Health Practitioner Regulation National Law (ACT) Act 2010

A2010-10

Republication No 6
Effective: 1 January 2018

Republication date: 1 January 2018

Last amendment made by A2017-14
(republication for amendments by A2016-55
as amended by A2017-14)
About this republication

The republished law
This is a republication of the Health Practitioner Regulation National Law (ACT) Act 2010 (including any amendment made under the Legislation Act 2001, part 11.3 (Editorial changes)) as in force on 1 January 2018. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 1 January 2018.

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):

- 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 Parliament 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, the symbol [U] appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register (www.legislation.act.gov.au). For more information, see the home page for this law on the register.

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 the Legislation Act 2001, section 95.

Penalties
At the republication date, the value of a penalty unit for an offence against this law is $150 for an individual and $750 for a corporation (see Legislation Act 2001, s 133).
# Health Practitioner Regulation National Law (ACT) Act 2010

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Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au
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**Modifications—Health Practitioner Regulation National Law**

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Health Practitioner Regulation National Law (ACT) Act 2010

An Act about health practitioner regulation, and for other purposes
Part 1 Preliminary

1 Name of Act

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

3 Dictionary

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

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

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

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

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

5 Notes

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

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.
Part 2  Adoption of Health Practitioner Regulation National Law

6 Application of Health Practitioner Regulation National Law

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

(a) applies as a territory law, as modified by schedule 1; and

(b) as so applying may be referred to as the Health Practitioner Regulation National Law (ACT); and

(c) so applies as if it were a part of this Act.

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

In the Health Practitioner Regulation National Law (ACT):

magistrates court means the Magistrates Court.

the State means the Territory.

this jurisdiction means the ACT.

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

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

Note  Responsible tribunal—see the Health Practitioner Regulation National Law (ACT), s 5.
9 **Exclusion of territory laws**

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

(a) the *Annual Reports (Government Agencies) Act 2004*;

(b) the *Auditor-General Act 1996*;

(c) the *Criminal Code 2002*;

(d) the *Financial Management Act 1996*;

(e) the *Freedom of Information Act 2016*;

(f) the *Legislation Act 2001*;

(g) the *Ombudsman Act 1989*;

(h) the *Public Sector Management Act 1994*.

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

10 **Regulation-making power**

The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act*. 
(see s 6)

[1.1] New section 35A

insert

35A National Board consideration of criminal history

(1) In making a decision under this Act that relates to an individual’s criminal history, a National Board must consider—

(a) the individual’s criminal record; and

(b) the inherent requirements of the profession, division or recognised specialty, for which the individual is seeking registration; and

(c) whether or not there is a high degree of direct connection between the individual’s criminal record and the inherent requirements of the profession, division or recognised specialty.

(2) If guidelines have been made by the National Board for this section, the board must also consider the guidelines when making the decision.

[1.2] Section 150 (1)

omit everything before paragraph (a), substitute

(1) If a National Board receives a complaint, the board must, as soon as practicable after its receipt—
[1.3] New section 150 (4A)

insert

(4A) The action that may be taken in relation to a notification or complaint, or part of a notification or complaint, from most serious to least serious, is as follows:

(a) deal with the notification or complaint, or part, under part 8, division 7 (Immediate action);

(b) refer the notification or complaint, or part, to the responsible tribunal under part 8, division 12 (Referring matter to responsible tribunals);

(c) refer the notification or complaint, or part, to the health complaints entity to be considered under the Human Rights Commission Act 2005;

(d) investigate the notification or complaint, or part, under part 8, division 8 (Investigations);

(e) deal with the notification or complaint, or part, as a professional standards matter under part 8, division 11 (Panels);

(f) deal with the notification or complaint, or part, as a health matter under part 8, division 11 (Panels);

(g) take action under part 8, division 10 (Action by National Board);

(h) decide to take no further action in relation to the notification, complaint, or part, in accordance with section 151 (When National Board may decide to take no further action).
[1.4] Section 150 (5)

*omit*

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

*substitute*

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

[1.5] New section 150 (5A)

*insert*

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

[1.6] Section 151 (1)

*omit*

A National Board

*substitute*

Subject to section 150, a National Board

[1.7] Section 152 (2)

*substitute*

(2) The notice must advise the registered health practitioner or student of—

(a) the nature of the notification; and

(b) the powers that the board might exercise in relation to the notification; and
(c) the procedural rights that the health practitioner or student has under this Act.

(2A) If a National Board approves a form for the notice, the notice must be in the approved form.

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

*omit*

A National Board

*substitute*

Subject to section 150, a National Board

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

*insert*

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

**[1.10] Section 167**

*omit everything before paragraph (a), substitute*

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

(1) The National Board must consider the investigator’s report jointly with the health complaints entity and attempt to reach agreement on how the matter that is the subject of the report is to be dealt with.

(2) After consideration under subsection (1), the National Board must decide—
[1.11] New section 167 (3) and (4)

insert

(3) However, if the National Board and the health complaints entity are not able to reach agreement on how the matter is to be dealt with, the decision of the board under subsection (2) must be to take the most serious action proposed by either the board or the health complaints entity.

(4) The actions that may be taken in relation to the matter, from most serious to least serious, are the actions set out in section 150 (4A).

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

insert

(ca) the powers that the board might exercise in relation to the assessment; and

(cb) the procedural rights that the health practitioner or student has under this Act.

[1.13] New section 172 (3)

insert

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

[1.14] Section 175

omit

The assessor must

substitute

(1) The assessor must
[1.15] New section 175 (2)

insert

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

[1.16] Section 177

omit everything before paragraph (a), substitute

177 Joint decision by National Board and health complaints entity

(1) The National Board must consider the report and discussions held with the registered health practitioner or student under section 176 (3).

(2) If the assessor’s report relates to a performance assessment, the consideration must be joint consideration with the health complaints entity, and the National Board and health complaints entity must attempt to reach agreement on how the registered health practitioner or student is to be dealt with.

(3) After consideration, the National Board may decide to—

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

insert

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

[1.18] New section 178 (1A) 

\[\text{insert}\]

(1A) This section also applies if—

(a) on jointly considering a notification, complaint or other matter, the health complaints entity is satisfied on reasonable grounds that the National Board should take action under subsection (2) (a), (b) or (c) in relation to a registered health practitioner or student registered by the board; and

(b) the action proposed by the health complaints entity to be taken by the board is more serious than any other action proposed by the board to be taken.

[1.19] New section 178 (4) 

\[\text{insert}\]

(4) If this section applies in relation to a registered health practitioner or student registered by the board because of subsection (1A), the National Board must—

(a) jointly consider with the health complaints entity the action to be taken under subsection (2) (a), (b) or (c); and

(b) take the action agreed after joint consideration.

[1.20] New section 184 (3) 

\[\text{insert}\]

(3) The panel must also give a copy of the notice to the health complaints entity as soon as practicable.
[1.21] New section 185 (4)
insert
(4) A panel must have regard to evidence given by the health complaints entity under section 186A.

[1.22] New section 186A
insert

186A Role of health complaints entity
At a hearing of a panel, the health complaints entity may—
(a) be represented; and
(b) give evidence about the consideration of a complaint or other matter by the health complaints entity; and
(c) be present at the hearing even if not giving evidence.

[1.23] New section 192 (3A)
insert
(3A) The National Board must also, within 30 days after the panel makes its decision, give the health complaints entity a copy of the notice given to the registered health practitioner or student.

[1.24] Schedule 5, part 1, clause 2 (3)
substitute
(3) For subclauses (1) and (2), it is not a reasonable excuse for an individual to fail to give stated information, answer a question or produce a document only because giving the information, answering the question or producing the document might tend to incriminate the individual.
(4) However—

(a) the information, answer or document required to be given, answered or provided by the individual is not admissible in evidence against the individual in a criminal proceeding, other than a proceeding for—

(i) an offence against this schedule; or

(ii) an offence in relation to the falsity of the information, answer or document; and

(b) evidence that was discovered as a result of the information or answer, and that could not have been discovered but for the giving of the information or answering of the question, is not admissible against the individual in a criminal proceeding.

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

substitute

(3) For subclauses (1) and (2), it is not a reasonable excuse for an individual to fail to give stated information, answer a question or produce a document only because giving the information, answering the question or producing the document might tend to incriminate the individual.

(4) However—

(a) the information, answer or document required to be given, answered or provided by the individual is not admissible in evidence against the individual in a criminal proceeding, other than a proceeding for—

(i) an offence against this schedule; or

(ii) an offence in relation to the falsity of the information, answer or document; and
(b) evidence that was discovered as a result of the information or answer, and that could not have been discovered but for the giving of the information or answering of the question, is not admissible against the individual in a criminal proceeding.
Dictionary

(see s 3)

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

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

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

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

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

1 About the endnotes

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 are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

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

A = Act
AF = Approved form
am = amended
amdt = amendment
AR = Assembly resolution
ch = chapter
CN = Commencement notice
def = definition
dict = dictionary
disallowed = disallowed by the Legislative Assembly
exp = expires/expired
Gaz = gazette
hgd = heading
IA = Interpretation Act 1967
ins = inserted/added
LA = Legislation Act 2001
LR = legislation register
LRA = Legislation (Republication) Act 1996
mod = modified/modification

NI = Notifiable instrument
om = omitted/repealed
ord = ordinance
orig = original
par = paragraph/subparagraph
pres = present
prev = previous
(prev...) = previously
pt = part
r = rule/subrule
reloc = relocated
renum = renumbered
R[X] = Republication No
s = section/subsection
sch = schedule
sdiv = subdivision
SL = Subordinate law
sub = substituted
underlining = whole or part not commenced or to be expired
3 Legislation history

Health Practitioner Regulation National Law (ACT) Act 2010 A2010-10
notified LR 31 March 2010
s 1, s 2 commenced 31 March 2010 (LA s 75 (1))
amdt 2.106 commenced 1 July 2012 (s 2 (2))
remainder commenced 1 July 2010 (s 2 (1) (a))

as modified by

notified LR 24 June 2010
s 1, s 2 commenced 24 June 2010 (LA s 75 (1))
s 3 commenced 1 July 2010 (s 2 and see Health Practitioner Regulation National Law (ACT) Act 2010 A2010-10 s 2 (1) (a))

Health Practitioner Regulation National Law (ACT) (Transitional Provisions) Regulation 2010 (No 2) SL2010-39 s 3
notified LR 11 October 2010
s 1, s 2 commenced 11 October 2010 (LA s 75 (1))
s 3 commenced 12 October 2010 (s 2)

as amended by

notified LR 26 August 2016
s 1, s 2 commenced 26 August 2016 (LA s 75 (1))
sch 4 pt 4.14 commenced 1 January 2018 (s 2 as am by A2017-14 s 19)

Justice and Community Safety Legislation Amendment Act 2017 (No 2) A2017-14 s 19
notified LR 17 May 2017
s 1, s 2 commenced 17 May 2017 (LA s 75 (1))
s 19 commenced 24 May 2017 (s 2 (1))

Note This Act only amends the Freedom of Information Act 2016 A2016-55.
Endnotes

4 Amendment history

4 Amendment history

Commencement
s 2 om LA s 89 (4)

Exclusion of territory laws
s 9 am A2016-55 amdt 4.16

Review of Act
s 11 exp 1 July 2012 (s 11 (2))

Local provisions
pt 3 hdg exp 1 July 2012 (s 15)

Amendment of legislation
div 3.1 hdg exp 1 July 2012 (s 15)

Legislation amended—sch 2
s 12 exp 1 July 2012 (s 15)

Modification—Health Act 1993
s 12A ins as mod SL2010-39 s 3
exp 1 July 2012 (see SL2010-39 s 4)

Transitional provisions
div 3.2 hdg exp 1 July 2012 (s 15)

Transitional regulations
s 13 exp 1 July 2012 (s 15)

Modification—sch 1
s 13A ins as mod SL2010-25 s 3
exp 1 July 2012 (see SL2010-25 s 4)

Annual reports for old boards
s 14 exp 1 January 2011 (s 14 (3))

Expiry—pt 3
s 15 exp 1 July 2012 (s 15)

Modifications—Health Practitioner Regulation National Law
sch 1 mod SL2010-25 s 3 (see endnote 6)
mod 1.23A, mod 1.23B exp 1 July 2012 (see SL2010-25 s 4)

Consequential amendments
sch 2 hdg om LA s 89 (3)

Administrative Decisions (Judicial Review) Act 1989
sch 2 pt 2.1 om LA s 89 (3)

Children and Young People Act 2008
sch 2 pt 2.2 om LA s 89 (3)
Civil Law (Wrongs) Act 2002
  sch 2 pt 2.3 om LA s 89 (3)

Corrections Management Act 2007
  sch 2 pt 2.4 om LA s 89 (3)

Crimes Act 1900
  sch 2 pt 2.5 om LA s 89 (3)

Crimes (Forensic Procedures) Act 2000
  sch 2 pt 2.6 om LA s 89 (3)

Health Act 1993
  sch 2 pt 2.7 om LA s 89 (3)

Health Professionals Act 2004
  sch 2 pt 2.8 om LA s 89 (3)

Health Professionals Regulation 2004
  sch 2 pt 2.9 om LA s 89 (3)

Health Professionals (Special Events Exemptions) Act 2000
  sch 2 pt 2.10 om LA s 89 (3)

Health Records (Privacy and Access) Act 1997
  sch 2 pt 2.11 om LA s 89 (3)

Human Rights Commission Act 2005
  sch 2 pt 2.12 om LA s 89 (3)

Legislation Act 2001
  sch 2 pt 2.13 om LA s 89 (3)

Medicines, Poisons and Therapeutic Goods Act 2008
  sch 2 pt 2.14 om LA s 89 (3)

Medicines, Poisons and Therapeutic Goods Regulation 2008
  sch 2 pt 2.15 om LA s 89 (3)

Mental Health (Treatment and Care) Act 1994
  sch 2 pt 2.16 om LA s 89 (3)

Public Health Act 1997
  sch 2 pt 2.17 om LA s 89 (3)

Radiation Protection Act 2006
  sch 2 pt 2.18 om LA s 89 (3)

Transplantation and Anatomy Act 1978
  sch 2 pt 2.19 om LA s 89 (3)

Victims of Crime (Financial Assistance) Act 1983
  sch 2 pt 2.20 om LA s 89 (3)
Endnotes

4 Amendment history

Victims of Crime Regulation 2000
sch 2 pt 2.21 om LA s 89 (3)

Workers Compensation Act 1951
sch 2 pt 2.22 om LA s 89 (3)

Workers Compensation Regulation 2002
sch 2 pt 2.23 om LA s 89 (3)
5 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. Electronic and printed versions of an authorised republication are identical.

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