

Health Practitioner Registration and Other Legislation Amendment Bill 2012

Report No. 18

Health and Community Services Committee

March 2013

Health and Community Services Committee

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Abbreviations

ADPA Qld	Australian Dental Prothetists Association Queensland
AHMAC	Australian Health Ministers Advisory Council
AHPRA	Australian Health Practitioner Regulation Agency
AHWMC	Australian Health Workforce Ministerial Council
DTBQ	Dental Technicians Board of Queensland
HQCC	Health Quality and Complaints Commission
OHPA	Oral Health Professionals Association
OHPRB	Office of Health Practitioner Registration Boards
QCA	Queensland Consumers Association
SPA	Speech Pathology Australia
SPBQ	Speech Pathologists Board of Queensland

Chair's foreword

On behalf of the Health and Community Services Committee of the 54th Parliament of Queensland, I present this report on the Health Practitioner Registration and Other Legislation Amendment Bill 2012.

The Bill was introduced into the Legislative Assembly by the Minister for Health on 27 November 2012. The committee was required to report to the Legislative Assembly by 12 March 2013.

The committee's task was to consider the policy to be given effect by the legislation, as well as the application of fundamental legislative principles – that is, whether the Bill has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

On behalf of the committee I thank those individuals and organisations who made written submissions on this Bill and gave evidence at its public hearing, and others who have informed the committee's deliberations: the committee's secretariat, officials from Queensland Health and the Technical Scrutiny of Legislation secretariat.

I commend the report to the House.

A handwritten signature in black ink, appearing to read 'T. Ruthenberg', is positioned above the printed name.

Trevor Ruthenberg MP
Chair

March 2013

Recommendation**Recommendation 1****2**

The committee recommends that the Health Practitioner Registration and Other Legislation Amendment Bill 2012 be passed.

1 Introduction

1.1 Role of the committee

The Health and Community Services Committee (the committee) was established by resolution of the Legislative Assembly on 17 May 2012, and is comprised of government and non-government members.

Section 93 of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the Bill, and
- the application of fundamental legislative principles to the Bill.

1.2 Process

1.2.1 Introduction and referral

The Health Practitioner Registration and Other Legislation Amendment Bill 2012 was introduced by the Minister for Health, the Hon Lawrence Springborg MP, Member for Southern Downs, and referred to the committee on 27 November 2012. The committee was required to report to the Legislative Assembly by 12 March 2013.

1.2.2 Submissions

The committee wrote to stakeholder organisations on 3 December 2012 inviting written submissions about the Bill by 8 February 2013. The committee also advertised its call for submissions on its website. Ten submissions were received and accepted. Submissions are listed at Appendix 1 and are published on the committee's webpage at www.parliament.qld.gov.au/hcsc.

1.2.3 Public briefing and public hearing

Officers from Queensland Health briefed the committee on the Bill on 17 December 2012. The committee held a public hearing on 13 February 2013. A list of witnesses is at Appendix 2. Transcripts of both the departmental briefing and the public hearing are published on the committee's webpage.

1.3 Policy objectives of the Bill

The objective of the Health Practitioner Registration and Other Legislation Amendment Bill 2012 (the Bill) is to abolish the State registration scheme for the dental technology and speech pathology professions in Queensland.

The Bill does this by repealing the *Dental Technicians Registration Act 2001*, the *Speech Pathologists Registration Act 2001* and the *Health Practitioner Registration Boards (Administration) Act 1999*. This has the effect of abolishing the registration boards.

The Bill also amends the *Health Practitioner (Professional Standards) Act 1999* to remove the components relating to the State-based registration scheme for speech pathologists and dental technicians, and renames and reorders this Act.

The Bill makes consequential amendments to other legislation to update definitions to reflect the cessation of registration for speech pathologists and dental technicians and provides for transitional arrangements.

2 Examination of the Bill

2.1 Should the Bill be passed?

Standing Order 132(1) requires the committee to recommend whether the Bill should be passed. The committee considered the main policy changes which the Bill would implement, as well as the application of fundamental legislative principles. After its examination of the Bill the committee determined to recommend that the Bill should be passed.

The remainder of this report outlines the issues considered by the committee in more detail.

Recommendation 1

The committee recommends that the Health Practitioner Registration and Other Legislation Amendment Bill 2012 be passed.

2.2 Repeal of registration Acts

The Bill abolishes the State-based regulation scheme for dental technicians and for speech pathologists. This requires the abolition of three statutory bodies in Queensland—the Dental Technicians Registration Board, the Speech Pathologists Registration Board and the Office of Health Practitioner Registration Boards (OHPRB).¹

The repeal of the registration Acts brings Queensland into line with all other Australian jurisdictions which have never registered, or no longer register, these two professions.²

2.2.1 *National registration of health professions*

Prior to 1 July 2010, the Queensland health practitioner registration scheme regulated the chiropractic, dental, dental prosthetics and dental technology, medical, medical radiation practice, nursing and midwifery, occupational therapy, optometry, osteopathy, pharmacy, physiotherapy, podiatry, psychology and speech pathology professions.

In March 2008, the Council of Australian Governments reached an intergovernmental agreement committing the States, Territories and the Commonwealth to establish a single National Registration and Accreditation Scheme for ten health professions (the national scheme). The new national boards for the professions are supported by the Australian Health Practitioner Regulation Agency (AHPRA).

Under the intergovernmental agreement, the Australian Health Workforce Ministerial Council (AHWMC) is responsible for agreeing on the inclusion of new professions in the national scheme.³

Prior to the intergovernmental agreement for the national scheme, an analysis of the requirement for regulation of all professions then registered in one, several or all states and territories was undertaken. Criteria for assessing the need for statutory regulation of a health profession were developed by the Australian Health Ministers Advisory Council (AHMAC) and adopted by AHWMC.

The guiding principles for the criteria for assessing the need for statutory regulation of a health profession are that the sole purpose of occupational regulation is to protect the public interest and not to protect the interests of health occupations. There are six criteria for assessment for registration:⁴

¹ Dr Michael Cleary, Queensland Health, public briefing transcript 17 December 2012, p 1

² Cleary, public briefing transcript, p 1

³ Intergovernmental Agreement for National Registration and Accreditation Scheme for the health professions, p 5

⁴ Intergovernmental Agreement, p 23

Criterion 1: It is appropriate for Health Ministers to exercise responsibility for regulating the occupation in question, or does the occupation more appropriately fall within the domain of another Ministry?

Criterion 2: Do the activities of the occupation pose a significant risk of harm to the health and safety of the public?

Criterion 3: Do existing regulatory or other mechanisms fail to address health and safety issues?

Criterion 4: Is regulation possible to implement for the occupation in question?

Criterion 5: Is regulation practical to implement for the occupation in question?

Criterion 6: Do the benefits to the public of regulation clearly outweigh the potential negative impact of such regulation?

A health profession must meet all six of the criteria to be considered for registration under the national scheme.

In July 2010, ten health professions (physiotherapy, optometry, nursing and midwifery, chiropractic care, pharmacy, dental care (dentists, dental hygienists, dental prosthetists and dental therapists), medical practitioners, psychology, osteopathy and podiatry) transitioned from Queensland registration to the national scheme. On 1 July 2012 a further four professions (Aboriginal and Torres Strait Islander health practitioners, Chinese medicine practitioners, medical radiation technologists and occupational therapists) transitioned to the national scheme. This left only dental technicians and speech pathologists registered in Queensland under the original state health practitioner registration scheme.

Queensland Health advised the committee that the dental technology and speech pathology professions have unsuccessfully sought approval for national registration, most recently in 2009. The AHWMC has determined that the professions do not meet the criteria for national registration and therefore do not require regulation under the national scheme. In particular, AHWMC assessed the two professions as having “a very low or non-existent risk to the public”.⁵

2.2.2 Registration of dental technicians and speech pathologists

Dental technicians and speech pathologists are not registered anywhere else in Australia. Jurisdictions that previously registered dental technicians (New South Wales, South Australia, the Australian Capital Territory and Western Australia) discontinued registration after the profession was deemed not to meet the criteria for inclusion in the national scheme.

Except for a brief period in the Northern Territory, speech pathologists have only ever been registered in Queensland.

On 6 August 2012, the Queensland Government decided to end the State-based regulatory scheme for dental technicians and speech pathologists.⁶ The current Bill puts this decision into effect.

Queensland Health noted that the registration of dental technology and speech pathology in Queensland is now inconsistent with the principles of national registration and with practice in other jurisdictions. It also creates a regulatory barrier to practitioners in these professions from other states practicing in Queensland.⁷

Queensland Health also advised that continuing registration of these professions in Queensland was now less financially viable, as other professions have moved into the arrangements of the national

⁵ Cleary, public briefing transcript, p 1

⁶ Office of Health Practitioner Boards (OHPRB), Background information fact sheet, retrieved from <http://www.healthregboards.qld.gov.au/publications/Background%20information.pdf> on 20 December 2012

⁷ Cleary, public briefing transcript, p 1

scheme. As the registration schemes are self-funded the costs of registration are borne by the practitioners.⁸

The abolition of state registration does not prevent the dental technology and speech pathology professions from seeking to be considered for national registration in the future by AHWMC. The professions would, however, need to demonstrate to the AHWMC that they meet the criteria for regulation under the national arrangements.⁹

2.2.3 *Cessation of state registration for dental technicians*

Submissions from the Australian Dental Prosthetists Association Queensland (ADPA Qld), the Dental Technicians Board of Queensland (DTBQ), Professor Newell Johnson, Professor of Dental Research at Griffith University, the Queensland Consumers Association (QCA) and the Oral Health Professionals Association (OHPA) did not support the ending of state registration for dental technicians.¹⁰

Submissions identified some risks relating to dental technology. For example, ADPA Qld argued that dental technicians should continue to be registered in some form because of a “direct, identifiable and individual connection between the prosthesis manufactured ... and a patient”. It also stated that cessation of registration is inconsistent with the regulatory regimes of other countries.¹¹ The OHPA noted that the introduction of new technologies and materials in dental technology increase the risk to the public of a dental technician’s work.¹² In its submission, QCA also noted that “any failure on the part of a dental technician to observe proper material selection controls could cause serious or permanent harm to the public”.¹³

The ADPA Qld noted, however, that appliances made by dental technicians are made exclusively to patient-specific prescriptions prepared by dental prosthetists or dentists (who are registered).¹⁴ Queensland Health advised the committee that dental technicians do not operate as independent practitioners but work as part of a practice under the supervision of a dentist. This provides a “high degree of clinical supervision” for the dental technician’s work. Queensland Health noted that direct patient care does not occur except under the supervision of a registered health practitioner.¹⁵ The committee noted that, to date, AHWMC has assessed dental technology as very low risk.

In its submission, DTBQ argued that regulation of dental technicians in Queensland has “resulted in significant improvements in the ethics, art and science of dental technology” and that entry and training standards are now higher and more consistent.¹⁶ Professor Johnson’s submission noted that the high standards of education and training for dental technicians could be put at risk by withdrawal of registration and that registration is the best way to ensure the necessary knowledge and expertise.¹⁷

Professor Johnson’s submission also recognised that uniformity in arrangements across jurisdictions is an advantage, enabling freedom of movement for practitioners. His submission noted that the dental technician profession had hoped to gain national registration, with the “high standards practiced in Queensland” extended nationally.¹⁸ OHPA’s submission also indicates that it believes that dental technicians should be registered under the national arrangements.¹⁹

⁸ Cleary, public briefing transcript, p 1

⁹ Cleary, public briefing transcript, p 1

¹⁰ Submissions 1, 2, 3, 6 and 10

¹¹ Australian Dental Prosthetists Association Queensland Inc (ADPA Qld), Submission 1, p 2

¹² Oral Health Professionals Association (OHPA), Submission 10, p 2

¹³ Queensland Consumers Association (QCA), Submission 6, p 4

¹⁴ ADPA Qld, Submission 1, p 2

¹⁵ Cleary, public hearing transcript, p 3

¹⁶ Dental Technicians Board of Queensland (DTBQ), Submission 2, p 2

¹⁷ Professor Newell Johnson, Submission 3, p 2

¹⁸ Johnson, Submission 3, p 1

¹⁹ OHPA, Submission 10, p 2

The committee notes that the dental technician profession will continue to have the option of seeking registration under the national regulatory arrangements.

2.2.4 *Cessation of state registration for speech pathologists*

Submissions from Speech Pathology Australia (SPA), the Speech Pathologists Board of Queensland (SPBQ), QCA, Autism Queensland Inc (Autism Qld) and Ms Joanne Adsett, speech pathologist, did not support the ending of state registration for speech pathologists.²⁰ The SPA submission noted that there had been no consultation about deregistration with the profession in Queensland, employer groups or the public, particularly with respect to the transition arrangements.²¹

In its submission, SPA raised its concern that removal of the requirement for state registration will result in less protection of the public and reduced assurance of receiving a safe and competent service.²² The SPBQ submission argued that the repeal of the current legislative framework will “adversely impact on the maintenance of consistent professional standards”.²³

A submission from Katherine Osborne and Yvette Dempsey, on behalf of 15 Gold Coast speech pathologists, supported the removal of registration for speech pathologists in Queensland. The submission lists a number of problems caused by state registration including the additional costs for speech pathologists wishing to practice across the Queensland/New South Wales border and difficulties in maintaining or regaining registration during periods of maternity leave or other breaks in practice. The submission noted the view that practitioners “have endured a protracted & arguably unreasonable process” to gain registration.²⁴

The submission from SPA argued that the profession’s client group is “inherently vulnerable”. The nature of communication and swallowing disorders mean that speech pathologists work with people who are physically, socially and emotionally vulnerable, frequently on a one-to-one basis.²⁵ Thus, the SPA argued, the client group needs specific legislative protections.²⁶ In its submission SPBQ also highlighted the particular vulnerability of the speech pathology client group, noting that “by the nature of the disabilities treated, the client group is inherently vulnerable and so have a specific need for protection”.²⁷

Speech Pathology Australia argued that where clinical procedures are not carried out competently or invasive instrumentation is not used appropriately, clients can be “at significant risk of physical harm and sometimes death”.²⁸ These procedures include endoscopic swallowing assessments, voice device insertions, tracheostomy management and suctioning.²⁹ Evidence to the committee at the public hearing expanded on the environments in which these procedures are managed which, in addition to hospitals, increasingly may be in residential aged care facilities and people’s homes.³⁰ While government and large non-government organisations may provide support for speech pathologists undertaking these procedures, other environments such as palliative care, residential aged care or “even smaller private hospitals” may not.³¹

²⁰ Submissions 4, 5, 6, 8 and 9

²¹ Speech Pathology Australia (SPA), Submission 4, p 3

²² SPA, Submission 4, p 1

²³ Speech Pathologists Board of Queensland (SPBQ), Submission 5, p 1

²⁴ Katherine Osborne & Yvette Dempsey on behalf of 15 Gold Coast speech pathologists, Submission 7, p 1

²⁵ SPA, Submission 4, pp 1 & 4

²⁶ SPA, Submission 4, p 3

²⁷ SPBQ, Submission 5, p 5

²⁸ SPA, Submission 4 pp 1 & 5

²⁹ SPA, Submission 4, p 1

³⁰ Dr Petrea Cornwell, SPA, public hearing transcript 13 February 2013, p 5

³¹ Cornwell, public hearing transcript, p 3

Other submissions also highlighted the vulnerability of the speech pathology client group and noted the risks of some speech pathology interventions.³² The submission from the SPBQ argued, in addition, that the growth of the speech pathology profession also “increases the potential of risk to public safety”.³³

The submission from the Gold Coast speech pathologists noted that there was little evidence of increased risk of harm in jurisdictions where speech pathologists are not registered.³⁴ One of the five case studies provided in the SPBQ submission related to clinical speech pathology skills in relation to difficulty in swallowing.³⁵ Queensland Health advised the committee that an assessment of the number of complaints received about speech pathologists had been made prior to consideration of deregistration. The number of complaints was low and related to professional standing rather than professional practice.³⁶

The SPA submission notes that, as a professional association, it has no jurisdiction or statutory powers to undertake health assessments, monitor practitioners and place general conditions on practice with regard to its own members and has no jurisdiction at all over non-members. The registration board has these powers.³⁷ Ms Adsett’s submission also noted that once registration of speech pathologists ceases, there will be no ability to enable ‘conditional registration’ related to concerns about issues such as health, currency of practice, English competency and ethical issues.³⁸

Other issues raised in submissions that wished to see state registration of speech pathologists continued were that:

- there would no longer be a need for commitment to continued professional development,³⁹
- clients would lack a consistent multidisciplinary environment across health professions and there will be reduced confidence on the part of clients and their carers,⁴⁰
- it would “make it entirely possible for the emergence of unqualified professionals” to operate under the title of speech pathologist,⁴¹
- registration has had a “critical role” in ensuring recency of practice,⁴² and
- the current cost for membership of Speech Pathology Australia is \$495 compared to registration at \$274.⁴³

Speech Pathology Australia advises that “an overwhelming number” of speech pathologists in Queensland support registration and do not perceive it as a burden.⁴⁴

A number of submissions relating to speech pathology raised the issue of recognition of the qualifications of speech pathologists trained overseas. In its submission Autism Qld indicated a concern that the removal of the registration scheme for speech pathologists would make employing speech pathologists who trained in countries other than Australia a “very complex process” and deter employers.⁴⁵ Ms Adsett also maintained that without state registration, overseas trained

³² Autism Qld, Submission 8, pp 1&2, Joanne Adsett, Submission 9, p 1, Queensland Consumers Association (QCA), Submission 6, p 2

³³ SPBQ, Submission 5, p 4

³⁴ Osborne & Dempsey, Submission 7, p 1

³⁵ SPBQ, Submission 5, p 6

³⁶ Cleary, public hearing transcript, p 3

³⁷ SPA, Submission 4, p 5

³⁸ Adsett, Submission 9, p 2

³⁹ Autism Qld, Submission 8, p 3

⁴⁰ SPBQ, Submission 5, pp 4 – 5

⁴¹ Autism Qld, Submission 8, p 2

⁴² Adsett, Submission 9, p 2

⁴³ Adsett, Submission 9, p 2

⁴⁴ SPA, Submission 4, p 2 & pp 7-8

⁴⁵ Autism Qld, Submission 8, p 3

speech pathologists would require assessment of their qualification and that the cost would need to be borne by employers rather than the speech pathologist.⁴⁶

The committee notes in this context that the SPBQ currently recognises SPA as the assessing authority for overseas gained speech pathology qualifications for registration purposes.⁴⁷ The arrangements for recognition of overseas qualifications would therefore be expected to remain unchanged in practical terms.

2.2.5 *Accountability and regulation of unregistered professions*

In its submission to the committee, ADPA Qld indicated concerns that the cessation of registration of dental technicians may mean that they are not be able to be held accountable “for their actions with regard to any adverse patient outcome”.⁴⁸ This concern was echoed in other submissions that did not support the discontinuation of state registration of dental technicians.⁴⁹

In its submission, SPBQ argues that deregistration will “remove an important avenue of complaint and redress which is presently available to the public in instances where registered speech pathologists fail to meet the standards required under the registration framework”.⁵⁰ Self-regulation proposed by the professional association nationally (Speech Pathology Australia) will not provide universal coverage and will “lack the legislative framework which enables meaningful responses to ensure protection of the public”.⁵¹

The Speech Pathologists Board of Queensland noted that currently Queensland is the only jurisdiction which requires criminal history screening of new applicants and annual disclosure by existing registrants.⁵² In its submission, the QCA argues that speech pathology clients might reasonably expect criminal history screening to apply to this health discipline.⁵³

The Speech Pathologists Board of Queensland also raised the issue of appropriate accountability and regulation as did a range of other submissions that did not support the cessation of registration for speech pathologists.

In Queensland, the Health Quality and Complaints Commission (HQCC) has the authority to investigate complaints against any health professional.⁵⁴ The HQCC response to complaints about unregistered providers depends on the issues raised.⁵⁵ At the public hearing, SPA was concerned that the powers of the HQCC to investigate complaints about speech pathology would “not extend beyond the health sector”.⁵⁶ The committee notes that the aspects of speech pathology most likely to present a risk to a patient are likely to be provided as part of providing a health service, and would therefore be within the powers of the HQCC to consider a complaint.⁵⁷

The Australian Health Ministers Advisory Council (AHMAC) is considering the regulatory or other means to protect the public from unregistered health providers who fail to observe minimum

⁴⁶ Adsett, Submission 9, p 1

⁴⁷ Australian Government Department of Immigration and Citizenship, Australian Skills Recognition Information (ASRI): Speech Pathologist - 252712, retrieved from <http://www.immi.gov.au/asri/occupations/s/speech-pathologist.htm> on 8 February 2013

⁴⁸ ADPA Qld, Submission 1, p 2

⁴⁹ DTBQ, Submission 2, p 2 and Newell, Submission 3, p 2

⁵⁰ SPBQ, Submission 5, p 1

⁵¹ SPBQ, Submission 5, p 1

⁵² SPBQ, Submission 5, p 5

⁵³ QCA, Submission 6, p 2

⁵⁴ OHPRB, Employer frequently asked questions, August 2012, p 2

⁵⁵ Cheryl Herbert, CEO, HQCC, Committee hearing transcript, 7 September 2011, p 12

⁵⁶ Cornwell, public hearing transcript, p 4

⁵⁷ *Health Quality and Complaints Commission Act 2006* refers.

standards of professional conduct.⁵⁸ Consultation on regulatory options was undertaken by AHMAC in 2011. No outcomes had been publicly reported at the time this Bill was being examined but Queensland Health advised the committee that further work on this issue is anticipated in order to provide a mechanism for ensuring the safety of the community with respect to unregistered health professionals.⁵⁹

There are other arrangements in place that safeguard the services provided by professionals. Those employed within the public sector undergo qualification checks. Within the private sector, speech pathologists in jurisdictions other than Queensland have access to billing arrangements under Medicare if they are members of SPA, the professional association. If a person seeing a speech pathologist is being billed under Medicare they can be “quite confident that the person has the appropriate qualifications”.⁶⁰

The national professional associations for speech pathologists and dental technicians also have a code of ethics or a constitution and allow for members of the public or the profession to make a complaint if they believe there has been a breach of the code or constitution.⁶¹

2.3 Repeal of the *Health Practitioner Registration Boards (Administration) Act 1999*

The Bill repeals the *Health Practitioner Registration Boards (Administration) Act 1999* which has the effect of abolishing the OHPRB. This Act provides the powers for the OHPRB to support the dental technology and speech pathology registration boards.⁶²

2.4 Amendments to the *Health Practitioners (Professional Standards) Act 1999*

The *Health Practitioners (Professional Standards) Act 1999* (Professional Standards Act) deals with the disciplinary action that is taken once a board has investigated a complaint. It is the link between the state registration boards and, for the national scheme, the national boards, and the Queensland Civil and Administrative Tribunal processes.⁶³

Clause 54 of the Bill repeals the components of the Professional Standards Act that apply to the State-based registration scheme for dental technicians and speech pathologists. Part 8 of the Bill makes various other amendments to the Professional Standards Act. As these are significant amendments, the Professional Standards Act is also renamed and reordered “to better reflect its remaining sole function, which is to provide for matters relating to disciplinary proceedings for nationally registered health practitioners”.⁶⁴

There are no policy changes in the amendments. They are all consequential to the repeal of the two state registration schemes.⁶⁵

2.5 Consequential amendments to other Queensland portfolio legislation

Most of the Bill consists of consequential amendments to other Acts that are affected by the abolition of state registration for speech pathologists and dental technicians. The amendments relate primarily to definitions of ‘registered health practitioner’ or remove references to the state registration boards and their related Acts. Amendments also update references in other Acts to the new name of the amended Professional Standards Act. Part 6 of the Bill ensures that arrangements under the *Forensic Disability Act 2011* continue to include speech pathologists. Part 10 amends the

⁵⁸ Australian Health Ministers Council (AHMAC), Consultation paper, *Options for regulation of unregistered health practitioners*, 2011, p 5

⁵⁹ Cleary, public briefing transcript, p 2

⁶⁰ Cleary, public briefing transcript, p 2

⁶¹ OHPRB, Employer frequently asked questions, August 2012, p 2

⁶² Explanatory notes to the Bill, p 2

⁶³ Rachel Welch, Queensland Health, public briefing transcript, p 2

⁶⁴ Explanatory notes to the Bill, p 3

⁶⁵ Welch, public briefing transcript, p 2

Health Quality and Complaints Commission Act 2006 so that references to ‘registration board’ are now to ‘national board’.

2.6 Transitional arrangements

Clause 53 of the Bill applies a number of transitional arrangements to the repeal of the State registration schemes. It specifically provides for the transfer of assets, liabilities and property, including the records of the two registration boards, to the OHPRB in the first instance. Then, upon repeal of the *Health Practitioner Registration Boards (Administration) Act 1999*, it transfers them to Queensland Health. Queensland Health will take responsibility for any records.⁶⁶

The abolition of the OHPRB will occur approximately one month after the registration boards are abolished. This will allow the winding up activities to be conducted.⁶⁷

The dental technician and speech pathology boards are provided administrative support through the OHPRB and staff employment is under the provisions of the *Public Service Act 2008*. Staff of OHPRB who do not choose to take voluntary redundancy will be transitioned to Queensland Health and managed in accordance with Queensland Public Service Directive 6/12 ‘Employees requiring placement’. This is the same arrangement as made for the other previous state registration board staff.⁶⁸

Other transitional provisions relate to the treatment of existing complaints at the time of repeal of the registration Acts. Queensland Health advised that it did not anticipate that there would be many and noted that most complaints for the two professions also fall within the scope of the HQCC. Any ongoing complaint processes will be transferred to the HQCC to be dealt with under its existing provisions.⁶⁹

If there are disciplinary proceedings that are not finalised upon the abolition of the scheme, the Bill provides a mechanism for these proceedings to continue under the pre-amended Professional Standards Act. This transitional provision will provide a registrant natural justice by giving them an opportunity to address allegations made against them.⁷⁰

The other significant transitional arrangement provided for in the Bill is for the issuing of blue cards by the Commissioner for Children and Young People and Child Guardian or the issuing of yellow cards by Disability Services, Department of Communities, Child Safety and Disability Services. Queensland Health advised the committee that, at present, registered health practitioners are not required to have these criminal history checks and these cards because this is checked as part of the registration process.⁷¹ The Bill provides a three-month transitional period for speech pathologists and dental technicians to seek a blue or yellow card as required.

In its response to an issue raised by the committee at the public briefing, Queensland Health advised that, on cessation of state registration, speech pathologists will be required to be members of Speech Pathology Australia in order to be eligible to provide services under the Medicare arrangements. This is currently the eligibility requirement for speech pathologists in other Australian jurisdictions. The Minister for Health will seek an amendment to the relevant Commonwealth regulation specifying the eligibility requirements for Medicare immediately following the cessation of registration in Queensland.⁷²

Dental technology is not an eligible service under Medicare.

⁶⁶ Welch, public briefing transcript, p 2

⁶⁷ Cleary, public briefing transcript, p 1

⁶⁸ Cleary, public briefing transcript, p 3 and Queensland Health response of 25 January 2013 to questions on notice, p 2

⁶⁹ Welch, public briefing transcript, p 2

⁷⁰ Welch, public briefing transcript, p 2

⁷¹ Welch, public briefing transcript, p 2

⁷² Queensland Health response, p 5

3 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ are the “principles relating to legislation that underlie a parliamentary democracy based on the rule of law”. The principles include that legislation has sufficient regard to the:

- rights and liberties of individuals, and
- institution of parliament.

3.1 Rights and liberties of individuals

3.1.1 Administrative power

Clause 53 of the Bill inserts a new section into the *Health Practitioners (Professional Standards) Act 1999* to provide for the refund of registration fees to registered dental technicians and speech pathologists where there is an unused portion of the registration fee on abolition of the registration schemes. The clause provides that the Chief Executive of Queensland Health ‘may’ refund the unused portion of the registration fee but does not require a refund by stating that the Chief Executive ‘must’ provide a refund.

The use of ‘must’ in the clause would more strongly define the administrative power. At the same time, it would place an obligation on the Chief Executive that could prove impractical in some circumstances. For example, a registrant may not be able to be located to have the fee refunded or the amount to be refunded might be very small. The discretion provided to the Chief Executive in the Bill with regard to refunds is therefore appropriate. The committee also notes that the Explanatory Notes to the Bill make clear the policy intent that registration fees are to be refunded.

3.1.2 Clear and precise drafting

In considering whether the Bill is unambiguous and drafted in a sufficiently clear and precise way, the committee identified two minor drafting issues with clause 55 of the Bill. The first relates to the use of the terms ‘pre-amended’ and ‘repealed’ Acts and their definitions. The definition of ‘pre-amended Act’ in clause 55 refers to section 406 which defines ‘pre-amended’ but the definition of ‘repealed Act’ at (b), in reference to part 13, division 7, subdivision 1 also refers to section 406, which does not include the term ‘repealed Act’. The second issue is that clause 55(4) amends the definition of ‘commencement’ to insert a reference to section 406A, however section 406A does not appear in the either the Act being amended or the Bill.

The committee brings these issues to the Minister’s attention.

3.2 Explanatory Notes

Explanatory Notes were tabled with the introduction of the Bill as required by the *Legislative Standards Act 1992* and comply with the requirements of section 23. The committee notes that the Explanatory Notes for the Bill are very detailed and provide an excellent level of background information.

Appendices

Appendix 1 – List of Submissions

Sub #	Name
1	Australian Dental Prosthetists Association Queensland Inc
2	Dental Technicians Board of Queensland
3	Professor Newell W Johnson, Griffith University
4	Speech Pathology Australia
5	Speech Pathologists Board of Queensland
6	Queensland Consumers Association
7	Katherine Osborne & Yvette Dempsey (on behalf of 15 Gold Coast Speech Pathologists)
8	Autism Queensland Inc
9	Joanne Adsett
10	Oral Health Professionals Association

Appendix 2 – Witnesses at public hearing 13 February 2013

Dr Petrea Cornwell, President, Speech Pathology Australia Queensland Branch
Mr John Mackay, Chairperson, Dental Technicians Board of Queensland