



Submission of the Health Quality and Complaints Commission, Queensland

Exposure draft of the *Health
Practitioner Regulation National Law
2009* (Bill B)

17 July 2009

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1. Introduction

The Health Quality and Complaints Commission (HQCC) supports the establishment of a national registration and accreditation scheme for health professionals and welcomes the opportunity to comment on the complaints handling arrangements proposed in the *Health Practitioner Regulation National Law* (Bill B).

The objectives of the proposed scheme and the HQCC are distinct and separate. Bill B is focused on establishing and maintaining a high quality mobile workforce through the national registration and accreditation of health professionals. It offers protection to the public by ensuring that only suitably qualified and competent practitioners are registered to practise in their chosen profession. Part 8 of Bill B, '*Complaints, performance, health and conduct*', acts as an adjunct to this function by providing a mechanism for dealing with individuals who act in a manner inconsistent with the standards and expectations of their professional peers.

The HQCC, on the other hand, is an independent statutory body charged with protecting the Queensland public by identifying opportunities to promote quality improvement across all health services. This is achieved, in part, by the independent and impartial review and management of consumer healthcare complaints. We also conduct investigations into broader health service quality and systemic issues. The HQCC reviews all matters holistically with the primary aim of identifying opportunities, and making recommendations, for quality improvement in health services.

Importantly, the HQCC also offers consumers an opportunity to resolve complaints directly with their healthcare provider or through our conciliation process.

Through each of its functions, the HQCC collects crucial data that may indicate trends or patterns of practice, both at the individual practitioner and systemic levels. This data not only informs recommendations for quality improvement, but also whether a Board referral is warranted. Such data is not currently collated by any other organisation in Queensland.

The current legislative scheme in Queensland ensures there is appropriate and regular consultation between the HQCC and the Practitioner Registration Boards, enabling each to achieve their statutory functions. For example, a complaint can be 'split', with the relevant Board managing the professional practice issues of an individual while the HQCC conciliates a resolution between that individual and the consumer. Board investigation reports are also provided to the HQCC so we can consider any systemic implications arising from the matter.

The HQCC submissions are directed to improving the opportunities for resolving consumer complaints while maintaining the advantages of current arrangements.

The HQCC is concerned about the very limited time it has had to consider the draft Bill B, particularly given the complexity of the legislation. Unlike other states, Queensland will have limited opportunity for further consultation or amendments under a 'Bill C'. We strongly recommend a second round of consultation before Bill B is considered by the Queensland Cabinet and certainly before it is tabled in the Queensland Parliament.

Professor Michael Ward
Commissioner

Mrs Cheryl Herbert
Chief Executive Officer

2. The complaint process

Part 8 Complaints, performance, health and conduct

The draft Bill B complaint process is depicted in the diagram at Attachment 1. In short, complaints about registrants are to be made to the National Agency, which will transfer the matter to the relevant National Board. The National Board will then inform itself about whether the complaint concerns a ground mentioned in section 155 and whether a local Health Complaints Entity (HCE) also has jurisdiction. A copy of the complaint, together with any relevant information, must then be provided to the HCE *and* the Public Interest Assessor (PIA) or Independent Assessor (IA). The PIA or IA will oversee the Board's decision for action.

The HCE is also required to provide copies of all consumer complaints about registrants to the relevant National Boards. In other words, both organisations will, in many cases, have jurisdiction to assess or take action upon the same complaint. The HQCC appreciates the intent of the complaint exchange, but is concerned that the draft Bill B does not provide a mechanism for the HCE and the National Boards to consult and decide which complaints will be assessed, and by which organisation.¹ For example, there is no provision to consult about whether it is a matter that the HCE or Board can properly accept or to advise about the steps each intends to take for its own purposes. Under the current scheme in Queensland, the consultation process ensures operational efficiency for the Boards and HQCC, and by default, offers more certainty for consumers and providers.

As the proposed legislation stands, there may be as many as four separate examinations of a single complaint. This will have the flow-on effect of providers and consumers potentially receiving multiple notifications from different bodies about the management of the one matter. This will inevitably cause delays, unnecessary duplication for providers and consumers, and the potential for the Boards and the HCE to reach different decisions on the same matter. Other consequences include uncertainty in avenues of review (to State and Commonwealth Ombudsmen, for example) and the potential for double jeopardy.

We submit it would be overwhelming and unhelpful for the HCEs and the Boards to automatically provide each other with copies of complaints and supporting information without an initial consultation. The current draft of the complaint scheme will not only complicate matters for consumers, but will increase costs for the HCEs and the Boards. The volume of complaints that can be expected in the automatic exchange will be considerable.

Finally, we are concerned that Bill B does not provide time frames for passing on consumer complaints to the local HCE or the PIA/IA. Around 80 per cent of consumer complaints in Queensland are resolved within 30 days of the complaint being made to the HQCC; that is, before any formal assessment takes place. The 60 day assessment time frame proposed in section 164 of the draft Bill B will seriously impede this very effective and existing early resolution opportunity.

Proposed solution

Section 164, Time frames and early resolution

To maximise the opportunity for an early resolution of consumer complaints, we submit that there should be a requirement to refer all consumer complaints to the HCE, either '*immediately*' or at most, within 14 days.

If our recommendations for amendments to the complaints process under sections 165 and 166 are *not* adopted, we submit that provision be made for the National Boards to satisfy themselves that a consumer has made a proper effort to resolve the complaint directly with the provider. That is, before the National Board is required to commence an assessment under section 164 [refer s59(2) HQCC Act for an example].

¹ The HQCC Act, for example, requires us to consult with Registration Boards before making a formal referral to those Boards [refer sections 50(2)(b), 61(2)(c), 76(1)(a), 81(3)(a)(i), 87(2), 91(2) HQCC Act].

Sections 165 and 166, Complaints process

We submit that sections 165 and 166 be combined into one process. This is depicted in the diagram in Attachment 2.

1. The National Boards must '*immediately*' or, at most, within 14 days refer all consumer complaints to the local HCE [refer s51 *Health Practitioners (Professional Standards) Act 1999* Qld (HPPSA) for an example provision].
2. The local HCE will be the PIA for the relevant participating jurisdictions, or the HQCC is to be appointed as the State IA for Queensland. (In the former case, it will be necessary to make consequential amendments to the PIA currently being limited to a 'person' employed by the National Agency.)

In either case, a consequential amendment to confirm this role will need to be included in each of the local HCE Acts.

3. The Board must notify the HCE of all complaints it receives about health practitioners. It must discuss its proposed assessment action with the HCE with a view to reaching agreement about the steps each intends to take on the matter, including referral to the HCE. If agreement cannot be reached, the HCE position (as the PIA/IA) will prevail.

The HQCC submits that the decisions for action will include the matters currently listed in section 165(4) but expanded to include the ability to refer a matter to the HCE or other entity which has appropriate functions or powers to deal with the matter. This should include relevant State and Commonwealth agencies and employers.

The HQCC submits it is unnecessary to list an order of seriousness. A collaborative approach is preferred, with the HCE having a final power of veto in the unusual event agreement cannot be reached.

We further submit it is unnecessary to stipulate that only one action at any one time is appropriate for each complaint. It might, for example, be appropriate for a Board to conduct a performance assessment while the HCE conducts an investigation. Alternatively, a Board could conduct an investigation, following which an HCE could facilitate conciliation. It might also be appropriate for a National Board to take more than one step in a matter at the same time. Appropriate flexibility should be reflected in the scheme.

4. If the HCE receives a complaint that involves a registrant of a National Board it will first consult that National Board before the matter is formally referred.
5. If the HCE accepts a matter for assessment or other process, the Board will not take any further action until the HCE process is complete and vice versa, unless otherwise agreed.² This will avoid the potential for duplication and inconsistency in the decisions reached and will increase the amount of information available to each other at the time of any later referral.
6. Include a provision to enable the National Boards and HCEs to reject a complaint on the basis it has been adequately and appropriately dealt with by another entity, including an HCE or disciplinary tribunal (this implies a consultation process) [refer s63(2) HQCC Act for example].

Information exchange

The draft Bill B enables the National Boards to decide that a complaint relates to a section 155 ground on the basis of '*complaints made to a health complaints entity*' [Part 8, s164(2)]. This assumes that trending and pattern of practice data will be shared by the HCE and the National Boards but there is currently no provision to give effect to this intention.

We submit that a form of section 166 draft Bill B be retained so that when a matter is referred to an HCE, the Board must provide a copy of the complaint, or record of complaint, and any other relevant information to the HCE, and vice versa. We are however concerned that the current draft will not provide sufficient protection to enable the exchange of information between the National Agency, National Boards and the HCEs.

² This idea is mirrored in the HQCC Act for circumstances where the HQCC is precluded from acting during the course of particular Board actions [refer section 66(4) and 57(3) and (5) HQCC Act]

The provision should be expanded to specifically include any trending or pattern of practice data held by the National Agency or National Boards which the HCE considers relevant to a particular matter or to its functions, and vice versa.

Notification about National Board and panel processes

We submit that provisions be included for notification to be made to the local HCE about all decisions to take action under the processes for performance assessment, professional standards panels, health assessments, and health assessment panels.

The HCE should have the ability to seek updates and to receive notification about the outcome of all National Board complaints processes under Part 8. This will ensure no residual matter of potential concern to an HCE is overlooked.

There should also be scope for consultation between the National Boards and the HCE before a matter is referred to an HCE.³ (Similar provisions exist in the HQCC Act when deciding to refer a matter to the Boards at various points of the HQCC processes.)

Investigations

The investigation process in Part 8, subdivision 6, should also be drafted in a way that reflects our proposal for complaint assessments. The default position should be for the National Boards to provide a copy of all investigation reports to the local HCE [refer ss115 and 116 HPPSA] with an opportunity for the HCE to provide comment, preferably within a 14 day time frame.

We further submit that the local HCE be permitted to require updates on the progress of all Board investigations [refer s116 HPPSA]. This is currently an important source of systemic health quality information for the HQCC.

Again, we submit it is unnecessary, as currently in expressed section 241(3) Bill B, to list an order of seriousness or to stipulate that only one action at any one time is permitted.

The role of the PIA/IA

The role of the PIA/IA in the draft Bill B is relevant only to this part of the legislation. The PIA is a person employed by the National Agency and is the default position for the referral of certain Board decisions. Otherwise, an IA applies if one has been appointed by the relevant State Minister. The sole function of the PIA/IA is to oversee the decision making processes of the National Boards for their decisions about complaint assessments and investigations.

We understand that the role was created to satisfy consumer demands for independence in these processes. In our view, these aims can be better achieved by the solution we have proposed and by utilising the local, already existing, independent and impartial statutory HCEs. We are unaware of any Australian jurisdiction lacking an independent HCE. Independent oversight and consultation are certainly functions already being performed by the HCEs and so no additional costs (Commonwealth or State) should arise from the model we have recommended.

Specific provisions of Part 8

Section 153, How a complaint is made

The HQCC is concerned about the provision for oral complaints in section 153(1)(a). By way of example, the HQCC Act enables the HQCC to require a written version of the complaint unless it would be difficult or impossible for a complainant to comply. The HQCC receives more than 5,000 telephone enquiries each year of which around 2,600 are formalised as complaints.

Unless a similar requirement for written confirmation is included in Bill B, the National Agency, National Boards, HCEs and the PIA will be completely overwhelmed and, consequently, ineffective. Such a requirement will reduce the likelihood of frivolous, vexatious and trivial complaints being unnecessarily progressed.

³ Respectively, draft Bill B sections 178/179(1)(a)(viii), 189/190(1)(vii), 197/198(b)(iii), and 208/209(b)(iii).

Section 155, Grounds for complaint

The grounds for complaint should reflect the definitions intended to be captured (e.g. '*professional misconduct*', '*unprofessional conduct*', '*unsatisfactory professional performance*', '*impairment*' etc). Paraphrasing is likely to lead to confusion in interpretation.

Section 167, Rejection of a complaint

We submit that a mechanism for the National Boards be included to enable the Boards to reject a complaint under section 167 if a consumer has not taken all reasonable steps to resolve the matter directly with the health service provider [refer s59(2) HQCC Act].

We have already submitted that there should be an opportunity to reject a complaint on the basis that another entity has adequately and appropriately dealt with the matter [refer to our submissions about s165 and s166 of the draft Bill B, above].

Section 171, Parties to tribunal proceedings; Part 8 Division 7, Professional standards panels

The HQCC submits that its ability to intervene in tribunal and professional standards proceedings be retained [refer to s190 HQCC Act, s214(c) HPPSA].

Section 243, Reviewable decisions; section 244, Application for review

These sections require amendment to ensure that a matter cannot be reviewed if it is substantially the same as a matter which has already been decided upon. It is also unclear what constitutes a reviewable decision or how an application can be made. It appears that HQCC matters could be reviewed by a State ombudsman, but Board matters will be reviewed by the Commonwealth ombudsman. This may leave scope for multiple review avenues and differences in decisions reached.

3. Information exchange

As already noted, under the current regime in Queensland, Boards must keep the HQCC informed about investigations, disciplinary proceedings and decisions. We have submitted that a similar information exchange be incorporated into the national scheme.

The draft of Bill B provides that a '*person exercising functions under this Law may disclose protected information*' to relevant entities [Part 10, s265].

A full and unfettered mutual exchange of information must be retained under the national scheme to ensure that the National Agency, National Boards and the HCEs work collaboratively and in the interests of promoting patient safety and improving quality in health services. Sufficient protection must be provided to facilitate this important flow of information.

Proposed solution

We have submitted that the exchange of complaint information must include relevant trending or pattern of practice data if required by the National Boards or the HCE (refer to our proposals under 'the complaints process' above). We submit this should also incorporate the National Agency, which we understand will be capturing and collating this critical data on behalf of the National Boards.

We further submit that Part 10, s265 be amended to enable HCEs to *require* the National Agency and National Boards to comply with the HCE's requests for information relevant to the HCE's functions and vice versa [refer to the examples in ss188 and 189 HQCC Act]. Alternatively, such a provision could be included in Part 8, Division 12, Miscellaneous.

4. Miscellaneous submissions

Part 1 Preliminary

The national scheme is no doubt intended to offer certainty for consumers and providers by ensuring that the National Boards and the HCEs work collaboratively, where appropriate, to achieve the interests of promoting patient safety and improving health service quality.

We submit that the scheme makes this clear by including in the opening sections a clear expression of this intention such as '*This Act must be read in conjunction with the relevant HCE Act for the participating jurisdictions.*'

Section 6 Definitions

disciplinary action and disciplinary body

A *health complaints entity* is listed as a *disciplinary body*. While arrangements in other States and Territories may differ, the HQCC Act does not enable the HQCC to undertake the disciplinary activities provided in Part 8 of the draft Bill B. The definitions, in their current form, lead to the potential for the HQCC's functions (quality improvement and management of health complaints) to be construed as disciplinary action. The HQCC does not have powers to take disciplinary action. This reference should therefore be removed insofar as the HQCC is concerned.

health service

Bill B introduces a definition of a *health service* which is inconsistent with the HQCC Act and we submit there should be consistency in the definitions. The HQCC Act definition is preferred with included and excluded health services listed respectively in schedules.

health service provider

Bill B contains a slightly different definition to the example in the HQCC Act. The HQCC definition is preferred because it specifically includes 'registered providers'.

Section 49, Functions of National Boards

We submit that subsection 49(g) be amended to include the words '*in conjunction with the HCEs*' to '*oversee the receipt, assessment and investigation of complaints...*'.

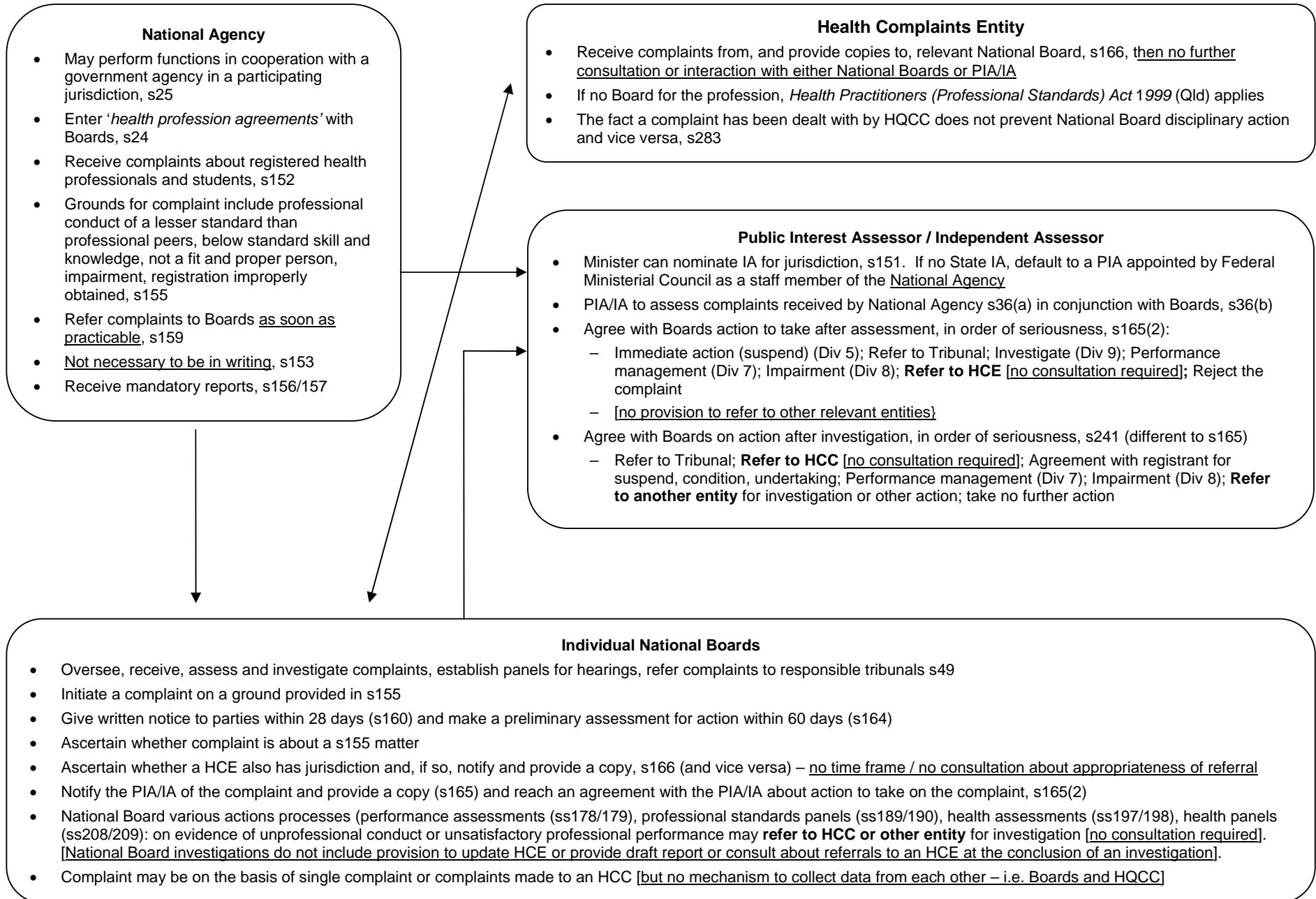
Suggestions for additional provisions

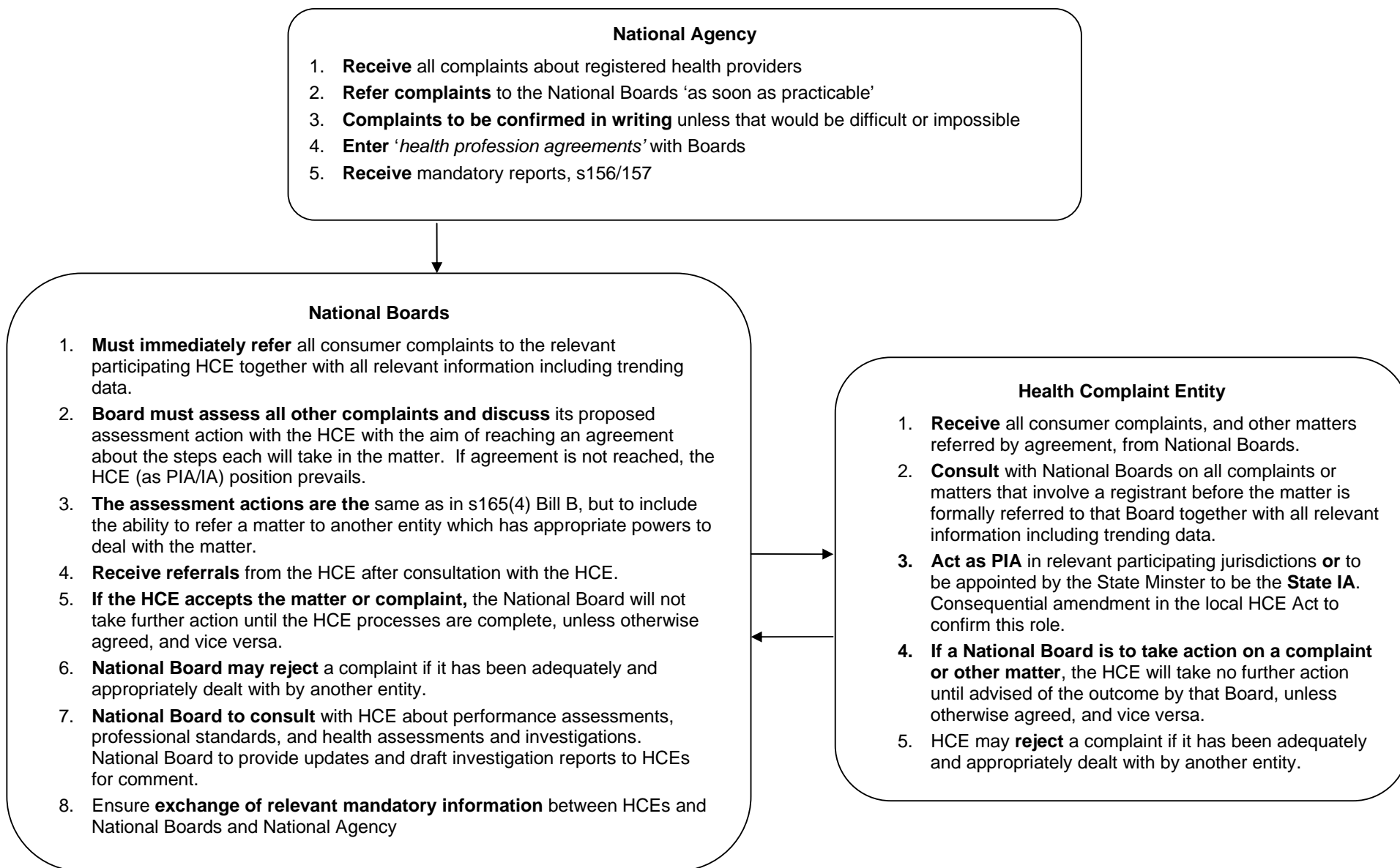
Memorandums of Understanding

Bill B should include a mechanism for the National Boards and HCEs to enter standing arrangements or Memorandums of Understanding about the management of complaints and the exchange of relevant information and data [refer s209 HQCC Act and s51(1)(b) HPPSA].

Reprisal and Whistleblower Acts

Bill B should include provisions to protect individuals against reprisal action [refer s193 HQCC Act] and to ensure consistency with local Whistleblower Acts.





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