

South Australia

Health Practitioner Regulation National Law (South Australia) (Amendment of Law) Regulations 2022

under the *Health Practitioner Regulation National Law (South Australia) Act 2010*

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Preamble

- 1 Section 4 of the *Health Practitioner Regulation National Law (South Australia) Act 2010* provides that if the Parliament of Queensland enacts an amendment to the *Health Practitioner National Law* set out in the Schedule to the *Health Practitioner Regulation National Law Act 2009* of Queensland (the **Queensland Act**), the Governor may, by regulation, modify the *Health Practitioner Regulation National Law (South Australia)* text to give effect to that amendment as a law of South Australia.
 - 2 The Parliament of Queensland has enacted the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022* to amend the Queensland Act and the amendments set out in Part 2 of these regulations to the *Health Practitioner Regulation National Law (South Australia)* text give effect to those Queensland amendments.
 - 3 Section 4(6) of the *Health Practitioner Regulation National Law (South Australia) Act 2010* provides that a regulation may take effect from the day of the commencement of an amendment made by the Parliament of Queensland in that State (including a day that is earlier than the day of this regulation's publication in the Gazette—see regulation 2).
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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Health Practitioner Regulation National Law (South Australia) (Amendment of Law) Regulations 2022*.

2—Commencement

These regulations will be taken to have come into operation on the day on which the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022* of Queensland was assented to by the Governor of Queensland.

Editorial note—

The *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022* of Queensland was assented to on 21 October 2022.

3—Amendment provisions

Pursuant to section 4(4) of the Act, the *Health Practitioner Regulation National Law (South Australia)* text is amended as specified in Part 2 of these regulations.

Part 2—Amendment of *Health Practitioner Regulation National Law (South Australia)*

4—Amendment of section 3—Objectives and guiding principles

- (1) Section 3, heading—delete "and guiding principles"
- (2) Section 3(2)—after paragraph (c) insert:
 - (ca) to build the capacity of the Australian health workforce to provide culturally safe health services to Aboriginal and Torres Strait Islander persons; and
- (3) Section 3(3)—delete subsection (3)

5—Insertion of section 3A

After section 3 insert:

3A—Guiding principles

- (1) The main guiding principle of the national registration and accreditation scheme is that the following are paramount:
 - (a) protection of the public;
 - (b) public confidence in the safety of services provided by registered health practitioners and students.
- (2) The other guiding principles of the national registration and accreditation scheme are as follows:
 - (a) the scheme is to operate in a transparent, accountable, efficient, effective and fair way;
 - (b) the scheme is to ensure the development of a culturally safe and respectful health workforce that—
 - (i) is responsive to Aboriginal and Torres Strait Islander persons and their health; and
 - (ii) contributes to the elimination of racism in the provision of health services;

Example—

Codes and guidelines developed and approved by National Boards under section 39 may provide guidance to health practitioners about the provision of culturally safe and respectful health care.

- (c) fees required to be paid under the scheme are to be reasonable having regard to the efficient and effective operation of the scheme;
- (d) 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.

6—Amendment of section 4—How functions to be exercised

Section 4—delete "section 3" and substitute:

sections 3 and 3A

7—Amendment of section 5—Definitions

- (1) Section 5, definition of *Advisory Council*—delete the definition
- (2) Section 5—before the definition of *Agency Fund* insert:

Agency Board means the Australian Health Practitioner Regulation Agency Board established by section 29;

- (3) Section 5, definition of *Agency Management Committee*—delete the definition
- (4) Section 5, definition of *COAG Agreement*, note—delete "Council of Australian Governments' website" and substitute:

National Agency's website

8—Amendment of section 17—Notification and publication of directions and approvals

Section 17(1)(a)—delete "Management Committee" and substitute:

Board

9—Repeal of Part 3

Part 3—delete the Part

10—Amendment of section 25—Functions of National Agency

- (1) Section 25(j)—delete paragraph (j) and substitute:
 - (j) to give advice to the Ministerial Council on issues relating to the national registration and accreditation scheme;
- (2) Section 25—after paragraph (k) insert:
 - (ka) to do anything else necessary or convenient for the effective and efficient operation of the national registration and accreditation scheme;

11—Substitution of heading to Part 4 Division 2

Heading to Part 4 Division 2—delete the heading to Division 2 and substitute:

Division 2—Agency Board

12—Amendment of section 29—Agency Management Committee

- (1) Section 29, heading—delete "Management Committee" and substitute:
Board
- (2) Section 29(1)—delete "Management Committee" and substitute:
Board
- (3) Section 29(2)—delete "Management Committee" and substitute:
Board
- (4) Section 29(4)—delete "Management Committee" and substitute:
Board

13—Amendment of section 30—Functions of Agency Management Committee

- (1) Section 30, heading—delete "Management Committee" and substitute:
Board
- (2) Section 30(1)—delete "Management Committee" and substitute:
Board
- (3) Section 30(1)(c)—delete "Committee" and substitute:
Board
- (4) Section 30(2)—delete "Management Committee" wherever occurring and substitute in each case:
Board

14—Amendment of section 33—Membership of National Boards

Section 33(8)—delete "Management Committee" and substitute:
Board

15—Amendment of section 35—Functions of National Boards

Section 35(1)(j)—delete "undertaking" and insert:
undertakings

16—Repeal of Part 7 Division 8 Subdivision 3

Part 7 Division 8 Subdivision 3—delete Subdivision 3

17—Amendment of section 102—Decision about application

Section 102(3), definition of *relevant section*—delete ", 96"

18—Amendment of section 127A—When matters under this Subdivision may be decided by review body of a co-regulatory jurisdiction

Section 127A(3)—delete "is" and substitute:

agrees

19—Amendment of section 133—Advertising

Section 133(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) in the case of an individual—\$60 000; or
- (b) in the case of a body corporate—\$120 000.

20—Amendment of section 136—Directing or inciting unprofessional conduct or professional misconduct

Section 136(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) in the case of an individual—\$60 000; or
- (b) in the case of a body corporate—\$120 000.

21—Amendment of section 142—Mandatory notifications by employers

Section 142(1)—before the note insert:

Example—

An employer takes action against a registered health practitioner by withdrawing or restricting the practitioner's clinical privileges at a hospital because the employer reasonably believes the public is at risk of harm by the practitioner practising the profession in a way that constitutes a significant departure from accepted professional standards—see paragraph (d) of the definition of *notifiable conduct* in section 140. The employer must notify the National Agency of the notifiable conduct.

22—Amendment of section 156—Power to take immediate action

Section 156(1)(a)(i)—delete "conduct, performance or health" and substitute:

health, conduct or performance

23—Amendment of section 161—Registered health practitioner or student to be given notice of investigation

Section 161(1)—delete "within"

24—Amendment of section 196—Decision by responsible tribunal about registered health practitioner

- (1) Section 196(4)(b)—delete "from—" and substitute:
from doing either or both of the following:
- (2) Section 196(4)(b)(i)—delete "or"

25—Amendment of section 219—Disclosure of information to other Commonwealth, State and Territory entities

Section 219(1)(a)—delete paragraph (a) and substitute:

- (a) the Chief Executive Medicare under the *Human Services (Medicare) Act 1973* of the Commonwealth;

26—Amendment of section 236—Protection from personal liability for persons exercising functions

- (1) Section 236(3), definition of *protected person*, (a)—delete paragraph (a)
- (2) Section 236(3), definition of *protected person*, (b)—delete "Management Committee" and substitute:

Board

27—Repeal of Part 12 Division 16

Part 12 Division 16—delete Division 16

28—Insertion of Part 14

After section 323 insert:

Part 14—Transitional provisions for *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022*

324—Renaming of Agency Management Committee

- (1) The renaming of the Agency Management Committee by the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022* does not affect the validity of an appointment of a person to the Committee before the renaming.
- (2) In this section—

Agency Management Committee means the Australian Health Practitioner Regulation Agency Management Committee established by section 29, as in force immediately before the commencement of this section.

325—Saving of endorsement of midwife practitioner

- (1) If, immediately before the commencement of section 75 of the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022*, a registered health practitioner's registration was endorsed as being qualified to practise as a midwife practitioner, the practitioner may do any of the following as if section 96 had not been repealed:
 - (a) if the practitioner continues to comply with any approved registration standard relevant to the endorsement—continue to hold and renew the endorsement, subject to any conditions stated in the endorsement;

- (b) while holding the endorsement, use the title "midwife practitioner" or otherwise hold themselves out as holding the endorsement.
- (2) Section 119 continues to apply in relation to a claim by any other registered health practitioner to hold, or to be qualified to hold, an endorsement as a midwife practitioner as if section 96 had not been repealed.

29—Repeal of Schedule 1

Schedule 1—delete the Schedule

30—Substitution of heading to Schedule 2

Heading to Schedule 2—delete the heading and substitute:

Schedule 2—Agency Board

31—Amendment of Schedule 2—Agency Board

- (1) Schedule 2, clause 1, definition of *Chairperson*—delete "Committee" and substitute:
Agency Board
- (2) Schedule 2, clause 1, definition of *Committee*—delete the definition
- (3) Schedule 2, clause 1, definition of *member*—delete "Committee" and substitute:
Agency Board
- (4) Schedule 2, clause 4(1)(d)—delete "Committee" wherever occurring and substitute in each case:
Agency Board
- (5) Schedule 2, clause 4(2)(d)—delete "Committee" and substitute:
Agency Board
- (6) Schedule 2, clause 4(3)—delete "Committee" wherever occurring and substitute in each case:
Agency Board
- (7) Schedule 2, clause 5(1)—delete "Committee" and substitute:
Agency Board
- (8) Schedule 2, clause 5(2)—delete "Committee" and substitute:
Agency Board
- (9) Schedule 2, clause 5, note—delete "Management Committee" and substitute:
Board
- (10) Schedule 2, clause 7(1)—delete "Committee" and substitute:
Agency Board
- (11) Schedule 2, clause 7(2)—delete "Committee" and substitute:
Agency Board

- (12) Schedule 2, clause 8(1)—delete "Committee" wherever occurring and substitute in each case:
Agency Board
- (13) Schedule 2, clause 8(2)—delete "Committee" and substitute:
Agency Board
- (14) Schedule 2, clause 8(3)—delete "Committee" wherever occurring and substitute in each case:
Agency Board
- (15) Schedule 2, clause 8(4)—delete "Committee" wherever occurring and substitute in each case:
Agency Board
- (16) Schedule 2, clause 8(5)—delete "Committee" and substitute:
Agency Board
- (17) Schedule 2, clause 9—delete "Committee" wherever occurring and substitute in each case:
Agency Board
- (18) Schedule 2, clause 10—delete "Committee" and substitute:
Agency Board
- (19) Schedule 2, clause 11—delete "Committee" wherever occurring and substitute in each case:
Agency Board
- (20) Schedule 2, clause 12(1)—delete "Committee" wherever occurring and substitute in each case:
Agency Board
- (21) Schedule 2, clause 13—delete "Committee" wherever occurring and substitute in each case:
Agency Board
- (22) Schedule 2, clause 14(1)—delete "Committee" wherever occurring and substitute in each case:
Agency Board
- (23) Schedule 2, clause 14(2)—delete "Committee" and substitute:
Agency Board
- (24) Schedule 2, clause 14(3)—delete "Committee" and substitute:
Agency Board
- (25) Schedule 2, clause 15—delete "Committee" and substitute:
Agency Board

- (26) Schedule 2, clause 16—delete "Committee" wherever occurring and substitute in each case:

Agency Board

32—Amendment of Schedule 3—National Agency

- (1) Schedule 3, clause 1(1)—delete "Management Committee" and substitute:

Board

- (2) Schedule 3, clause 2(1)—delete "Management Committee" and substitute:

Board

- (3) Schedule 3, clause 2(2)—delete "Management Committee" wherever occurring and substitute in each case:

Board

- (4) Schedule 3, clause 3(2)—delete "Management Committee" and substitute:

Board

- (5) Schedule 3, clause 4(1)—delete "Management Committee" wherever occurring and substitute in each case:

Board

- (6) Schedule 3, clause 4(2)—delete "Management Committee" and substitute:

Board

33—Amendment of Schedule 7—Miscellaneous provisions relating to interpretation

Schedule 7, clause 38—after "and" insert:

in

Editorial note—

As required by section 10AA(2) of the *Legislative Instruments Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor's Deputy

with the advice and consent of the Executive Council
on 1 December 2022

No 108 of 2022