

## Health Practitioner Regulation National Law Application Bill 2023

### EXPLANATORY MEMORANDUM

The *Health Practitioner Regulation National Law Application Bill 2023* (the Bill) provides for an Act with four purposes.

First, to apply the Health Practitioner Regulation National Law (with modifications) as a law of the State. The Health Practitioner Regulation National Law provides a scheme for the regulation of 15 health professions in Australia and is the subject of an Intergovernmental Agreement between all jurisdictions in Australia. The Health Practitioner Regulation National Law is developed through consultation and agreement in all participating jurisdictions, enacted by the Queensland Parliament and adopted by each participating jurisdiction. Western Australia currently adopts the Health Practitioner Regulation National Law through the enactment of corresponding legislation; the Bill will change this adoption method to an applied laws mechanism.

Second, the Bill provides for the tabling and disallowance of amendments made to the National Law. The Bill recognises the unique needs of the WA community and health industry, and thus while seeking to enable an efficient mechanism to adopt the National Law, retains the ability to make modifications and disallow amendments as necessary to address WA specific requirements.

Third, the Bill enacts provisions to regulate the health professions which have local application in Western Australia. Fourth, the Bill repeals the existing Health Practitioner Regulation National Law legislative framework in WA and provides for a transition to the applied laws mechanism.

The Bill is set out as follows:

#### PART 1 — PRELIMINARY

##### **Clause 1**      **Short title**

The Act will be called the *Health Practitioner Regulation National Law Application Act 2023*.

##### **Clause 2**      **Commencement**

This clause provides for the commencement of the Act. Part 1 comes into operation on the day on which the Act receives the Royal Assent.

The commencement of section 29 is dependent on the commencement of the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022* (Qld) section 94 as it modifies a provision of the National Law inserted by that section.

The rest of the Act commences on the day after the Act receives the Royal Assent. The National Law is already operational in WA; the Bill merely changes

the method by which the National Law is adopted so there are no further preparations required prior to commencement.

### **Clause 3**      **Terms used**

This clause defines terms used in the Act. Key definitions include:

- ***amending Act*** – a Queensland Act that receives the Royal Assent after 10 October 2023 and amends the National Law or national regulations;
- ***commencement day*** – the day on which section 5 comes into operation;
- ***national regulations*** – the regulations made under section 245 of the National Law or a Queensland Act for the purposes of the National Law.

This clause also provides that terms used in the Act and also in the *Health Practitioner Regulation National Law (Western Australia)* have the same meanings in the Act as they have in the Law.

### **Clause 4**      **Act binds Crown**

This clause provides for the Act to bind the Crown.

## PART 2 — HEALTH PRACTITIONER REGULATION NATIONAL LAW

### DIVISION 1 — APPLICATION OF HEALTH PRACTITIONER REGULATION NATIONAL LAW

#### **Clause 5**      **Application of National Law as law of the State**

This clause applies the Health Practitioner Regulation National Law, set out in the *Health Practitioner Regulation National Law Act 2009* (Qld) Schedule, as a law of WA, with four conditions:

- the National Law is applied as it is in force on 10 October 2023;
- the National Law is applied with the modifications specified in Part 3 of this Act;
- the National Law applied will include amendments by specified provisions of the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022* (Qld) (which have not yet commenced as at 10 October 2023) when those provisions come into operation in WA under section 6(2) of this Act;
- the National Law applied will include all amending Acts that have effect under section 8 and that have come into operation as a law of WA under section 9.

The National Law applied in WA is referred to as the Health Practitioner Regulation National Law (Western Australia).

The National Law as it is in force on 10 October 2023 includes amendments made by the following Acts:

- the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2017* (Qld) (**Tranche 1 amendments**);
- the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2019* (Qld) (**Tranche 1A amendments**);
- the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022* (Qld) (**Tranche 2 amendments**);
- the *Health Practitioner Regulation National Law (Surgeons) Amendment Act 2023* (Qld) (**2023 amendments**).

These amendments to the National Law are legislative reforms agreed by all participating jurisdictions following extensive consultation and review of the operation of the National Law. The Explanatory Memoranda of the aforementioned Acts provide detailed explanation of each provision in the National Law.

The current *Health Practitioner Regulation National Law (Western Australia)* incorporates Tranche 1 amendments only. When the Bill is enacted, all the Tranche 2 amendments and 2023 amendments will be adopted in WA. Not all of the Tranche 1A amendments will be adopted in WA – some of the Tranche 1A amendments will be excluded by way of modification of the National Law in Part 3 of the Act.

The Bill applies the National Law as in force on 10 October 2023 rather than as amended from time to time. However, a mechanism has been inserted into the Bill which will allow amendments to the National Law, enacted by the Queensland Parliament after 10 October 2023, to be applied in WA.

#### **Clause 6      Commencement of National Law as law of the State**

This clause provides that the Health Practitioner Regulation National Law (Western Australia) comes into operation on commencement day.

Further, this clause provides when Tranche 2 amendments that are not yet in operation as at 10 October 2023 come into operation in WA. If the provision has come into operation in Queensland before commencement day, the provision comes into operation in WA on commencement day. Otherwise, the provision comes into operation in WA when the provision comes into operation in Queensland.

#### **Clause 7      Tabling amending Acts**

This clause sets out the tabling requirement for amending Acts; namely within 18 sitting days after the day the amending Act receives Royal Assent.

#### **Clause 8      Disallowance of amending Acts**

This clause sets out the process by which an amending Act has effect. An amending Act has effect if it is tabled under section 7 and no notice of a disallowance resolution is given in either House within the notice period (i.e. 14 sitting days of the House after the amending Act is tabled).

An amending Act also has effect if it is tabled under section 7, a notice of a disallowance resolution is given within the notice period, and one of the following occur:

- the notice is withdrawn or discharged within the disallowance period (i.e. 30 sitting days of the House after the notice is given); or
- the disallowance resolution is lost in the House; or
- the disallowance resolution is not agreed to within the disallowance period.

#### **Clause 9      Commencement of provisions amending Acts**

This clause clarifies when an amending Act comes into operation in WA. If an amending Act has effect under section 8, the Governor must declare this by proclamation.

If an amending provision is in operation in Queensland prior to the publication of the proclamation, the proclamation must specify when that provision comes into operation in WA. Otherwise, an amending provision comes into operation in WA when it comes into operation in Queensland.

**Clause 10    Amending Acts enacted after 10 October 2023 but before commencement day**

This clause provides for the application of sections 7 to 9 to an amending Act which receives the Royal Assent after 10 October 2023 but before commencement day. Those sections apply as if the amending Act received the Royal Assent on commencement day.

**Clause 11    Tabling of amending Act taken to be publication for Standing Orders**

This clause provides that the laying of an amending Act before a House under section 7 is taken to be publication of the amending Act for the purposes of a Standing Order of the House which provides for referral of an instrument to a parliamentary committee on publication of the instrument.

**DIVISION 2 — APPLICATION OF NATIONAL REGULATIONS**

**Clause 12    Application of national regulations as subsidiary legislation**

This clause applies the national regulations, as in force from time to time, as subsidiary legislation in WA. However, a mechanism has been inserted into the Bill which will allow Parliament to disallow amendments to the national regulations.

**Clause 13    National regulations made by amending Act provision**

This clause provides that national regulations made under a provision of an amending Act only apply as subsidiary legislation in WA under section 12 of this Act if the amending Act has effect under section 8 (i.e. no disallowance has occurred) and the provision has come into operation under section 9 (Commencement of provisions of amending Acts).

**Clause 14    National regulations made under or for purposes of amending Act provision**

This clause applies to a provision of the national regulations made on or after commencement day under or for the purposes of a provision of the National Law that is amended, or inserted into the National Law, by a provision of an amending Act.

The subsidiary provision only applies as subsidiary legislation in WA under section 12 if the amending Act has effect under section 8 (i.e. no disallowance has occurred). If the subsidiary provision applies as subsidiary legislation in WA under section 12 of this Act, the application takes effect when the relevant provision of the amending Act comes into operation in WA under section 9 (Commencement of provisions of amending Acts), or when the subsidiary provision comes into operation in Queensland, whichever is later.

### **Clause 15    Publication of national regulations**

This clause sets out the publication requirements for national regulations made after 10 October 2023, i.e. published on the WA legislation website within 18 days after those regulations are made. National regulations made after 10 October 2023 but before commencement day must be published within 18 days after commencement day.

### **Clause 16    Tabling and disallowance of national regulations**

This clause sets out the process by which national regulations cease to have effect as subsidiary legislation in WA.

National regulations cease to have such effect if one of the following occur:

- they are not published under section 15; or
- they are not tabled within 6 sitting days after publication; or
- they are tabled within 6 sitting days and notice of a resolution to disallow is given and agreed to by a House.

Further, provisions that were amended or repealed by those national regulations are revived.

### **Clause 17    *Interpretation Act s. 41 and 42 do not apply to Health Practitioner Regulation National Law Regulation (Western Australia)***

This clause provides that the *Interpretation Act 1984* sections 41 and 42 do not apply to the *Health Practitioner Regulation National Law Regulation (Western Australia)*. Those provisions relate to the publication, commencement, tabling and disallowance of subsidiary legislation, which are provided for in sections 15 and 16 of this Act.

## **DIVISION 3 — MISCELLANEOUS**

### **Clause 18    Meaning of generic terms in *Health Practitioner Regulation National Law (Western Australia)* for purposes of this jurisdiction**

This clause provides for the meaning of jurisdiction-specific terms used in the *Health Practitioner Regulation National Law (Western Australia)*. This clause is based on the *Health Practitioner Regulation National Law (WA) Act 2010* section 5.

### **Clause 19    Responsible tribunal for the *Health Practitioner Regulation National Law (Western Australia)***

This clause declares the State Administrative Tribunal to be the responsible tribunal for the purposes of the *Health Practitioner Regulation National Law (Western Australia)*. This clause replicates the *Health Practitioner Regulation National Law (WA) Act 2010* section 6.

## **Clause 20    Interaction between National Law and this Act**

This clause provides that, in the event of an inconsistency between the Act and the *Health Practitioner Regulation National Law (Western Australia)*, the Act prevails to the extent of the inconsistency.

## **Clause 21    No double jeopardy**

This clause provides that a person is not liable to be punished for an offence against the *Health Practitioner Regulation National Law (Western Australia)* if the person has been punished for an act or omission that constitutes that offence under the law of another participating jurisdiction.

## **Clause 22    Exclusion of legislation of this jurisdiction**

This clause provides that the *Interpretation Act 1984* does not apply to the *Health Practitioner Regulation National Law (Western Australia)*. Interpretation matters are provided for in the *Health Practitioner Regulation National Law (Western Australia)* section 6 and Schedule 7.

This clause further provides that specified Acts do not apply to the *Health Practitioner Regulation National Law (Western Australia)*, or to the instruments made under the Law, unless as applied under the Law. The excluded Acts relate to matters which are provided for in the Law, ensuring uniformity across participating jurisdictions for the interpretation of legislation, financial matters, freedom of information, the role of the ombudsman and matters relating to the employment of public servants.

This clause is based on the *Health Practitioner Regulation National Law (WA) Act 2010* section 7.

## **PART 3 — MODIFICATION OF SCHEDULE TO *HEALTH PRACTITIONER REGULATION NATIONAL LAW ACT 2009* (QUEENSLAND)**

### **Clause 23    Modification of National Law**

This clause provides that the National Law applies in WA as if modified by the amendments set out in Part 3 of this Act.

### **Clause 24    Section 3A modified**

This clause amends the guiding principles of the National Law which were updated in the Tranche 2 amendments. The modified guiding principles reflect the wording used in the current *Health Practitioner Regulation National Law (Western Australia)* section 3(3)(c).

### **Clause 25    Section 113 modified**

This clause amends the provision restricting the use of protected titles to include the title “physician” as a protected title. This modification retains the protection of this title that is in place under the current *Health Practitioner Regulation National Law (Western Australia)* section 113.

### **Clause 26    Section 123A inserted**

This clause inserts a provision to protect birthing practices. The provision limits the care of a person in labour to the following:

- a medical practitioner;
- a midwife;
- a student in the course of their medical or midwifery studies;
- a person acting under the supervision of a medical practitioner or midwife;
- a person acting in an emergency.

Although a modification to the National Law, it is a retention of the restriction on birthing practices that is in place under the current *Health Practitioner Regulation National Law (Western Australia)* section 123A.

### **Clause 27    Section 141 modified**

This clause amends the provision requiring health practitioners to give mandatory notification of notifiable conduct or an impairment. This modification retains the structure under the current *Health Practitioner Regulation National Law (Western Australia)* section 141 for implementing the exclusion of treating health practitioners from the mandatory notification requirement.

### **Clause 28    Sections 141A, 141B and 141C deleted**

This clause deletes mandatory notification provisions inserted in the National Law in the Tranche 1A amendments. This modification retains the current policy position in Western Australia to exclude all treating health practitioners from the mandatory notification requirements. WA’s policy position protects health



practitioners needing treatment as treatment can be sought without fear of being reported. WA's policy still allows for voluntary notifications by treating health practitioners, which reporting records indicate has been utilised by treating practitioners on the basis of ethical/moral obligations.

**Clause 29    Section 159B modified**

This clause provides a consequential amendment resulting from the insertion of section 123A.

**Clause 30    Section 159P modified**

This clause provides a consequential amendment resulting from the insertion of section 123A.

**Clause 31    Section 206 modified**

This clause inserts a note to clarify the operation of section 206(1). This modification replicates the current *Health Practitioner Regulation National Law (Western Australia)* section 206(1).

**Clause 32    Section 241A deleted**

This clause deletes the provision inserted in the National Law in the Tranche 1A amendments which makes certain offences under the National Law indictable offences. This modification retains the current policy position in Western Australia to treat all offences under the National Law as summary offences.

**Clause 33    Section 242 replaced**

Subclause (1) replicates the current *Health Practitioner Regulation National Law (Western Australia)* section 242. It is a consequential modification resulting from the deletion of section 241A and retains the current policy position in Western Australia to treat all offences under the National Law as summary offences.

Summary offences in WA are subject to a limitation period of 12 months. By not making certain offences indictable, prosecutions in WA for those offences will be subject to this statutory limitation period. This will be inconsistent with the statutory limitation period in every other jurisdiction.

Subclause (2) allows proceedings for certain offences under the National Law to be commenced at any time. These offences are: holding out to be registered when not actually registered, using a protected title, undertaking restricted practices and contravening a prohibition order. These types of offences may take some time to come to light due to their deceptive nature. Removing the limitation period for these serious offences under the National Law will enable better protection for the WA public as serious offenders can be appropriately punished for all their offending, not just their offending within the last 12 months.

This modification also keeps the position in WA regarding limitation periods for these offences consistent with the other jurisdictions.

**Clause 34   Sections 246 and 247 deleted**

This clause deletes the National Law provisions relating to parliamentary scrutiny and disallowance of national regulations. Sections 15 and 16 of this Act provide a mechanism for the publication, tabling and disallowance of national regulations that is in line with a standardised approach to the State's adoption of national regulations.

## **PART 4 — PROVISIONS SPECIFIC TO THIS JURISDICTION**

### **Clause 35    Police Commissioner may give criminal history information**

This clause enables the Western Australian Commissioner of Police to share information about a person's criminal history with a National Board.

This clause replicates the *Health Practitioner Regulation National Law (WA) Act 2010* section 10.

### **Clause 36    Review of decisions by State Administrative Tribunal as responsible Tribunal**

This clause provides that a reference in the *Health Practitioner Regulation National Law (Western Australia)* to an appeal against a decision is, in relation to an appeal to the State Administrative Tribunal as the responsible tribunal, a reference to a review of the decision under the *State Administrative Tribunal Act 2004* Part 3 Division 3.

This clause replicates the *Health Practitioner Regulation National Law (WA) Act 2010* section 11.

### **Clause 37    Local regulations**

This clause provides that the Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for giving effect to this Act.

This clause replicates the *Health Practitioner Regulation National Law (WA) Act 2010* section 12.

## **PART 5 — REPEALS AND TRANSITIONAL PROVISIONS**

### **DIVISION 1 — REPEAL**

#### **Clause 38    Written laws repealed**

This clause repeals the *Health Practitioner Regulation National Law (WA) Act 2010*.

### **DIVISION 2 — TRANSITIONAL PROVISIONS**

#### **Clause 39    Terms used**

This clause defines terms for the purposes of transitioning from the repealed legislative framework to the new legislative framework. In particular, this clause provides that a provision of the former National Law or repealed Act, corresponds to a provision of the new National Law or this Act, if they are substantially the same.

#### **Clause 40    Application of *Interpretation Act 1984***

This clause provides that the *Interpretation Act 1984* provisions, other than section 38, regarding repeal and substitution of enactments apply to the repeal of the *Health Practitioner Regulation National Law (WA) Act 2010* and the former Law as if a repealed provision were re-enacted as the corresponding provision of this Act or the new Law.

#### **Clause 41    References to the Law and this Law**

This clause provides that references in the National Law to “the Law” or “this Law” include a reference to the former Law.

#### **Clause 42    New Law operates as continuation of former Law**

This clause provides for the continuation of the former Law as the new Law. Matters commenced or arising under the former Law must be dealt with under the new Law.

#### **Clause 43    New regulations operate as continuation of regulations applied under former Law**

This clause provides for the continuation of the national regulations applied under the former Law. The national regulations are currently adopted in WA by an applied laws mechanism so cannot be repealed. The provision adopting the national regulations has been repealed and re-enacted and this clause applies the relevant provisions in the *Interpretation Act 1984* regarding repeal and substitution of enactments to ensure that there is no gap in operation of the national regulations in WA.

**Clause 44 Existing applications for accreditation or registration**

This clause provides that applications made under the former Law must be dealt with under the new Law.

**Clause 45 Existing right of review of condition or undertaking**

This clause provides that a right of review existing under the former Law continues under the new Law.

**Clause 46 Existing right of appeal**

This clause provides that a right of appeal existing under the former Law continues under the new Law.

**Clause 47 Undecided reviews and appeals**

This clause provides that existing reviews or appeals commenced under the former Law must be dealt with under the new Law.

**Clause 48 Amounts payable or recoverable under former Law**

This clause provides that amounts payable or recoverable under the former Law are payable or recoverable under the new Law.

**Clause 49 Transitional regulations**

This clause provides that transitional regulations may prescribe all matters that are required or necessary or convenient to be prescribed if there is no sufficient provision in this Division for dealing with a transitional matter. The transitional regulations may also prescribe that specified provisions of any written law do not apply to or in relation to any matter or apply with specified modifications to or in relation to any matter. The power to make transitional regulations ceases 2 years after commencement day.

## **PART 6 — CONSEQUENTIAL AMENDMENTS**

### **DIVISION 1 — *LIQUOR CONTROL ACT 1988* AMENDED**

#### **Clause 50    Act amended**

This clause provides that Division 1 amends the *Liquor Control Act 1988* (WA).

#### **Clause 51    Section 69 amended**

This clause updates a reference to the former Act to a reference to the National Law. It is an administrative change only.

### **DIVISION 2 — *NATIONAL HEALTH FUNDING POOL ACT 2012* AMENDED**

#### **Clause 52    Act amended**

This clause provides that Division 2 amends the *National Health Funding Pool Act 2012* (WA).

#### **Clause 53    Section 3 amended**

This clause updates a reference to the former Act to a reference to the National Law. It is an administrative change only.

#### **Clause 54    Section 8 amended**

This clause replaces a note for the purposes of updating a reference to the National Law. It is an administrative change only.