act B into ACT law. Following adoption, references to the *Health Professionals Act 2004* would be incorrect.

[2.133] Table 22, item 2, column 3

This clause amends table 22, item 2, column 3 of section 22 to refer to the National Law rather than the *Health Professionals Act 2004*. The amendment reflects the intention to adopt National Act B into ACT law. Following adoption, references to the *Health Professionals Act 2004* would be incorrect.

[2.134] Table 22, item 4, column 3

This clause amends table 22, item 4, column 3 of section 22 to refer to the National Law rather than the *Health Professionals Act 2004*. The amendment reflects the intention to adopt National Act B into ACT law. Following adoption, references to the *Health Professionals Act 2004* would be incorrect.

Dictionary

The dictionary includes a definition for *Health Practitioner Regulation National Law (ACT)* and the *Qld Act*, which are, referred to throughout the Bill. The dictionary also refers to the Legislation Act 2001, which contains definitions and other provisions relevant to the interpretation of this Bill.