



Australian Capital Territory

# **Health Professionals Regulation 2004**

**SL2004-41**

made under the

**Health Professionals Act 2004**

**Republication No 2**

**Effective: 22 November 2004 – 6 July 2005**

Republication date: 22 November 2004

Last amendment made by SL2004-52  
(republication for commenced provisions)

Includes uncommenced provisions: see last endnote

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Health Professionals Regulation 2004*, made under the *Health Professionals Act 2004* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 22 November 2004. It also includes any amendment, repeal or expiry affecting the republished law to 22 November 2004.

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

### Kinds of republications

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

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

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

### Editorial changes

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

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

### Uncommenced provisions and amendments

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

### Modifications

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

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Health Professionals Regulation 2004

made under the

**Health Professionals Act 2004**

## Contents

---

	Page	
<b>Chapter 1</b>	<b>Preliminary</b>	
1	Name of regulation	2
2	Commencement	2
3	Dictionary	2
<b>Chapter 2</b>	<b>Health profession boards</b>	
<b>Part 2.1</b>	<b>Establishment of health profession boards</b>	
4	Establishment of health profession boards	4

---

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22/11/04

Health Professionals Regulation 2004  
Effective: 22/11/04-06/07/05

contents 1

	Page
<b>Part 2.2</b>	<b>Health profession board members</b>
5	Board president 5
6	Board deputy president 6
7	Eligibility to remain in office—board president 6
8	Eligibility to remain in office—board deputy president 6
9	Board members—election or appointment 7
10	Appointment of board members 7
11	Consultation about appointment to board 8
12	Community representatives 9
13	Eligibility to remain in office—board members 9
14	Proposal to remove board member 9
15	Decision on application to remove board member 10
16	Leave of board members 10
17	Payment of board members 11
18	Payment of assistants 11
19	Extraordinary expenses etc of health profession boards 11
20	Employment of staff 11
21	Functions of executive officer 12
22	Delegation by board 12
<b>Part 2.3</b>	<b>Elections</b>
<b>Division 2.3.1</b>	<b>General</b>
23	Definitions for pt 2.3 13
24	Dates for elections 14
26	List of health professionals 15
27	Registered health professionals to be notified of dates 16
28	Eligibility for nominations etc 16
29	Nominations 17
30	Hour of nomination 18
31	Withdrawal of nomination 18
32	Application of Electoral Act, s 110 18
33	Declaration of candidates 18
34	If no more candidates than positions 19
35	If no candidates 19

	Page
36	20
37	20
38	20
39	20
40	20
41	21
42	21
43	22
44	22
45	23
46	23
47	23
48	24
49	24
50	24
51	24
52	24
<b>Division 2.3.2</b>	
<b>Application of ch 2 to first elections and suspended boards</b>	
52A	25
52B	27
52C	29
<b>Division 2.3.3</b>	
<b>Casual and temporary vacancies in elected positions</b>	
53	29
54	30
55	30
56	31
57	31
58	32
59	32
60	33
61	34

	Page
<b>Division 2.3.4      Disputed elections</b>	
62      Definitions for div 2.3.4	35
63      Court of Disputed Health Elections	36
64      Powers of the court	36
65      Court's decisions are final	36
66      Validity may be disputed after election	36
67      People entitled to dispute elections	37
68      Form of disputed election application	37
69      Time for filing disputed election application	38
70      Registrar to serve copies of disputed election application	38
71      Parties to disputed election application	38
72      Withdrawal of disputed election application	39
73      Hearing and decision on leave application	39
74      Person ceasing to be respondent to disputed election application	40
75      End of disputed election application	41
76      Hearing disputed election applications	41
77      Declarations and orders of court	42
78      Illegal election practices	42
79      Bribery or undue influence by person elected	44
80      Immaterial delays and errors in relation to elections	44
81      Inquiries by court	44
82      Rejected ballot papers	45
83      Evidence that people were not allowed to vote	45
84      Inspection of electoral papers	45
85      Commissioner not prevented from accessing documents	46
86      Registrar to serve copies of court declarations on certain people	46
87      Effect of court declarations	46
88      Court procedure	47
89      Legal representation limited in court proceeding	47
90      Costs may be ordered against Territory	47
<b>Division 2.3.5      Electoral offences</b>	
91      Multiple votes prohibited	47
92      Interference with voting	48
93      Giving completed ballot papers to commissioner	49

---

	Page	
94	Opening envelopes containing ballot papers	49
95	Influencing of votes by officers	49
96	Violence and intimidation	49
97	Voting fraud	50
<b>Part 2.4</b>	<b>Health profession board meetings</b>	
98	When are board meetings held?	51
99	Board meetings usually in public	51
100	Ministerial referrals to board	51
101	Presence at board meetings	52
102	Presiding member at board meetings	52
103	Board quorum	52
104	Voting at board meetings	53
105	Records of board meetings	53
106	Board meeting procedures	54
107	Disclosure of interests by board members	54
<b>Part 2.5</b>	<b>Health profession board functions</b>	
108	Board to seek to form ties	56
109	Performance of board on standards	56
110	Performance of board on applications and reports	57
111	Board's obligation to send renewal notices	57
<b>Chapter 3</b>	<b>Registration of health professionals</b>	
<b>Part 3.1</b>	<b>Applications for registration</b>	
112	Applications for registration	58
113	Registration of health professionals	59
114	Suitability to practise requirements	60
115	General competence to practise	60
116	Conditional registration	61
117	When is conditional registration in public interest?	62
118	Specialist area registration	63
119	Powers of health profession boards to require information	63

## Contents

---

	Page
120 Length of registration	64
121 Practising certificate	64
122 Replacement practising certificates	65
123 Return of practising certificate	65
<b>Part 3.2 End of registration and renewal</b>	
124 When does registration end?	67
125 Failure to meet insurance requirement	67
126 Renewal notice for registration	68
127 Late payment of registration	68
128 Retrospective re-registration	69
<b>Part 3.3 Maintaining competence and continuing professional development</b>	
129 Obligation to maintain competence and continue professional development	70
130 Programs for maintenance of competence	70
131 Standards for maintenance of competence	70
132 Use of information about continuing competence etc	71
<b>Chapter 4 Required standard of practice</b>	
<b>Part 4.1 Required standard of practice generally</b>	
133 Purpose of ch 4	73
134 Standards statements	73
135 Pattern of practice or particular acts	74
136 Endangering public	74
137 Lack of competence to practise etc	74
<b>Part 4.2 Specific breaches of the required standard of practice</b>	
138 Purpose of pt 4.2 etc	75
139 Breach of standards statements	75
140 Telling board about proceedings relating to health professional	75



	Page
141	76
142	76
143	76
144	77
145	77
146	77
147	78
148	78
149	78
150	78
<b>Chapter 5</b>	<b>The register</b>
151	80
152	80
153	81
154	81
155	82
156	82
157	83
158	83
<b>Schedule 1</b>	<b>Regulated professions</b>
	84
<b>Schedule 2</b>	<b>Medical practitioners</b>
2.6	85
	85

Contents

---

<b>Schedule 15</b>	<b>Modifications of Act</b>	Page 86
<b>Dictionary</b>		91
<b>Endnotes</b>		
1	About the endnotes	95
2	Abbreviation key	95
3	Legislation history	96
4	Amendment history	96
5	Earlier republications	98
6	Uncommenced provisions	99



Australian Capital Territory

# Health Professionals Regulation 2004

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made under the

**Health Professionals Act 2004**

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## Chapter 1 Preliminary

### 1 Name of regulation

This regulation is the *Health Professionals Regulation 2004*.

### 2 Commencement

- (1) Chapter 1, chapter 2, chapter 6 and the dictionary commence on 18 November 2004.
- (2) The remaining provisions (including, for example, schedule 1 and schedule 2) commence on a day fixed by the Minister by written notice.

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

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

- (3) If a provision of this regulation does not commence before 8 July 2005, it automatically commences on that day.
- (4) The Legislation Act, section 79 (1) (Automatic commencement of postponed law) does not apply to this regulation.

### 3 Dictionary

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

*Note 1* The dictionary at the end of this regulation defines certain terms used in this regulation, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*drug of dependence*—see the *Drugs of Dependence Act 1989*, section 3 (1).' means that the term 'drug of dependence' is defined in that subsection and the definition applies to this regulation.

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

## Chapter 2 Health profession boards

### Part 2.1 Establishment of health profession boards

#### 4 Establishment of health profession boards

- (1) The health profession board mentioned in schedule 1, column 2 is established to regulate the health profession mentioned in column 3.
- (2) Schedule 1, column 4 identifies the schedule that prescribes anything else required to be prescribed for a particular health profession.

**Example of things required to be prescribed**

the number of members the health profession board for the profession has, including how many members must be appointed and how many elected

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

- (3) If a schedule requires or allows something to be approved by a health profession board, the approval must be in writing and is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

## Part 2.2 Health profession board members

### 5 Board president

- (1) The Minister must appoint a person to be president of a health profession board (the *board president*).

*Note 1* The Minister must consult the board, and may consult other people, before appointing the board president (see s 11).

*Note 2* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

*Note 3* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

- (2) However, the Minister may appoint a person under subsection (1) only if the person—
- (a) is a registered member of a health profession for which the health profession board was established; and
  - (b) has been registered for a continuous period of at least 3 years immediately before the day of appointment.

#### Example for par (a)

A single health profession board is established for health professions A and B. The Minister may appoint Smith, who is and has been a member of health profession A for the required time, as president, because Smith is a registered member of a health profession for which the board was established (that is, health profession A). Similarly, the Minister may appoint Jones, who is and has been a member of health profession B for the required time, as president.

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

- (3) An appointment must be for a term of not longer than 4 years.

*Note* A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 (1) (c)).

## **6 Board deputy president**

- (1) A health profession board must, by majority vote, elect a board member (other than the board president) to be deputy president of the health profession board (the *board deputy president*).

*Note* Board members (other than the board president) are appointed under s 9 or elected under pt 2.3 (Elections).

- (2) The board deputy president may exercise a function of the board president at any time when the president cannot for any reason exercise the function.
- (3) The board deputy president is elected for 1 year, but may be re-elected if still eligible to be elected.
- (4) The board deputy president may resign as deputy president by written notice given to the board president or, if there is no president, the health profession board.

## **7 Eligibility to remain in office—board president**

If the health professional who is the board president stops being registered by the health profession board, the health professional stops being board president.

## **8 Eligibility to remain in office—board deputy president**

If the person who is board deputy president stops being a board member, the person stops being the board deputy president.



**9 Board members—election or appointment**

- (1) This section applies to board members other than the board president and any board member who is a community representative.
- (2) At least  $\frac{1}{2}$  the members to which this section applies must be appointed by the Minister under section 10.
- (3) If the schedule to this regulation for the health profession that the health profession board regulates requires a board member to be elected, the member must be elected under part 2.3 (Elections).

**10 Appointment of board members**

- (1) The Minister may appoint a person to be a member of a health profession board.

*Note 1* The Minister must consult the board, and may consult other people, before appointing board members (see s 11).

*Note 2* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3. In particular, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

*Note 3* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

- (2) An appointment must be for not longer than 4 years.

*Note 1* A board member's appointment ends if the Minister ends the appointment or the member resigns (see Legislation Act, s 208 and s 210).

*Note 2* A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

- (3) The Minister must appoint, from the community representative list, the number of community representatives to be board members that are required by the schedule that relates to the health profession.

*Note* There must be at least 1 community representative appointed as a board member (see the Act, s 24 (2) (c)).

- (4) If a position on the health profession board to which someone was appointed under this section becomes free, the Minister must fill the position by appointing someone who satisfies the requirements for the position.

## **11 Consultation about appointment to board**

- (1) Before appointing someone, other than a community representative, to a health profession board the Minister must consult the board.
- (2) The Minister may also seek advice, and nominations, from an entity the Minister considers suitable to give advice, and make nominations, in relation to the health profession board.
- (3) Also, if the Minister considers it appropriate to do so, the Minister may appoint members to the health profession board at intervals, instead of at the same time.

### **Example of why Minister might consider it appropriate to appoint people at intervals**

to avoid the loss of corporate knowledge that might happen if a large number of members were appointed at the same time and, because of that, left the board at the same time

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

- (4) Subsection (1) does not apply if the health profession board is suspended.

**12 Community representatives**

The Minister may appoint a person as a community representative to a health profession board only if the person is on the community representative list for the board.

**13 Eligibility to remain in office—board members**

If a registered health professional who is a board member (other than the board president) stops being registered by the health profession board, the health professional stops being a board member.

**14 Proposal to remove board member**

- (1) This section applies if a board president believes on reasonable grounds that someone should no longer be a board member.
- (2) The board president must, in writing, tell the person—
  - (a) of the president's belief that the person should no longer be a board member; and
  - (b) why the president holds the belief; and
  - (c) that the person may, within 2 weeks after the day the person receives the notice, make a written submission to the president about why the person believes the person should continue to be a board member.
- (3) If, after considering any submission made within the 2 weeks, the board president is satisfied that the person should no longer be a board member, the president may apply, in writing, to the Minister for the person's removal.
- (4) The application must—
  - (a) state the reasons why the board president believes the person should no longer be a board member; and

- (b) be accompanied by any submission made by the person to the president within the 2 weeks.

## **15 Decision on application to remove board member**

- (1) This section applies if a board president applies to the Minister under section 14 (3) for a person's removal.
- (2) If, after considering the application and any submission accompanying it, the Minister is satisfied that the person should no longer be a board member—
  - (a) the Minister may give the board president and the person written notice that the person is no longer a member; and
  - (b) if the Minister gives the person notice—the person is no longer a member from the time the person receives the notice.
- (3) If, after considering the application, the Minister is not satisfied that the person should no longer be a board member, the Minister must give written notice to the board president and the person to the effect that the person remains a board member.

## **16 Leave of board members**

- (1) The Minister may, conditionally or unconditionally, allow a board president to take leave.
- (2) A board president may, conditionally or unconditionally, allow a board member (other than the president) to take leave for not longer than 1 year.

*Note 1* The board deputy president is a board member and so can be given leave under s (2) (see s 6 (1) and 8).

*Note 2* The Minister may appoint a person to act in the position of someone on leave (see Legislation Act, s 209).

## **17 Payment of board members**

- (1) A health profession board may decide, in writing, the allowances to be paid to board members.
- (2) However, if the remuneration tribunal sets a maximum amount of allowances for board members, the health profession board may not pay its members more than that amount.

## **18 Payment of assistants**

A health profession board may pay anyone who helps the board.

### **Examples of ways people might help the health profession board**

- 1 by providing expert opinion to the health profession tribunal in relation to a report about a health professional registered by the board
- 2 by serving on a panel or committee established by the board
- 3 by providing legal advice, or other services, to the board

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

## **19 Extraordinary expenses etc of health profession boards**

- (1) A health profession board must, if practicable, seek the Minister's approval before taking action under the Act that the board considers is likely to incur an extraordinary liability.
- (2) A health profession board may apply to the Minister for financial assistance if the board believes on reasonable grounds that it is likely to incur extraordinary expenses in relation to legal fees or damages because of the administration of the Act.

## **20 Employment of staff**

- (1) A health profession board must, in writing, appoint an executive officer.

- (2) The executive officer may, but need not, be a member of the health profession board.
- (3) A health profession board may engage the people, or buy the services, that are necessary or desirable to help it to exercise its functions.
- (4) Without limiting subsection (3), the health profession board may engage a person on a fee or contractual basis to provide advice or other assistance.

*Note* **Person** includes a corporation (see Legislation Act, dict, pt 1).

## **21 Functions of executive officer**

The executive officer of a health profession board—

- (a) is responsible for the management of the board's affairs, subject to any direction given by the board; and
- (b) must advise the board; and
- (c) has any other function given to the executive officer under a territory law.

## **22 Delegation by board**

A health profession board may delegate a function to—

- (a) a board member; or
- (b) the board's executive officer; or
- (c) a committee of the board; or
- (d) anyone else the board considers appropriate.

*Note* For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

## **Part 2.3**                      **Elections**

### **Division 2.3.1**            **General**

*Note to div 2.3.1*

For first elections under this part or elections if a health profession board is suspended, see div 2.3.1A.

#### **23**                      **Definitions for pt 2.3**

In this part:

***ballot paper envelope*** means an envelope addressed to the electoral commissioner on which is printed a declaration to be filled out by an elector.

*Note*            If a form is approved under s 52 for the envelope and declaration, the form must be used.

***close of poll day***, for an election for a health profession—see section 24 (1) (d).

***election***, for a health profession, means an election of members for the health profession board for the profession, and includes a recount under division 2.3.3 (Casual and temporary vacancies in elected positions).

***election start day***, for an election for a health profession—see section 24 (1) (a).

***elector***, for an election for a health profession—see section 37.

***Electoral Act*** means the *Electoral Act 1992*.

***eligible*** means eligible to be a member of a health profession board under section 28.

***hour of nomination***, for an election for a health profession—see section 30.

*issue of papers day*, for an election for a health profession—see section 24 (1) (c).

*list of health professionals*, for an election for a health profession—see section 26.

*nomination close day*, for an election for a health profession—see section 24 (1) (b).

*officer* means an officer appointed under the Electoral Act, section 33, and includes the electoral commissioner.

*preliminary scrutiny* means action by the electoral commissioner under section 44 (2).

*scrutiny centre*, for an election for a health profession, means a scrutiny centre declared for the election under section 51.

## 24 Dates for elections

- (1) For an election for a health profession, the board president for the health profession must, in writing, fix the following days for the election:
  - (a) the day from which candidates for election may be nominated (the *election start day*);
  - (b) the last day when candidates for election may be nominated (the *nomination close day*);
  - (c) the last day when voting papers may be issued (the *issue of papers day*);
  - (d) the day for the close of the poll (the *close of poll day*).
- (2) The election start day for the election must be at least 1 week after the day the board president fixes the days under subsection (1) for the election.
- (3) The nomination close day for the election must be at least 21 days after the election start day.



- (4) The issue of papers day for the election must be—
  - (a) at least 21 days before the close of poll day; and
  - (b) at least 14 days after nomination close day.
- (5) The close of poll day for the election must be at least 70 days and at most 90 days after the election start day.
- (6) After fixing the days under subsection (1), the board president must promptly send a copy of the instrument to the electoral commissioner.
- (7) A failure to comply with this section in relation to an election does not invalidate the election.

## **26 List of health professionals**

- (1) As soon as practicable after the election start day for an election for a health profession, the board president for the health profession must give the electoral commissioner a list (the *list of health professionals*) that—
  - (a) states the following in relation to each person who, on election start day, was registered in the profession:
    - (i) the person's name;
    - (ii) the person's postal address; and
  - (b) is certified by the board president to be correct.
- (2) The electoral commissioner must make a copy of the list of health professionals for the election available for public inspection at the office of the electoral commissioner during ordinary business hours as soon as practicable after the commissioner receives the list until—
  - (a) the end of the period when the election result may be disputed;  
or

- (b) if the election result is disputed—the dispute is decided or otherwise ends.
- (3) A failure to comply with this section in relation to an election does not invalidate the election.

## **27 Registered health professionals to be notified of dates**

- (1) After receiving the list of health professionals for an election for a health profession, the electoral commissioner must send by post to each health professional on the list, at the address shown in the list, a written notice—
  - (a) telling the health professional about the days fixed under section 24 (1); and
  - (b) telling the health professional about the requirements for eligibility for nomination in section 28; and
  - (c) inviting the health professional to seek nomination for the election.
- (2) The electoral commissioner must send each notice under subsection (1) not later than 2 weeks before the nomination close day for the election.
- (3) A failure to comply with this section in relation to an election does not invalidate the election.

## **28 Eligibility for nominations etc**

- (1) A person is eligible to be a member of the health profession board for a health profession if the person—
  - (a) is a registered health professional in the health profession; and
  - (b) has been continuously registered, or continuously registered under a corresponding law of a local jurisdiction and the Act, for at least 3 years before election start day.

**Example**

Stephanie was registered under a corresponding law of a local jurisdiction (New Zealand) for 2 years and 9 months. Since coming to the ACT, she has been registered under the Act. There was no break in registration between the time she was registered in New Zealand and being registered under the Act. Once she has been registered for 3 months in the ACT, she will have been continuously registered under a corresponding law of a local jurisdiction and the Act for 3 years, and will be eligible for nomination.

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

- (2) A person is not eligible to be nominated for election as a member of a health profession board for a health profession unless the person is, on election start day, eligible to be a member of the health profession board.

**29 Nominations**

- (1) The nomination of a person (the *nominee*) for election as a member of the health profession board for a health profession must be signed by the person and 2 other health professionals (the *nominators*).
- (2) The nominee must be eligible to be nominated for the election under section 28.
- (3) The nominators must be registered in the health profession on the election start day.
- (4) The nomination must include, or be accompanied by, a signed statement by the nominee that the nominee consents to the nomination.
- (5) The nomination must be given to the electoral commissioner before the hour of nomination.

**30 Hour of nomination**

The *hour of nomination*, for an election for a health profession, is 12 noon on the nomination close day.

**31 Withdrawal of nomination**

A person nominated to be a candidate may withdraw his or her consent to the nomination by giving the electoral commissioner written notice of withdrawal before the hour of nomination.

**32 Application of Electoral Act, s 110**

- (1) The Electoral Act, section 110 (Rejection of nominations), applies to an election under this part.
- (2) In applying the Electoral Act, section 110 in relation to this part—
  - (a) a reference in the Electoral Act, section 110 (1) to section 105 is taken to be a reference to this regulation, section 29 (Nominations); and
  - (b) any other necessary changes are taken to have been made.
- (3) The electoral commissioner may ask the executive officer of a health profession board for any information the commissioner needs to work out whether a nominee is eligible to be nominated as a member of the board.
- (4) An executive officer must comply with a request made to the officer under subsection (3).

**33 Declaration of candidates**

- (1) As soon as practicable after the hour of nomination for an election, the electoral commissioner must, in writing, declare the name and postal address of each candidate.
- (2) A declaration is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

**34 If no more candidates than positions**

- (1) This section applies to an election for a health profession if, at the hour of nomination—
  - (a) at least 1 candidate has been nominated; and
  - (b) there are no more candidates nominated than are required to be elected at the election.
- (2) The electoral commissioner must, in writing—
  - (a) declare the nominated candidate or candidates elected; and
  - (b) tell the board president of the health profession board about the election of each person elected; and
  - (c) if fewer candidates are nominated for election than are required to be elected—tell the board president the number of candidates required to be elected who were not elected.
- (3) A declaration under subsection (2) (a) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.
- (4) If the electoral commissioner tells the Minister a number under subsection (2) (c), the Minister must appoint that number of people as members of the health profession board under section 9.

**35 If no candidates**

- (1) If no candidate is nominated for an election for a health profession, the election is taken to have failed and the electoral commissioner must, in writing, tell the board president and the Minister about the failure of the election.
- (2) If the electoral commissioner tells the Minister about the failure of the election, the Minister must, under section 9, appoint as members of the health profession board the number of people who would otherwise be required to be elected.

**36 If more candidates than positions**

If more candidates are nominated for an election for a health profession than are required to be elected, the electoral commissioner must conduct a poll under this part to decide the election.

**37 Eligibility to vote**

A person (an *elector*) may vote in an election for a health profession if the person is, on the election start day, registered in the health profession.

**38 Number of votes**

Each elector is entitled to only 1 vote at the election.

**39 Positions on ballot paper**

- (1) The electoral commissioner must determine by lot the positions in which the candidates for an election are to appear on the ballot paper.
- (2) The electoral commissioner determines positions by lot if the commissioner determines the positions in accordance with an approval under the Electoral Act, section 125.

**40 Distribution of ballot papers**

- (1) The electoral commissioner must, on or before the issue of papers day, send each registered health professional whose name appears on the list of health professionals for the election—
  - (a) a ballot paper; and
  - (b) a ballot paper envelope; and

(c) an envelope addressed to the commissioner.

*Note* If a form is approved under s 52 for a ballot paper, the form must be used.

- (2) Things sent to a health professional under subsection (1)—
- (a) must be in a covering envelope addressed to the health professional that is sent to the postal address for the health professional in the list of health professionals; and
  - (b) may be sent to the health professional's business address if they are returned unclaimed to the electoral commission before the close of poll day.

#### **41 Manner of voting**

The Electoral Act, section 132 (Manner of recording vote) applies to the manner of voting under this part.

#### **42 Replacement of ballot papers**

- (1) This section applies if, before close of poll day for an election for a health profession, a person eligible to vote at the election makes and gives the electoral commissioner a written statement—
- (a) setting out his or her full name and postal address; and
  - (b) stating that he or she has not received a ballot paper or ballot paper envelope or that a ballot paper or ballot paper envelope received by him or her has been lost or destroyed; and
  - (c) stating that he or she has not already voted at the election;
- (2) This section also applies if, before an election for a health profession, a person eligible to vote at the election—
- (a) makes and gives to the electoral commissioner a written statement—
    - (i) setting out his or her full name and postal address; and

- (ii) stating that a ballot paper or ballot paper envelope received by him or her has, by mistake or accident, been spoilt; and
  - (b) gives the electoral commissioner the spoilt ballot paper or ballot paper envelope.
- (3) The electoral commissioner must give the person a ballot paper or ballot paper envelope, or a further ballot paper or ballot paper envelope and, if relevant, cancel the spoilt ballot paper or envelope.

#### **43 After voting**

An elector for an election for a health profession must, after recording his or her vote—

- (a) place the ballot paper in the ballot paper envelope and seal the envelope; and
- (b) fill in and sign the declaration printed on the ballot paper envelope, place the envelope in the envelope addressed to the electoral commissioner (the *returning envelope*) and seal the returning envelope; and
- (c) send the returning envelope to the commissioner so that it reaches the commissioner not later than 12 noon on the close of poll day.

#### **44 Scrutiny**

- (1) The Electoral Act, part 12 (The scrutiny) (other than section 189 (Declaration of result of election)) applies to an election as if—
  - (a) a reference to declaration voting papers were a reference to votes cast in the election; and
  - (b) a reference to preliminary scrutiny for the election were a reference to scrutiny under subsection (2); and
  - (c) all other necessary changes were made.



- (2) If the electoral commissioner is satisfied that the declaration on a ballot paper envelope has been signed by the elector named in the declaration, the ballot paper must be admitted to further scrutiny.

#### **45 Appointment of scrutineers**

- (1) A candidate for an election for a health profession may appoint a scrutineer to represent the candidate during the scrutiny for the election.
- (2) An appointment may be made by giving the electoral commissioner—
- (a) written notice, signed by the candidate, stating the name and address of the scrutineer; and
  - (b) an undertaking signed by the scrutineer.

*Note* If a form is approved under s 52 for an undertaking, the form must be used.

#### **46 Conduct of scrutineers**

- (1) A scrutineer representing a candidate for an election for a health profession may enter, be present in or leave a scrutiny centre for the election during the conduct of the scrutiny for the election at the centre.
- (2) However, at any time during the conduct of the scrutiny at the centre, there must not be more scrutineers at the centre representing a particular candidate than there are officers at the centre.
- (3) A scrutineer at a scrutiny centre must wear a badge, supplied by the electoral commissioner, that identifies the person as a scrutineer.

#### **47 Candidates not to participate in conduct of election**

A candidate must not take any part in the conduct of an election.

**48 Declaration etc of results**

- (1) As soon as practicable after the result of an election for a health profession has been decided, the electoral commissioner must, in writing—
  - (a) declare each successful candidate elected; and
  - (b) tell the board president of the health profession board in writing about the election of each person elected.
- (2) A declaration under subsection (1) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

**49 Term of elected board members**

The term of a person declared elected under section 48—

- (a) begins on the day the person is declared elected; and
- (b) is 4 years.

**50 Destruction of election material**

The electoral commissioner must destroy the ballot papers and ballot paper envelopes for an election on the election start day for the next election.

**51 Scrutiny centres**

- (1) The electoral commissioner may, in writing, declare a stated place to be a scrutiny centre for an election for a health profession.
- (2) A declaration is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

**52 Approved forms for elections**

- (1) The electoral commissioner may, in writing, approve forms for this part.

- (2) If the electoral commissioner approves a form for a particular purpose, the approved form must be used for the purpose.

*Note* For other provisions about forms, see the Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

## **Division 2.3.2 Application of ch 2 to first elections and suspended boards**

### **52A Application of ch 2 to first election for professions previously unregulated under the Act**

- (1) This section applies if a regulation (the *amending regulation*) amending schedule 1 to establish a health profession has been made and notified but has not commenced.
- (2) Appointments may be made to the health profession board under part 2.2, and elections may be conducted for members of the board under part 2.2 and part 2.3, as if the amending regulation had commenced.
- (3) Without limiting subsection (2)—
- (a) anything may be done for the purpose of making an appointment or conducting an election; and
  - (b) a successful candidate for election may be declared elected.
- (4) For subsection (2), chapter 2 (Health profession boards) applies to the making of an appointment, or the conduct of an election, as if—
- (a) a person who would be registered in the health profession if the amending regulation had commenced were registered in the health profession; and

- (b) the words ‘, from the community representative list,’ were omitted from section 10 (3) (Appointment of board members); and
  - (c) section 11 (1) (Consultation about appointment to board) were omitted; and
  - (d) section 12 (Community representatives) were omitted; and
  - (e) the words ‘the board president and’ were omitted from section 35 (1) (If no candidates); and
  - (f) a reference in chapter 2 to the *board president* were a reference to the Minister; and
  - (g) any other necessary changes were made.
- (5) Without limiting subsection (4), anything that may or must be done under chapter 2 by or in relation to the board president may or must be done by or in relation to the Minister.
- (6) This section is additional to the Legislation Act, section 81 (Exercise of powers between notification and commencement).
- (7) However, if the health profession is regulated under a repealed Act, subsection (4) (c) applies in relation to the health profession board for the profession as if it read as follows:
- ‘(c) the reference in section 11 (1) (Consultation about appointment to board) to the health profession board is taken to be a reference to the board established under the repealed Act that regulates the profession under that Act;’.
- (8) Also, if the health profession is regulated under a repealed Act, an election under part 2.3 to the health profession board for that profession is not invalid only because a person registered, or taken to be registered, as a member of the profession when the election is held is not registered as a member of the profession when the schedule that establishes the board commences.

(9) In this section:

*repealed Act* means an Act, other than the *Medical Practitioners Act 1930*, mentioned in the Act, section 136 (Repeals).

(10) This section does not apply in relation to medical practitioners.

*Note* See s 52B.

(11) Subsections (7) to (10) and this subsection expire on 8 July 2006.

**52B Application of ch 2 to first election of medical board under Act**

(1) This section applies to the ACT Medical Board (the *medical board*).

(2) Appointments may be made to the medical board under part 2.2, and elections may be conducted for members of the medical board under part 2.2 and part 2.3, as if schedule 1 and schedule 2 had commenced.

(3) Without limiting subsection (2)—

(a) anything may be done for the purpose of making an appointment or conducting an election; and

(b) a successful candidate for election may be declared elected.

(4) For subsection (2), chapter 2 (Health profession boards) applies to the making of an appointment, or the conduct of an election, as if—

(a) a person who would be registered in the medical profession if schedule 1 and schedule 2 had commenced were registered in the medical profession; and

(b) the words ‘, from the community representative list,’ were omitted from section 10 (3) (Appointment of board members); and

(c) the reference in section 11 (1) (Consultation about appointment to board) to the health profession board is taken to be a

reference to the medical board established under the *Medical Practitioners Act 1930*; and

- (d) section 12 (Community representatives) were omitted; and
  - (e) the words ‘the board president and’ were omitted from section 35 (1); and
  - (f) a reference in chapter 2 to the ***board president*** were a reference to the Minister; and
  - (g) any other necessary changes were made.
- (5) Without limiting subsection (4), anything that may or must be done under chapter 2 by or in relation to the board president may or must be done by or in relation to the Minister.
  - (6) Anything done, or purported to have been done, under this regulation before the commencement of this section has effect after that commencement as if this section (and every other provision of this regulation) had been in force when the thing was done.
  - (7) To remove any doubt, a failure to comply with section 26 (3) (List of health professionals) in relation to an election for the medical board, whether held before the commencement of this section or otherwise, does not invalidate the election.
  - (8) An election under part 2.3 to the medical board is not invalid only because a person registered, or taken to be registered, as a medical practitioner when the election is held is not registered as a medical practitioner when schedule 2 commences.
  - (9) This section is additional to the Legislation Act, section 81 (Exercise of powers between notification and commencement).
  - (10) This section expires on 8 July 2005.

**52C      Application of ch 2 to elections if board suspended**

- (1) This section applies if the health profession board for a health profession is suspended.
- (2) Chapter 2 applies to the conduct of an election as if—
  - (a) the words ‘the board president and’ were omitted from section 35 (1) (If no candidates); and
  - (b) a reference in chapter 2 to the *board president*, in relation to the suspended board, were a reference to the Minister; and
  - (c) any other necessary changes were made.
- (3) Without limiting subsection (2), anything that may or must be done under chapter 2 by or in relation to the health profession board president may or must be done by or in relation to the Minister.

**Division 2.3.3      Casual and temporary vacancies in elected positions**

**53      Definitions for div 2.3.3**

In this division:

*casual vacancy* means a vacancy in a position on a health profession board to which a board member is elected rather than appointed if the vacancy has happened otherwise than because—

- (a) the board has been discharged; or
- (b) the term for which the board member was elected has ended; or
- (c) there has been a complete or partial failure of an election.

*closing time for applications*—see section 56 (2) (Candidates for casual vacancy).

*former board member*, in relation to a casual vacancy in a position on a health profession board, means the person who was elected to the position at the last election before the vacancy happened.

*partial failure*, of an election, means that fewer candidates were nominated for the election than were required to be elected.

#### **54 Notice of long casual vacancy**

- (1) This section applies if—
  - (a) there is a casual vacancy for a position on a health profession board; and
  - (b) the former board member's term had more than 1 year to run.
- (2) The board president of the health profession board must tell the electoral commissioner in writing about the casual vacancy.

#### **55 Publication of notice about casual vacancy**

- (1) This section applies if the board president of a health profession board tells the electoral commissioner in writing about a casual vacancy under section 54.
- (2) If the electoral commissioner is satisfied that it is practicable to fill the vacancy under section 58, the commissioner must, so far as practicable, give a copy of the notice to anyone who, in the commissioner's opinion, may be entitled to make an application under section 56 in relation to the vacancy.
- (3) A notice under subsection (2) must—
  - (a) contain a statement to the effect that—
    - (i) there is a casual vacancy in the health profession board; and
    - (ii) a person may apply to be a candidate under section 56; and



- (b) state the closing time for applications.
- (4) If the electoral commissioner is not satisfied that it is practicable to fill the vacancy under section 58, the commissioner must tell the board president that it is not practicable.

## **56 Candidates for casual vacancy**

- (1) A person may apply to be a candidate for a position on a health profession board for which a casual vacancy has happened if the person—
  - (a) was a candidate in the last election for the position; and
  - (b) was not elected at that election; and
  - (c) is eligible to be elected to the position.

- (2) An application under subsection (1) must reach the electoral commissioner before 12 noon on the 10th day after the day when notice of the vacancy is given under section 55 (2) (the *closing time for applications*).

*Note* If a form is approved under s 52 for an application, the form must be used.

- (3) An applicant may withdraw his or her application by giving the electoral commissioner written notice of the withdrawal before applications close.
- (4) The electoral commissioner must reject a purported application that is not in accordance with subsection (2) and give the person in relation to whom it was made written notice setting out the reasons for the rejection.

## **57 Publication of candidates' details**

- (1) If 1 or more people have applied to be a candidate under section 56, the electoral commissioner must, in writing, declare the name and postal address of each candidate.

- (2) If there are no candidates for a casual vacancy, the electoral commissioner must declare that there are no candidates and tell the board president of the relevant health profession board in writing that there are no candidates.
- (3) A declaration under subsection (1) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

## **58 Determination of candidate to fill vacancy**

- (1) If there is only 1 candidate for a casual vacancy, the electoral commissioner must declare the candidate elected.
- (2) If there is more than 1 candidate for a casual vacancy, the electoral commissioner must, as soon as practicable after making a declaration under section 57 (1)—
  - (a) fix a time and place for a recount of the ballot papers counted at the last election at which the former board member was elected; and
  - (b) give each candidate written notice of the time and place fixed; and
  - (c) recount the ballot papers in accordance with the Electoral Act, schedule 4, part 4.3 (with necessary changes).

*Note* For how documents may be given, see the Legislation Act, pt 19.5.

- (3) The electoral commissioner must—
  - (a) declare the successful candidate elected; and
  - (b) tell the board president of the health profession board in writing about the election of the successful candidate.

## **59 Board nominees**

- (1) This section applies if—

- 
- (a) there is a casual vacancy for a position on a health profession board; and
  - (b) either—
    - (i) the former board member's term had not more than 1 year to run; or
    - (ii) the electoral commissioner tells the board president under section 55 (4) that it is not practicable to fill the vacancy; or
    - (iii) the commissioner tells the board president under section 57 (2) that there are no candidates for the vacancy.
  - (2) If the health profession board is satisfied that, because of the size of the board, it is not practicable for the board to exercise its functions without filling the vacancy, the board may ask the Minister to nominate a person to fill the vacancy.
  - (3) If asked to do so under subsection (2) and after consulting with the health profession board, the Minister must nominate a person who is eligible to be a member of the board and tell the electoral commissioner.
  - (4) The electoral commissioner must—
    - (a) declare the person elected; and
    - (b) tell the board president of the health profession board in writing about the person's election.
  - (5) To remove any doubt, the health profession board may exercise functions under this section even if it does not have a quorum.

**60 Term of board member declared elected under div 2.3.3**

- (1) This section applies to a person declared elected under this division.
- (2) The term of the person's appointment begins at the end of the day the election of the person is declared and, unless sooner ended, ends

on the day the original board member's appointment would have ended.

## **61 Temporary vacancies**

- (1) This section applies if—
- (a) an elected board member cannot for any reason exercise the functions of the position to which the member was elected; and
  - (b) the period for which the member cannot exercise the functions is shorter than 1 year; and
  - (c) the board member's inability to exercise the functions is temporary.

### **Examples for par (a)**

- 1 The board member is ill or on leave.
- 2 The board member is outside the ACT or Australia.

*Note 1* **Function** is defined in the Legislation Act, dict, pt 1 to include authority, duty and power.

*Note 2* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see s 126 and s 132).

- (2) If the health profession board is satisfied that, because of the size of the board, it is not practicable for the board to exercise its functions without filling the position of the elected board member, the board may ask the Minister to appoint a person to fill the position temporarily.
- (3) If asked to do so under subsection (2) and after consulting the health profession board, the Minister may, in writing, appoint to the board a person who is eligible to be a member of the board for the period while the elected member is unable to exercise the functions of the position.
- (4) To remove any doubt, the health profession board may exercise functions under this section even if it does not have a quorum.

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## Division 2.3.4 Disputed elections

### 62 Definitions for div 2.3.4

In this division:

***bribery*** means a contravention of the Criminal Code, section 356 (Bribery) in relation to an election.

***contravention***, of a section of the Act or the *Crimes Act 1914* (Cwlth), includes—

- (a) attempting or conspiring to contravene that section; or
- (b) aiding, abetting, counselling or procuring the contravention of that section.

***Court of Disputed Health Elections***—see section 63 (2).

***disputed election application*** means an application disputing the validity of an election.

***election***—

- (a) means an election under this part; and
- (b) includes the election of a person to fill a casual vacancy.

***file*** means file in the registrar's office.

***leave application*** means an application under section 72 for leave to withdraw a disputed election application.

***proceeding*** means a proceeding before the Court of Disputed Health Elections.

***registrar*** means the registrar of the Supreme Court.

***undue influence*** means a contravention of the *Crimes Act 1914* (Cwlth), section 28 (Interfering with political liberty).

### **63 Court of Disputed Health Elections**

- (1) The Supreme Court has jurisdiction to hear and decide—
  - (a) disputed election applications; and
  - (b) questions referred to the court by a health profession board about—
    - (i) the eligibility of people who have been declared elected to be members of the board; or
    - (ii) vacancies in the membership of the board.
- (2) When exercising jurisdiction under subsection (1), the Supreme Court is known as the *Court of Disputed Health Elections*.

### **64 Powers of the court**

The Supreme Court has the same powers (so far as they are applicable) when exercising jurisdiction under this part as it has when exercising its original jurisdiction.

### **65 Court's decisions are final**

A decision of the Court of Disputed Health Elections is final and conclusive, is not subject to appeal and must not be called into question.

### **66 Validity may be disputed after election**

- (1) The validity of an election must not be disputed except by application to the Court of Disputed Health Elections after the result of the election is declared.

- (2) Without limiting subsection (1), if any of the following matters in relation to an election is called into question, the validity of the election is to be taken to be in dispute:
- (a) the acceptance or rejection of the nomination of a candidate by the electoral commissioner;
  - (b) the eligibility of a person to be nominated as a candidate or to be elected;
  - (c) any matter connected with the distribution, or scrutiny, of ballot papers;
  - (d) any matter connected with the admission or rejection of votes by the electoral commissioner at the preliminary scrutiny.

## **67 People entitled to dispute elections**

The following people are entitled to dispute the validity of an election for a health profession:

- (a) a candidate in the election;
- (b) an elector for the election;
- (c) the electoral commissioner.

## **68 Form of disputed election application**

- (1) A disputed election application must—
- (a) state the declarations sought; and
  - (b) set out the facts relied on to invalidate the election with sufficient detail to identify the matters on which the applicant relies to justify each declaration; and
  - (c) set out the applicant's full name and address and the capacity in which the applicant is making the application; and
  - (d) be signed by the applicant.

- (2) The signature of an applicant other than the electoral commissioner must be witnessed by someone else.
- (3) The witness's signature, full name, address and occupation must be set out in the disputed election application.

**69 Time for filing disputed election application**

A disputed election application must be filed within 40 days after the day the result of the election is notified.

**70 Registrar to serve copies of disputed election application**

If a disputed election application is filed under section 69, the registrar must serve a sealed copy of the application on—

- (a) the person whose election is being disputed; and
- (b) the board president of the health professions board to which the person was elected; and
- (c) if the electoral commissioner is not the applicant—the commissioner.

**71 Parties to disputed election application**

- (1) The following people are entitled to appear in a proceeding under this division:
  - (a) the applicant;
  - (b) the electoral commissioner;
  - (c) if the person whose election is being disputed files a notice of appearance within 7 days after the day the person is served with a copy of the application under section 70—the person;
  - (d) anyone else with the leave of the Court of Disputed Health Elections.



- (2) A person other than the applicant who appears under subsection (1) is taken to be a respondent to the disputed election application.
- (3) This section does not apply to a leave application.

## **72 Withdrawal of disputed election application**

- (1) The applicant for a disputed election application may withdraw the application only with the leave of the Court of Disputed Health Elections.
- (2) An applicant is not entitled to make a leave application unless notice of the applicant's intention to do so has been given to the electoral commissioner and to each of the respondents to the disputed election application.
- (3) If there are 2 or more applicants to the disputed election application, the leave application must not be made without the consent of each applicant to the disputed election application.
- (4) If the disputed election application is withdrawn, the applicant is liable to pay the costs of the respondent in relation to that application and the leave application unless the Court of Disputed Health Elections orders otherwise.

## **73 Hearing and decision on leave application**

- (1) This section applies to a leave application made under section 72 in relation to a disputed election application.
- (2) The electoral commissioner, and each respondent to the disputed election application, are entitled to appear as respondents to the leave application.
- (3) Anyone else may appear as a respondent to the leave application only with the leave of the Court of Disputed Health Elections.

- (4) In deciding the leave application, the Court of Disputed Health Elections must inquire into the reasons for the application and decide whether it was—
- (a) the result of an agreement, arrangement or understanding; or
  - (b) in consideration of—
    - (i) the position on the health profession board that is in issue being vacated in the future; or
    - (ii) the withdrawal of another disputed election application; or
    - (iii) anything else.
- (5) The Court of Disputed Health Elections must publish its reasons for a decision as if it were a judgment and give a copy of them to the electoral commissioner.

**74 Person ceasing to be respondent to disputed election application**

- (1) This section applies to a person (other than the electoral commissioner) who is a respondent to a disputed election application if, before the hearing of a disputed election application, the respondent—
- (a) dies or gives written notice that he or she does not intend to oppose the application; or
  - (b) resigns from, or otherwise ceases to hold, the position on the health profession board that is in issue.
- (2) If this section applies to a person—
- (a) the person stops being a respondent; and
  - (b) the person, or his or her personal representative, must—

- (i) give the registrar written notice explaining why the person has stopped being the respondent; and
  - (ii) give each person who might have been an applicant in relation to the election application notice that the person has stopped being the respondent; and
  - (c) if a person who might have been an applicant in relation to the election application files a notice of appearance within 7 days after the day the person receives the notice under subsection (2) (b) (ii)—that person is entitled to appear as a respondent to the application.
- (3) A person who has stopped being a respondent to a disputed election application is not entitled to appear as a party in a proceeding in relation to the application.
- (4) The registrar must tell the electoral commissioner of the receipt of a notice mentioned in subsection (2) (b).

## **75 End of disputed election application**

- (1) The death of a sole applicant or the last survivor of several applicants ends a disputed election application.
- (2) The ending of a disputed election application does not affect the liability of the applicant or anyone else for costs awarded against the applicant or anyone else.

## **76 Hearing disputed election applications**

- (1) As soon as practicable after the time for filing a disputed election application under section 69 in relation to an election has ended, the registrar must prepare a list of the disputed election applications in the order of filing and make a copy of the list available for inspection at the registrar's office.
- (2) A disputed election application must, as far as practicable, be heard in the order in which it appears in the list.

- (3) However, all disputed election applications in relation to an election for a particular position on a health profession board must be heard together.

## **77 Declarations and orders of court**

- (1) The Court of Disputed Health Elections must hear and decide a disputed election application and may—
- (a) declare the election void; or
  - (b) declare that a person who has been declared elected was not properly elected; or
  - (c) declare that a person who has not been declared elected was properly elected; or
  - (d) dismiss the application completely or partly.
- (2) The Court of Disputed Health Elections may make any other order in relation to the disputed election application that the court considers appropriate.

## **78 Illegal election practices**

- (1) In this section:

*illegal practice* means a contravention of the Criminal Code, section 356 (Bribery) or part 3.6 (Forgery and related offences), and includes undue influence.

*prescribed declaration* means a declaration under section 77 (1) (a) or (b)—

- (a) on the ground of an illegal practice (other than bribery or undue influence); or

- (b) on the ground of bribery or undue influence by a person who was not a candidate for the election without the knowledge or consent of a candidate in the election.

*Note* **Undue influence** is defined in s 62.

- (2) The Court of Disputed Health Elections may make a declaration under section 77 (1) (a) or (b)—
  - (a) on the ground of an illegal practice in relation to the election; or
  - (b) on any other ground the court considers appropriate.
- (3) However, the Court of Disputed Health Elections must not make a prescribed declaration unless satisfied that—
  - (a) the result of the election was, or was likely to have been, affected by the illegal practice; and
  - (b) it is just to make the declaration.
- (4) If the Court of Disputed Health Elections finds an illegal practice in relation to an election (whether or not the court makes a declaration under section 77 (1) (a) or (b) on that ground), the registrar must report the finding to—
  - (a) the electoral commissioner; and
  - (b) the director of public prosecutions; and
  - (c) the board president of the health profession board to which the election related.
- (5) A finding by the Court of Disputed Health Elections in relation to an illegal practice in relation to an election does not bar, or prejudice in any way, any prosecution in relation to the act claimed before the court to have been the illegal practice.

**79 Bribery or undue influence by person elected**

If the Court of Disputed Health Elections finds that a person who was declared elected committed, or attempted to commit, bribery or undue influence in relation to any election, the court must declare the election of the person void.

**80 Immaterial delays and errors in relation to elections**

- (1) The Court of Disputed Health Elections must not make a declaration under section 77 (1) (a), (b) or (c) on the ground that there was a delay in—
  - (a) declaring the nominations for the election; or
  - (b) declaring the result of the election.
- (2) The Court of Disputed Health Elections must not make a declaration under section 77 (1) (a), (b) or (c) on the ground of an absence of, or error or omission by, the electoral commissioner or an officer unless the absence, error or omission affected, or was likely to have affected, the result of the election.
- (3) In deciding whether an absence, error or omission that prevented an elector from voting affected the result of an election, the Court of Disputed Health Elections must not have regard to any evidence of the way in which the elector intended to vote.

**81 Inquiries by court**

In deciding a disputed election application, the Court of Disputed Health Elections may make the inquiries it considers appropriate, including—

- (a) an inquiry about the identity of people who voted; and
- (b) an inquiry about whether ballot papers were improperly admitted or rejected.

**82 Rejected ballot papers**

In deciding a disputed election application, the Court of Disputed Health Elections may have regard to any ballot papers rejected at the preliminary scrutiny if the court forms the opinion that the ballot papers should not have been rejected.

**83 Evidence that people were not allowed to vote**

In deciding a disputed election application, the Court of Disputed Health Elections must not have regard to any evidence that a person was not allowed to cast a vote in an election unless the court is satisfied that the person—

- (a) claimed to vote under this regulation; and
- (b) complied with the requirements of this regulation for voting to the extent that the person was allowed to do so.

**84 Inspection of electoral papers**

- (1) A party to a disputed election application may inspect, and make copies of or take extracts from, the electoral papers (except ballot papers) in the electoral commissioner's possession that were used in relation to the election being disputed.
- (2) However, the party may only do something under subsection (1)—
  - (a) with the leave of the Court of Disputed Health Elections; and
  - (b) in the presence of the electoral commissioner or a member of staff of the electoral commission.

**85 Commissioner not prevented from accessing documents**

Unless the Court of Disputed Health Elections otherwise orders, the filing of a disputed election application does not prevent the electoral commissioner, another member of the electoral commission or a member of the staff of the commission from having access to a document to which the person would otherwise be entitled to have access to exercise a function under this regulation.

**86 Registrar to serve copies of court declarations on certain people**

The registrar must, after a disputed election application is decided, serve a sealed copy of the declarations and orders (if any) made by the Court of Disputed Health Elections on—

- (a) the board president of the health profession board to which the election related; and
- (b) each party to the application.

**87 Effect of court declarations**

- (1) If the Court of Disputed Health Elections declares an election void, another election must be held under this part.
- (2) If the Court of Disputed Health Elections declares that a person who has been declared elected was not properly elected, the person is taken not to have been properly elected.
- (3) If the Court of Disputed Health Elections declares that a person who has not been declared elected was properly elected, the person is taken to have been properly elected.
- (4) A declaration by the Court of Disputed Health Elections mentioned in subsection (1), (2) or (3) takes effect at the end of the day the declaration by the court is made.



**88 Court procedure**

In a proceeding, the Court of Disputed Health Elections —

- (a) must be guided by the substantial merits and good conscience of the case; and
- (b) is not bound by technicalities, legal forms or the rules of evidence, but may inform itself in the way it considers appropriate.

**89 Legal representation limited in court proceeding**

In a proceeding, a party is entitled to be represented by only 1 lawyer appearing as counsel.

**90 Costs may be ordered against Territory**

Even if the Territory is not a party to a proceeding, the Court of Disputed Health Elections may order the Territory to pay some or all of the costs of the proceeding.

**Division 2.3.5 Electoral offences**

**91 Multiple votes prohibited**

- (1) A health professional must not vote more than once at the same election.

Maximum penalty: 30 penalty units.

- (2) An offence against this section is a strict liability offence.

## **92 Interference with voting**

- (1) A person must not—
  - (a) interfere with the casting of a vote by an elector; or
  - (b) do anything to find out how an elector voted; or
  - (c) allow anyone else to find out how an elector voted.Maximum penalty: 30 penalty units.
- (2) Subsection (1) does not apply to a person assisting an elector under subsection (3).
- (3) An elector may be assisted in voting if the elector would otherwise be unable to vote.
- (4) An assistant—
  - (a) must be a nominee of the elector; and
  - (b) may assist in any of the following ways:
    - (i) by acting as an interpreter;
    - (ii) by filling out, or assisting the elector to fill out, the declaration;
    - (iii) by explaining the ballot paper and the requirements of this regulation relating to its marking;
    - (iv) by marking, or assisting the elector to mark, the ballot paper at the elector's direction;
    - (v) by folding the ballot paper and putting it in a ballot paper envelope as required by this regulation;
    - (vi) by sending the ballot paper envelope with the marked ballot paper back to the electoral commissioner.
- (5) An offence against this section is a strict liability offence.

**93 Giving completed ballot papers to commissioner**

- (1) A person who accepts completed ballot papers to be given to the electoral commissioner must give them to the commissioner as soon as practicable.

Maximum penalty: 10 penalty units.

- (2) An offence against this section is a strict liability offence.

**94 Opening envelopes containing ballot papers**

- (1) Unless authorised under this regulation, a person must not open an envelope that appears to contain completed ballot papers.

Maximum penalty: 5 penalty units.

- (2) An offence against this section is a strict liability offence.

**95 Influencing of votes by officers**

- (1) An officer must not do anything to influence someone else's vote.

Maximum penalty: 30 penalty units.

- (2) An offence against this section is a strict liability offence.

**96 Violence and intimidation**

- (1) A person must not, by violence or intimidation, hinder or interfere with the free exercise of a right or duty under this regulation.

Maximum penalty: 30 penalty units.

*Note 1* **Function** is defined in the Legislation Act, dict, pt 1 to include authority, duty and power.

*Note 2* **Exercise** a function includes perform the function (see Legislation Act, dict, pt 1).

- (2) An offence against this section is a strict liability offence.

**97 Voting fraud**

- (1) A person must not supply a ballot paper unless authorised by this regulation.

Maximum penalty: 20 penalty units.

- (2) A person must not mark a ballot paper unless—

(a) the person is an elector or an assistant assisting the elector under section 92 (3); and

(b) the ballot paper marked is the elector's ballot paper.

Maximum penalty: 30 penalty units.

- (3) A person commits an offence if—

(a) the person casts a ballot; and

(b) the person is not entitled to vote.

Maximum penalty: 30 penalty units.

- (4) An offence against this section is a strict liability offence.

## **Part 2.4**                      **Health profession board meetings**

### **98**                      **When are board meetings held?**

- (1) A health profession board may hold the meetings it considers appropriate to allow the board to exercise its functions.
- (2) The board president may, in writing, call a meeting at a stated time and place.
- (3) The board president must call a meeting if a majority of the board members asks the president in writing to call a meeting.

### **99**                      **Board meetings usually in public**

- (1) Health profession board meetings must be open to the public unless the board decides otherwise, either for a particular meeting or for a particular kind of meeting.
- (2) A decision by the health profession board that a meeting is not to be open to the public does not prevent the board from allowing someone other than a board member to attend the meeting.

### **100**                      **Ministerial referrals to board**

The Minister may, in writing, refer a matter to a health profession board for consideration if—

- (a) the Minister considers that the matter involves the protection of the public or of the public interest; and
- (b) the matter relates to a health profession the board regulates.

**101 Presence at board meetings**

- (1) If the members of the health profession board agree, a board meeting may be held by means of a method of communication, or a combination of a number of methods of communication, that allows everyone taking part in the meeting to hear what anyone else taking part in the meeting says without being in each other's presence.
- (2) A health profession board member who takes part in a meeting conducted under subsection (1) is taken, for all purposes, to be present at the meeting.

**102 Presiding member at board meetings**

- (1) The board president must preside at each health profession board meeting at which the president is present.
- (2) If the board president is not present at a health profession board meeting but the board deputy president is present, the deputy president must preside at the meeting.
- (3) If neither the board president nor board deputy president is present at a health profession board meeting attended by a quorum of board members, the members present may elect a member present to preside at the meeting.

**103 Board quorum**

- (1) A quorum, for a health profession board meeting, is a majority of the board members.
- (2) For this section, the *board members* include any positions on the health profession board that are vacant.

**104 Voting at board meetings**

- (1) A question arising at a health profession board meeting must be decided by a majority of the votes of board members attending and voting.
- (2) The member presiding at a health profession board meeting may decide a question arising at the meeting if—
  - (a) the member is the board president or board deputy president; and
  - (b) the members attending and voting cannot decide the question by a majority.
- (3) However, a decision on a question arising at a meeting must be postponed until a future health profession board meeting if—
  - (a) the member presiding at a health profession board meeting is not the board president or board deputy president; and
  - (b) the members attending and voting cannot decide the question by a majority.
- (4) Voting at a health profession board meeting is by show of hands or, if a board member attending the meeting calls for a vote by ballot, by ballot.

**105 Records of board meetings**

Each health profession board must keep a record of what happens at its meetings.

*Note* Under the *Electronic Transactions Act 2001*, s 9, a requirement in legislation for something to be signed may be satisfied even if the thing is kept in electronic form.

**106 Board meeting procedures**

If this part does not prescribe a procedure for something the health profession board must or may do at a meeting, the board may decide its own procedures for meetings.

**107 Disclosure of interests by board members**

- (1) This section applies if a board member (the *interested member*) has a personal interest or a direct or indirect financial interest in a matter being considered or about to be considered by the health profession board.
- (2) As soon as practicable after the matter comes to the interested member's knowledge, the member must either—
  - (a) disclose that the member has an interest in the matter and withdraw from the meeting at which the matter is to be considered; or
  - (b) describe the interest to the health profession board and allow the board to decide whether the person should take part in consideration of the matter.
- (3) The withdrawal of a member under subsection (2) (a) must be recorded in the minutes of the health profession board meeting.
- (4) Unless the health profession board otherwise decides, the interested member must not—
  - (a) be present during a deliberation of the board in relation to the matter; or
  - (b) take part in a decision of the board in relation to the matter.
- (5) The interested member must not—
  - (a) be present during a deliberation of the health profession board to decide whether the interested member should take part in the consideration of the matter; or



- (b) take part in the making of the decision by the health profession board mentioned in paragraph (a) in relation to the member.
- (6) A person must not contravene subsection (4) or (5).

Maximum penalty: 10 penalty units.

## Part 2.5 Health profession board functions

### 108 Board to seek to form ties

- (1) A health profession board for a health profession must actively seek to form ties with relevant entities to further the promotion and achievement of suitability to practise standards and professional development standards within the health profession.
- (2) In this section:  
*relevant entities* mean professional entities and entities in local jurisdictions that correspond to the health profession board.

### 109 Performance of board on standards

- (1) In assessing a health profession board's performance, the Minister may consider whether the standards approved by the board under section 134 (Standards statements) benefit, or are likely to benefit, the public.
- (2) The Minister must consider the public benefit of the standards by considering—
  - (a) whether the standards—
    - (i) promote the main object of the Act; and
    - (ii) clearly set out safe practice requirements; and
  - (b) how much the health profession board consulted in the development of the standards; and
  - (c) whether there is public support for the standards; and
  - (d) the public benefit of the standards as compared to alternative approaches.

**110 Performance of board on applications and reports**

- (1) In assessing a health profession board's performance, the Minister may consider whether the board deals with applications under the Act and reports as promptly as possible while allowing for proper consideration of the applications and reports.
- (2) A health profession board is responsible for ensuring that health professionals referred to panels established by the board are dealt with as promptly as possible, while allowing for proper consideration of the issues.

**111 Board's obligation to send renewal notices**

In assessing a health profession board's performance, the Minister may consider whether the board has sent renewal notices under section 126 (Renewal notice for registration).

## **U** Chapter 3 Registration of health professionals

*Note* The entitlement to, and criteria for, registration are in the Act, s 37.

### **U** Part 3.1 Applications for registration

*Note about application of the Mutual Recognition Act 1992 (Cwlth) and the Trans-Tasman Mutual Recognition Act 1997 (Cwlth) (the **Commonwealth Acts**)*

The Commonwealth Acts allow people registered in certain occupations in a local jurisdiction to carry on the occupations in another local jurisdiction and set out the method of applying for registration in the ACT or a local jurisdiction. The requirements for registration under this regulation cannot validly require anything of people being registered under the Commonwealth Acts that would be inconsistent with those Acts. Accordingly, provisions of this chapter, such as the requirements for applications, do not apply to the registration of people under the Commonwealth Acts. Also, the Commonwealth Acts set out when conditions may be placed on people registered under those Acts by a health profession board. For more information, see the Commonwealth Acts.

#### **U** 112 Applications for registration

An application by a person for registration as a health professional must contain the following:

- (a) the person's name;
- (b) the name used by the person, or intended to be used by the person, when practising the profession if different from the person's name;
- (c) if the person has previously practised in the profession—any other name used by the person when practising the profession;
- (d) the person's date of birth;
- (e) the person's postal address;

- (f) the person's business address, or intended business address;
- (g) evidence of the person's qualifications, including relevant training undertaken;
- (h) if the person has been refused registration, or had his or her registration cancelled—details of the refusal or cancellation;
- (i) if the person has been refused registration (however described) as a health professional, or had his or her registration as a health professional cancelled, under a corresponding law of a local jurisdiction—details of the refusal or cancellation.

*Note* A fee may be determined under the Act, s 132 for this section.

**U 113 Registration of health professionals**

- (1) On application by a person under section 112, the health profession board must—
  - (a) register the person unconditionally; or
  - (b) register the person conditionally; or
  - (c) refuse to register the person.
- (2) The health profession board must give the person written notice of the decision under subsection (1).
- (3) If the health profession board registers a person, whether unconditionally or conditionally, the board must give the person a unique registration number.
- (4) A notice under subsection (2) must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

**U 114 Suitability to practise requirements**

- (1) Someone is suitable to practise in a health profession, or a specialist area of the profession, if—
  - (a) the person has the qualifications for the health profession or specialist area set out in the schedule for the profession; and
  - (b) the person has successfully completed training (which may include an internship) set out in the schedule for the profession or specialist area; and
  - (c) the person is generally competent.

*Note* General competence is dealt with in s 115.

- (2) A person is also suitable to practise in a health profession if the person is unconditionally registered in another jurisdiction and is entitled to be registered in the ACT under the *Mutual Recognition Act 1992* (Cwlth) or the *Trans-Tasman Mutual Recognition Act 1997* (Cwlth).
- (3) For subsection (1) (b), the schedule for the profession may require the training to have been completed within a stated time before the application for registration.

**U 115 General competence to practise**

- (1) A health profession board, in deciding whether a person is generally competent in relation to a health profession, must consider the following:
  - (a) whether the person is mentally and physically healthy enough to practise the profession;
  - (b) whether the person has an addiction to alcohol or another drug;

- (c) whether the person has been convicted, or found guilty, in the ACT, a local jurisdiction or elsewhere of an offence that indicates that the person may not be competent to practise the profession;
  - (d) whether the person's practice experience is recent enough and sufficient to allow the person to practise the profession safely, taking into account any requirements about recency of practice included in the schedule that relates to the health profession.
- (2) The health profession board may also consider any other relevant matter.

**Examples of other relevant matters**

- 1 whether the person has previously had his or her registration cancelled, either in the ACT or a local jurisdiction
- 2 the health profession tribunal has previously declared that, if the person had been registered at the time the tribunal considered the person, the tribunal would have found that the person had contravened the required standard of practice or did not satisfy the suitability to practise requirements

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

**U 116 Conditional registration**

- (1) If a health profession board is not required to register a person under the Act, section 37, the board may register a person conditionally if satisfied that—
- (a) the conditional registration of the person is in the public interest; and
- Note* Section 117 sets out when conditional registration is in the public interest.
- (b) the conditional registration of the person will not endanger public safety.

- (2) A health profession board may place conditions on a person's registration, even if the person is someone the board must register under the Act, section 37, if satisfied on reasonable grounds that it is in the public interest to do so.

**U 117**      **When is conditional registration in public interest?**

- (1) It is in the public interest to register a person conditionally if—
- (a) the person would be entitled to apply for unconditional registration if the person had completed a period of supervised training (which may include internship) that the person has started; or
  - (b) the person's registration in a local jurisdiction is subject to a condition; or
  - (c) the person is a graduate from an institution other than an institution approved by a national organisation that represents the health profession, and registration would allow the person to undertake postgraduate training that the board considers suitable for the person; or
  - (d) the person is a candidate for an examination required under the Act and the health profession board has approved the person to undertake a period of supervised training to help the person become unconditionally registered; or
  - (e) the person wishes to take up a teaching or research position; or
  - (f) the person is approved by the board to fill a position that is in an area of unmet need; or
  - (g) the person is not trained in a local jurisdiction and, if registered, the person could undertake additional training before the person is examined or assessed in the ACT or a local jurisdiction; or



- (h) the person's general competence or competence to practise the profession is limited and conditional registration is required in the public interest.
- (2) This section does not limit when it is in the public interest to register a person conditionally.

*Note* A person may only be registered for up to 1 year at a time (see s 120), so a condition will only last for a maximum of 1 year, unless renewed.

**U 118 Specialist area registration**

- (1) This section applies if the schedule for a health profession includes requirements relating to admission to a specialist area of the health profession.
- (2) A person may only practise in the specialist area if the person is registered to practise in the area.

**U 119 Powers of health profession boards to require information**

- (1) A health profession board may, before making a decision in relation to an application for registration of a person, ask the person, in writing—
  - (a) for stated information in relation to something relevant to the person's entitlement to registration; or
  - (b) to appear personally before the board to give information about the person's application.

*Note* The health profession board may delegate its power to take information under par (b) (see s 22).

- (2) Subsection (1) (b) does not apply if the application for registration is made under the *Mutual Recognition Act 1992* (Cwlth).
- (3) If a health profession board asks a person to give information (whether in person or otherwise) to the board, the board may refuse

to consider the application for registration further if the person does not give the information.

**U 120 Length of registration**

Registration is for—

- (a) the period of not longer than 1 year stated in the practising certificate; or
- (b) if no period is stated in the practising certificate—1 year.

*Note* The schedule for a health profession may prescribe a date in a year when a practising certificate for the profession will end.

**U 121 Practising certificate**

If a health profession board registers someone as a health professional, the board must give the person a certificate that states—

- (a) the name the person is allowed to practise under; and
- (b) the profession (or specialist area within the profession) the person is registered in; and
- (c) the date the registration ends (the *registration end date*); and
- (d) if the registration is conditional—that the person's registration is conditional and that the conditions on registration may be obtained from the health profession board unless the board decides otherwise under section 155 (3) (Access to registers).

**U 122 Replacement practising certificates**

- (1) This section applies if a person's practising certificate is damaged, lost, stolen or destroyed.
- (2) On application, the relevant health profession board may issue a replacement registration certificate to the person if satisfied that the registration certificate has been damaged, lost, stolen or destroyed.
- (3) To help the health profession board decide whether the registration certificate has been damaged, lost, stolen or destroyed, the board may, in writing, ask the person to give the board a written statement confirming, and explaining the circumstances of, the damage, loss, theft or destruction.

*Note* A fee may be determined under the Act, s 132 for this section.

**U 123 Return of practising certificate**

- (1) For this section, the following are *relevant circumstances* for a health professional:
  - (a) the health professional's registration is cancelled;
  - (b) the health professional's registration is suspended;
  - (c) a condition has been placed on the health professional's registration since the practising certificate was issued;
  - (d) the details included on the health professional's practising certificate are not, or are no longer, accurate.
- (2) If a relevant circumstance applies to the health professional, the relevant health profession board may, in writing, mention the circumstance and ask the health professional to give the practising certificate to the board.

- (3) Within 14 days after the day the health professional receives a notice under subsection (2), the health professional must give the health professional's practising certificate to the health profession board.

Maximum penalty: 5 penalty units.

- (4) If the relevant circumstance is a circumstance mentioned in subsection (1) (c) or (d), the health profession board must give the health professional an accurate practising certificate.
- (5) The health profession board must return the practising certificate of a health professional if—
- (a) the certificate was given to the board because the professional's registration was suspended; and
  - (b) the suspension has ended; and
  - (c) the health professional is still registered.

## **U** Part 3.2 End of registration and renewal

### **U** 124 When does registration end?

- (1) A health professional's registration ends if—
  - (a) the registration has not been renewed at the end of 2 weeks after the registration end date; or
  - (b) the health professions tribunal cancels the person's registration; or
  - (c) the person dies.
- (2) If registration ends under subsection (1) (a), the registration is taken to have ended on the registration end date.
- (3) If registration ends under subsection (1) (b), the registration ends on cancellation.

### **U** 125 Failure to meet insurance requirement

- (1) A health profession board may ask a relevant health professional to produce to the board a certificate of insurance for any insurance required to be held by the health professional under the Act.
- (2) The health profession board may require production of the certificate of insurance within a stated period that is at least 7 days after the day the health professional receives the request.
- (3) If the health professional does not produce the certificate within the stated period, the health profession board may apply to the health professions tribunal for the cancellation of the health professional's registration.

**U 126**      **Renewal notice for registration**

- (1) A *renewal notice* for the registration of a registered health professional is a notice, addressed to the health professional, that states that the health professional's registration will end if it is not renewed on or before a date stated in the notice.
- (2) A health profession board must send a renewal to a registered health professional not later than 4 weeks, and not earlier than 8 weeks, before the registration end date.
- (3) If the health profession board fails to send a renewal notice to a registered health professional, or the notice is not received by the health professional, the failure or nonreceipt does not affect—
  - (a) the end of the health professional's registration; or
  - (b) the obligation of the health professional to renew the registration if the health professional intends to practise his or her health profession after the end of the existing registration.

**U 127**      **Late payment of registration**

- (1) This section applies if—
  - (a) a health professional's registration (the *expired registration*) ends without being renewed; and
  - (b) the health professional pays the registration fee for renewal of the registration within 2 weeks after the registration end date for the expired registration.
- (2) The relevant health profession board may renew the health professional's registration with effect from the registration end date for the expired registration.

*Note*      A fee may be determined under the Act, s 132 for this section.

**U 128      Retrospective re-registration**

- (1) This section applies if—
  - (a) a health professional’s registration (the *expired registration*) ends without being renewed; and
  - (b) the health professional does not pay the registration fee for renewal of the registration within 2 weeks after the registration end date for the expired registration.
- (2) The relevant health profession board may renew the health professional’s registration.

*Note*      A fee may be determined under the Act, s 132 for this section.

- (3) The renewal may be made effective from the day the expired registration ended or from a later day, as the health profession board considers appropriate.

**U** **Part 3.3** **Maintaining competence and continuing professional development**

**U** **129** **Obligation to maintain competence and continue professional development**

A registered health professional must ensure that he or she remains suitable to practise the profession in which he or she is registered.

*Note* Section 114 sets out the suitability to practise requirements for a health professional.

**U** **130** **Programs for maintenance of competence**

A health profession board must, in writing, establish, or facilitate the establishment of, programs to support, promote and assess health professionals' general and professional competence.

**U** **131** **Standards for maintenance of competence**

- (1) The standards under this section are part of the suitability to practise standards relating to the maintenance of competence.
- (2) A health profession board must, in consultation with professional representative bodies, develop or endorse written standards about the action registered health professionals need to take to maintain competence and continue professional development.
- (3) The health profession board must ensure, as far as practicable, that the standards developed or endorsed are consistent with any standards developed by professional representative bodies for the health profession.
- (4) An endorsement of standards must be in writing, and may be an endorsement of standards as in force from time to time.



- (5) A standard, or an endorsement of standards, is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

- (6) The standards must include the following:
- (a) requirements for maintaining professional competence and professional development;
  - (b) how the requirements are satisfied and demonstrated, including—
    - (i) the frequency and extent of any required training, instruction or practical experience; and
    - (ii) the time within which the training, instruction or practical experience must be completed; and
    - (iii) detail of any examination required; and
    - (iv) the reporting requirements.
- (7) The standards may provide that membership of a named organisation or participation in a named course or program is sufficient evidence of maintenance of competence to practise and professional development.
- (8) A health profession board may establish a committee to assist in overseeing the board's continuing competence and professional development program.

**U 132 Use of information about continuing competence etc**

- (1) A health profession board may use information it receives about a registered health professional's continuing competence or professional development to take action to protect public safety or in the public interest.

- (2) The action the health profession board may take includes the following:
- (a) reporting annually to the Minister, using non-identifying information, on the general performance or achievement of a regulated health profession as a whole or within specialist areas;
  - (b) providing information or advice to registered health professionals about their performance, including comparisons to best practice;
  - (c) providing information to someone else with the consent of the registered health professional;
  - (d) using information to support the board's advice or decision on what to do about a report or matter referred to the board by the electoral commissioner in relation to a health professional.
- (3) Also, if information received under this part in relation to a health professional indicates a potential risk to public safety, the health profession board may treat the matter as a report about the health professional.

**U Chapter 4 Required standard of practice**

**U Part 4.1 Required standard of practice generally**

**U 133 Purpose of ch 4**

This chapter—

- (a) allows a health profession board to decide what behaviour does and does not meet the required standard of practice in relation to relevant health professionals, so that the health professionals can tell what they should, and should not, be doing to be competent to practise; and
- (b) sets out how a health professional may be judged against the standard; and
- (c) sets out the required standard of practice that, if breached, will mean the health professional is not competent to practise.

**U 134 Standards statements**

- (1) A *standards statement* is a statement designed to raise awareness of the standard of practice required from a health professional for the professional to be competent to practise, or to help the health professional improve his or her suitability to practise.
- (2) A health profession board may develop standards to make up the required standard of practice for the health profession it regulates.

**Example of standard**

a code of professional conduct

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

- (3) A health profession board must, in writing, approve standards developed by the board or another entity.
- (4) However, the health profession board must not approve standards that are inconsistent with standards approved by a professional body representing the health profession unless satisfied that the inconsistent standard is necessary to protect the public.
- (5) If a health profession board approves a standard statement developed by another entity, it may approve the standard as in force from time to time.
- (6) An approval is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

**U 135** **Pattern of practice or particular acts**

In deciding whether a registered health professional's standard of practice meets the required standard of practice, the health professions tribunal, the relevant health profession board or a panel formed by the relevant health profession board may consider the health professional's act or acts and the health professional's pattern of practice.

*Note* *Act* includes fail to act (see dict).

**U 136** **Endangering public**

A registered health professional breaches the required standard of practice if the health professional engages in a standard of practice that endangers public health and safety.

**U 137** **Lack of competence to practise etc**

A registered health professional breaches the required standard of practice if the health professional engages in a standard of practice that demonstrates a lack of competence to practise, knowledge, skill, judgment or care by the health professional.

## **U** Part 4.2                      **Specific breaches of the required standard of practice**

### **U** 138                      **Purpose of pt 4.2 etc**

- (1) The purpose of this part is to prescribe a minimum for the required standard of practice.
- (2) If a health professional breaches this part, the health professional breaches the required standard of practice and is not competent to practise unless the health profession board decides otherwise.

### **U** 139                      **Breach of standards statements**

A registered health professional must not breach a standards statement that applies to the professional.

### **U** 140                      **Telling board about proceedings relating to health professional**

- (1) A registered health professional must tell the health profession board for the health professional if the health professional is charged with an offence.
- (2) A notice under subsection (1) must—
  - (a) identify the charge sufficiently to allow the health profession board to decide whether the charge indicates that the health professional may be contravening the Act; and
  - (b) be made as soon as practicable after the day the health professional is charged, but in any case within 7 days after that day.

*Note*                      A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

**U 141 Infection control and notifiable diseases**

A registered health professional must comply with legislation that prescribes requirements for infection control and reporting of notifiable disease.

**U 142 Drugs and health professional**

- (1) A registered health professional must not practise while under the influence of a drug (whether a prescription drug, an illegal drug or another drug) if the drug affects the health professional's ability to practise.
- (2) A registered health professional must not practise while dependent on a drug (for example, a drug of dependence) that may adversely affect the health professional's professional performance.

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

**U 143 Drugs and patients**

- (1) A registered health professional must not give a drug of dependence or a prohibited substance to a drug-dependent person.
- (2) This section does not apply if the drug is required for the medical treatment of the drug-dependent person and is given as part of a treatment plan for the person.
- (3) In this section:

*drug-dependent person*—see the *Drugs of Dependence Act 1989*, section 3 (1).

*give* includes sell, offer for sale, prescribe and administer.

*prohibited substance*—see the *Drugs of Dependence Act 1989*, section 3 (1).

**U 144 Inappropriate behaviour**

- (1) A registered health professional must not engage in inappropriate behaviour involving someone who is, or was, a user of a health service provided by the health professional.
- (2) A standards statement may set out what kind of behaviour is inappropriate in relation to a health profession.

**U 145 Reporting other health professionals**

A registered health professional is taken to have contravened the required standard of practice if—

- (a) the health professional believes on reasonable grounds that—
  - (i) another registered health professional has contravened or is contravening a required standard of practice or a suitability to practice requirement; and
  - (ii) the contravention has had, or is likely to have, a substantial affect on a member of the public; and
- (b) the contravention does not relate to an administrative matter; and
- (c) the health professional does not tell a health professional board about the belief; and
- (d) the contravention has, or has had, a substantial effect on a member of the public.

**U 146 Clinical records**

- (1) A registered health professional must maintain adequate clinical records.
- (2) A registered health professional must not change a clinical record to deceive anyone.

**U 147 Misrepresenting facts in certificates**

A registered health professional must not, while practising as a health professional, sign a certificate that misrepresents a fact.

**U 148 Treatment by assistants**

- (1) A registered health professional must not allow someone else (an *assistant*) to treat a user of a health service provided by or on behalf of the health professional, or perform a procedure, on the health professional's behalf if the treatment, or procedure, requires professional discretion or skill.
- (2) Subsection (1) does not apply if—
  - (a) the treatment is given, or the procedure performed, as part of a program to train the assistant to become a registered health professional; or
  - (b) the assistant is a registered health professional.
- (3) A registered health professional must adequately supervise anyone providing health services on behalf of the health professional.

**U 149 Misleading advertising**

A registered health professional must not advertise a health service in a way that is misleading.

**U 150 Behaviour that contravenes another law**

- (1) A registered health professional must not engage in behaviour that contravenes another law in a way that reflects on the ability or commitment of the health professional to provide an adequate standard of care for patients.
- (2) Without limiting the behaviour mentioned in subsection (1), a health professional engages in behaviour of that kind if—
  - (a) while registered—



- (i) the health professional is convicted, or found guilty, of an offence punishable by imprisonment for 6 months or longer; and
  - (ii) the behaviour on which the conviction, or finding of guilt, is based reflects adversely on the professional's suitability to practise; or
  - (b) the health professional is convicted, or found guilty, of an offence against the *Health Insurance Act 1973* (Cwlth) committed while registered; or
  - (c) the health professional breaches the health rights and responsibilities code while registered.
- (3) In subsection (2) (c):

***health rights and responsibilities code***—see the *Community and Health Services Complaints Act 1993*, section 4, definition of ***code***.

## **U** Chapter 5 The register

### **U** 151 Register

- (1) A health profession board must keep a register.
- (2) The register may be kept in the form of 1 or more registers, or 1 or more parts, as long as the register complies with the Act.
- (3) The health profession board must ensure that the information in the register is as accurate and current as practicable.
- (4) The health profession board must on application, and may on its own initiative, make the changes necessary to the register to give effect to subsection (3).
- (5) If a court or tribunal orders the health profession board to make a change to the register, the board must make the change.

### **U** 152 Contents of register

- (1) The register kept by a health profession board must contain the registration details of each person registered as a health professional for a health profession it regulates.
- (2) The register may also contain other information in relation to a registered health professional that the health profession board considers necessary or desirable.
- (3) For this section:  
*registration details*, for a person, means the following details:
  - (a) the details required to be included in the person's application for registration under section 112;
  - (b) the section under which the person was registered;

- (c) the registration number given to the person;
- (d) the registration date and, if the registration has been renewed, the latest renewal date;
- (e) any condition on registration;
- (f) if the person's registration is suspended—the date the suspension began and is to end.

**Examples for par (b)**

- 1 s 113 (1) (a) for unconditional registration
- 2 s 113 (1) (b) for conditional registration

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

**U 153 Information in register to be accessible and extractable**

The register kept by a health profession board must be kept in a way that allows the information about a registered health professional to be readily reproduced in an easily readable form.

**U 154 Executive officer responsible for register**

- (1) The executive officer of a health profession board must keep the register on behalf of the board.
- (2) Without limiting how the executive officer may keep the register, the executive officer may do the following in relation to the register:
  - (a) include the details of newly registered health professionals;
  - (b) remove the details of health professionals who are no longer registered;
  - (c) correct information in the register that is not, or is no longer, accurate.

- (3) To remove any doubt, the removal of details of a health professional who is no longer registered does not prevent the executive officer from keeping a record of details removed.

**U 155 Access to register**

- (1) The register kept by a health profession board must be open for inspection by the public at reasonable times.
- (2) However, information that is not required to be included in the register under section 152 (Contents of register) need not be available to the public.
- (3) Also, the health profession board need not allow public inspection of a condition on the registration of a person if—
  - (a) the condition contains information about someone other than the registered person that the board is satisfied is, or may possibly be, confidential; or
  - (b) in the board's opinion, the benefit to the public of knowing the condition is outweighed by the personal or prejudicial nature of the condition.
- (4) The health profession board may, if asked, give someone a copy of, or extract from, the register.

*Note* If a fee is determined under the Act, s 132 for a request under s (4), the fee must be paid.

**U 156 Requests for changes of details in register**

- (1) A person may apply to the health profession board for a change to be made to the information in the register kept by the board.

- (2) If someone applies for a change, the health profession board must consider whether the change is necessary and tell the applicant, in writing, whether the board considers the change necessary.

*Note* Because the health profession board is required to keep the register current and accurate, if the board considers the change necessary the board must make the change under s 151 (4).

**U** **157** **When board must not charge fees etc for register corrections**

A health profession board may not charge a fee, or must refund any fee paid, on application for a change in the register kept by the board if the change is necessary because of a mistake of the board.

**158** **Modifications of Act, pt 15—Act, s 152**

- (1) The Act is modified by schedule 15.
- (2) This section, and schedule 15, expire on 18 November 2006.

**U** **Schedule 1 Regulated professions**

(see s 4 )

<b>column 1 item</b>	<b>column 2 health profession board</b>	<b>column 3 health profession</b>	<b>column 4 relevant schedule</b>
1	ACT Medical Board	medical practitioners	2

**U** **Schedule 2**      **Medical practitioners**

(see s 4 and sch 1)

**2.6**      **Medical board membership—Act, s 24**

- (1) The medical board is made up of the president and the following people:
  - (a) 3 elected members;
  - (b) 5 appointed members, 2 of whom are community representatives.
- (2) The community representatives must be people who are not entitled to be registered under the Act.
- (3) One of the community representatives must be a lawyer who has been a lawyer for at least 5 years before the day of appointment.

## Schedule 15 Modifications of Act

(see s 158)

### [15.1] Section 137 (1)

*substitute*

- (1) This section applies to a health profession regulated under a repealed Act.

### [15.2] Section 139 (1)

*substitute*

- (1) This section applies if a person was registered under a repealed Act immediately before its repeal and the registration was subject to a condition.

### [15.3] New sections 150A to 150J

*insert*

#### 150A People previously registered under repealed Act

A reference in section 77 (Meaning of *registered health professional* for div 9.2) to a person who was registered at the time of an act or omission includes a reference to a person who was registered under a repealed Act at that time, whether or not the person is, or has at any time been, registered under this Act.

#### 150B People previously registered under Act or repealed Act

In this Act:

*registered health professional*, in relation to a report under division 9.2 or a complaint, includes a person who was registered under this Act or a repealed Act at the time of the act or omission reported or complained about.



**150C Existing inquiries**

To remove any doubt, in an inquiry to which section 140 applies, anything done by a board in relation to a person registered at any time by the board, as part of an inquiry or otherwise, may, but need not, be done again under this Act by the health profession board that regulates a profession in relation to which the board was established.

**150D Application of s 26 (3)**

Section 26 (3) applies to a health profession board that wants to suspend or cancel a health professional's registration before 8 July 2006 as if it read as follows:

- '(3) If a health profession wants a health professional's registration suspended or cancelled, the board cannot suspend or cancel the registration itself, but may apply to the health professions tribunal for suspension or cancellation.'

**150E Application of s 37 (5) (c)**

Section 37 (5) (c) applies to regulations made before 8 July 2006 as if it read as follows:

- '(c) when (in addition to the circumstances already prescribed under this Act) a health profession may apply for the suspension or cancellation of registration; and'

**150F Application of s 84 (2) (e) and s 84 (3)**

- (1) This section applies to a notice under section 84 (2) given before 8 July 2006.
- (2) Section 84 (2) (e) applies in relation to the notice as if the word 'maximum' were inserted before the word 'period'.
- (3) Section 84 (3) applies in relation to the notice as if the word 'maximum' were inserted before the word 'period'.

**150G Application of s 86 (3) (b)**

- (1) This section applies to a matter to which part 10 (Joint consideration with commissioner) applies if the matter is considered before 8 July 2006.
- (2) Section 86 (3) (b) applies to the matter as if it read as follows:  
‘(b) apply to the tribunal for the suspension or cancellation of the registration of the health professional to whom the matter relates;’.

**150H Application of s 122 (2) (i) and s 122 (3)**

- (1) This section applies if, before 8 July 2006, a professional standards panel is satisfied that a health professional has done something mentioned in section 122 (1).
- (2) The professional standards panel may take action under section 122 (2) (i) as if it read as follows:  
‘(i) refer the report, complaint, or application for a condition review, to the health profession board with—
  - (i) a recommendation that an application be made to the health profession tribunal for the suspension or cancellation of the health professional’s registration; and
  - (ii) the standards inquiry report on which the recommendation is based; and’.
- (3) Section 122 (3) does not apply if the professional standards panel acts under section 122 (2) (i) as modified by subsection (2).

**150I Applications to health professions tribunal**

- (1) This section applies to an application for the suspension or cancellation of the health professional’s registration made before 8 July 2006.

- 
- (2) For this Act, an application by a health profession board to the health professions tribunal for the suspension or cancellation of the health professional's registration is to be dealt with by the tribunal, as far as practicable, in the same way as an application for review under part 7.
  - (3) To remove any doubt, the parties to the application are the health profession board making the application, the health professional to whom the application relates and, with the tribunal's leave, anyone else.
  - (4) In deciding whether to suspend or cancel the registration, the health professions tribunal must consider whether—
    - (a) the health professional has contravened a standard of practice that applied to the health professional; or
    - (b) the health professional is putting, or has put, public safety at risk.

**150J Appointment and election of health profession board members before Act fully commenced**

- (1) This section applies to any of the following powers under this Act that are to be, or have been, exercised in relation to a health profession board:
  - (a) a power to make an appointment to the board;
  - (b) a power to make a statutory instrument for the purposes of the board;
  - (c) a power to do anything in relation to the conduct of an election for members of the board.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (2) To remove any doubt, the Legislation Act, section 81 (Exercise of powers between notification and commencement) is taken to apply, or is taken to have applied, to the exercise of the power even if—
- (a) the power was exercised before the commencement of this section; or
  - (b) the power is exercised before this Act has fully commenced.
- (3) For the exercise of the power, this Act is taken to have fully commenced at the time of the exercise of the power.
- (4) Anything done, or purported to have been done, under this Act before the commencement of this section has effect after that commencement as if this section (and every other provision of this Act) had been in force when the thing was done.
- Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).
- (5) Subsection (4) is additional to subsections (2) and (3).
- (6) This section is additional to the Legislation Act, section 81.

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## Dictionary

(see s 3)

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

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

- disallowable instrument (see s 9)
- electoral commissioner
- Executive
- function
- penalty unit (see s 133)
- person
- under.

*Note 3* Terms used in this regulation have the same meaning that they have in the *Health Professionals Act 2004* (see Legislation Act, s 148.) For example, the following terms are defined in the *Health Professionals Act 2004*, dict:

- community representative list
- corresponding law
- health profession board
- local jurisdiction
- relevant health profession board (see s 19)
- report.

*act* includes fail to act.

*ballot paper envelope*, for part 2.3 (Elections)—see section 23.

*board deputy president*—see section 6.

*board president*—see section 5.

**board member**, of a health profession board, means each of the following of the health profession board:

- (a) the board president;
- (b) the board deputy president;
- (c) a board member appointed under section 10;
- (d) a board member elected under part 2.3 (Elections).

**bribery**, for division 2.3.4 (Disputed elections)—see section 62.

**casual vacancy**, for division 2.3.3 (Casual and temporary vacancies in elected positions)—see section 53.

**close of poll day**, for an election for a health profession, for part 2.3 (Elections)—see section 24 (1) (d).

**closing time for applications**, for division 2.3.3 (Casual and temporary vacancies in elected positions)—see section 56 (2) (Candidates for casual vacancy).

**contravention**, of a section of the Act or the *Crimes Act 1914* (Cwlth), for division 2.3.4 (Disputed elections)—see section 62.

**Court of Disputed Health Elections**, for division 2.3.4 (Disputed elections)—see section 63 (2).

**disputed election application**, for division 2.3.4 (Disputed elections)—see section 62.

**drug of dependence**—see the *Drugs of Dependence Act 1989*, section 3 (1).

**election**, for a health profession—

- (a) for part 2.3 (Elections)—see section 23; and
- (b) for division 2.3.4 (Disputed elections)—see section 62.

**election start day**, for an election for a health profession, for part 2.3 (Elections)—see section 24 (1) (a).

*elector*, for an election for a health profession—see section 37.

*Electoral Act*, for part 2.3 (Elections)—see section 23.

*eligible*, for part 2.3 (Elections)—see section 23.

*file*, for division 2.3.4 (Disputed elections)—see section 62.

*former board member*, for division 2.3.3 (Casual vacancies in elected positions)—see section 53.

*hour of nomination*, for an election for a health profession, for part 2.3 (Elections)—see section 30.

*issue of papers day*, for an election for a health profession, for part 2.3 (Elections)—see section 24 (1) (c).

*leave application*, for division 2.3.4 (Disputed elections)—see section 62.

*list of health professionals*, for an election for a health profession, for part 2.3 (Elections)—see section 26.

*medical board* means the ACT Medical Board (see sch 1).

*nomination close day*, for an election for a health profession, for part 2.3 (Elections)—see section 24 (1) (b).

*officer*, for part 2.3 (Elections)—see section 23.

*partial failure*, for division 2.3.3 (Casual and temporary vacancies in elected positions)—see section 53.

*practising certificate* means a certificate given to a registered health professional under section 121 (Practising certificate), section 122 (Replacement practising certificates) or section 123 (4) (Return of practising certificate).

*preliminary scrutiny*, for part 2.3 (Elections)—see section 23.

*proceeding*, for division 2.3.4 (Disputed elections)—see section 62.

*registrar*, for division 2.3.4 (Disputed elections)—see section 62.

**registration end date**—see section 121 (c).

**renewal notice**—see section 126 (1).

**scrutiny centre**, for an election for a health profession, for part 2.3 (Elections)—see section 23.

**specialist area**, for a health profession—

- (a) means an area prescribed as a specialist area for the profession under the schedule for the profession; and
- (b) includes a sub-specialist area prescribed under the schedule.

**standards statement**—see section 134.

**undue influence**, for division 2.3.4 (Disputed elections)—see section 62.



## Endnotes

### 1 About the endnotes

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

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

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

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

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

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

## Endnotes

3 Legislation history

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### 3 Legislation history

This regulation was originally the *Health Professionals Regulations 2004*. It was renamed by the *Health Professionals Amendment Regulation 2004 (No 1)* SL2004-52 s 4.

#### **Health Professionals Regulation 2004 SL2004-41**

notified LR 6 September 2004

s 1, s 2 commenced 6 September 2004 (LA s 75 (1))

ch 1, ch 2, dict commenced 18 November 2004 (s 2 (1) as am by SL2004-52 s 4)

s 158, sch 15 commenced 22 November 2004 (s 2 (2) and CN2004-26)

remainder awaiting commencement (s 2 (2) as am by SL2004-52 s 4)

*Note 1* default commencement under s 2 (3): 8 July 2005

*Note 2* default commencement under LA s 79 does not apply to this regulation

as amended by

#### **Health Professionals Amendment Regulation 2004 (No 1) SL2004-52**

notified LR 17 November 2004

s 1, s 2 commenced 17 November 2004 (LA s 75 (1))

remainder commenced 18 November 2004 (s 2)

### 4 Amendment history

#### **Name of regulation**

s 1 sub SL2004-52 s 4

#### **Commencement**

s 2 sub SL2004-52 s 4

#### **Consultation about appointment to board**

s 11 am SL2004-52 s 5

#### **General**

div 2.3.1 hdg note ins SL2004-52 s 6

#### **Dates for elections**

s 24 am SL2004-52 s 7

#### **If no board president**

s 25 om SL2004-52 s 8

**List of health professionals**

s 26 am SL2004-52 s 9

**If no more candidates than positions**

s 34 am SL2004-52 s 10

**If no candidates**

s 35 am SL2004-52 s 14

**Declaration etc of results**

s 48 am SL2004-52 s 14

**Application of ch 2 to first elections and suspended boards**

div 2.3.1A hdg renum as div 2.3.2 hdg

**Application of ch 2 to first elections and suspended boards**

div 2.3.2 hdg orig div 2.3.2 hdg renum as div 2.3.3 hdg  
(prev div 2.3.1A hdg) ins SL2004-52 s 11  
renum R1 LA (see SL2004-52 s 12)

**Application of ch 2 to first election for professions previously unregulated under the Act**

s 52A ins SL2004-52 s 11  
ss (7)-(11) exp 8 July 2006 (s 52A (11))

**Application of ch 2 to first election of medical board under Act**

s 52B ins SL2004-52 s 11  
exp 8 July 2005 (s 52B (10))

**Application of ch 2 to elections if board suspended**

s 52C ins SL2004-52 s 11

**Casual and temporary vacancies in elected positions**

div 2.3.3 hdg orig div 2.3.3 hdg renum as div 2.3.4 hdg  
(prev div 2.3.2 hdg) renum R1 LA (see SL2004-52 s 12)

**Notice of long casual vacancy**

s 54 am SL2004-52 s 14

**Publication of notice about casual vacancy**

s 55 am SL2004-52 s 14

**Publication of candidates' details**

s 57 am SL2004-52 s 14

**Determination of candidate to fill vacancy**

s 58 am SL2004-52 s 14

**Board nominees**

s 59 am SL2004-52 s 14

**Disputed elections**

div 2.3.4 hdg orig div 2.3.4 hdg renum as div 2.3.5 hdg  
(prev div 2.3.3 hdg) renum R1 LA (see SL2004-52 s 12)

## Endnotes

### 5 Earlier republications

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**Registrar to serve copies of disputed election application**

s 70 am SL2004-52 s 14

**Illegal election practices**

s 78 am SL2004-52 s 14

**Registrar to serve copies of court declarations on certain people**

s 86 am SL2004-52 s 14

**Electoral offences**

div 2.3.5 hdg (prev div 2.3.4 hdg) renum R1 LA (see SL2004-52 s 12)

**Modifications of Act, pt 15—Act, s 152**

s 158 ins SL2004-52 s 13  
exp 18 November 2006 (s 158 (2))

**Medical practitioners**

sch 2 s renum R1 LA

**Modifications of Act**

sch 15 ins SL2004-52 s 15  
mods renum R1 LA  
exp 18 November 2006 (s 158 (2))

### 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R1 18 Nov 2004	18 Nov 2004— 21 Nov 2004	SL2004-52	new regulation, amendments by SL2004-52 and includes editorial amendments under Legislation Act

**6 Uncommenced provisions**

Chapter 3, chapter 4, chapter 5, schedule 1 and schedule 2 were uncommenced at the republication date but have been included in this republication with the symbol **U** immediately before the provision headings.

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