

**Bill B EXPOSURE DRAFT**

**THE QUEENSLAND NURSING COUNCIL'S SUBMISSION**

**SUBMITTED 17 JULY 2009**



Exposure Draft to Bill B – Operational Forum 7 July 2009		
Part 1	Preliminary	
Section	Issue	Proposed Alternative Solution
Preliminary	<p>1 Short title</p> <p>2 Commencement</p> <p>3 Object of Law</p> <p>4 Objectives and guiding principles of national registration and accreditation scheme</p> <p>5 How functions to be exercised</p> <p>6 Definition</p> <p>7 Interpretation generally</p> <p>8 Extraterritorial operation of Law</p> <p>9 Trans-Tasman mutual recognition principle</p>	<p>1</p> <p>2</p> <p>3 More emphasis is required on protective role of legislation. QNC endorses comments by OMBQ.</p> <p>3(a) include suitably qualified, <b>fit</b> and competent</p> <p>4(1)(a) include practise in a competent, <b>safe</b> and ethical manner.</p> <p>5</p> <p>6 <i>accreditation authority</i> – replace ‘and’ with ‘or’  <i>impairment</i> – include (a) practitioner’s capacity to practise the practitioner’s profession <b>safely</b>  <i>reportable conduct</i> – need to include criminal charges</p> <p>7</p> <p>8</p> <p>9</p>
Part 1 Other comments		

<b>Exposure Draft to Bill B – Operational Forum 7 July 2009</b>		
<b>Part 2</b>	<b>Ministerial Council</b>	
<b>Section</b>	<b>Issue</b>	<b>Proposed Alternative Solution</b>
<b>Ministerial Council</b>	<b>10 Policy directions</b> <b>11 Approval of registration standards</b> <b>12 Approvals in relation to specialist registration</b> <b>13 Approval of areas of practice for purposes of endorsement</b> <b>14 How Ministerial Council exercises functions</b> <b>15 Notification and publication of directions and approvals</b>	<b>10(4)</b> – QNC is concerned that this may result in lowering of professional standards to meet workforce needs. Protection of the public must remain foremost. QNC endorses suggested amendment proposed by OMBQ 11 12 13 14 15
<b>Part 2 Other comments</b>		

<b>Exposure Draft to Bill B – Operational Forum 7 July 2009</b>		
<b>Part 3</b>	<b>Australian Health Workforce Advisory Council</b>	
<b>Section</b>	<b>Issue</b>	<b>Proposed Alternative Solution</b>
<b>Australian Health Workforce Advisory Council</b>	<b>16 Establishment of Advisory Council</b> <b>17 Function of Advisory Council</b> <b>18 Publication of advice</b> <b>19 Powers of Advisory Council</b> <b>20 Membership of Advisory Council</b>	16 17 18 19 20
<b>Part 3 Other comments</b>		

<b>Exposure Draft to Bill B – Operational Forum 7 July 2009</b>		
<b>Part 4</b>	<b>Australian Health Practitioner Regulation Agency</b>	
<b>Section</b>	<b>Issue</b>	<b>Proposed Alternative Solution</b>
<b>Division 1 National Agency</b>	<b>21 National Agency</b> <b>22 General powers of National Agency</b> <b>23 Functions of National Agency</b> <b>24 Health profession agreements</b> <b>25 Co-operation with participating jurisdictions and Commonwealth</b> <b>26 Office of National Agency</b>	21 22 <b>23</b> Include a further subparagraph as follows: 'to establish and administer an efficient procedure for monitoring compliance with conditions imposed on registration under this Act or undertakings provided by health practitioners or students to a National Board.' 24 25 26
<b>Division 2 Agency Management Committee</b>	<b>27 Agency Management Committee</b> <b>28 Vacancies to be advertised</b> <b>29 Functions of Agency Management Committee</b> <b>30 Members to act in public interest</b>	27 28 29 30
<b>Division 3 Chief executive officer</b>	<b>31 Chief executive officer</b> <b>32 Functions of chief executive officer</b> <b>33 Delegation and subdelegation by chief executive officer</b> <b>34 Vacancy in office</b>	31 32 33 34
<b>Division 4 Public interest assessor</b>	<b>35 Public Interest Assessor</b> <b>36 Functions of Public Interest Assessor</b> <b>37 Independence of Public Interest Assessor</b> <b>38 Vacancy in office</b>	<b>35</b> QNC does not support the role of the Public Interest Assessor (PIA) as current complaints management processes with HQCC/QNC are efficient and effective. The introduction of the PIA in its current form it will add unnecessary costs and delays to the handling of complaints. Therefore QNC seeks to have the proposed introduction of the PIA in its current form removed from the legislation. QNC endorses proposals by HQCC. 36 37 38
<b>Division 5 Staff, consultants and contractors</b>	<b>39 Staff of National Agency</b> <b>40 Staff seconded to National Agency</b> <b>41 Consultants and contractors</b>	39 40 <b>41</b> QNC would support external nurse/midwife inspectors to be appointed under a contractual arrangement.

<b>Division 6 Reporting obligations</b>	<b>42 Annual report 43 Reporting by National Boards</b>	<b>42 43</b>
<b>Part 4 Other comments</b>		

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Part 5	National Boards	
Section	Issue	Proposed Alternative Solution
<b>Division 1</b> <b>National Boards</b>	<b>44 Establishment of National Boards</b> <b>45 Membership of National Boards</b> <b>46 Eligibility for appointment</b> <b>47 Vacancies to be advertised</b> <b>48 Members to act in public interest</b>	<b>44</b> Each National Board should be a separate legal entity capable of suing and being sued. Section 303 only creates 1 legal entity.  <b>45(5)</b> QNC does not believe that proposed composition of National Boards provides for adequate representation of the various jurisdictions. QNC proposes eight practitioner members (one from each participating State and Territory) and four community members. This Board of 12 members meets the requirements of s <b>45(4)</b> .  46 47 48
<b>Division 2</b> <b>Functions and powers of National Boards</b>	<b>49 Functions of National Boards</b> <b>50 Powers of National Boards</b> <b>51 Requirement to consult other National Boards</b> <b>52 Boards may obtain assistance</b> <b>53 Committees</b> <b>54 State and Territory Boards</b> <b>55 Delegation of functions</b>	<b>49</b> insert further subparagraphs after s.49(j) as follows: 'to monitor conditions imposed on the registration of health practitioners and students' 'to monitor undertakings given by health practitioners or students.'  50 51 52 53  <b>54</b> State and Territory Board responsibilities need clarification as to how this will work operationally. What is minimum number of persons who may comprise the committee?  55
<b>Division 3</b> <b>Registration standards and codes and guidelines</b>	<b>56 National board may develop registration standards and codes and guidelines</b> <b>57 Consultation about registration standards, codes and guidelines</b> <b>58 Use of registration standards, codes or guidelines in disciplinary proceedings</b>	56  57  58
<b>Part 5</b> <b>Other comments</b>		

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Part 6	Accreditation	
Section	Issue	Proposed Alternative Solution
Division 1 Preliminary	59 Definition	59 Section 59(c) refers to assessment of ‘authorities’. QNC believes that it should be the “programs” that are assessed as there are some countries which do not have an assessing authority. If the authority was assessed, there would not be a way of determining whether the health practitioner meets Australian standards for nursing competence as outlined in the Australian Nursing and Midwifery competency guidelines for nurses.
Division 2 Accreditation authorities	60 Ministerial Council may appoint external accreditation entity 61 National Agency may enter into contracts with external accreditation entities 62 Accreditation committee 63 Accreditation processes to be published	60 QNC endorses comments by OMBQ 61 62 63
Division 3 Accreditation functions	64 Development of accreditation standards 65 Approval of accreditation standards 66 Accreditation of programs of study 67 Approval of accredited programs of study 68 Accreditation authority to monitor approved courses of study	64 65 66 67 There should be power to grant accreditation subject to conditions. Further there should be matters specified to which National Board may have regard to in assessing application for accreditation of program of study (see <i>Nursing Act 1992</i> , s.81(2)).  Additionally there should be a provision making it an offence to conduct a program of study without accreditation (eg. <i>Nursing Act 1992</i> , s.83W).  68 Monitoring role of accreditation authority in s.68(2) must be complimented by investigation powers such as entry, search and seizure.  QNC considers ‘must’ in s.68(3) should be replaced by ‘may’ particularly given the severe inconvenience that may be visited upon students if accreditation is revoked. QNC endorses comments by OHPRB regarding power for accreditation authority to impose conditions on accreditation.  Presumably the revocation of accreditation by the accreditation authority automatically results in the National Board’s approval being rendered obsolete.

<b>Part 6</b> <b>Other comments</b>		
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Part 7	Registration of health practitioners	
Section	Issue	Proposed Alternative Solution
Division 1 General registration	69 Eligibility for general registration 70 Qualifications for general registration 71 Examination or assessment for general registration 72 Suitable person for general registration 73 Professional indemnity insurance arrangements 74 Period of general registration	<p>69 Professional indemnity insurance as a pre-requisite for registration will prevent many nurses and midwives from becoming registered; particularly new graduates and overseas trained nurses who have not yet gained employment. Some overseas trained nurses may only decide to come to Australia if they first gain registration in Australia. Further s.69(1)(d) places significant administrative burden in assessing applications for registration. <b>QNC considers s.69(1)(d) should be deleted given s.101(1)(a)(ii). This would require amendment to s.73.</b></p> <p>QNC considers English language proficiency should be included in s.69. A provision similar to s.54(3)(b) of the <i>Nursing Act 1992</i> would be appropriate. This would require deletion of s.11(2)(d).</p> <p>70 71 72 73 74</p>
Division 2 Specialist registration	75 Eligibility for specialist registration 76 Qualifications for specialist registration 77 Examination or assessment for specialist registration 78 Suitable person for specialist registration 79 Period of specialist registration	<p>75 76 77 78 79</p>
Division 3 Provisional registration	80 Eligibility for provisional registration 81 Suitable person for provisional registration 82 Period of provisional registration	<p>80 81 82</p>

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Part 7	Registration of health practitioners	
Section	Issue	Proposed Alternative Solution
Division 4 Limited registration	83 Eligibility for limited registration	83
	84 Limited registration for postgraduate training or supervised practice	84 85
	85 Limited registration for area of need	
	86 Limited registration in public interest	86
	87 Limited registration for teaching or research	87
	88 Suitable person for limited registration	88
	89 Limited registration not to be held for more than one purpose	89
	90 Period of limited registration	90
	91 Limited registration not to be renewed or restored	91
	Division 5 Non-practising registration	92 Eligibility for non-practising registration
93 Period of non-practising registration		93
Division 6 Application for registration	94 Application for registration	94
	95 Power to check applicant's proof of identity	95
	96 Power to check applicant's criminal history	96 Substitute 'may' in s.96(3) with 'must' otherwise there is no obligation on CrimTrac or police commissioner to provide requested information.
	97 Power to enquire about qualifications, registration status and practice in health profession	
	98 Boards' other powers before deciding application for registration	Currently an applicant for registration under <i>Trans-Tasman Mutual Recognition (Queensland) Act 2003</i> is excluded from criminal history checks. This situation should be clarified in the legislation.
	99 Applicant may make submissions about proposed refusal of application or imposition of condition	
	100 Decision about application	97(1)(c)(i)&(ii) requires that if an applicant's qualifications were obtained more than three years before the day the application for registration is made an entity nominated by the applicant provide evidence that the applicant has practised the profession within the 3 years before the day the application is made and give information about the applicant's practice. It is not an requirement for registration that the applicant have practised within the previous 3 years although the Ministerial Council may approve a registration standard for recency of practice (s.11(2)(c)). QNC would be concerned if a recency of practice requirement of less than 5 years was approved as this could act as a disincentive for nurses and midwives to return to practice after parenting. Such a requirement also has implications for workforce supply and cost related to the increased demand this requirement will place on return to practice and supervised practice programs. QNC recommends the recency of practice
	101 Conditions of registration	
	102 Notice to be given to applicant	
	103 Failure to decide application	

		<p>period be maintained at five years for nurses and midwives.</p> <p>98 99 100 101 102</p> <p><b>103</b> QNC endorses the comments made by OHPRB regarding the time frame for determining an application for registration.</p>
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<b>Part 7</b>	<b>Registration of health practitioners</b>	
<b>Section</b>	<b>Issue</b>	<b>Proposed Alternative Solution</b>
<b>Division 7 Student registration</b>	<b>104 National Board must register persons undertaking approved program of study</b> <b>105 National Board may ask education provider for list of persons undertaking approved program of study</b> <b>106 Registration of students</b> <b>107 Period of student registration</b> <b>108 Notice to be given if student registration suspended or condition imposed</b> <b>109 Report to National Board of cessation of status as student</b>	<b>104</b>  <b>105</b> – QNC is concerned that education providers may not provide accurate information about students. Therefore students should be required to complete an application form for registration and provide photographic ID, full name, address and date of birth, and a declaration as to fitness to practice.  <b>106</b> – As to s.106(2)(a), see comments re s.105  <b>107</b> <b>108</b> QNC endorses comments made by OHPRB regarding absence of power to cancel registration of student.  <b>109</b> – QNC recommends 30 day time limit in s109(1), not 60 days.
<b>Division 8 Endorsement of registration</b>		
<b>Subdivision 1 Endorsement in relation to scheduled medicines</b>	<b>110 Endorsement for scheduled medicines</b>	<b>110</b> QNC endorses comments made by OHPRB
<b>Subdivision 2 Endorsement in relation to nurse practitioners</b>	<b>111 Endorsement as nurse practitioner</b>	<b>111</b> QNC endorses comments made by OHPRB
<b>Subdivision 3 Endorsement in relation to midwife practitioners</b>	<b>112 Endorsement as midwife practitioner</b>	<b>112</b> QNC endorses comments made by OHPRB

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<b>Part 7</b>	<b>Registration of health practitioners</b>	
<b>Section</b>	<b>Issue</b>	<b>Proposed Alternative Solution</b>
<b>Division 8 Endorsement of registration</b>		
<b>Subdivision 4 Endorsements in relation to approved areas of practice</b>	<b>113 Endorsements for approved areas of practice</b>	113
<b>Subdivision 5 Application for endorsement</b>	<b>114 Application for endorsement 115 Boards' other powers before deciding application for endorsement 116 Applicant may make submissions about proposed refusal of application or imposition of condition 117 Decision about application 118 Conditions of endorsement 119 Notice to be given to applicant 120 Failure to decide application for endorsement</b>	114 115 116 117 118 119 120
<b>Division 9 Renewal of registration or endorsement</b>	<b>121 Application of Division 122 Application for renewal of registration or endorsement 123 Registration or endorsement taken to continue in force 124 Annual statement 125 Decision about renewal</b>	121 122 123 <b>124</b> QNC endorses comments made by OHPRB. QNC also considers that the annual statement should include a statement by the health practitioner about their last period of practice in the profession for recency of practice purposes.  <b>125</b> QNC endorses comments made by OHPRB

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Part 7	Registration of health practitioners	
Section	Issue	Proposed Alternative Solution
Division 10 Restoration of general registration or specialist registration	126 Eligibility for restoration of registration 127 Application for restoration of registration	126 127
Division 11 Title and practice protections		
Subdivision 1 Title protections	128 Claims by persons as to registration 129 Restriction on use of titles 130 Use of title “acupuncturist” 131 Claims by persons as to registration in divisions of Register 132 Claims by persons as to registration in recognised specialty 133 Restriction on use of specialist titles 134 Claims by persons as to registration in recognised specialty	128 QNC endorses comments made by OHPRB 129 130 131 QNC endorses comments made by OHPRB  132  133 134
Subdivision 2 Practice protections	135 Restricted dental acts 136 Restrictions on prescription of optical appliances 137 Restrictions on spinal manipulation	<b>Practice protections</b> QNC considers that the absence of practice protections currently in <i>Nursing Act 1992</i> will <i>significantly</i> diminish the ability of the Nursing and Midwifery Board of Australia to protect the public. QNC considers provisions equivalent to s.77H and s.77I of the <i>Nursing Act 1992</i> must be included. QNC notes that dental, optical and spinal manipulation restrictions have been included.

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<b>Part 7</b>	<b>Registration of health practitioners</b>	
<b>Section</b>	<b>Issue</b>	<b>Proposed Alternative Solution</b>
<b>Division 12 Miscellaneous</b>		
<b>Subdivision 1 Certificates of registration</b>	<b>138 Issue of certificate of registration</b>	138
<b>Subdivision 2 Review of conditions and undertakings</b>	<b>139 Changing or removing conditions or undertaking on application by registered health practitioner or student 140 Changing conditions or undertakings on Board's initiative 141 Removal of condition or revocation of undertaking</b>	<b>139</b> QNC endorses the 4 points made by OHPRB  <b>140</b> The Board should have flexibility to review conditions and undertakings at any time if it receives satisfactory evidence to do so (eg health assessment report).  141
<b>Subdivision 3 Obligation of registered health practitioner to provide information</b>	<b>142 Information about offences, clinical privileges and billing privileges 143 Change in mailing address 144 National Board may ask registered health practitioner for employer's details</b>	<b>142</b> QNC endorses comments made by OMBQ regarding additional events to be included in s.142(3).  143 144
<b>Subdivision 4 Advertising</b>	<b>145 Advertising</b>	<b>145</b> QNC endorses comment by OMBQ. QNC had recent similar case to <i>OMBQ v Tait</i> .
<b>Subdivision 5 Board's powers to check identity and criminal history</b>	<b>146 Evidence of identity 147 Criminal history check</b>	<b>146</b> There must be a power to immediately cancel registration if registration obtained through identity fraud.  <b>147</b> Substitute 'may' in s.147(3) with 'must' otherwise there is no obligation on CrimTrac or police commissioner to provide requested information.
<b>Subdivision 6 General</b>	<b>148 Directing or inciting unprofessional conduct or professional misconduct 149 Surrender of registration</b>	<b>148</b> QNC considers there is no justification for exemption in s.148(2) and that s.148(2) should be deleted.  149
<b>Part 7 Other comments</b>		

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Part 8	Complaints, performance, health and conduct	
Section	Issue	Proposed Alternative Solution
Division 1 Preliminary	<p><b>150 Part also applicable to former registered health practitioners</b></p> <p><b>151 Responsible Minister may nominate independent assessor</b></p>	<p><b>150</b> s.150(2) should include reference to a person who was registered under this law but is no longer registered.</p> <p><b>151</b> If this is to be HQCC, current processes are effective and promote protection of the public</p> <p>An alternative would be that the HQCC could be appointed the independent assessor for Queensland.</p>
Division 2 Making a complaint	<p><b>152 Who may make complaint</b></p> <p><b>153 How complaint is made</b></p> <p><b>154 National Agency to provide reasonable assistance to complainant</b></p> <p><b>155 Grounds for complaint</b></p>	<p>152</p> <p><b>153</b> While verbal complaints may be received, there should be a requirement included in the legislation for the complaint and its particulars to be documented by the national agency and confirmed in writing by the complainant. In the absence of such confirmation within a predetermined period of, say, 21 days, the legislation should allow the Board a discretion to reject the complaint without assessment.</p> <p><b>154</b> QNC seeks clarification as to what is 'reasonable assistance' and if this reasonable assistance is actually <i>assisting a person to write a complaint</i>. If so, QNC would prefer that an independent party provide assistance because of the risk of "putting words into the complainant's mouth" and thus jeopardising impartiality.</p> <p><b>155</b> The grounds for making a complaint against a registered health practitioner should mirror the definitions of unprofessional conduct, unsatisfactory professional conduct and professional misconduct in s.6. (see eg. S.102AA(1) of the <i>Nursing Act 1992</i>)</p>
Division 3 Other matters taken to be complaints	<p><b>156 Mandatory reporting by health practitioners</b></p> <p><b>157 Mandatory reporting by employers</b></p> <p><b>158 National Board may take action on own initiative</b></p>	<p><b>156</b> QNC agrees with OHPRB that there are no obligations placed on an education provider for mandatory reporting of students who may be impaired or who have been charged with or convicted of an offence as detailed in s.142(3). In the absence of a mandatory reporting obligation, it is expected that education providers will continue to be placed in a legal quandary about whether they can inform the Board of these matters. QNC submits that it would</p>

		<p>be in the public interest for such a reporting obligation to be included in the legislation as this would put the obligation beyond doubt and be of assistance to the education provider in bringing the matter before a Board.</p> <p>157 158</p>
<p><b>Division 4 Dealing with complaints</b></p>	<p><b>159 Referral of complaint to National Board</b>  <b>160 National Board to give notice of receipt of complaint</b>  <b>161 National Board may deal with complaints about same person together</b>  <b>162 National Boards may deal with complaints collaboratively</b>  <b>163 National Board may require further information</b>  <b>164 Preliminary assessment</b>  <b>165 Agreement with independent assessor about complaint</b>  <b>166 Relationship with health complaints entity</b>  <b>167 Rejection of complaint</b></p>	<p>159</p> <p>160</p> <p>161</p> <p>162</p> <p><b>163</b> QNC considers that:</p> <ul style="list-style-type: none"> <li>• use of 'more' is problematic and should be deleted;</li> <li>• after 'information', insert 'or documents';</li> <li>• after 'complaint', insert ' at the place and';</li> <li>• a subsection (d) should be included to refer to any person who may have information or documents relevant to an assessment of the complaint;</li> <li>• it must be an offence to fail to comply with a notice under s.163; a provision similar to s.78 of the <i>Health Practitioners (Professional Standards) Act 1999</i> is highly desirable.</li> </ul> <p><b>164</b> 60 day timeframe is not operationally practical and should be replaced by 'as soon as reasonably possible'.</p> <p>There should be ability to refer the complaint to another entity, such as police or Department of Health and Aging.</p> <p><b>165</b> QNC endorses comments made by HQCC</p> <p><b>166</b> QNC endorses comments made by HQCC</p> <p><b>167</b> QNC considers that the power of rejection should include the situation where a Board receives a complaint the subject matter of which has already been appropriately dealt with by the Board or another entity.</p>

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<b>Part 8</b>	<b>Complaints, performance, health and conduct</b>	
<b>Section</b>	<b>Issue</b>	<b>Proposed Alternative Solution</b>
<b>Division 5 Immediate action</b>	168 Immediate suspension or imposition of condition 169 Suspension or conditions to be recorded in Register	<b>168</b> QNC endorses all comments made by OHPRB. A test of 'potential serious risk' would be consistent with prevailing test under <i>Nursing Act 1992</i> .
<b>Division 6 Referring complaints to tribunals</b>	170 Complaint to be referred to responsible tribunal 171 Parties to the proceedings 172 Decision 173 Action that may be taken by tribunal	QNC endorses the comments made by OHPRB in relation to Division 6.  QNC repeats its comments in relation to s44; the Boards must be legal entities to be parties to disciplinary proceedings.
<b>Division 7 Professional standards matters</b>		QNC endorses comment by OHPRB that an amendment is necessary so that a Board has a power to refer a matter to the professional standards panel either after assessment or after investigation <i>without</i> going through a performance assessment.
<b>Subdivision 1 Performance assessment</b>	174 Requirement for performance assessment 175 Appointment of assessor to carry out assessment 176 Report from assessor 177 Copy of report to be given to health practitioner 178 National Board's decision 179 Action that may be taken by National Board at end of proceeding	QNC endorses comments made by OHPRB in relation to sections 174 to 179.  <b>175</b> It may be necessary to appoint more than 1 assessor. QNC endorses amendment proposed by OMBQ in this regard.  <b>177</b> Discussing a report with a registrant may have significant cost implications and may not always be appropriate. It should not be mandatory for Board appointee to have discussion with registrant as contemplated in s.177(2).  <b>178</b> QNC endorses comments by OMBQ that Board should be able to refer health practitioner for a health assessment under division 8.
<b>Subdivision 2 Professional standards panels</b>	180 Establishment of professional standards panel 181 List of approved persons for appointment to professional standards panels 182 Notice to be given to registered health practitioner 183 Procedure of professional standards panel 184 Legal representation 185 Panel may proceed in absence of registered health practitioner 186 Complainant	<b>180</b> QNC considers that the panel should include a lawyer member to ensure no legal error in procedure or decision making.  181  <b>182</b> Notice under s.182(2) should include right to elect to refer to tribunal for hearing (see comments re s188 below).  183

**187 Hearing not open to the public**  
**188 Referral to responsible tribunal**  
**189 Decision of professional standards panel**  
**190 Action by professional standards panel at end of proceeding**  
**191 Notice to be given to registered health practitioner**

**184** Query whether the Board can be legally represented.

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QNC endorses comments by OHPRB regarding sections 188 to 191.

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Part 8	Complaints, performance, health and conduct	
Section	Issue	Proposed Alternative Solution
Division 8 Health matters		
Subdivision 1 Self-referral	192 Procedure if registered health practitioner or student informs National Board of impairment	192 QNC endorses comments by OHPRB.
Subdivision 2 Health assessments	193 Requirement for health assessment 194 Appointment of assessor 195 Report from assessor 196 Copy of report to be given to health practitioner 197 Decision of National Board 198 Action by National Board at end of proceeding 199 Notice to be given to registered health practitioner or student and complainant	<p>193 As to s.193(4)(b), QNC repeats what was suggested in relation to s.170(2)(b).</p> <p>194 QNC considers s.194(3) should include a proviso as follows: '... , save that the Board can recover from the health practitioner, as a debt, any fee or cost incurred by the Board as a result of any failure by the health practitioner to comply with a notice under s.193(4).'</p> <p>195</p> <p>196 QNC submits that this should be amended to: (a) give the practitioner or student the opportunity to elect to either discuss the assessment report with a Board nominee or make a written submission to the Board; (b) give the Board power to make a decision on the matter in a timely manner without having to wait in those cases where the report has not been given to the practitioner or student by setting a time limit in subsection (2) or deleting reference to subsection (2) in subsection (3).</p> <p>A similar amendment to (b) above should be made under <b>s.177</b> to enable a practitioner subject to a performance assessment to elect to make a written submission to the Board.</p> <p>196(3)(b) is rather weak. It suggests that there can be compromise over how an impairment can be treated. It should not be mandatory to initiate discussions about health issues. In mental health issues the nurse may not have insight. Advice of the assessor should be considered crucial.</p> <p>197 198 199</p>
Subdivision 3	200 Establishment of health panel	QNC considers the establishment of a health panel is unnecessary. QNC

<b>Health panels</b>	<b>201 List of approved persons for appointment to health panels</b> <b>202 Notice to be given to registered health practitioner or student</b> <b>203 Procedure of health panel</b> <b>204 Legal representation</b> <b>205 Complainant</b> <b>206 Hearing not open to public</b> <b>207 Referral to responsible tribunal</b> <b>208 Decision of health panel</b> <b>209 Action by health panel at end of proceeding</b> <b>210 Notice to be given to registered health practitioner and complainant</b>	recommends that the health assessor's report be considered (along with any submissions from the health practitioner) by the professional standards panel and not a separate health panel. The professional standards panel should consider and make decisions on performance, conduct and health issues as there is often a nexus between health and conduct/performance issues.
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<b>Part 8</b>	<b>Complaints, performance, health and conduct</b>	
<b>Section</b>	<b>Issue</b>	<b>Proposed Alternative Solution</b>
<b>Division 9 Investigations</b>		
<b>Subdivision 1 Preliminary</b>	<b>211</b> When investigation may be conducted <b>212</b> Registered health practitioner to be given notice of investigation <b>213</b> Investigation to be conducted in timely way	QNC endorses the comments made by OHPRB regarding s.211 and s.212(3). The National Board must have power to investigate former registrants.
<b>Subdivision 2 Investigators</b>	<b>214</b> Appointment of investigators <b>215</b> Identity card <b>216</b> Display of identity card	<b>214</b> – QNC endorses comments by OHPRB. QNC considers it is imperative that investigator has expertise in the same field as the health practitioner (particularly given findings required to be made – s.240(2)(a))  215 216
<b>Subdivision 3 Power to obtain information</b>	<b>217</b> Powers of investigators <b>218</b> Offence for failing to produce information or attend before investigator <b>219</b> Inspection of documents	217 218 <b>219</b> – QNC endorses amendments suggested by OMBQ
<b>Subdivision 4 Power to enter places</b>	<b>220</b> Entering places <b>221</b> Application for warrant <b>222</b> Issue of warrant <b>223</b> Application by electronic communication <b>224</b> Procedure before entry under warrant <b>225</b> Powers after entering places <b>226</b> Offences for failing to comply with requirement under section 225 <b>227</b> Seizure of evidence <b>228</b> Securing seized things <b>229</b> Receipt for seized things <b>230</b> Forfeiture of seized thing <b>231</b> Dealing with forfeited things <b>232</b> Return of seized things <b>233</b> Access to seized things	<b>220</b> – QNC endorses comment by OMBQ 221 222 223 224 225 226  227 228 229 230 231 232 233

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Part 8	Complaints, performance, health and conduct	
Section	Issue	Proposed Alternative Solution
Subdivision 5 General enforcement matters	234 Damage to property 235 Compensation 236 False or misleading information 237 False or misleading documents 238 Obstructing investigators 239 Impersonation of investigators	234 235 236 237 238 239
Subdivision 6 Procedure after investigation	240 Investigator's report about investigation 241 Agreement with independent assessor about action to be taken 242 Notice to be given to health practitioner and complainant	240  241 – Board must be able to request investigator to provide further information or documents or to carry out further investigations. In the later of these circumstances a supplementary report may be required.  Independent assessor should be HQCC.  As to s.241(3), see comments re s.165.  242 – QNC endorses OHPRB comments re s.242(2).
Division 10 Review	243 Reviewable decisions 244 Application for review 245 Review of reviewable decision	243  244 – reference in s.244(1) to decisions of professional standards panel and health panel are superfluous as s.243 only applies to decisions made by National Boards.  245 – clarify whether further information can be considered on review
Division 11 Appeals	246 Appellable decisions 247 Parties to the proceedings 248 Costs 249 Decision 250 Relationship with Act establishing responsible tribunal	246 247 248 249 250
Division 12 Miscellaneous	251 Notice from disciplinary body 252 Implementation of decisions	251 252

	253 National Board to give notice to registered health practitioner's employer	253
Part 8 Other comments		<p>QNC considers the most effective professional standards process is as follows:</p> <ul style="list-style-type: none"> <li>• a health practitioner with a <b>performance</b> concern could have a performance assessment conducted by an independent assessor (from the chosen panel) whose report is considered by the Professional Standards Panel (along with the practitioner's written submissions and supporting evidence)</li> <li>• a health practitioner with a <b>conduct</b> concern could be investigated and the investigator's report is considered by the Professional Standards Panel (along with the practitioner's written submissions and supporting evidence)</li> <li>• a health practitioner with a <b>health</b> concern could have a health assessment conducted with an independent assessor (from the chosen panel) whose report is considered by the Professional Standards Panel (along with the practitioner's written submissions and supporting evidence).</li> </ul>

<b>Exposure Draft to Bill B – Operational Forum 7 July 2009</b>		
<b>Part 9</b>	<b>Finance</b>	
<b>Section</b>	<b>Issue</b>	<b>Proposed Alternative Solution</b>
<b>Finance</b>	<b>254 Australian Health Practitioner Regulation Agency Fund</b> <b>255 Payments into Agency Fund</b> <b>256 Payments out of Agency Fund</b> <b>257 Investment of money in Agency Fund</b> <b>258 Duties of National Agency and Boards with respect to financial management</b>	254 255 256 257 258
<b>Part 9 Other comments</b>		

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<b>Part 10</b>	<b>Information and privacy</b>	
<b>Section</b>	<b>Issue</b>	<b>Proposed Alternative Solution</b>
<b>Division 1 Privacy</b>	<b>259 Application of Commonwealth Privacy Act</b>	259
<b>Division 2 Disclosure of information and confidentiality</b>	<b>260 Definition 261 Application of Commonwealth FOI Act 262 Duty of confidentiality 263 Disclosure of information for workforce planning 264 Disclosure of information for information management and communication purposes 265 Disclosure of information to other Commonwealth, State and Territory entities 266 National Board to publish certain decisions 267 Disclosure to protect health or safety of patients or other persons 268 Disclosure to registration authorities</b>	260 261 262 263 264  <b>265</b> – QNC queries whether s.265(1)(e) is sufficient to enable the unfettered exchange of information between QNC and HQCC in accordance with current regime.  It should be stated in s.265(1) that National Boards can share information between themselves about individual health practitioners.  <b>266</b> – ‘panel’ to be inserted after ‘health’ in s.266(1)(c). 267 268
<b>Division 3 Registers in relation to registered health practitioner</b>	<b>269 National Registers 270 Specialists Registers 271 Information to be recorded in registers 272 Board may decide not to include certain information in register 273 Inspection of registers</b>	269 270 271 272  273
<b>Division 4 Student registers</b>	<b>274 Student registers 275 Information to be recorded in student register</b>	274 275
<b>Division 5 Records</b>	<b>276 Records to be kept by National Boards</b>	276
<b>Division 6 Unique identifier</b>	<b>277 Unique identifier to be given to each registered health practitioner</b>	277

<b>Part 10</b> <b>Other comments</b>		
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<b>Part 11</b>	<b>Miscellaneous</b>	
<b>Section</b>	<b>Issue</b>	<b>Proposed Alternative Solution</b>
<b>Part 11</b>	<b>278 General duties of persons exercising functions under this Law</b>	278
	<b>279 Application of Commonwealth Ombudsman Act</b>	279
	<b>280 Protection from personal liability for persons exercising functions</b>	280
	<b>281 Protection from liability for persons making complaint or otherwise providing information</b>	281
	<b>282 Proceedings for offences</b>	282
	<b>283 Conduct may constitute offence and be subject of disciplinary proceedings</b>	283
	<b>284 Evidentiary certificates</b>	284
	<b>285 National regulations</b>	285
	<b>286 Parliamentary scrutiny of national regulations</b>	286
	<b>287 Effect of disallowance of national regulation</b>	287
<b>Part 11 Other comments</b>		

<b>Exposure Draft to Bill B – Operational Forum 7 July 2009</b>		
<b>Part 11</b>	<b>Miscellaneous</b>	
<b>Section</b>	<b>Issue</b>	<b>Proposed Alternative Solution</b>
<b>Division 1 Definitions</b>	<b>288 Definitions</b>	288
<b>Division 2 Ministerial Council</b>	<b>289 Directions given by Ministerial council 290 Accreditation functions exercised by existing accreditation entities 291 Standards approved by Ministerial Council</b>	289 290 291
<b>Division 3 Advisory Council</b>	<b>292 Advisory Council 293 Members of Advisory Council</b>	292 293
<b>Division 4 National Agency</b>	<b>294 National Agency 295 Health profession agreements 296 Service agreement</b>	294 295 296
<b>Division 5 Agency Management Committee</b>	<b>297 Agency Management Committee 298 Members of Agency Management Committee</b>	297 298
<b>Part 11 Other comments</b>		

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<b>Part 12</b>	<b>Transitional provisions</b>	
<b>Section</b>	<b>Issue</b>	<b>Proposed Alternative Solution</b>
<b>Division 6 Staff, consultants and contractors of National Agency</b>	<b>299 Chief executive officer 300 Staff 301 Consultants and contractors</b>	<b>299 300 301</b>
<b>Division 7 Reports</b>	<b>302 Annual report</b>	<b>302</b>
<b>Division 8 National Boards</b>	<b>303 National Boards 304 Members of National Boards 305 Committees 306 Delegation</b>	<b>303 304 305 306</b>
<b>Division 9 Agency Fund</b>	<b>307 Agency Fund</b>	<b>307</b>
<b>Division 10 Miscellaneous</b>	<b>308 Offences</b>	<b>308</b>
<b>Division 11 Registration</b>	<b>309 General registration 310 Specialist registration 311 Provisional registration 312 Limited registration 313 Non-practising registration 314 Registration for existing registered students 315 Registration for new students 316 Other registrations 317 Endorsements 318 Conditions imposed on registration or endorsement 319 Expiry of registration and endorsement 320 Protected titles for certain specialist health practitioners 321 First renewal of registration or endorsement 322 Programs of study</b>	<b>309 310 311 312 313 314 315 316 317 318 319 320 321 322</b>

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<b>Part 12</b>	<b>Transitional provisions</b>	
<b>Section</b>	<b>Issue</b>	<b>Proposed Alternative Solution</b>
<b>Division 12 Applications for registration and endorsement</b>	<b>323 Applications for registration 324 Applications for endorsement 325 Disqualifications and conditions relevant to applications for registration</b>	323 324 325
<b>Division 13 Complaints and disciplinary proceedings</b>	<b>326 Complaints made but not being dealt with on participation day 327 Complaints being dealt with on participation day 328 Complaints made after participation day 329 Undertakings and other agreements 330 Orders</b>	326 327 - QNC agrees with OMBQ - amend section to reflect that where a Board had “made a decision to take disciplinary action, but not completed dealing with the matter in relation to a complaint”, that the matter would continue to be dealt with under that Act had it not been repealed.  328 329 330
<b>Division 14 Local registration authority</b>	<b>331 Assets and liabilities 332 Records relating to registration and accreditation 333 Financial and administrative records 334 Pharmacy businesses and premises 335 Members of local registration authority</b>	331 332 333 334 335
<b>Division 15 Staged commencement for certain health professions</b>	<b>336 Application of Division 337 Application of Law to relevant profession between commencement and 1 July 2011 338 Application of Law to appointment of first National Board for relevant professions 339 Application of Law to relevant profession between 1 July 2011 and 30 June 2012 340 Qualifications for general registration in relevant profession 341 Offences 342 Relationship with other provisions of Law</b>	336 337  338  339  340  341 342
<b>Division 16 Savings and transitional regulations</b>	<b>343 Savings and transitional regulations</b>	343
<b>Part 12</b>		

<b>Other comments</b>		
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<b>Schedule 1</b>	<b>Constitution and procedure of Advisory Council</b>	
<b>Section</b>	<b>Issue</b>	<b>Proposed Alternative Solution</b>
<b>Part 1 General</b>	<b>1 Definitions</b>	1
<b>Part 2 Constitution</b>	<b>2 Terms of office of members</b>	2
	<b>3 Remuneration</b>	3
	<b>4 Vacancy in office of member</b>	4
	<b>5 Extension of term of office during vacancy in membership</b>	5
	<b>6 Disclosure of conflict of interest</b>	6
<b>Part 3 Procedure</b>	<b>7 General procedure</b>	7
	<b>8 Quorum</b>	8
	<b>9 Presiding member</b>	9
	<b>10 Transaction of business outside meetings or by telecommunication</b>	10
	<b>11 First meeting</b>	11
<b>Schedule 1 Other comments</b>		

<b>Exposure Draft to Bill B – Operational Forum 7 July 2009</b>		
<b>Schedule 2</b>	<b>Constitution and procedure of Agency Management Committee</b>	
<b>Section</b>	<b>Issue</b>	<b>Proposed Alternative Solution</b>
<b>Part 1 General</b>	<b>1 Definitions</b>	1
<b>Part 2 Constitution</b>	<b>2 Terms of office of members</b>	2
	<b>3 Remuneration</b>	3
	<b>4 Vacancy in office of member</b>	4
	<b>5 Extension of term of office during vacancy in membership</b>	5
	<b>6 Disclosure of conflict of interest</b>	6
<b>Part 3 Procedure</b>	<b>7 General procedure</b>	7
	<b>8 Quorum</b>	8
	<b>9 Chief executive officer may attend meetings</b>	9
	<b>10 Presiding member</b>	10
	<b>11 Voting</b>	11
	<b>12 Transaction of business outside meetings or by telecommunication</b>	12
	<b>13 First meeting</b>	13
	<b>14 Defects in appointment of members</b>	14
<b>Schedule 2 Other comments</b>		

<b>Exposure Draft to Bill B – Operational Forum 7 July 2009</b>		
<b>Schedule 3</b>	<b>Constitution and procedure of National Boards</b>	
<b>Section</b>	<b>Issue</b>	<b>Proposed Alternative Solution</b>
<b>Part 1 General</b>	<b>1 Definitions</b>	1
<b>Part 2 Constitution</b>	<b>2 Terms of office of members</b>	2
	<b>3 Remuneration</b>	3
	<b>4 Vacancy in office of member</b>	4
	<b>5 Extension of term of office during vacancy in membership</b>	5
	<b>6 Disclosure of conflict of interest</b>	6
<b>Part 3 Procedure</b>	<b>7 General procedure</b>	7
	<b>8 Quorum</b>	8
	<b>9 Presiding member</b>	9
	<b>10 Voting</b>	10
	<b>11 Transaction of business outside meetings or by telecommunication</b>	11
	<b>12 First meeting</b>	12
	<b>13 Defects in appointment of members</b>	13
<b>Schedule 3 Other comments</b>		

<b>Exposure Draft to Bill B – Operational Forum 7 July 2009</b>		
<b>Schedule 4</b>	<b>Miscellaneous provisions relating to interpretation</b>	
<b>Section</b>	<b>Issue</b>	<b>Proposed Alternative Solution</b>
<b>Part 1 Preliminary</b>	<b>1 Displacement of Schedule by contrary intention</b>	1
<b>Part 2 General</b>	<b>2 Law to be construed not to exceed legislative power of Legislature</b>	2
	<b>3 Every section to be a substantive enactment</b>	3
	<b>4 Material that is, and is not, part of this Law</b>	4
	<b>5 References to particular Acts and to enactments</b>	5
	<b>6 References taken to be included in Act or Law citation etc</b>	6
	<b>7 Interpretation best achieving Law’s purpose</b>	7
	<b>8 Use of extrinsic material in interpretation</b>	8
	<b>9 Effect of change of drafting practice and use of examples</b>	9
	<b>10 Use of examples</b>	10
	<b>11 Compliance with forms</b>	11
<b>Part 3 Terms and references</b>	<b>12 Definitions</b>	12
	<b>13 Provisions relating to defined terms and gender and number</b>	13
	<b>14 Meaning of “may” and “must” etc</b>	14
	<b>15 Words and expressions used in statutory instruments</b>	15
	<b>16 Effect of express references to bodies corporate and individuals</b>	16
	<b>17 Production of records kept in computers etc</b>	17
	<b>18 References to this jurisdiction to be implied</b>	18
	<b>19 References to officers and holders of offices</b>	19
	<b>20 Reference to certain provisions of Law</b>	20
	<b>21 Reference to provisions of this Law or an Act is inclusive</b>	21

<b>Exposure Draft to Bill B – Operational Forum 7 July 2009</b>		
<b>Schedule 4</b>	<b>Miscellaneous provisions relating to interpretation</b>	
<b>Section</b>	<b>Issue</b>	<b>Proposed Alternative Solution</b>
<b>Part 4 Functions and powers</b>	<b>22 Performance of statutory functions</b> <b>23 Power to make instrument or decision includes power to amend or repeal</b> <b>24 Matters for which statutory instruments may make provision</b> <b>25 Presumption of validity and power to make</b> <b>26 Appointments may be made by name or office</b> <b>27 Acting appointments</b> <b>28 Powers of appointment imply certain incidental powers</b> <b>29 Delegation of functions</b> <b>30 Exercise of powers between enactment and commencement</b>	<p><b>22</b> QNC submits that the most effective structure for the regulation of nursing and midwifery is for the Nursing and Midwifery Board of Australia to be established as a statutory authority, with perpetual succession, a common seal, the capacity to sue and be sued in its corporate name, the power to enter into contracts, acquire, hold, deal with and dispose of property, conduct general banking, make financial investments and otherwise do anything that an individual could do.</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p>
<b>Part 5 Distance, time and age</b>	<b>31 Matters relating to distance, time and age</b>	31
<b>Schedule 4 Other comments</b>		