

Queensland



HEALTH LEGISLATION AMENDMENT ACT 2001

Act No. 78 of 2001

Queensland



HEALTH LEGISLATION AMENDMENT ACT 2001

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Queensland



Health Legislation Amendment Act 2001

Act No. 78 of 2001

An Act to amend Acts administered by the Minister for Health

[Assented to 15 November 2001]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Health Legislation Amendment Act 2001*.

2 Commencement

The following provisions commence on a day to be fixed by proclamation—

- (a) parts 5, 6, 19 and 21;
- (b) schedules 1 and 3;
- (c) schedule 4 to the extent it amends the *Drugs Misuse Act 1986*, the *Liquor Act 1992*, the *Tobacco and Other Smoking Products (Prevention of Supply to Children) Act 1998* and the *Transport Operations (Road Use Management) Act 1995*.

PART 2—AMENDMENT OF CHIROPRACTORS REGISTRATION ACT 2001

3 Act amended in pt 2

This part amends the *Chiropractors Registration Act 2001*.

4 Amendment of s 42 (Procedural requirements for applications)

(1) Section 42(2)—

renumber as section 42(4).

(2) Section 42—

insert—

‘(2) The approved form may require the disclosure of the applicant’s criminal history.

‘(3) If the approved form requires the disclosure of the applicant’s criminal history, the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure.’.

5 Amendment of s 45 (Fitness to practise the profession)

(1) Section 45(1)(c) to (e)—

omit, insert—

‘(c) the applicant’s criminal history;’.

(2) Section 45(1)(f) to (h)—

renumber as section 45(1)(d) to (f).

(3) Section 45(2)—

omit, insert—

‘(2) When having regard to the applicant’s criminal history under subsection (1)(c), the board must have particular regard to the following—

- (a) any conviction of the applicant for an indictable offence;
- (b) any conviction of the applicant for an offence against the repealed Act, this Act, the *Health Practitioners (Professional Standards) Act 1999* or a corresponding law;
- (c) any conviction of the applicant for an offence, relating to the practice of the profession—
 - (i) against the *Health Act 1937* or the *Fair Trading Act 1989*; or
 - (ii) against another law applying, or that applied, in the State, the Commonwealth, another State or a foreign country.’.

(4) Section 45(3), ‘(1)(g)’—

omit, insert—

‘(1)(e)’.

(5) Section 45(4), ‘an’—

omit, insert—

‘the’.

(6) Section 45(6)—

omit, insert—

‘(6) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the asking for, or giving of, the report.’.

6 Amendment of s 47 (Appointment of appropriately qualified person to conduct health assessment)

(1) Section 47(4) and (5)—

renumber as section 47(6) and (7).

(2) Section 47—

insert—

‘(4) If the board considers it relevant to the assessment, it may disclose the applicant’s criminal history to a person appointed to conduct the assessment.

‘(5) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure.’.

7 Amendment of s 70 (Procedural requirements for applications)

Section 70(2), ‘must be made’—

omit, insert—

‘may only be decided by the board if it is received’.

8 Amendment of s 196 (Confidentiality of information)

Section 196(6), definition “information”, paragraph (b), ‘a request under section 45(4)’—

omit, insert—

‘this Act’.

9 Amendment of sch 4 (Dictionary)

Schedule 4—

insert—

‘“**criminal history**”, of a person, means all the following—

- (a) every conviction of the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act;
- (b) every charge made against the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act.’.

PART 3—AMENDMENT OF DENTAL PRACTITIONERS REGISTRATION ACT 2001

10 Act amended in pt 3

This part amends the *Dental Practitioners Registration Act 2001*.

11 Amendment of s 42 (Procedural requirements for applications)

(1) Section 42(2)—

renumber as section 42(4).

(2) Section 42—

insert—

‘(2) The approved form may require the disclosure of the applicant’s criminal history.

‘(3) If the approved form requires the disclosure of the applicant’s criminal history, the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure.’.

12 Amendment of s 45 (Fitness to practise the profession)

(1) Section 45(1)(c) to (e)—

omit, insert—

‘(c) the applicant’s criminal history;’.

(2) Section 45(1)(f) to (h)—

renumber as section 45(1)(d) to (f).

(3) Section 45(2)—

omit, insert—

‘(2) When having regard to the applicant’s criminal history under subsection (1)(c), the board must have particular regard to the following—

- (a) any conviction of the applicant for an indictable offence;
- (b) any conviction of the applicant for an offence against the repealed Act, this Act, the *Health Practitioners (Professional Standards) Act 1999* or a corresponding law;
- (c) any conviction of the applicant for an offence, relating to the practice of the profession—
 - (i) against the *Health Act 1937* or the *Fair Trading Act 1989*; or
 - (ii) against another law applying, or that applied, in the State, the Commonwealth, another State or a foreign country.’.

(4) Section 45(3), ‘(1)(g)’—

omit, insert—

‘(1)(e)’.

(5) Section 45(4), ‘an’—

omit, insert—

‘the’.

(6) Section 45(6)—

omit, insert—

‘(6) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the asking for, or giving of, the report.’.

13 Amendment of s 47 (Appointment of appropriately qualified person to conduct health assessment)

(1) Section 47(4) and (5)—

renumber as section 47(6) and (7).

(2) Section 47—

insert—

‘(4) If the board considers it relevant to the assessment, it may disclose the applicant’s criminal history to a person appointed to conduct the assessment.

‘(5) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure.’.

14 Amendment of s 70 (Procedural requirements for applications)

Section 70(2), ‘must be made’—

omit, insert—

‘may only be decided by the board if it is received’.

15 Amendment of s 218 (Confidentiality of information)

Section 218(6), definition “information”, paragraph (b), ‘a request under section 45(4)’—

omit, insert—

‘this Act’.

16 Amendment of sch 4 (Dictionary)

Schedule 4—

insert—

‘**“criminal history”**, of a person, means all the following—

- (a) every conviction of the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act;
- (b) every charge made against the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act.’.

**PART 4—AMENDMENT OF DENTAL TECHNICIANS
AND DENTAL PROSTHETISTS REGISTRATION
ACT 2001**

17 Act amended in pt 4

This part amends the *Dental Technicians and Dental Prosthetists Registration Act 2001*.

18 Amendment of s 42 (Procedural requirements for applications)

(1) Section 42(2)—

renumber as section 42(4).

(2) Section 42—

insert—

‘(2) The approved form may require the disclosure of the applicant’s criminal history.

‘(3) If the approved form requires the disclosure of the applicant’s criminal history, the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure.’.

19 Amendment of s 45 (Fitness to practise the profession)

(1) Section 45(1)(c) to (e)—

omit, insert—

‘(c) the applicant’s criminal history;’.

(2) Section 45(1)(f) to (h)—

renumber as section 45(1)(d) to (f).

(3) Section 45(2)—

omit, insert—

‘(2) When having regard to the applicant’s criminal history under subsection (1)(c), the board must have particular regard to the following—

(a) any conviction of the applicant for an indictable offence;

- (b) any conviction of the applicant for an offence against the repealed Act, this Act, the *Health Practitioners (Professional Standards) Act 1999* or a corresponding law;
- (c) any conviction of the applicant for an offence, relating to the practice of the profession—
 - (i) against the *Health Act 1937* or the *Fair Trading Act 1989*; or
 - (ii) against another law applying, or that applied, in the State, the Commonwealth, another State or a foreign country.’.

(4) Section 45(3), ‘(1)(g)’—

omit, insert—

‘(1)(e)’.

(5) Section 45(4), ‘an’—

omit, insert—

‘the’.

(6) Section 45(6)—

omit, insert—

‘(6) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the asking for, or giving of, the report.’.

20 Amendment of s 47 (Appointment of appropriately qualified person to conduct health assessment)

(1) Section 47(4) and (5)—

renumber as section 47(6) and (7).

(2) Section 47—

insert—

‘(4) If the board considers it relevant to the assessment, it may disclose the applicant’s criminal history to a person appointed to conduct the assessment.

‘(5) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure.’.

21 Amendment of s 70 (Procedural requirements for applications)

Section 70(2), ‘must be made’—

omit, insert—

‘may only be decided by the board if it is received’.

22 Amendment of s 200 (Confidentiality of information)

Section 200(6), definition “information”, paragraph (b), ‘a request under section 45(4)’—

omit, insert—

‘this Act’.

23 Amendment of sch 4 (Dictionary)

Schedule 4—

insert—

‘**“criminal history”**, of a person, means all the following—

- (a) every conviction of the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act;
- (b) every charge made against the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act.’.

PART 5—AMENDMENT OF FOOD ACT 1981**24 Act amended in pt 5 and sch 1**

This part and schedule 1 amend the *Food Act 1981*.

25 Amendment of title

(1) Title, ‘preparation’—

omit, insert—

‘handling’.

(2) Title, ‘wholesomeness and purity’—

omit, insert—

‘safety and suitability’.

26 Insertion of new ss 2 and 3

After section 1—

insert—

‘2 Objects of Act

‘The objects of this Act include the following—

- (a) ensuring food for sale is safe and suitable for human consumption;
- (b) preventing misleading conduct relating to the sale of food;
- (c) applying the food standards code.

‘3 This Act not affected by Food Production (Safety) Act 2000

‘The *Food Production (Safety) Act 2000* is additional to, and does not limit, this Act.’.

27 Amendment of s 5 (Interpretation)

(1) Section 5, heading—

omit, insert—

‘5 Definitions’.

(2) Section 5, ‘5. In this Act—’—

omit, insert—

‘The dictionary in schedule 3 defines particular words used in this Act.’.

(3) Section 5, definitions “analysis”, “animal”, “appliance”, “appropriate designation”, “drug”, “food”, “package”, “prepare” and “sell”—

omit.

(4) Section 5—

insert—

‘ **“analysis”** includes an examination or testing of food or another thing.

“animal” includes an amphibian, bird, crustacean, fish, mollusc and reptile.

“equipment” means the whole or part of—

- (a) any utensil, machinery, instrument, device, apparatus or appliance used, or designed or intended for use, in connection with the handling of food; or
- (b) any substance, utensil, machinery, instrument, device, apparatus or appliance that is used, or that is designed or intended for use, in cleaning anything mentioned in paragraph (a).

“exercised all due diligence” includes took all reasonable precautions.

“food” see section 5A.

“food business” means a business, enterprise or activity that involves—

- (a) the handling of food intended for sale; or
- (b) the sale of food;

regardless of whether the business, enterprise or activity concerned is of a commercial, charitable or community nature and whether it involves the handling or sale of food on one occasion only.

“food standards code” see section 5B.

“handling”—

- (a) of food, includes the making, manufacturing, producing, collecting, extracting, processing, storing, transporting, delivering, preparing, treating, preserving, packing, cooking, thawing, serving and displaying of food; or
- (b) of an article other than food, includes the manufacturing, collecting, processing, storing, transporting, delivering, preparing, treating, packing, and displaying of the article.

“package” includes a container and wrapper in or by which food intended for sale is wholly or partly encased, covered, enclosed, contained or packed and, if food is carried or sold or intended to be carried or sold in more than one package, includes every one of the packages.

“recall order” means an order under part 3 requiring the recall or disposal, or both, of food.

“sell” see section 5C.

“this jurisdiction” means Queensland.

“unsafe” see section 5D.

“unsuitable” see section 5E.

(5) Section 5, definition “advertisement”, ‘or disposal’—
omit.

(6) Section 5, definition “article”, paragraph (b), ‘an appliance’—
omit, insert—
‘equipment’.

(7) Section 5, definition “article”, paragraph (e), ‘conveyance’—
omit, insert—
‘transporting’.

(8) Section 5, definition “food store”, from ‘or preparation’ to ‘supplying’—
omit, insert—
‘or handling’.

(9) Section 5, definition “food vehicle”, from ‘or preparation’ to ‘conveying’—
omit, insert—
‘or handling’.

(10) Section 5, definition “food vending machine”, ‘or supplying’—
omit.

(11) Section 5, definition “proprietor”, paragraph (c), ‘an appliance’—
omit, insert—
‘equipment’.

(12) Section 5, definition “proprietor”, paragraph (c), ‘the appliance’—
omit, insert—
‘the equipment’.

(13) Section 5, definition “proprietor”—

insert—

‘(d) in relation to a food business—means—

- (i) the person carrying on the food business; or
- (ii) if that person can not be identified, the person in charge of the food business.’

(14) Section 5, definition “vehicle”, ‘conveyance’—

omit, insert—

‘transportation’.

(15) Section 5, definitions, as amended—

relocate to schedule 3 as inserted by this Act.

28 Replacement of s 5A (Application of Act to certain food)

Section 5A—

omit, insert—

‘5A Meaning of “food”

‘(1) In this Act, “**food**” includes—

- (a) a substance or thing of a kind used, or represented as being for use, for human consumption (whether it is raw, prepared or partly prepared); and
- (b) a substance or thing of a kind used, or represented as being for use, as an ingredient or additive in a substance or thing mentioned in paragraph (a); and
- (c) a substance used in preparing a substance or thing mentioned in paragraph (a) if it comes into direct contact with the substance or thing mentioned in that paragraph, including, for example, a processing aid; and
- (d) chewing gum or an ingredient or additive in chewing gum, or a substance used in preparing chewing gum; and
- (e) a substance or thing declared to be a food under a declaration in force under the *Australia New Zealand Food Authority Act 1991* (Cwlth), section 3B;

whether or not the substance, thing or chewing gum is in a condition fit for human consumption.

‘(2) However, “**food**” does not include a therapeutic good within the meaning of the *Therapeutic Goods Act 1989* (Cwlth).

‘5B Meaning of “**food standards code**”

‘(1) Subject to subsection (2), in this Act, “**food standards code**” means the Australia New Zealand Food Standards Code as defined in the *Australia New Zealand Food Authority Act 1991* (Cwlth).

‘(2) In applying the food standards code for this Act—

- (a) the code applies with the changes stated in schedule 2; and
- (b) standard 3.2.1 and clause 4 of standard 3.2.2 of the code¹ do not apply; and
- (c) clause 3 of standard 3.2.2 of the code² does not apply until 1 July 2002.

‘5C Meaning of “**sell**”

‘(1) In this Act, “**sell**” includes—

- (a) barter, offer or attempt to sell; and
- (b) receive for sale; and
- (c) have in possession for sale; and
- (d) display for sale; and
- (e) cause or permit to be sold or offered for sale; and
- (f) send, forward or deliver for sale; and
- (g) dispose of in any way for valuable consideration; and
- (h) dispose of to an agent for sale on consignment; and
- (i) provide under a contract of service; and

1 Food standards code, standard 3.2.1 (Food Safety Programs) and standard 3.2.2 (Food Safety Practices and General Requirements), clause 4 (Notification)

2 Food standards code, standard 3.2.2 (Food Safety Practices and General Requirements), clause 3 (Food handling-skills and knowledge)

- (j) in relation to food, supply the food as a meal or part of a meal to an employee, under a term of an award governing the employment of the employee or a term of the employee's contract of service, for consumption by the employee at the employee's place of work; and
- (k) dispose of by way of raffle, lottery or other game of chance; and
- (l) offer as a prize or reward; and
- (m) give away for the purpose of advertisement or in furtherance of trade or business; and
- (n) in relation to food, supply the food under a contract (whether or not the contract is made with the consumer of the food), together with accommodation, service or entertainment, in consideration of an inclusive charge for the food supplied and the accommodation, service or entertainment; and
- (o) in relation to food, give away, from a food business, the food to a person; and
- (p) sell for the purpose of resale.

‘(2) For this Act, food or equipment that is displayed for the purpose of being offered as a prize or reward or given away for the purpose of advertisement or in the furtherance of trade or business is taken to have been displayed for sale by the owner of the food or equipment.

‘5D Meaning of “unsafe” food

‘(1) For this Act, food is **“unsafe”** at a particular time if it would be likely to cause physical harm to a person who might later consume it, assuming—

- (a) it was, after that particular time and before being consumed by the person, properly subjected to all processes (if any) that are relevant to its reasonable intended use; and
- (b) nothing happened to it after that particular time and before being consumed by the person that would prevent its being used for its reasonable intended use; and
- (c) it was consumed by the person according to its reasonable intended use.

‘(2) However, food is not unsafe merely because its inherent nutritional or chemical properties cause, or its inherent nature causes, adverse

reactions only in persons with allergies or sensitivities that are not common to the majority of persons.

‘(3) In subsection (1)—

“**processes**” include processes involving storage and preparation.

‘5E Meaning of “unsuitable” food

‘(1) For this Act, food is “**unsuitable**” if it is food that—

- (a) is damaged, deteriorated or perished to an extent that affects its reasonable intended use; or
- (b) contains a damaged, deteriorated or perished substance that affects its reasonable intended use; or
- (c) is the product of a diseased animal, or an animal that has died other than by slaughter, and has not been declared under an Act to be safe for human consumption; or
- (d) contains a biological or chemical agent, or other matter or substance, that is foreign to the nature of the food.

‘(2) However, food is not unsuitable merely because—

- (a) it contains an agricultural or veterinary chemical in an amount that does not contravene the food standards code; or
- (b) it contains a metal or non-metal contaminant (within the meaning of the food standards code) in an amount that does not contravene the permitted level for the contaminant as specified in the food standards code; or
- (c) it contains a matter or substance that is permitted by the food standards code.

‘(3) In this section—

“**slaughter**”, of an animal, includes the killing of an animal in the process of capturing, taking or harvesting it for the purposes of preparing it for use as food.’.

29 Replacement of pt 2 (Offences in connection with the sale and preparation of food)

Part 2—

omit, insert—

‘PART 2—OFFENCES RELATING TO FOOD***‘Division 1—Serious offences relating to food*****‘9 Handling of food in unsafe way**

‘A person must not handle food intended for sale in a way that the person knows, or reasonably ought to know, will make, or is likely to make, the food unsafe.

Maximum penalty—1 350 penalty units or 2 years imprisonment.

‘10 Sale of unsafe food

‘A person must not sell food that the person knows, or reasonably ought to know, is unsafe.

Maximum penalty—1 350 penalty units or 2 years imprisonment.

‘11 False description of food

‘(1) A person must not cause food intended for sale to be falsely described if the person knows, or reasonably ought to know, that a consumer of the food who relies on the description will, or is likely to, suffer physical harm.

Maximum penalty—1 350 penalty units or 2 years imprisonment.

‘(2) A person must not sell food that the person knows, or reasonably ought to know, is falsely described and will, or is likely to, cause physical harm to a consumer of the food who relies on the description.

Maximum penalty—1 350 penalty units or 2 years imprisonment.’.

30 Insertion of new pt 2, div 2

After section 11, as inserted by this Act—

insert—

‘Division 2—Other offences relating to food**‘12 Handling and sale of unsafe food**

‘(1) A person must not handle food intended for sale in a way that will make, or is likely to make, the food unsafe.

Maximum penalty—700 penalty units.

‘(2) A person must not sell food that is unsafe.

Maximum penalty—700 penalty units.

‘13 Handling and sale of unsuitable food

‘(1) A person must not handle food intended for sale in a way that will make, or is likely to make, the food unsuitable.

Maximum penalty—550 penalty units.

‘(2) A person must not sell food that is unsuitable.

Maximum penalty—550 penalty units.

‘(3) For the purposes of this section, it is immaterial whether the food concerned is safe.

‘14 Misleading conduct relating to sale of food

‘(1) A person must not, in the course of carrying on a food business, engage in conduct that is misleading or deceptive or is likely to mislead or deceive in relation to the advertising, packaging or labelling of food intended for sale or the sale of food.

Maximum penalty—700 penalty units.

‘(2) A person must not, for the purpose of effecting or promoting the sale of food in the course of carrying on a food business, cause the food to be advertised, packaged or labelled in a way that falsely describes the food.

Maximum penalty—700 penalty units.

‘(3) A person must not, in the course of carrying on a food business, sell food that is packaged or labelled in a way that falsely describes the food.

Maximum penalty—700 penalty units.

‘(4) Neither subsection (2) nor (3) limits the generality of subsection (1).

‘15 Sale of unfit equipment or packaging or labelling material

‘(1) A person must not sell equipment that, if used for the purposes for which it was designed or intended to be used—

- (a) would make or be likely to make food unsafe; or
- (b) would put other equipment, or would be likely to put other equipment, in a condition that, if the other equipment were used for the purposes for which it was designed or intended to be used, it would make, or be likely to make, food unsafe.

Maximum penalty—700 penalty units.

‘(2) A person must not sell packaging or labelling material that, if used for the purposes for which it was designed or intended to be used, would make or be likely to make food unsafe.

Maximum penalty—700 penalty units.

‘16 Compliance with food standards code

‘(1) A person must comply with a requirement imposed on the person by a provision of the food standards code in relation to the conduct of a food business or to food intended for sale or food for sale.

Maximum penalty—700 penalty units.

‘(2) A person must not sell food that does not comply with a requirement of the food standards code that relates to the food.

Maximum penalty—700 penalty units.

‘(3) A person must not sell or advertise food that is packaged or labelled in a way that contravenes a provision of the food standards code.

Maximum penalty—700 penalty units.

‘(4) A person must not sell or advertise for sale food in a way that contravenes a provision of the food standards code.

Maximum penalty—700 penalty units.

‘(5) A person does not commit an offence against this section in relation to a contravention of the food standards code, standard A1, clause (1A)³ if the food concerned was packed, before or at the time of sale, in the presence of the purchaser.

‘17 False descriptions of food

‘(1) For this part, food that is falsely described includes food to which any 1 or more of the following paragraphs applies—

- (a) the food is represented as being of a particular nature or substance for which there is a prescribed standard under the food standards code and the food does not comply with that prescribed standard;
- (b) the food is represented as being of a particular nature or substance and it contains, or is mixed or diluted with, any substance in a quantity or proportion that significantly diminishes its food value or nutritive properties as compared with food of the represented nature or substance;
- (c) the food is represented as being of a particular nature or substance and it contains, or is mixed or diluted with, a substance of lower commercial value than food of the represented nature or substance;
- (d) the food is represented as being of a particular nature or substance and a constituent of the food has been wholly or partly removed so that its properties are diminished as compared with food of the represented nature or substance;
- (e) a word, statement, device or design used in the packaging or labelling of the food, or in an advertisement for the food, would create a false impression about the nature or substance of the food, or the commercial value of the food, in the mind of a reasonable person;
- (f) the food is not of the nature or substance represented by the way in which it is packaged, labelled or offered for sale.

‘(2) Without limiting the application of subsection (1) of this section to section 11(2), food is falsely described for the purposes of section 11(2) if it is supplied in response to a purchaser’s request for a particular type of

3 Food standards code, standard A1 (Labelling and Advertising)

food or a food that does not contain a particular ingredient, and the food is not of that type or contains that ingredient.

‘17A Application of provisions outside jurisdiction

‘For this part, it does not matter that the food concerned was sold or intended for sale outside this jurisdiction.’.

31 Insertion of new pt 2, div 3

After section 17A, as inserted by this Act—

insert—

‘Division 3—Defences

‘17B Defence relating to publication of advertisements

‘(1) In proceedings for an offence under this part in relation to the publication of an advertisement, it is a defence for a person to prove that—

- (a) the person carried on the business of publishing or arranging for the publication of advertisements; and
- (b) the person published or arranged for the publication of the advertisement concerned in the ordinary course of that business.

‘(2) Subsection (1) does not apply if the person—

- (a) should reasonably have known that the publication of the advertisement was an offence; or
- (b) is the proprietor of a food business or is otherwise engaged in the conduct of a food business for which the advertisement was published; or
- (c) had previously been informed in writing by the chief executive that publication of an advertisement of that type would constitute an offence.

‘17C Defence relating to food for export

‘(1) In proceedings for an offence under this part involving a contravention of a provision of the food standards code in relation to food, it is a defence for a person to prove that—

- (a) the food concerned is to be exported to another country; and
- (b) the food complies with the laws in force at the time of the alleged offence in the place to which the food is to be exported being laws that deal with the same subject-matter as the provision of the food standards code concerned.

‘(2) This section does not apply to food that was originally intended for export but was sold in this jurisdiction.

‘17D Defence of due diligence

‘(1) In proceedings for an offence under this part, it is a defence for a person to prove that the person exercised all due diligence to prevent the commission of the offence by the person or by another person under the person’s control.

‘(2) Without limiting the ways in which a person may satisfy the requirements of subsection (1), a person satisfies those requirements if it is proved—

- (a) that the commission of the offence was due to—
 - (i) an act or default of another person; or
 - (ii) reliance on information supplied by another person; and
- (b) that—
 - (i) the person carried out all checks of the food concerned as were reasonable in all the circumstances; or
 - (ii) it was reasonable in all the circumstances to rely on checks carried out by the person who supplied the food concerned to the person; and
- (c) that the person did not import the food into this jurisdiction from another country; and
- (d) if the offence involves the sale of food, that—
 - (i) the person sold the food in the same condition as when the person purchased it; or
 - (ii) the person sold the food in a different condition to that in which the person purchased it, but that the difference did not result in a contravention of this Act.

‘(3) Without limiting the ways in which a person may satisfy the requirements of subsection (1) or (2)(b)(i), a person may satisfy those requirements by proving that the person complied with a scheme (for example, a quality assurance program or an industry code of practice) that was—

- (a) designed to manage food safety hazards and based on Australian national or international standards, codes or guidelines designed for that purpose; and
- (b) documented in some way.

‘(4) In subsection (2)(a)—

“another person” does not include a person who was—

- (a) an employee or agent of the defendant; or
- (b) in the case of a defendant that is a body corporate, a director, employee or agent of the defendant.

‘17E Disapplication of Criminal Code, ss 23 and 24

‘(1) The Criminal Code, section 23, does not apply to an offence under this part.

‘(2) The Criminal Code, section 24, does not apply to an offence under division 2.⁴

‘17F Defence relating to handling food

‘In proceedings for an offence under section 9, 12(1) or 13(1),⁵ it is a defence for a person to prove that the person caused the food to which the offence relates to be destroyed or otherwise disposed of immediately after the food was handled in the way that was likely to make it unsafe or unsuitable.

4 Criminal Code, sections 23 (Intention—motive) and 24 (Mistake of fact)

5 Sections 9 (Handling of food in unsafe way), 12 (Handling and sale of unsafe food) and 13 (Handling and sale of unsuitable food)

‘17G Defence relating to sale of unfit equipment or packaging or labelling material

‘In proceedings for an offence under section 15(1) or (2),⁶ it is a defence for a person to prove that the person reasonably believed that the equipment or material concerned was not intended for use in connection with the handling of food.’.

32 Replacement of pt 3 (Labelling requirements)

Part 3—

omit, insert—

‘PART 3—EMERGENCY POWERS

‘18 Making of order

‘The chief executive may make an order under this part if the chief executive has reasonable grounds to believe that the making of the order is necessary to prevent or reduce the possibility of a serious danger to public health or to mitigate the adverse consequences of a serious danger to public health.

‘19 Nature of order

‘(1) An order under this part may do any 1 or more of the following—

- (a) require the publication of warnings, in a form approved by the chief executive, that a particular food or type of food is unsafe;
- (b) prohibit the cultivation, taking, harvesting or obtaining, from a specified area, of a particular food or type of food or other primary produce intended to be used for human consumption;
- (c) prohibit a particular food or type of food from being advertised or sold;
- (d) direct that a particular food or type of food consigned or distributed for sale or sold be recalled and specify the way in which, and the period within which, the recall must be conducted;

6 Section 15 (Sale of unfit equipment or packaging or labelling material)

- (e) direct that a particular food or type of food or other primary produce intended to be used for human consumption be impounded, isolated, destroyed or otherwise disposed of and specify the way in which the impounding, isolation, destruction or disposal must be conducted;
- (f) prohibit absolutely the carrying on of an activity in relation to a particular food or type of food, or permit the carrying on of the activity only under conditions specified in the order;
- (g) without limiting paragraph (f), impose conditions relating to the taking and analysis of samples of the food or of water or soil or another thing that is part of the environment in which that activity is carried on in relation to the food;
- (h) specify methods of analysis (not inconsistent with any methods prescribed by the food standards code) of any samples required to be taken under the order.

‘(2) An order under this part may be varied or revoked by the chief executive in the same way as the order was made.

‘19A Special provisions relating to recall orders

‘(1) A recall order may require the person, or the persons of a class, that is bound by the order to disclose to the public or to a class of persons specified in the order, in a way so specified, any one or more of the following—

- (a) the particular food or type of food to be recalled or disposed of;
- (b) the reasons why the food is considered to be unsafe;
- (c) the circumstances in which consumption of the food is unsafe;
- (d) procedures for disposing of the food.

‘(2) A person who is required by a recall order to conduct a recall of food must give written notice to the chief executive of the completion of the recall as soon as practicable after the completion.

‘(3) A person who is bound by a recall order is liable for any cost incurred by or on behalf of the chief executive in connection with the recall order and that cost is taken to be a debt due to the chief executive from the person.

‘(4) In proceedings for the recovery of the debt, a certificate signed by the chief executive stating the amount of any costs and the way in which they were incurred is evidence of the matters certified.

‘19B Way of making orders

‘(1) An order under this part—

- (a) must be made in writing addressed to the person or persons intended to be bound by it, and served on that person or each of those persons, as the case requires; or
- (b) must be addressed to several persons, to a class of persons, or to all persons.

‘(2) Notice of an order addressed as mentioned in subsection (1)(b) setting out the order and the persons to be bound by the order must, as soon as practicable after the order is made, be published in a newspaper that, in the opinion of the chief executive, will be most likely to bring the order to the attention of the persons to be bound by it.

‘(3) An order under this part, when it takes effect, is binding on the person or persons to whom it is addressed.

‘(4) An order that is served on a person takes effect when it is served.

‘(5) An order, notice of which is published under subsection (2), takes effect at the beginning of the first day on which the notice was published.

‘(6) An order ceases to have effect at the expiration of 90 days after the day on which it takes effect unless it is sooner revoked.

‘(7) Subsection (6) does not prevent a further order being made in the same terms as an order that has ceased to have effect.

‘19C Compensation

‘(1) A person bound by an order under this part who suffers loss because of the making of the order may apply to the chief executive for compensation if the person considers that there were insufficient grounds for the making of the order.

‘(2) If there were insufficient grounds for the making of the order, the chief executive must pay the compensation to the applicant that is just and reasonable.

‘(3) The chief executive must give written notice about his or her decision about the payment of compensation under this section to each applicant for the payment of the compensation.

‘(4) If the chief executive has not decided an application for compensation under this section within 28 days of receiving the application, the chief executive is taken to have decided to refuse to pay any compensation.

‘(5) If the chief executive refuses an application for compensation or decides an amount of compensation less than that sought by the applicant, the notice must also state the following—

- (a) the reasons for the decision;
- (b) that the applicant may appeal against the decision within 28 days;
- (c) how the applicant may appeal against the decision.

‘19D Failure to comply with order

‘A person must not, without reasonable excuse—

- (a) carry on an activity in contravention of a prohibition imposed on the person by an order under this part; or
- (b) neglect or refuse to comply with a direction given by an order under this part; or
- (c) contravene a condition specified in an order under this part.

Maximum penalty—700 penalty units.’.

33 Amendment of 26 (Duty of local government)

Section 26(1), ‘part 4’—

omit, insert—

‘section 16(1), in so far as the subsection relates to standards 3.1.1, 3.2.2 and 3.2.3 of the food standards code,⁷ and of part 4’.

7 Food standards code, standards 3.1.1 (Interpretation and Application), 3.2.2 (Food Safety Practices and General Requirements) and 3.2.3 (Food Premises and Equipment)

34 Insertion of new s 29A

After section 29—

insert—

‘29A When an article etc. must be analysed by an analyst

‘If an authorised officer wishes to have an article, other thing or sample taken under section 28(1)(a)(iii) or (viii) analysed, the officer must have it analysed by an analyst.’.

35 Insertion of new pt 5A

After section 40—

insert—

‘PART 5A—APPEALS**‘40A Who may appeal**

‘An applicant for the payment of compensation under section 19C who is dissatisfied with the chief executive’s decision to refuse to pay compensation or about the amount of compensation may appeal against the decision.

‘40B Starting an appeal

‘(1) An appeal may be started at—

- (a) the Magistrates Court nearest the place where the person lives or carries on business; or
- (b) a Magistrates Court at Brisbane.

‘(2) The notice of appeal under the *Uniform Civil Procedure Rules 1999* must be filed with the registrar of the court within 28 days after—

- (a) if the person is given notice of the decision under section 19C(5)—the day the person is given the notice; or
- (b) if paragraph (a) does not apply—the day the person otherwise becomes aware of the decision.

‘(3) The court may, at any time, extend the time for filing the notice of appeal.

‘40C Hearing procedures

‘(1) In hearing the appeal, the court is not bound by the rules of evidence and must comply with natural justice.

‘(2) The appeal is by way of rehearing, unaffected by the chief executive’s decision, on the material before the chief executive and any further evidence allowed by the court.

‘40D Powers of court on appeal

‘(1) In deciding the appeal, the court may confirm the chief executive’s decision or substitute another decision for the chief executive’s decision.

‘(2) The chief executive must give effect to the court’s decision.

‘40E Appeal to District Court

‘An appeal lies to the District Court from a decision of a Magistrates Court under section 40D, but only on a question of law.’.

36 Insertion of new s 40F

Part 6, before section 41—

insert—

‘40F Labelling requirement about ingredient in food

‘(1) A label on a large package of food must not contain a statement relating to a particular ingredient present in the food in the package unless the label also contains a statement of the proportion by weight in which the ingredient is present.

‘(2) A person must not sell food that is labelled contrary to subsection (1).

‘Maximum penalty—40 penalty units.

‘(3) In this section—

“**large package**” means a package with a surface area of at least 100 cm².’.

37 Amendment of s 41 (Defence in respect of food for export)

(1) Section 41, heading—

omit, insert—

‘41 Defence for s 40F relating to food for export’.

(2) Section 41, from ‘defined’ to ‘section 19’—

omit, insert—

‘against section 40F’.

(3) Section 41(b), ‘sale, preparation, packing and’—

omit.

38 Insertion of new s 45A

After section 45—

insert—

‘45A Alternative verdicts for serious food offences

‘(1) If, on the trial of a person charged with an offence against section 9,⁸ the trier of fact is not satisfied that the person committed the offence but is satisfied that the person committed an offence against section 12(1),⁹ the trier of fact may find the person not guilty of the offence charged but guilty of an offence against section 12(1), and the person is liable to punishment accordingly.

‘(2) If, on the trial of a person charged with an offence against section 10,¹⁰ the trier of fact is not satisfied that the person committed the offence but is satisfied that the person committed an offence against section 12(2), the trier of fact may find the person not guilty of the offence charged but guilty of an offence against section 12(2), and the person is liable to punishment accordingly.’.

8 Section 9 (Handling of food in unsafe way)

9 Section 12 (Handling and sale of unsafe food)

10 Section 10 (Sale of unsafe food)

39 Amendment of s 50 (Liability for offence by employee)

(1) Section 50(2)—

omit, insert—

‘(2) However, it is a defence in a proceeding against the employer for the offence if it is proved the employer exercised all due diligence to prevent the commission of the offence by the employee.’.

(2) Section 50(4), ‘subsection (2)’—

omit, insert—

‘subsection (3)’.

40 Amendment of s 57 (Regulations)

Section 57—

insert—

‘(5) This section does not authorise the making of a regulation that is inconsistent with the food standards code as applying for this Act.’.

41 Amendment of schedule (Subject matter for regulations)

Schedule, ‘SCHEDULE’—

omit, insert—

‘SCHEDULE 1’.

42 Insertion of new sch 2

After schedule 1, as renumbered—

insert—

‘SCHEDULE 2
‘CHANGES TO FOOD STANDARDS CODE

section 5B(2)(a)

1. The editorial notes in the code do not apply.
2. The definition ‘**appropriate enforcement agency**’ in clause 1 of standard 3.1.1 is replaced with the following definition—
‘**appropriate enforcement agency** means—
 - (a) in relation to a food business—the local government in whose area the food premises of the business are situated; or
 - (b) in relation to food premises—the local government in whose area the premises are situated.’.
3. In the definition ‘**food premises**’ in clause 1 of standard 3.1.1, the words ‘, pontoons and any other place declared by the relevant authority to be premises under the Food Act’ are replaced with the words ‘and pontoons’.
4. The definition ‘**sell**’ in clause 1 of standard 3.1.1 is replaced with the following definition—
‘**sell** has the same meaning as it has in the Act.’.
5. The following definitions are included in clause 1 of standard 3.1.1—
‘**relevant authority** means the chief executive of the Queensland department of government in which the Act is administered.
‘**local government** means a local government as defined in section 36 of the *Acts Interpretation Act 1954* of Queensland.’.
6. The definition ‘**primary food production**’ in clause 1 of standard 3.1.1 is replaced with the following definition—
‘**primary food production** means production of primary produce within the meaning of section 11 of the *Food Production (Safety) Act 2000* of Queensland.’.
7. In clause 2(4)(c) of standard 3.1.1, the words ‘another Act’ are replaced with the words ‘an Act’.

43 Insertion of new sch 3

After schedule 2, as inserted by this Act—

insert—

‘SCHEDULE 3**‘DICTIONARY**

section 5’.

PART 6—AMENDMENT OF HEALTH ACT 1937**44 Act amended in pt 6**

This part amends the *Health Act 1937*.

45 Amendment of s 5 (Interpretation)

(1) Section 5(1), definitions “analyst” and “inspector”—

omit.

(2) Section 5(1)—

insert—

‘**“analyse”**, for part 4A, see section 136.

“analyst”, other than for a relevant provision or part 4A, means a person appointed under section 27 as a State analyst or a person holding accreditation of a kind prescribed under a regulation.

“document certification requirement”, for part 4A, see section 136.

“document production requirement”, for part 4A, see section 136.

“endorsement”, for part 4A, see section 136.

“executive officer”, for part 4A, see section 136.

“health service employee”, for part 4A, see section 136.

“inspector”—

- (a) for a relevant provision or part 4A—means an inspector appointed under section 137; or
- (b) otherwise—means an inspector appointed under section 22(1) or 27(1) and includes a chief inspector, a medical or engineering inspector, an assistant inspector and an environmental health officer.

“offence against a relevant provision”, for part 4A, see section 136.

“personal particulars requirement”, for part 4A, see section 136.

“relevant provisions” see section 134.

“State analyst”, for a relevant provision or part 4A, means a State analyst appointed under section 153Z(1).

“thing”, for part 4A, see section 136.’.

46 Amendment of s 18A (Chief executive to give notice of proceedings to boards)

(1) Section 18A(1)(a), ‘or a nurse’—

omit, insert—

‘, nurse or veterinary surgeon’.

(2) Section 18A(1)(c)—

omit.

47 Amendment of s 27A (Prohibition on use of term State analyst)

Section 27A, all words after paragraph (b)(ii)—

omit, insert—

‘unless the person is appointed as an analyst under section 27(1), or as a State analyst under section 153Z(1) or another law of the State.’.

48 Amendment of s 124A (Powers respecting articles capable of causing bodily harm or discomfort to humans)

Section 124A(1), 'section 132'—

omit, insert—

'part 4A'.

49 Omission of s 125 (Prohibition of white phosphorus in matches)

Section 125—

omit.

50 Omission of s 131 (Inorganic salts of hydrocyanic acid)

Sections 131—

omit.

51 Replacement of pt 4, div 10 hdg (Inspection, removal, sampling, analysis)

Part 4, division 10, heading—

omit, insert—

'Division 10—Miscellaneous'.

52 Omission of ss 132—151

Sections 132 to 151—

omit.

53 Amendment of s 152 (Regulations about drugs, articles, substances, appliances etc.)

(1) Section 152(k), (y) and (z)—

omit.

(2) Section 152(zi) and heading above the paragraph—

omit.

54 Renumbering of ss 152 and 153

Sections 152 and 153—

renumber as sections 132 and 133.

55 Insertion of new pt 4A, divs 1–2

After section 133 (as renumbered)—

insert—

‘PART 4A—MONITORING, INVESTIGATION AND ENFORCEMENT***‘Division 1—Preliminary*****‘134 Application of pt 4A**

‘This part applies for the purposes of the following (the “**relevant provisions**”)—

- (a) part 4, divisions 1, 2, 3, 6 and 10;¹¹
- (b) a regulation made under part 4, division 1, 2, 3, 6 or 10.

‘135 Relationship of this part to pt 2, div 4

‘Part 2, division 4¹² does not limit this part.

‘136 Definitions for pt 4A

‘In this part—

“**analyse**” includes measure and test.

11 Part 4 (Drugs and other articles), divisions 1 (Preliminary), 2 (Drugs etc.), 3 (Cooking utensils, toys, wearing apparel, matches and the use of lead), 6 (Labelling of drugs and poisons) and 10 (Miscellaneous)

12 Part 2 (General provisions), division 4 (Appointment of officers under and for the purposes of the Act)

“conviction”, relating to an offence against a relevant provision or this part, means being found guilty of the offence, on a plea of guilty or otherwise, whether or not a conviction is recorded.

“document certification requirement” means a document certification requirement under section 153N(5).

“document production requirement” means a document production requirement under section 153N(6).

“endorsement” means an endorsement as defined under a regulation made under section 132.

“executive officer”, of a corporation, means a person who is concerned with, or takes part in, the corporation’s management, whether or not the person is a director or the person’s position is given the name of executive officer.

“health service employee” means a person appointed as a health service employee under the *Health Services Act 1991*, section 24.

“offence against a relevant provision”, includes an offence under section 175¹³ relating to a relevant provision.

“personal particulars requirement” means a personal particulars requirement under section 153L(5).

“thing” includes a sample of, or from, a thing.

‘Division 2—Inspectors

‘137 Appointment and qualifications

‘(1) The chief executive may appoint any of the following persons as an inspector—

- (a) an officer of the department;
- (b) a health service employee;
- (c) a person prescribed under a regulation.

‘(2) However, the chief executive may appoint a person as an inspector only if the chief executive is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

13 Section 175 (General penalty)

‘138 Appointment conditions and limit on powers

‘(1) An inspector holds office on any conditions stated in—

- (a) the inspector’s instrument of appointment; or
- (b) a signed notice given to the inspector; or
- (c) a regulation.

‘(2) The instrument of appointment, a signed notice given to the inspector or a regulation may limit the inspector’s powers under this part.

‘(3) In this section—

“signed notice” means a notice signed by the chief executive.

‘139 Issue of identity card

‘(1) The chief executive must issue an identity card to each inspector.

‘(2) The identity card must—

- (a) contain a recent photo of the inspector; and
- (b) contain a copy of the inspector’s signature; and
- (c) identify the person as an inspector under this part; and
- (d) state an expiry date for the card.

‘(3) This section does not prevent the issue of a single identity card to a person for this part and other purposes.

‘140 Production or display of identity card

‘(1) In exercising a power under this part in relation to a person, an inspector must—

- (a) produce the inspector’s identity card for the person’s inspection before exercising the power; or
- (b) have the identity card displayed so it is clearly visible to the person when exercising the power.

‘(2) However, if it is not practicable to comply with subsection (1), the inspector must produce the identity card for the person’s inspection at the first reasonable opportunity.

‘(3) For subsection (1), an inspector does not exercise a power in relation to a person only because the inspector has entered a place as mentioned in section 144(1)(b) or (2).

‘141 When inspector ceases to hold office

‘(1) An inspector ceases to hold office if any of the following happens—

- (a) the term of office stated in a condition of office ends;
- (b) under another condition of office, the inspector ceases to hold office;
- (c) the inspector’s resignation under section 142 takes effect.

‘(2) Subsection (1) does not limit the ways an inspector may cease to hold office.

‘(3) In this section—

“**condition of office**” means a condition on which the inspector holds office.

‘142 Resignation

‘(1) An inspector may resign by signed notice given to the chief executive.

‘(2) However, if holding office as an inspector is a condition of the inspector holding another office, the inspector may not resign as an inspector without resigning from the other office.

‘143 Return of identity card

‘A person who ceases to be an inspector must return the person’s identity card to the chief executive within 21 days after ceasing to be an inspector unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.’

56 Insertion of new pt 4A, div 3, sdivs 1–3

After section 143, as inserted by this Act—

insert—

‘Division 3—Powers of inspectors

‘Subdivision 1—Entry of places

‘144 Power to enter places

‘(1) An inspector may enter a place if—

- (a) its occupier consents to the entry; or
- (b) it is a public place and the entry is made when the place is open to the public; or
- (c) the entry is authorised by a warrant; or
- (d) the entry is to account for controlled drugs, restricted drugs or poisons kept at the place by the holder of an endorsement and the place is open for carrying on business or otherwise open for entry.

‘(2) For the purpose of asking the occupier of a place for consent to enter, an inspector may, without the occupier’s consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the inspector reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

‘(3) Subsection (4) applies if the holder of an endorsement is an individual who carries on business at a place and also resides at the place.

‘(4) Subsection (1)(d) does not authorise an inspector to enter a part of the place in which the individual resides.

‘Subdivision 2—Procedure for entry**‘145 Consent to entry**

‘(1) This section applies if an inspector intends to ask an occupier of a place to consent to the inspector or another inspector entering the place under section 144(1)(a).

‘(2) Before asking for the consent, the inspector must tell the occupier—

- (a) the purpose of the entry; and
- (b) that the occupier is not required to consent.

‘(3) If the consent is given, the inspector may ask the occupier to sign an acknowledgment of the consent.

‘(4) The acknowledgment must state—

- (a) the occupier has been told—
 - (i) the purpose of the entry; and
 - (ii) that the occupier is not required to consent; and
- (b) the purpose of the entry; and
- (c) the occupier gives the inspector consent to enter the place and exercise powers under this division; and
- (d) the time and date the consent was given.

‘(5) If the occupier signs an acknowledgment, the inspector must immediately give a copy to the occupier.

‘(6) If—

- (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
- (b) an acknowledgment complying with subsection (4) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

‘146 Application for warrant

‘(1) An inspector may apply to a magistrate for a warrant for a place.

‘(2) The application must be sworn and state the grounds on which the warrant is sought.

‘(3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the application to be given by statutory declaration.

‘147 Issue of warrant

‘(1) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against a relevant provision or this part; and
- (b) the evidence is at the place, or may be at the place within the next 7 days.

‘(2) The warrant must state—

- (a) that a stated inspector may, with necessary and reasonable help and force—
 - (i) enter the place and any other place necessary for entry; and
 - (ii) exercise the inspector’s powers under this division; and
- (b) the offence for which the warrant is sought; and
- (c) the evidence that may be seized under the warrant; and
- (d) the hours of the day or night when the place may be entered; and
- (e) the date, within 14 days after the warrant’s issue, the warrant ends.

‘148 Special warrant

‘(1) An inspector may apply for a warrant (a “**special warrant**”) by phone, fax, radio or another form of communication if the inspector considers it necessary because of—

- (a) urgent circumstances; or

(b) other special circumstances, including, for example, the inspector's remote location.

'(2) Before applying for the warrant, the inspector must prepare an application stating the grounds on which the warrant is sought.

'(3) The inspector may apply for the warrant before the application is sworn.

'(4) After issuing the warrant, the magistrate must immediately fax a copy to the inspector if it is reasonably practicable to fax the copy.

'(5) If it is not reasonably practicable to fax a copy to the inspector—

(a) the magistrate must tell the inspector—

(i) what the terms of the warrant are; and

(ii) the date and time the warrant was issued; and

(b) the inspector must complete a form of warrant (a "**warrant form**") and write on it—

(i) the magistrate's name; and

(ii) the date and time the magistrate issued the warrant; and

(iii) the terms of the warrant.

'(6) The facsimile warrant, or the warrant form properly completed by the inspector, authorises the entry and the exercise of the other powers stated in the warrant issued by the magistrate.

'(7) The inspector must, at the first reasonable opportunity, send to the magistrate—

(a) the sworn application; and

(b) if the inspector completed a warrant form—the completed warrant form.

'(8) On receiving the documents, the magistrate must attach them to the warrant.

'(9) If—

(a) an issue arises in a proceeding about whether an exercise of a power was authorised by a special warrant; and

(b) the warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a special warrant authorised the exercise of the power.

‘149 Warrant—procedure before entry

‘(1) This section applies if an inspector named in a warrant issued under this division for a place is intending to enter the place under the warrant.

‘(2) Before entering the place, the inspector must do or make a reasonable attempt to do the following—

- (a) identify himself or herself to a person present at the place who is an occupier of the place by producing a copy of the inspector’s identity card or other document evidencing the appointment;
- (b) give the person a copy of the warrant or, if the entry is authorised by a facsimile warrant or warrant form mentioned in section 148(6), a copy of the facsimile warrant or warrant form;
- (c) tell the person the inspector is permitted by the warrant to enter the place;
- (d) give the person an opportunity to allow the inspector immediate entry to the place without using force.

‘(3) However, the inspector need not comply with subsection (2) if the inspector believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

‘150 Stopping motor vehicles

‘(1) This section applies if an inspector suspects on reasonable grounds, or is aware, that a thing in or on a motor vehicle may provide evidence of an offence against a relevant provision or this part.

‘(2) For the purpose of exercising the powers of an inspector under this division, an inspector may—

- (a) if the motor vehicle is moving—ask or signal the person in control of the motor vehicle to stop the motor vehicle; and
- (b) whether or not the motor vehicle is moving—ask or signal the person in control of the motor vehicle to bring the motor vehicle to a convenient place within a reasonable distance to allow the inspector to exercise the inspector’s powers under this division.

‘(3) Despite section 140,¹⁴ for the purpose of exercising a power under subsection (2)(a), the inspector must—

- (a) have with him or her the inspector’s identity card; and
- (b) produce the identity card for the person’s inspection immediately after the motor vehicle is stopped.

‘(4) The person must comply with the inspector’s request or signal, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

‘(5) If the motor vehicle is stopped, the inspector may direct the person—

- (a) not to move the motor vehicle until the inspector has exercised the inspector’s powers under this division; or
- (b) to move the motor vehicle to, and keep it at, a stated reasonable place to allow the inspector to exercise the inspector’s powers under this division.

‘(6) When giving the direction, the inspector must warn the person it is an offence not to comply with the direction, unless the person has a reasonable excuse.

‘(7) The person must comply with the inspector’s direction, unless the person has a reasonable excuse

Maximum penalty—50 penalty units.

‘(8) In this section—

“**motor vehicle**” means a vehicle propelled by a motor that forms part of the vehicle, and includes a trailer attached to the vehicle.

‘Subdivision 3—Powers after entry

‘151 General powers after entering place

‘(1) This section applies to an inspector who enters a place.

14 Section 140 (Production or display of identity card)

‘(2) However, if an inspector enters a place to get the occupier’s consent to enter a place, this section applies to the inspector only if the consent is given or the entry is otherwise authorised.

‘(3) For monitoring or enforcing compliance with a relevant provision or this part, the inspector may—

- (a) search any part of the place; or
- (b) inspect, measure, test, photograph or film any part of the place or anything at the place; or
- (c) take a thing at the place for analysis; or
- (d) take an extract from, or copy of, a document at the place; or
- (e) take into or onto the place any person, equipment and materials the inspector reasonably requires for exercising a power under this division; or
- (f) require the occupier of the place, or a person at the place, to give the inspector reasonable help to exercise the inspector’s powers under paragraphs (a) to (e); or
- (g) require the occupier of the place, or a person at the place, to give the inspector information to help the inspector find out whether a relevant provision or this part is being complied with.

‘(4) When making a requirement under subsection (3)(f) or (g), the inspector must warn the person it is an offence not to comply with the requirement unless the person has a reasonable excuse.

‘152 Failure to help inspector

‘(1) A person required to give reasonable help under section 151(3)(f) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

‘(2) If an individual is required under section 151(3)(f) to give information or produce a document, it is a reasonable excuse for the individual not to comply with the requirement that complying with the requirement might tend to incriminate the individual.

‘153 Failure to give information

‘(1) A person of whom a requirement is made under section 151(3)(g) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

‘(2) It is a reasonable excuse for an individual not to comply with the requirement that complying with the requirement might tend to incriminate the individual.’.

57 Insertion of new pt 4A, div 3, sdiv 4

After section 153, as inserted by this Act—

insert—

‘Subdivision 4—Power to seize evidence**‘153A Seizing evidence at a place that may be entered without consent or warrant**

‘An inspector who enters a place that may be entered under this division without the consent of the occupier and without a warrant, may seize a thing at the place if the inspector reasonably believes the thing is evidence of an offence against a relevant provision or this part.

‘153B Seizing evidence at a place that may only be entered with consent or warrant

‘(1) This section applies if—

- (a) an inspector is authorised to enter a place under this division only with the consent of the occupier or a warrant; and
- (b) the inspector enters the place after obtaining the necessary consent or warrant.

‘(2) If the inspector enters the place with the occupier’s consent, the inspector may seize a thing at the place if—

- (a) the inspector reasonably believes the thing is evidence of an offence against a relevant provision or this part; and
- (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier’s consent.

‘(3) If the inspector enters the place with a warrant, the inspector may seize the evidence for which the warrant was issued.

‘(4) The inspector also may seize anything else at the place if the inspector reasonably believes—

- (a) the thing is evidence of an offence against a relevant provision or this part; and
- (b) the seizure is necessary to prevent the thing being—
 - (i) hidden, lost or destroyed; or
 - (ii) used to continue, or repeat, the offence.

‘(5) Also, the inspector may seize a thing at the place if the inspector reasonably believes it has just been used in committing an offence against a relevant provision or this part.

‘153C Securing seized thing

‘Having seized a thing, an inspector may do 1 or more of the following—

- (a) move the thing from the place where it was seized (the “**place of seizure**”);
- (b) leave the thing at the place of seizure but take reasonable steps to restrict access to it;

Examples of restricting access to a thing—

1. Sealing a thing and marking it to show access to it is restricted.
2. Sealing the entrance to a room where the seized thing is situated and marking it to show access to it is restricted.

- (c) if the thing is equipment—make it inoperable.

Example of making equipment inoperable—

Dismantling equipment or removing a component of equipment without which the equipment is not capable of being used.

‘153D Tampering with seized thing

‘(1) If an inspector restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing, or something restricting access to the thing, without an inspector’s approval.

Maximum penalty—100 penalty units.

‘(2) If an inspector makes seized equipment inoperable, a person must not tamper, or attempt to tamper, with the equipment, without an inspector’s approval.

Maximum penalty—100 penalty units.

‘153E Powers to support seizure

‘(1) To enable a thing to be seized, an inspector may require the person in control of it—

- (a) to take it to a stated reasonable place by a stated reasonable time; and
- (b) if necessary, to remain in control of it at the stated place for a stated reasonable period.

‘(2) The requirement—

- (a) must be made by notice in the approved form; or
- (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by notice in the approved form as soon as practicable.

‘(3) A further requirement may be made under this section about the thing if it is necessary and reasonable to make the further requirement.

‘(4) A person of whom a requirement is made under subsection (1) or (3) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty for subsection (4)—50 penalty units.

‘153F Receipt for seized thing

‘(1) As soon as practicable after an inspector seizes a thing, the inspector must give a receipt for it to the person from whom it was seized.

‘(2) However, if for any reason it is not practicable to comply with subsection (1), the inspector must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.

‘(3) The receipt must describe generally each thing seized and its condition.

‘(4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt (given the thing’s nature, condition and value).

‘153G Forfeiture of seized thing

‘(1) A seized thing is forfeited to the State if the inspector who seized the thing—

- (a) can not find its owner, after making reasonable inquiries; or
- (b) can not return it to its owner, after making reasonable efforts; or
- (c) reasonably believes it is necessary to keep the thing to prevent it being used to commit an offence against a relevant provision or this part.

‘(2) In applying subsection (1)—

- (a) subsection (1)(a) does not require the inspector to make inquiries if it would be unreasonable to make inquiries to find the owner; and
- (b) subsection (1)(b) does not require the inspector to make efforts if it would be unreasonable to make efforts to return the thing to its owner.

Example for paragraph (b)—

The owner of the thing has migrated to another country.

‘(3) If the inspector makes a decision under subsection (1)(c), resulting in the thing being forfeited to the State, the inspector must immediately give the owner a written notice stating—

- (a) the reasons for the decision; and
- (b) that the owner may appeal against the decision within 28 days; and
- (c) how the owner may appeal against the decision.

‘(4) Subsection (3) does not apply if—

- (a) the inspector can not find the owner, after making reasonable inquiries; or
- (b) it is impracticable or would be unreasonable to give the notice.

‘(5) Regard must be had to a thing’s nature, condition and value—

- (a) in deciding—
 - (i) whether it is reasonable to make inquiries or efforts; and
 - (ii) if making inquiries or efforts, what inquiries or efforts, including the period over which they are made, are reasonable; or
- (b) in deciding whether it would be unreasonable to give the written notice.

‘153H Forfeiture on conviction

‘(1) On the conviction of a person for an offence against a relevant provision or this part, the court may order the forfeiture to the State of—

- (a) anything used to commit the offence; or
- (b) anything else the subject of the offence.

‘(2) The court may make the order—

- (a) whether or not the thing has been seized; or
- (b) if the thing has been seized, whether or not the thing has been returned to its owner.

‘(3) The court may make any order to enforce the forfeiture it considers appropriate.

‘(4) This section does not limit the court’s powers under the *Penalties and Sentences Act 1992* or another law.

‘153I Dealing with forfeited things etc.

‘(1) On the forfeiture of a thing to the State, the thing becomes the State’s property and may be dealt with by the chief executive as the chief executive considers appropriate.

‘(2) Without limiting subsection (1), the chief executive may destroy or dispose of the thing.

‘(3) Despite subsection (1), the chief executive must not deal with the thing in a way that could prejudice the outcome of an appeal, relevant to the thing, of which the chief executive is aware.

‘153J Return of seized thing

‘(1) If a seized thing is not forfeited, the inspector must return it to its owner—

- (a) at the end of 6 months; or
- (b) if a proceeding for an offence against a relevant provision or this part involving the thing is started within 6 months, at the end of the proceeding and any appeal from the proceeding.

‘(2) Despite subsection (1), unless the thing is forfeited, the inspector must immediately return a thing seized as evidence to its owner if the inspector stops being satisfied its continued retention as evidence is necessary.

‘153K Access to seized thing

‘(1) Until a seized thing is forfeited or returned, an inspector must allow its owner to inspect it and, if it is a document, to copy it.

‘(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.’.

58 Insertion of new pt 4A, div 3, sdiv 5 and div 4

After section 153K, as inserted by this Act—

insert—

‘Subdivision 5—Power to obtain information**‘153L Power to require name and address**

‘(1) This section applies if—

- (a) an inspector finds a person committing an offence against a relevant provision or this part; or
- (b) an inspector finds a person in circumstances that lead, or has information about a person that leads, the inspector to reasonably suspect the person has just committed an offence against a relevant provision or this part.

‘(2) The inspector may require the person to state the person’s name and residential address.

‘(3) When making the requirement, the inspector must warn the person it is an offence to fail to state the person’s name or residential address, unless the person has a reasonable excuse.

‘(4) The inspector may require the person to give evidence of the correctness of the stated name or residential address if the inspector reasonably suspects the stated name or address is false.

‘(5) A requirement under subsection (2) or (4) is called a “**personal particulars requirement**”.

‘153M Failure to give name or address

‘(1) A person of whom a personal particulars requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

‘(2) A person does not commit an offence against subsection (1) if—

- (a) the person was required to state the person’s name and residential address by an inspector who suspected the person had committed an offence against a relevant provision or this part; and
- (b) the person is not proved to have committed the offence.

‘153N Power to require production of documents

‘(1) An inspector may require a person to make available for inspection by an inspector, or produce to the inspector for inspection, at a reasonable time and place nominated by the inspector—

- (a) a document issued to the person under a relevant provision; or
- (b) a document required to be kept by the person under a relevant provision.

‘(2) The inspector may keep the document to copy it.

‘(3) If the inspector copies a document mentioned in subsection (1)(b), or an entry in the document, the inspector may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry.

‘(4) The inspector must return the document to the person as soon as practicable after copying it.

‘(5) However, if a requirement (a “**document certification requirement**”) is made of a person under subsection (3), the inspector may keep the document until the person complies with the requirement.

‘(6) A requirement under subsection (1) is called a “**document production requirement**”.

‘153O Failure to produce document

‘(1) A person of whom a document production requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

‘(2) It is not a reasonable excuse for a person not to comply with a document production requirement that complying with the requirement might tend to incriminate the person.

‘153P Failure to certify copy of document

‘A person of whom a document certification requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

‘153Q Power to require information

‘(1) This section applies if an inspector reasonably believes—

- (a) an offence against a relevant provision or this part has been committed; and
- (b) a person may be able to give information about the offence.

‘(2) The inspector may, by written notice given to the person, require the person to give information about the offence to the inspector at a stated reasonable time and place.

‘(3) The person must comply with a requirement under subsection (2), unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

‘(4) It is a reasonable excuse for an individual to fail to give information if giving the information might tend to incriminate the individual.

‘Division 4—General enforcement matters**‘153R Compliance notice**

‘(1) This section applies if the chief executive or an inspector reasonably believes—

- (a) a person—
 - (i) is contravening a relevant provision or a provision of this part; or
 - (ii) has contravened a relevant provision or a provision of this part in circumstances that make it likely the contravention will continue or be repeated; and
- (b) a matter relating to the contravention is reasonably capable of being rectified; and
- (c) it is appropriate to give the person an opportunity to rectify the matter.

‘(2) The chief executive or inspector may give the person a notice (a **“compliance notice”**) requiring the person to rectify the matter.

‘(3) The compliance notice must state—

- (a) that the chief executive or inspector believes the person—
 - (i) is contravening a relevant provision or a provision of this part; or
 - (ii) has contravened a relevant provision or a provision of this part in circumstances that make it likely that the contravention will continue or be repeated; and
- (b) the provision the chief executive or inspector believes is being, or has been, contravened; and
- (c) briefly, how it is believed the provision is being, or has been contravened; and
- (d) the matter relating to the contravention that the chief executive or inspector believes is reasonably capable of being rectified; and
- (e) the reasonable steps the person must take to rectify the matter; and
- (f) that the person must take the steps within a stated reasonable period of not less than 21 days; and

- (g) that it is an offence to fail to comply with the compliance notice unless the person has a reasonable excuse.

‘(4) The person must comply with the compliance notice, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

‘(5) The person can not be prosecuted for contravention of the provision unless the person—

- (a) fails to comply with the compliance notice within the stated period; and
- (b) does not have a reasonable excuse for failing to comply with the notice.

‘153S Notice of damage

‘(1) This section applies if—

- (a) an inspector damages property when exercising or purporting to exercise a power; or
- (b) a person (the “**other person**”) acting under the direction or authority of an inspector damages property.

‘(2) The inspector must immediately give notice of particulars of the damage to the person who appears to the inspector to be the owner of the property.

‘(3) If the inspector believes the damage was caused by a latent defect in the property or circumstances beyond the inspector’s or other person’s control, the inspector may state the belief in the notice.

‘(4) If, for any reason, it is impracticable to comply with subsection (2), the inspector must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.

‘(5) This section does not apply to damage the inspector reasonably believes is trivial.

‘(6) In this section—

“**owner**”, of property, includes the person in possession or control of it.

‘153T Compensation

‘(1) A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under any of the following subdivisions of division 3¹⁵—

- (a) subdivision 1 (Entry of places)
- (b) subdivision 3 (Powers after entry)
- (c) subdivision 4 (Power to seize evidence)

‘(2) Without limiting subsection (1), compensation may be claimed for loss or expense incurred in complying with a requirement made of the person under the subdivision.

‘(3) Compensation may be claimed and ordered to be paid in a proceeding—

- (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
- (b) for an offence against a relevant provision or this part brought against the person claiming compensation.

‘(4) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

‘153U False or misleading statements

‘(1) A person must not state anything to an inspector the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

‘(2) In a proceeding for an offence against subsection (1), it is enough for a charge to state that the statement was, without specifying which, ‘false or misleading’.

‘153V False or misleading documents

‘(1) A person must not give an inspector a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

‘(2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) tells the inspector, to the best of the person’s ability, how it is false or misleading; and
- (b) if the person has, or can reasonably obtain, the correct information, gives the correct information.

‘(3) In a proceeding for an offence against subsection (1), it is enough for a charge to state that the statement was, without specifying which, ‘false or misleading’.

‘153W Obstructing inspector

‘(1) A person must not obstruct an inspector in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

‘(2) If a person has obstructed an inspector and the inspector decides to proceed with the exercise of the power, the inspector must warn the person that—

- (a) it is an offence to obstruct the inspector, unless the person has a reasonable excuse; and
- (b) the inspector considers the person’s conduct is an obstruction.

‘(3) In this section—

“**obstruct**” includes hinder and attempt to obstruct or hinder.

‘153X Impersonation of inspector

‘A person must not pretend to be an inspector.

Maximum penalty—50 penalty units.

‘153Y Dealing with certain things

‘(1) If an inspector takes a thing under section 151(3)(c),¹⁶ or seizes a thing under section 153A or 153B¹⁷ for analysis by a State analyst, the inspector must—

- (a) divide the thing into 3 separate parts and—
 - (i) seal or fasten each part in a way that will, so far as is practicable, prevent a person tampering with the part; and
 - (ii) attach a label containing the label details to each part; and
- (b) leave 1 part with the owner of the thing or the person from whom the thing was obtained; and
- (c) deal with 1 of the remaining parts under section 153ZD; and
- (d) keep the other remaining part for future comparison.

‘(2) Subsection (3) applies if a thing is in more than 1 package and the inspector reasonably believes that, because of the size of the packages, dividing 1 package of the thing for analysis into 3 separate parts would—

- (a) affect the composition or quality of the thing in a way that would make the separate parts unsuitable for accurate analysis; or
- (b) make the parts insufficient for accurate analysis; or
- (c) make the thing in any other way unsuitable for analysis.

‘(3) If the inspector reasonably believes the packages contain the same substance, the inspector may—

- (a) mix 2 or more of the packages and deal with the mixture under subsection (1); or
- (b) use more than 1 of the packages to make up each part mentioned in subsection (1).

‘(4) Subsections (1) to (3) do not apply to a thing to the extent that, because of its nature, it is impossible or impractical to deal with it in the way mentioned in the subsections.

‘(5) In this section—

16 Section 151 (General powers after entering place)

17 Sections 153A (Seizing evidence at a place that may be entered without consent or warrant) and 153B (Seizing evidence at a place that may only be entered with consent or warrant)

“label details” means—

- (a) an identification number; and
- (b) a description of the thing; and
- (c) the date it was taken or seized; and
- (d) the place where it was taken or seized; and
- (e) the inspector’s signature.’.

59 Insertion of new pt 4A, div 5

After section 153Y, as inserted by this Act—

insert—

‘Division 5—Analysis of things

‘153Z Appointment and qualifications

‘(1) The chief executive may appoint any of the following persons as a State analyst—

- (a) an officer of the department;
- (b) a health service employee;
- (c) a person prescribed under a regulation.

‘(2) However, the chief executive may appoint a person as a State analyst only if the chief executive is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

‘153ZA Appointment conditions and limit on powers

‘(1) A State analyst holds office on any conditions stated in—

- (a) the State analyst’s instrument of appointment; or
- (b) a signed notice given to the State analyst; or
- (c) a regulation.

‘(2) The instrument of appointment, a signed notice given to the State analyst or a regulation may limit the State analyst’s powers under this part.

‘(3) In this section—

“**signed notice**” means a notice signed by the chief executive.

‘153ZB When State analyst ceases to hold office

‘(1) A State analyst ceases to hold office if any of the following happens—

- (a) the term of office stated in a condition of office ends;
- (b) under another condition of office, the State analyst ceases to hold office;
- (c) the State analyst’s resignation under section 153ZC takes effect.

‘(2) Subsection (1) does not limit the ways a State analyst may cease to hold office.

‘(3) In this section—

“**condition of office**” means a condition on which the State analyst holds office.

‘153ZC Resignation

‘(1) A State analyst may resign by signed notice given to the chief executive.

‘(2) However, if holding office as a State analyst is a condition of the State analyst holding another office, the State analyst may not resign as a State analyst without resigning from the other office.

‘153ZD Analysis

‘(1) If an inspector who takes a thing at a place under section 151(3)(c)¹⁸, or seizes a thing under section 153A or 153B for analysis, is not a State analyst, the inspector must, as soon as practicable, give it to a State analyst for analysis.

‘(2) The State analyst must, as soon as practicable, complete a certificate of analysis for the thing and give the certificate to the inspector.

‘(3) If an inspector who takes a thing as mentioned in subsection (1) is a State analyst, the inspector must, as soon as practicable, complete a certificate of analysis for the thing.

‘(4) For dealing with a part of a thing mentioned in section 153Y(1)(c), subsections(1) and (3) apply as if a reference to a thing were a reference to a part.

‘153ZE Certificate must indicate methodology used

‘The certificate of analysis must include information about the methodology used to conduct the analysis.’.

60 Insertion of new pt 4A, div 6

After section 153ZE, as inserted by this Act—

insert—

‘Division 6—Legal proceedings

‘Subdivision 1—Application

‘153ZF Application of division

‘This division applies to a proceeding under a relevant provision or this part.

‘Subdivision 2—Evidence

‘153ZG Appointments and authority

‘It is not necessary to prove—

- (a) the chief executive’s appointment; or
- (b) the appointment of an inspector or State analyst; or
- (c) the authority of the chief executive, an inspector or State analyst to do anything under this part.

‘153ZH Signatures

‘A signature purporting to be the signature of the chief executive, an inspector or State analyst is evidence of the signature it purports to be.

‘153ZI Evidentiary aids

‘(1) A certificate purporting to be signed by the chief executive stating any of the following matters is evidence of the matter—

- (a) a stated document is an appointment, endorsement or notice made, given, issued or kept under a relevant provision or this part;
- (b) a stated document is a document given to the chief executive under a relevant provision;
- (c) a stated document is a copy of a thing mentioned in paragraph (a) or (b);
- (d) on a stated day, or during a stated period, a stated person was or was not the holder of an endorsement;
- (e) on a stated day, or during a stated period, an endorsement—
 - (i) was or was not in force; or
 - (ii) was or was not subject to a stated condition;
- (f) on a stated day, an endorsement was suspended or cancelled;
- (g) on a stated day, or during a stated period, an appointment as an inspector or State analyst was, or was not, in force for a stated person;
- (h) on a stated day, a stated person was given a stated notice under this part;
- (i) on a stated day, a stated requirement was made under a relevant provision or this part of a stated person.

‘(2) A statement in a complaint for an offence against a relevant provision or this part that the matter of the complaint came to the knowledge of the complainant on a stated day is evidence of when the matter came to the complainant’s knowledge.

‘(3) A certificate purporting to be that of a State analyst in relation to a thing taken by an inspector at a place under section 151(3)(c),¹⁹ or seized under section 153A or 153B,²⁰ stating any of the following matters is evidence of the matters—

- (a) the analyst’s qualifications;
- (b) the analyst took, or received from a stated person, the thing;
- (c) the thing was analysed at a stated place on a stated day or during a stated period;
- (d) the methodology used to analyse the thing;
- (e) the results of the analysis.

‘(4) In a proceeding in which the chief executive applies under section 153ZK to recover costs incurred by the chief executive, a certificate by the chief executive stating that stated costs were incurred and the way in which, and purpose for which, they were incurred is evidence of the matters stated.

‘Subdivision 3—Proceedings

‘153ZJ Summary proceedings for offences against a relevant provision or this part

‘(1) A proceeding for an offence against a relevant provision or this part is to be taken in a summary way under the *Justices Act 1886*.

‘(2) The proceeding must start—

- (a) within 1 year after the commission of the offence; or
- (b) within 6 months after the offence comes to the complainant’s knowledge, but within 2 years after the commission of the offence.

19 Section 151 (General powers after entering place)

20 Section 153A (Seizing evidence at a place that may be entered without consent or warrant) or 153B (Seizing evidence at a place that may only be entered with consent or warrant)

‘153ZK Recovery of costs of investigation

‘(1) This section applies if—

- (a) a court convicts a person of an offence against a relevant provision or this part; and
- (b) the chief executive applies to the court for an order against the person for the payment of the costs the chief executive has incurred in taking a thing, conducting an analysis or doing something else during the investigation of the offence; and
- (c) the court finds the chief executive has reasonably incurred the costs.

‘(2) The court may order the person to pay the chief executive an amount equal to the costs if it is satisfied it would be just to make the order in the circumstances of the particular case.

‘(3) This section does not limit the court’s powers under the *Penalties and Sentences Act 1992* or another law.

‘153ZL Application for order for payment of costs under s 153ZK

‘(1) An application to a court under section 153ZK is, and any order made by the court on the application is, a judgment in the court’s civil jurisdiction.

‘(2) Any issue on the application is to be decided on the balance of probabilities.

‘153ZM Responsibility for acts or omissions of representatives

‘(1) This section applies in a proceeding for an offence against a relevant provision or this part.

‘(2) If it is relevant to prove a person’s state of mind about a particular act or omission, it is enough to show—

- (a) the act was done or omitted to be done by a representative of the person within the scope of the representative’s actual or apparent authority; and
- (b) the representative had the state of mind.

‘(3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative’s actual or apparent

authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

‘(4) In this section—

“representative” means—

- (a) for a corporation—an executive officer, employee or agent of the corporation; or
- (b) for an individual—an employee or agent of the individual.

“state of mind”, of a person, includes—

- (a) the person’s knowledge, intention, opinion, belief or purpose; and
- (b) the person’s reasons for the intention, opinion, belief or purpose.

‘153ZN Executive officers must ensure corporation complies with relevant provisions and this part

‘(1) The executive officers of a corporation must ensure the corporation complies with the relevant provisions and this part.

‘(2) If a corporation commits an offence against a relevant provision or a provision of this part, each of the corporation’s executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

‘(3) Evidence that the corporation has been convicted of an offence against a relevant provision or a provision of this part is evidence that each of the executive officers committed the offence of failing to ensure the corporation complies with the provision.

‘(4) However, it is a defence for an executive officer to prove—

- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.’.

61 Insertion of new pt 4A, divs 7 and 8

After section 153ZN, as inserted by this Act—

insert—

‘Division 7—Appeals**‘153ZO Who may appeal**

‘An owner of a thing forfeited to the State under section 153G(1)(c) who is dissatisfied with the decision resulting in the forfeiture may appeal against the decision.

‘153ZP Starting an appeal

‘(1) An appeal may be started at—

- (a) the Magistrates Court nearest the place where the person lives or carries on business; or
- (b) a Magistrates Court at Brisbane.

‘(2) The notice of appeal under the *Uniform Civil Procedure Rules 1999* must be filed with the registrar of the court within 28 days after—

- (a) if the person is given notice of the decision under section 153G(3)—the day the person is given the notice; or
- (b) if paragraph (a) does not apply—the day the person otherwise becomes aware of the forfeiture.

‘(3) The court may, at any time, extend the time for filing the notice of appeal.

‘153ZQ Hearing procedures

‘(1) In hearing the appeal, the court is not bound by the rules of evidence and must comply with natural justice.

‘(2) The appeal is by way of rehearing, unaffected by the inspector’s decision, on the material before the inspector and any further evidence allowed by the court.

‘153ZR Powers of court on appeal

‘(1) In deciding the appeal, the court may confirm the inspector’s decision or substitute another decision for the inspector’s decision.

‘(2) The chief executive or inspector must give effect to the court’s decision.

‘153ZS Appeal to District Court

‘An appeal lies to the District Court from a decision of a Magistrates Court under section 153ZR, but only on a question of law.

‘Division 8—Miscellaneous**‘153ZT Protecting officials from liability**

‘(1) An official is not civilly liable for an act done, or omission made, honestly and without negligence under a relevant provision or this part.

‘(2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.

‘(3) In this section—

“official” means—

- (a) the chief executive; or
- (b) an inspector or State analyst; or
- (c) a person acting under the direction of an inspector.’.

62 Omission of s 154 (Proceedings by indictment and contracts not to be affected)

Section 154—

omit.

63 Insertion of new s 154O

Part 6, before section 155—

insert—

‘154O Application of pt 6

‘Except for sections 175, 178(f) and 180(1) and (2)(f),²¹ this part does not apply to part 4A²² or a relevant provision.’

64 Insertion of new pt 8

After section 183—

insert—

**‘PART 8—TRANSITIONAL PROVISIONS FOR
HEALTH LEGISLATION AMENDMENT ACT 2001**

‘184 Transitional provision for things done etc. before this section commences

‘(1) Subsection (2) applies in relation to anything done, omitted or started under, or in relation to, a section 184 provision before the commencement.

‘(2) The pre-amended Act continues to apply as if the *Health Legislation Amendment Act 2001* had not been passed.

‘(3) Subsections (1) and (2) do not limit the *Acts Interpretation Act 1954*, section 20.²³

‘(4) Without limiting subsections (1) to (3), a proceeding for an offence against a section 184 provision committed before the commencement may be started or continued, and the pre-amended Act applies in relation to the proceeding, as if the *Health Legislation Amendment Act 2001* had not been passed.

‘(5) In this section—

“commencement” means the commencement of this section.

“pre-amended Act” means this Act as in force before the commencement.

“relevant provision” means a relevant provision as in force before the commencement.

21 Sections 175 (General penalty), 178 (Evidence), and 180 (Regulation making power)

22 Part 4A (Monitoring, investigation and enforcement)

23 *Acts Interpretation Act 1954*, section 20 (Saving or operation of repealed Act etc.)

“repealed provision” means any of sections 132 to 151 of the pre-amended Act.

“section 184 provision” means a relevant provision or a repealed provision.

‘185 Transitional provisions about certain authorities

‘(1) Subsection (2) applies if, immediately before the commencement, a person’s authority under section D2 of the repealed regulation to take an old action in relation to all dangerous drugs and restricted drugs was cancelled under section D3 of that regulation.

‘(2) To remove any doubt, it is declared that starting on the commencement, the person’s authority under the new regulation to take a new action in relation to all controlled drugs and restricted drugs is taken to be cancelled by a decision of the chief executive properly made under chapter 1, part 5, division 4²⁴ of the new regulation, and subject to subsection (5), continues to be cancelled.

‘(3) Subsection (4) applies if, immediately before the commencement, a person’s authority under section D2 of the repealed regulation to take an old action in relation to a particular substance that was a dangerous drug or restricted drug under that regulation was cancelled under section D3 of that regulation.

‘(4) To remove any doubt, it is declared that starting on the commencement, the person’s authority under the new regulation to take a new action in relation to the substance is taken to be cancelled by a decision of the chief executive properly made under chapter 1, part 5, division 4 of the new regulation, and subject to subsection (5), continues to be cancelled.

‘(5) Subsections (2) and (4) do not prevent the chief executive repealing, under section 26A of the new regulation, the decision of the chief executive.

‘(6) In this section—

“commencement” means the commencement of the new regulation.

“new action” means administer, dispense, issue, obtain, possess, including possess at a particular place, prescribe, sell or supply.

24 *Health (Drugs and Poisons) Regulation 1996*, chapter 1 (Introduction), part 5 (Endorsements), division 4 (Suspension or cancellation of endorsement)

“**new regulation**” means the *Health (Drugs and Poisons) Regulation 1996*.

“**old action**” means administer, buy, dispense, obtain, possess, including possess on particular premises or at a particular place, prescribe, procure or offer to procure, sell, or supply or offer to supply.

“**repealed regulation**” means the *Poisons Regulation 1973*’.

PART 7—AMENDMENT OF HEALTH PRACTITIONERS (PROFESSIONAL STANDARDS) ACT 1999

65 Act amended in pt 7

This part amends the *Health Practitioners (Professional Standards) Act 1999*.

66 Amendment of s 240 (Decision about whether ground for disciplinary action established)

Section 240(3)(c), after ‘assessment’—

insert—

‘or external assessment’.

67 Amendment of s 241 (Decision about disciplinary action relating to registrant)

Section 241(2)(j)(ii), ‘person’—

omit, insert—

‘registrant’.

68 Amendment of s 243 (Decision about disciplinary action relating to former registrant)

(1) Section 243(2)(b)—

omit, insert—

‘(b) 1 or more of the following—

- (i) to order the person to pay a fine of an amount not more than the equivalent of 1 333 penalty units;
- (ii) conditions under which the person may re-apply for registration in the relevant profession;
- (iii) conditions that must be imposed on any future registration of the person in the relevant profession;
- (iv) to order the person to do anything else the tribunal reasonably considers appropriate;
- (v) to order the person to refrain from doing anything the tribunal reasonably considers inappropriate;
- (vi) to indicate another form of disciplinary action mentioned in section 241(2) would have been taken if the person were registered.’.

(2) Section 243(3), ‘subsection (2)(b)(ii)’—

omit, insert—

‘subsection (2)(b)(vi)’.

69 Replacement of s 288 (Power of health assessment committee about registrant)

Section 288—

omit, insert—

‘288 Power of health assessment committee to require registrant to undergo health assessments

‘(1) A health assessment committee may, by written notice given to a registrant, require the registrant to do 1 or both of the following—

- (a) attend before the committee to undergo a health assessment;
- (b) as part of the health assessment conducted by the committee, undergo a health assessment (an “**external assessment**”) by an appropriately qualified person other than a member of the committee (an “**external assessor**”).

‘(2) The notice must state—

- (a) a reasonable time and place for the registrant to undergo the health assessment or external assessment; and

- (b) for an external assessment—
 - (i) the reasons for the assessment; and
 - (ii) the name and qualifications of the external assessor; and
- (c) advice to the registrant of the terms of section 289(1).

‘(3) If the registrant is required to attend before the health assessment committee, the registrant may be accompanied by a lawyer or another person but the lawyer or other person is not entitled to address the committee on the registrant’s behalf.

‘(4) The registrant must not fail, without reasonable excuse—

- (a) to attend as required by the notice; and
- (b) to continue to attend as required by the health assessment committee until excused from further attendance; and
- (c) to cooperate with the committee or external assessor in the conduct of a health assessment or external assessment.

‘(5) In this section—

“**appropriately qualified**”, for an external assessor, includes having the qualifications, experience, skills or knowledge appropriate to conduct the external assessment.

‘288A Appointment of external assessor

‘(1) This section applies if a health assessment committee decides to require the registrant to undergo an external assessment.

‘(2) The committee may appoint 1 or more external assessors to conduct the assessment.

‘(3) Before appointing a person as an external assessor, the committee must be satisfied the person does not have a personal or professional connection with the registrant that may prejudice the way in which the person conducts the assessment.’.

70 Amendment of s 289 (Failure to comply with requirement of health assessment committee)

Section 289(1), ‘288(4)—

omit, insert—

‘288(5)’.

71 Insertion of new s 295A

After section 295—

insert—

‘295A External assessor to prepare report about external assessment

‘(1) An external assessor who conducts an external assessment must, as soon as practicable after conducting the assessment, prepare a report about the assessment (an “**external assessment report**”).

‘(2) The external assessment report must include—

- (a) the external assessor’s findings about whether the registrant is impaired; and
- (b) if the external assessor finds the registrant is impaired—
 - (i) the nature and extent of the registrant’s impairment; and
 - (ii) the external assessor’s recommendations about any action that needs to be taken to protect the wellbeing of vulnerable persons including, for example, the imposition of conditions on the registrant’s registration.

‘(3) Also, if more than 1 external assessor conducted the external assessment and the findings or recommendations are not unanimous, the external assessment report must include—

- (a) the different views of the assessors; and
- (b) the basis for each view.

‘(4) The external assessor must give the external assessment report to the health assessment committee.’.

72 Amendment of s 296 (Health assessment committee to prepare report)

(1) Section 296(1)—

omit, insert—

(1) The health assessment committee must prepare a report about its assessment of the registrant (an **“assessment report”**) after conducting its assessment and considering the following—

- (a) any external assessment report about the registrant;
- (b) any submission made by the registrant under section 287(1);
- (c) any health assessment report given by the registrant to the committee under section 287(2).’.

(2) Section 296(2)(b)(ii), after ‘protect’—

insert—

‘the wellbeing of’.

(3) Section 296(2)—

insert—

- ‘(c) any external assessment report about the registrant.’.

73 Amendment of s 307 (Use of assessment report)

(1) Section 307(1), ‘prepared under section 296(1)’—

omit.

(2) Section 307(3), ‘which’—

omit, insert—

‘whom’.

(3) Section 307(4), definition “assessment report”—

omit, insert—

‘ **“assessment report”** means the following and includes a copy of the report, or a part of the report or copy—

- (a) an assessment report prepared under section 296(1);
- (b) an external assessment report.’.

74 Replacement of s 308 (Board must pay cost of health assessment)

Section 308—

omit, insert—

‘308 Board must pay cost of assessments

‘If a board establishes a health assessment committee, the board must pay the costs of—

- (a) the health assessment conducted by the committee; and
- (b) an external assessment required by the committee.’

75 Amendment of s 381 (Effect of suspension)

Section 381—

insert—

‘(1A) Despite subsection (1), action relating to the registrant may be taken under this Act and for that purpose the registrant continues to be a registrant under the relevant health practitioner registration Act.’

76 Amendment of s 392 (Confidentiality)

Section 392(5), definition “relevant person”—

insert—

- ‘(ja) an external assessor; or’.

77 Insertion of new pt 14

After part 13—

insert—

‘PART 14—VALIDATION PROVISION**‘405 Validation of certain tribunal decisions**

‘(1) This section applies if, before the commencement of this section—

- (a) the tribunal made a decision under section 241 in relation to a person; and
- (b) at the time the decision was made the person was taken under section 381(1) not to be registered under the relevant health practitioner registration Act.

‘(2) The tribunal’s decision is taken to have been validly made, and to continue to have effect, to the same extent as if section 381(1A) were in force at all relevant times.’.

78 Amendment of schedule (Dictionary)

Schedule—

insert—

‘**“external assessment”** see section 288(1)(b).

“external assessment report” see section 295A(1).

“external assessor” see section 288(1)(b).’.

PART 8—AMENDMENT OF MEDICAL PRACTITIONERS REGISTRATION ACT 2001

79 Act amended in pt 8

This part amends the *Medical Practitioners Registration Act 2001*.

80 Amendment of s 42 (Procedural requirements for applications)

(1) Section 42(2)—

renumber as section 42(4).

(2) Section 42—

insert—

‘(2) The approved form may require the disclosure of the applicant’s criminal history.

‘(3) If the approved form requires the disclosure of the applicant’s criminal history, the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure.’.

81 Amendment of s 45 (Fitness to practise the profession)

(1) Section 45(1)(c) to (e)—

omit, insert—

‘(c) the applicant’s criminal history;’.

(2) Section 45(1)(f) to (h)—

renumber as section 45(1)(d) to (f).

(3) Section 45(2)—

omit, insert—

‘(2) When having regard to the applicant’s criminal history under subsection (1)(c), the board must have particular regard to the following—

- (a) any conviction of the applicant for an indictable offence;
- (b) any conviction of the applicant for an offence against the repealed Act, this Act, the *Health Practitioners (Professional Standards) Act 1999* or a corresponding law;
- (c) any conviction of the applicant for an offence, relating to the practice of the profession—
 - (i) against the *Health Act 1937* or the *Fair Trading Act 1989*; or
 - (ii) against another law applying, or that applied, in the State, the Commonwealth, another State or a foreign country.’.

(4) Section 45(3), ‘an’—

omit, insert—

‘the’.

(5) Section 45(5)—

omit, insert—

‘(5) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the asking for, or giving of, the report.’.

82 Amendment of s 47 (Appointment of appropriately qualified person to conduct health assessment)

(1) Section 47(4) and (5)—

renumber as section 47(6) and (7).

(2) Section 47—

insert—

‘(4) If the board considers it relevant to the assessment, it may disclose the applicant’s criminal history to a person appointed to conduct the assessment.

‘(5) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure.’.

83 Amendment of s 72 (Procedural requirements for applications)

Section 72(2), ‘must be made’—

omit, insert—

‘may only be decided by the board if it is received’.

84 Amendment of s 110 (Procedural requirements for applications)

(1) Section 110(2)—

renumber as section 110(4).

(2) Section 110—

insert—

‘(2) For an applicant who is not a general registrant, the approved form may require the disclosure of the applicant’s criminal history.

‘(3) If the approved form requires the disclosure of the applicant’s criminal history, the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure.’.

85 Insertion of new s 143A

Part 3, division 10, subdivision 2—

insert—

‘143A Deemed specialist registration

‘(1) This section applies to a registrant who is registered, under section 135, to practise the profession in a speciality in an area of need.

‘(2) While the registrant is registered to practise the profession in a speciality in an area of need, the registrant is taken to also be a specialist registrant in the speciality.

‘(3) The registrant’s deemed specialist registration under subsection (2) is taken to be subject to any conditions of the registrant’s special purpose registration under section 135.

‘(4) Part 3, division 9²⁵ does not apply to the registrant while the registrant is taken, under subsection (2), to be a specialist registrant.

‘(5) Also, part 3, division 11²⁶ does not apply to the registrant’s deemed specialist registration under subsection (2).’.

86 Replacement of pt 3, div 10, sdiv 5 hdg and insertion of new s 149A

Part 3, division 10, subdivision 5, heading—

omit, insert—

‘Subdivision 5—Changing or removing conditions

‘149A Changing conditions

‘(1) This section applies if the board reasonably believes the conditions imposed on a special purpose registration under this Act need to be changed for the registrant to competently and safely undertake the activity the subject of the registration.

‘(2) The board must give the registrant a notice (a “**show cause notice**”) stating—

- (a) the board’s proposal to change the conditions; and
- (b) the ground for the proposed change; and
- (c) an outline of the facts and circumstances forming the basis for the ground; and
- (d) an invitation to the registrant to show within a stated period (the “**show cause period**”) why the conditions should not be changed.

‘(3) The show cause period must be a period ending not less than 21 days after the show cause notice is given to the registrant.

25 Part 3 (Registration), division 9 (Specialist registration)

26 Part 3 (Registration), division 11 (General provisions about registrations)

‘(4) The registrant may make written submissions about the show cause notice to the board in the show cause period.

‘(5) The board must consider any submissions made under subsection (4) and decide whether or not to change the conditions in the way stated in the notice.

‘(6) The board must give the registrant notice of its decision as soon as practicable after it is made.

‘(7) If the board decides to change the conditions, it must as soon as practicable give the registrant an information notice about the decision.

‘(8) The change takes effect when the information notice is given to the registrant and does not depend on the certificate of special purpose registration being amended to record the change or a replacement certificate of special purpose registration being issued.’.

87 Amendment of s 150 (Removal)

(1) Section 150(4) and (5)—

omit.

(2) Section 150(6)—

renumber as section 150(4).

88 Insertion of new s 150A

After section 150—

insert—

‘150A Amending or replacing certificate of special purpose registration

‘(1) This section applies if—

- (a) a special purpose registrant receives an information notice, under section 149A(7), about a decision to change the conditions of the registration; or
- (b) a special purpose registrant receives a notice, under section 150(3), about a decision to remove the conditions of the registration.

‘(2) The registrant must return the certificate of special purpose registration to the board within 14 days after receiving the notice, unless the registrant has a reasonable excuse.

Maximum penalty—10 penalty units.

‘(3) On receiving the certificate, the board must—

- (a) amend the certificate in an appropriate way and return the amended certificate to the registrant; or
- (b) issue another certificate of special purpose registration to the registrant to replace the certificate returned to the board.’.

89 Amendment of s 176 (Protection for registrants providing information about crimes to police officers)

(1) Section 176, heading, ‘crimes’—

omit, insert—

‘indictable offences’.

(2) Section 176(1), ‘a crime’—

omit, insert—

‘an indictable offence’.

(3) Section 176(2), ‘the crime’—

omit, insert—

‘the indictable offence’.

(4) Section 176(4)—

omit.

90 Amendment of s 257 (Confidentiality of information)

Section 257(6), definition “information”, paragraph (b), ‘a request under section 45(3)’—

omit, insert—

‘this Act’.

91 Amendment of s 293 (Existing registrations)

(1) Section 293(10) to (12)—

renumber as section 293(12) to (14).

(2) Section 293—

insert—

‘(10) Subsection (11) applies to a person who, immediately before the commencement—

(a) was registered under section 17C(1)(d) of the repealed Act; and

(b) was, or was purported to be, registered under section 18 of the repealed Act in a specialty.

‘(11) Despite subsection (2), the person is not taken to have specialist registration in the specialty under this section.’.

(3) Section 293(13), as renumbered, ‘Subsection (12)’—

omit, insert—

‘Subsection (14)’.

(4) Section 293(13), as renumbered, ‘subsection (10)’—

omit, insert—

‘subsection (12)’.

92 Amendment of s 294 (Removal of conditions imposed under repealed Act)

(1) Section 294, heading, ‘**Removal of**’—

omit, insert—

‘**Changing or removing**’.

(2) Section 294(2), ‘Section 150 applies’—

omit, insert—

‘Sections 149A and 150 apply’.

93 Amendment of sch 1 (Decisions for which information notices must be given)

Schedule 1—

insert—

‘149A

Deciding to change conditions of a special purpose registration’.

94 Amendment of sch 3 (Dictionary)

Schedule 3—

insert—

‘“**criminal history**”, of a person, means all the following—

- (a) every conviction of the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act;
- (b) every charge made against the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act.’.

PART 9—AMENDMENT OF MEDICAL RADIATION TECHNOLOGISTS REGISTRATION ACT 2001

95 Act amended in pt 9

This part amends the *Medical Radiation Technologists Registration Act 2001*.

96 Amendment of s 42 (Procedural requirements for applications)

(1) Section 42(2)—

renumber as section 42(4).

(2) Section 42—

insert—

‘(2) The approved form may require the disclosure of the applicant’s criminal history.

‘(3) If the approved form requires the disclosure of the applicant’s criminal history, the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure.’.

97 Amendment of s 45 (Fitness to practise the profession)

(1) Section 45(1)(c) to (e)—

omit, insert—

‘(c) the applicant’s criminal history;’.

(2) Section 45(1)(f) to (i)—

renumber as section 45(1)(d) to (g).

(3) Section 45(2)—

omit, insert—

‘(2) When having regard to the applicant’s criminal history under subsection (1)(c), the board must have particular regard to the following—

- (a) any conviction of the applicant for an indictable offence;
- (b) any conviction of the applicant for an offence against this Act, the *Health Practitioners (Professional Standards) Act 1999* or a corresponding law;
- (c) any conviction of the applicant for an offence, relating to the practice of the profession—
 - (i) against the *Radiation Safety Act 1999*, the *Health Act 1937* or the *Fair Trading Act 1989*; or
 - (ii) against another law applying, or that applied, in the State, the Commonwealth, another State or a foreign country.’.

(4) Section 45(3), ‘(1)(h)’—

omit, insert—

‘(1)(f)’.

(5) Section 45(4), ‘an’—

omit, insert—

‘the’.

(6) Section 45(6)—

omit, insert—

‘(6) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the asking for, or giving of, the report.’.

98 Amendment of s 47 (Appointment of appropriately qualified person to conduct health assessment)

(1) Section 47(4) and (5)—

renumber as section 47(6) and (7).

(2) Section 47—

insert—

‘(4) If the board considers it relevant to the assessment, it may disclose the applicant’s criminal history to a person appointed to conduct the assessment.

‘(5) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure.’.

99 Amendment of s 74 (Procedural requirements for applications)

Section 74(2), ‘must be made’—

omit, insert—

‘may only be decided by the board if it is received’.

100 Amendment of s 211 (Confidentiality of information)

Section 211(6), definition “information”, paragraph (b), ‘a request under section 45(4)’—

omit, insert—

‘this Act’.

101 Amendment of sch 3 (Dictionary)

Schedule 3—

insert—

‘**“criminal history”**, of a person, means all the following—

- (a) every conviction of the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act;
- (b) every charge made against the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act.’

PART 10—AMENDMENT OF MENTAL HEALTH ACT 2000**102 Act amended in pt 10 and sch 2**

This part and schedule 2 amend the *Mental Health Act 2000*.

103 Amendment of s 70 (Giving information about detention)

(1) Section 70(1), after ‘On’—

insert—

‘the person’.

(2) Section 70(1)(c)—

omit, insert—

- ‘(c) give written notice to the tribunal of the patient’s detention as a classified patient if—
 - (i) the health service is a high security unit and the patient is a young patient; or
 - (ii) an involuntary treatment order or forensic order is in force for the patient.’

104 Amendment of s 118 (Duration of order)

Section 118—

insert—

‘(3) If the administrator of the patient’s treating health service is satisfied the order has ended under subsection (2), the administrator must give written notice that the order has ended to—

- (a) the patient; and
- (b) the patient’s allied person; and
- (c) the tribunal; and
- (d) if, immediately before the order ended, chapter 7, part 2,²⁷ applied to the patient—the director.’

105 Amendment of s 129 (Authorising limited community treatment)

Section 129(3), all words before paragraph (a)—

omit, insert—

‘(3) The director must not give an approval under subsection (2)(b) unless the director is satisfied there is not an unacceptable risk the patient would, if the treatment were undertaken in the community—’.

106 Replacement of s 139 (Performance of electroconvulsive therapy with consent or tribunal approval)

Section 139, not including the note appearing at the end of the section—

omit, insert—

‘139 Performance of electroconvulsive therapy with consent or tribunal approval

‘(1) A doctor may perform electroconvulsive therapy on a person at an authorised mental health service if—

- (a) the person has given informed consent to the treatment; or
- (b) the tribunal has approved the use of the treatment on the person.

²⁷ Chapter 7 (Examinations, references and orders for persons charged with offences), part 2 (Procedures for particular involuntary patients charged with offences)

‘(2) However, a doctor must not, under subsection (1)(b), perform electroconvulsive therapy on a person who is not an involuntary patient if the doctor knows the person objects to the therapy.

‘(3) In this section—

“**object**”, for a person, means—

- (a) the person indicates the person does not wish to have electroconvulsive therapy; or
- (b) the person previously indicated, in similar circumstances, the person did not then wish to have electroconvulsive therapy and since then the person has not indicated otherwise.

Example—

An indication may be given in an enduring power of attorney or advance health directive or in another way, including, for example, orally or by conduct.’.

107 Amendment of s 147 (Director may require reports about mechanical restraint)

(1) Section 147, ‘report in the approved form’—

omit, insert—

‘written report’.

(2) Section 147—

insert—

‘(2) The report must include the information required by the director.’.

108 Amendment of s 160 (Director may require reports about seclusions)

(1) Section 160, ‘report in the approved form’—

omit, insert—

‘written report’.

(2) Section 160—

insert—

‘(2) The report must include the information required by the director.’.

109 Amendment of s 169 (Notice of transfer)

Section 169—

insert—

‘(2) Subsection (1) does not apply if the patient is a patient detained for assessment.’.

110 Amendment of s 203 (Decisions on review)

(1) Section 203(3) to (5)—

renumber as section 203(5) to (7).

(2) Section 203—

insert—

‘(3) Without limiting subsection (2)(a) or (b), an order under the paragraph may be made subject to a condition that the patient must not contact a stated person.

Examples of persons a patient must not contact—

1. A victim of an offence alleged to have been committed by the patient.
2. The spouse or a relative or dependent of the patient.

‘(4) In deciding whether to make an order under subsection (2)(a) or (b), the tribunal must consider whether the order should be subject to a condition mentioned in subsection (3).’.

111 Amendment of s 204 (Restrictions on review decisions)

(1) Section 204(1)—

omit, insert—

‘(1) The tribunal must not do either of the following unless it is satisfied the patient does not represent an unacceptable risk to the safety of the patient or others, having regard to the patient’s mental illness or intellectual disability—

- (a) revoke the forensic order for the patient;
- (b) order or approve limited community treatment for the patient.’.

(2) Section 204(4), all words before paragraph (a)—

omit, insert—

‘(4) The tribunal must not order or approve limited community treatment for a patient mentioned in subsection (3) unless it is satisfied there is not an unacceptable risk the patient would, if the treatment were undertaken in the community—’.

112 Amendment of s 205 (Notice of decision)

(1) Section 205(1)(b), (c) and (d)—

renumber as section 205(1)(c), (d) and (e).

(2) Section 205(1)—

insert—

‘(b) the patient’s allied person;’.

(3) Section 205(1)(e), as renumbered, ‘to (c)’—

omit, insert—

‘to (d)’.

113 Amendment of s 211 (Notice of hearing for review)

Section 211(1)—

insert—

‘(e) if the review is to be carried out on application of a person not mentioned in paragraphs (a) to (d)—the applicant.’.

114 Amendment of s 212 (Decision on review)

(1) Section 212(2)—

omit, insert—

‘(2) If, on the last review required to be conducted under section 209(1)(a) or any subsequent review, the tribunal decides the person is unfit for trial, the tribunal must also decide whether the person is likely to be fit for trial in a reasonable time.

‘(3) If the tribunal decides the person is unlikely to be fit for trial in a reasonable time, it must give a written report to the Attorney-General about the person’s mental condition.’.

115 Amendment of s 213 (Notice of decision)

Section 213(1)(d)—

omit, insert—

- ‘(d) if the person is a forensic patient—the patient’s allied person;
- (e) if the review was carried out on application of a person not mentioned in paragraphs (a) to (d)—the applicant.’.

116 Amendment of s 220 (Patients to whom pt 5 applies)

(1) Section 220(b), after ‘mind’—

insert—

, or unfitness for trial of a permanent nature, for the patient’.

(2) Section 220, note, ‘and diminished responsibility, see section 267’—

omit, insert—

‘, diminished responsibility and fitness for trial, see sections 267, 270 and 271’.

117 Amendment of s 223 (Restriction on making notification order)

(1) Section 223(2), example 1—

omit, insert—

1. A victim of an offence alleged to have been committed by the patient or, if the victim has died as a result of the offence, a relative of the victim.
- 1A. A person who was with a victim of an offence when the offence was alleged to have been committed by the patient.’.

(2) Section 223(2), examples 1A to 3—

renumber as examples 2 to 4.

118 Amendment of s 226 (Notice of order or decision to refuse)

Section 226(3)—

insert—

- ‘(e) the patient’s allied person.’.

119 Insertion of new ch 6 pt 5A

After section 228—

insert—

‘PART 5A—NON-CONTACT ORDERS**‘228A Application of pt 5A**

‘This part applies if, on a review of the mental condition of a person charged with a personal offence, the tribunal decides to revoke a forensic order made for the person.

‘228B Tribunal may make non-contact order

‘(1) Despite being satisfied the person does not represent an unacceptable risk to the safety of others, the tribunal may make a non-contact order against the person requiring any 1 or more of the following—

- (a) the person not contact the victim of the alleged offence or, if the victim has died as a result of the alleged offence, a relative of the victim, for a stated time;
- (b) the person not contact someone who was with the victim when the alleged offence was committed (an “**associate**”), for a stated time;
- (c) the person not go to a stated place, or within a stated distance of a stated place, for a stated time.

‘(2) The time stated in the order must be a period starting when it is made and ending no later than 2 years after it is made.

‘(3) The order must state a Magistrates Court in which a copy of the order is to be filed.

‘(4) A non-contact order that relates to a victim of the alleged offence or relative or associate mentioned in subsection (1)(a) or (b), is made in favour of that person.

‘(5) The tribunal’s decision to make a non-contact order against the person must be made as part of a review but is separate from, and not material to, the decision to revoke the forensic order for the person.

‘228C Restrictions on making non-contact order

‘(1) The tribunal may make a non-contact order against the person only in favour of another person for whom a notification order is in force relating to the first person.

‘(2) The tribunal must not make a non-contact order against the person unless it is satisfied it is appropriate in all the circumstances.

‘(3) In deciding whether it is appropriate to make a non-contact order against the person, the tribunal must consider—

- (a) the views of the following persons—
 - (i) the victim of the alleged offence or, if the victim has died as a result of the alleged offence, a relative of the victim, in whose favour the tribunal is considering making the order;
 - (ii) the associate in whose favour the tribunal is considering making the order;
 - (iii) the person; and
- (b) the viability of making the order in circumstances in which contact between the person and the victim, associate or relative may be unavoidable; and

Example of unavoidable contact under paragraph (b)—

Contact may be unavoidable if the person and the victim both live in a small remote community.

- (c) the person’s criminal history within the meaning of the *Criminal Law (Rehabilitation of Offenders) Act 1986*; and
- (d) the terms of any other order relating to the person and the victim, associate or relative.

Examples of another order under paragraph (d)—

An order under the *Family Law Act 1975* (Cwlth) or *Domestic Violence (Family Protection) Act 1989*.

‘228D Non-contact order and reasons to be given to particular persons

‘If the tribunal decides to make a non-contact order against the person, the tribunal must—

- (a) give a copy of the order to each interested person for the order and the commissioner of the police service; and

- (b) give each interested person written reasons for the decision; and
- (c) give the person against whom the order is made a written notice stating—
 - (i) the person may, within 28 days after receiving the notice, appeal to the Mental Health Court against the decision; and
 - (ii) how to appeal.

‘228E Executive officer to file non-contact order

‘The executive officer must file a copy of the non-contact order, together with the tribunal’s reasons for making the order, in the Magistrates Court stated in it.

‘228F Variation and revocation of non-contact order

‘(1) An interested person for the non-contact order or a person acting on behalf of the person against whom the order is made may, at any time, apply to a Magistrates Court for an order to vary or revoke the order.

‘(2) The application must—

- (a) be in the form approved by the chief executive for justice; and
- (b) state fully the grounds of the application and the facts relied on; and
- (c) be filed in the court.

‘(3) Within 7 days after the application is filed, the registrar of the court must give a copy of the application to—

- (a) if the application is made by an interested person—the other interested persons; or
- (b) if paragraph (a) does not apply—the interested persons.

‘(4) The registrar of the court must give 7 days written notice of the hearing of the application to the applicant and the persons given a copy of the application under subsection (3).

‘(5) Each of the persons given notice of the hearing under subsection (4) is entitled to be heard at the hearing of the application.

‘(6) The court may make an order varying or revoking the non-contact order only if satisfied there has been a material change in the circumstances of an interested person that justifies the variation or revocation.

Example of a material change in the victim’s circumstances—

Because of the relocation of the victim’s workplace, the victim starts working in the building where the person against whom the order is made works.

‘(7) In deciding whether to vary or revoke the non-contact order, the court must consider the reasons for the decision to make the order.

‘(8) The registrar of the court must give a copy of the order varying or revoking the non-contact order to the following persons—

- (a) the interested persons for the non-contact order and any other person to whom a varying order relates;
- (b) the commissioner of the police service.

‘228G Offence to contravene requirement of non-contact order

‘(1) The person against whom a non-contact order is made must not contravene a requirement of the order.

Maximum penalty—40 penalty units or 1 year’s imprisonment.

‘(2) A Magistrates Court that convicts a person of an offence against subsection (1) may, in addition to or instead of sentencing the person for the offence, make an order varying the non-contact order.

‘(3) If a court acts under subsection (2), the registrar of the court must give a copy of the court’s order to the following persons—

- (a) the interested persons for the non-contact order and any other person to whom the varying order relates;
- (b) the commissioner of the police service.’.

120 Amendment of s 232 (Notice of hearing of application)

(1) Section 232(2)(a) to (g)—

omit, insert—

- (a) the person the subject of the application;
- (b) if the person is an involuntary patient—the patient’s allied person;

- (c) if the person is a minor—a parent of the minor or the minor’s guardian;
- (d) if the tribunal reasonably believes the person has a personal attorney—the attorney;
- (e) if the tribunal reasonably believes the person has a personal guardian—the guardian;
- (f) the administrator of the authorised mental health service identified in the application as the service in which the electroconvulsive therapy is to be administered;
- (g) the applicant.’.

121 Amendment of s 234 (Notice of decision)

(1) Section 234(1)(b)—

omit, insert—

- ‘(b) for an application for approval to administer electroconvulsive therapy—
- (i) the administrator of the authorised mental health service identified in the application as the service in which the electroconvulsive therapy is to be administered; and
 - (ii) if the person the subject of the application is an involuntary patient, the person’s allied person.’.

(2) Section 234(4), ‘patient’—

omit, insert—

‘person the subject of the application’.

122 Amendment of s 237 (Notice of application of part)

Section 237(2)(c)—

omit, insert—

- ‘(c) if the patient is a forensic patient—the tribunal.’.

123 Insertion of new s 245A

Chapter 7, part 2, after section 245—

insert—

‘245A Notice if part no longer applies to forensic patient

‘If the director becomes aware that this part no longer applies to a forensic patient because the patient is not charged with a simple or indictable offence, the director must give written notice of the fact to the tribunal.’.

123A Amendment of s 247 (Attorney-General’s powers on reference)

Section 247(1)(c)—

omit, insert—

‘(c) the matter of the patient’s mental condition is to be referred to the Mental Health Court.²⁸’.

124 Amendment of s 248 (Notice of decision to director)

(1) Section 248, heading, after ‘director’—

insert—

‘and tribunal’.

(2) Section 248, after ‘to the director’—

insert—

‘and tribunal’.

125 Amendment of s 252 (Notice of decision to discontinue proceedings)

Section 252(b)—

omit, insert—

‘(b) the patient; and

28 See part 6 (Inquiries on references to Mental Health Court)

- (c) the patient's allied person; and
- (d) if the patient is a child, the chief executive for families.'

126 Replacement of s 275 (Mental Health Court may approve limited community treatment)

Section 275—

omit, insert—

'275 Mental Health Court may approve limited community treatment

'(1) The Mental Health Court may, under the order, approve limited community treatment for the patient.

'(2) However, the Mental Health Court must not approve limited community treatment unless it is satisfied the patient does not represent an unacceptable risk to the safety of the patient or others, having regard to the patient's mental illness or intellectual disability.'

127 Amendment of s 284 (Submission and consideration of relevant material by non-party)

(1) Section 284(1), example—

omit, insert—

'Example of relevant material—

A statement by the victim of an offence that is not otherwise before the court about—

- (a) the mental condition of the alleged offender when the offence was committed; or
- (b) the risk the victim believes the alleged offender represents to the victim or the victim's family.'

(2) Section 284—

insert—

'(1A) Also, for a decision about the making of a non-contact order in favour of a person mentioned in section 313C(2), the court must receive in evidence material giving the person's views as required under the section.

(3) Section 284(2), example—

omit.

(4) Section 284—

insert—

‘(2A) For subsection (2), the director of public prosecutions must submit the material mentioned in the subsection.’.

(5) Section 284(1A) to (3)—

renumber as section 284(2) to (5).

128 Amendment of s 286 (Notices of decisions and orders)

(1) Section 286(2)—

omit.

(2) Section 286(3)—

renumber as section 286(2).

129 Amendment of s 289 (Mental Health Court may order, approve or revoke limited community treatment)

(1) Section 289(4)—

renumber as section 289(6).

(2) Section 289(2) and (3)—

omit, insert—

‘(2) Without limiting subsection (1)(a) or (b), an order under the paragraph may be made subject to a condition that the patient must not contact a stated person.

Examples of persons a patient must not contact—

1. A victim of an offence alleged to have been committed by the patient.
2. The spouse or a relative or dependent of the patient.

‘(3) In deciding whether to make an order under subsection (1)(a) or (b), the court must consider whether the order should be subject to a condition mentioned in subsection (2).

‘(4) However, the court must not order or approve limited community treatment unless it is satisfied the patient does not represent an unacceptable risk to the safety of the patient or others, having regard to the patient’s mental illness or intellectual disability.

‘(5) Also, the court must not order or approve limited community treatment for a patient mentioned in section 288(1)(c) unless it is satisfied

there is not an unacceptable risk the patient would, if the treatment were undertaken in the community—

- (a) not return to the authorised mental health service when required; or
- (b) commit an offence; or
- (c) endanger the safety or welfare of the patient or others.’.

130 Replacement of s 301 (Director to refer mental condition of particular persons to tribunal)

Section 301—

omit, insert—

‘301 Director to refer mental condition of particular persons to tribunal

‘(1) Immediately after receiving the registrar’s notice, the director must refer the matter of the person’s mental condition to the tribunal.

‘(2) However, this section does not apply to a person for whom a court has made a custody order following a section 647 finding.’.

131 Insertion of new ch 7, pt 8A

After section 313—

insert—

‘PART 8A—NON-CONTACT ORDERS

‘313A Application of pt 8A

‘This part applies if, on a reference, the Mental Health Court—

- (a) decides a person charged with a personal offence—
 - (i) was of unsound mind when the alleged offence was committed; or
 - (ii) is unfit for trial for the alleged offence and the unfitness for trial is of a permanent nature; and
- (b) does not make a forensic order for the person.

Note—

The court must have regard to the matters mentioned in section 288(3) in deciding whether to make a forensic order for the person.

‘313B Mental Health Court may make non-contact order

‘(1) The Mental Health Court may make a non-contact order against the person requiring any 1 or more of the following—

- (a) the person not contact the victim of the alleged offence or, if the victim has died as a result of the alleged offence, a relative of the victim, for a stated time;
- (b) the person not contact someone who was with the victim when the alleged offence was committed (an “**associate**”), for a stated time;
- (c) the person not go to a stated place, or within a stated distance of a stated place, for a stated time.

‘(2) The time stated in the order must be a period starting when it is made and ending no later than 2 years after it is made.

‘(3) The order must state a Magistrates Court in which a copy of the order is to be filed.

‘(4) A non-contact order that relates to a victim of the alleged offence or relative or associate mentioned in subsection (1)(a) or (b), is made in favour of that person.

‘(5) The court’s decision to make a non-contact order against the person must be made as part of the reference but is separate from, and not material to, the decision whether to make a forensic order for the person.

‘313C Restrictions on making non-contact order

‘(1) The Mental Health Court must not make a non-contact order against the person unless it is satisfied it is appropriate in all the circumstances.

‘(2) In deciding whether it is appropriate to make a non-contact order against the person, the court must consider—

- (a) the views of the following persons—
 - (i) the victim of the alleged offence or, if the victim has died as a result of the alleged offence, a relative of the victim, in whose favour the court is considering making the order;

- (ii) the associate in whose favour the court is considering making the order;
- (iii) the person; and
- (b) the viability of making the order in circumstances in which contact between the person and the victim, associate or relative may be unavoidable; and

Example of unavoidable contact under paragraph (b)—

Contact may be unavoidable if the person and the victim both live in a small remote community.

- (c) the person's criminal history within the meaning of the *Criminal Law (Rehabilitation of Offenders) Act 1986*; and
- (d) the terms of any other order relating to the person and the victim, associate or relative.

Examples of another order under paragraph (d)—

An order under the *Family Law Act 1975* (Cwlth) or *Domestic Violence (Family Protection) Act 1989*.

‘313D Non-contact order and reasons to be given to particular persons

‘If the Mental Health Court decides to make a non-contact order against the person, the registrar of the court must give—

- (a) a copy of the order, and written reasons for making the order, to the interested persons for the order; and
- (b) a copy of the order to the commissioner of the police service.

‘313E Registrar to file non-contact order

‘The registrar must file a copy of the non-contact order, together with the Mental Health Court's reasons for making the order, in the Magistrates Court stated in it.

‘313F Variation and revocation of non-contact order

‘(1) An interested person for the non-contact order or a person acting on behalf of the person against whom the order is made may, at any time, apply to a Magistrates Court for an order to vary or revoke the order.

‘(2) The application must—

- (a) be in the form approved by the chief executive for justice; and
- (b) state fully the grounds of the application and the facts relied on; and
- (c) be filed in the court.

‘(3) Within 7 days after the application is filed, the registrar of the court must give a copy of the application to—

- (a) if the application is made by an interested person—the other interested persons; or
- (b) if paragraph (a) does not apply—the interested persons.

‘(4) The registrar of the court must give 7 days written notice of the hearing of the application to the applicant and the persons given a copy of the application under subsection (3).

‘(5) Each of the persons given notice of the hearing under subsection (4) is entitled to be heard at the hearing of the application.

‘(6) The court may make an order varying or revoking the non-contact order only if satisfied there has been a material change in the circumstances of an interested person that justifies the variation or revocation.

Example of a material change in the victim’s circumstances—

Because of the relocation of the victim’s workplace, the victim starts working in the building where the person against whom the order is made works.

‘(7) In deciding whether to vary or revoke the non-contact order, the court must consider the reasons for making the order.

‘(8) The registrar of the court must give a copy of the order varying or revoking the non-contact order to the following persons—

- (a) the interested persons for the non-contact order and any other person to whom a varying order relates;
- (b) the commissioner of the police service.

‘313G Offence to contravene requirement of non-contact order

‘(1) The person against whom a non-contact order is made must not contravene a requirement of the order.

Maximum penalty—40 penalty units or 1 year’s imprisonment.

‘(2) A Magistrates Court that convicts a person of an offence against subsection (1) may, in addition to or instead of sentencing the person for the offence, make an order varying the non-contact order.

‘(3) If a court acts under subsection (2), the registrar of the court must give a copy of the court’s order to the following persons—

- (a) the interested persons for the non-contact order and any other person to whom the varying order relates;
- (b) the commissioner of the police service.’

132 Insertion of new ch 8, pt 1, div 1AA

(1) Before chapter 8, part 1, division 1—

insert—

‘Division 1AA—Preliminary

‘318A Definition of “patient” for pt 1

‘In this part—

“**patient**” includes a person who, immediately before the making of a decision appealed against, was an involuntary patient.’

(2) Chapter 8, part 1, divisions 1AA to 3—

renumber as chapter 8, part 1, divisions 1 to 4.

133 Amendment of s 464 (Submission and consideration of relevant material by non-party)

(1) Section 464—

insert—

‘(1A) Also, for a decision about the making of a non-contact order in favour of a person mentioned in section 228C(3), the tribunal must take into account material giving the person’s views as required under the section.

(2) Section 464(1A) to (3)—

renumber as section 464(2) to (4).

134 Insertion of new s 505A

After section 505—

insert—

‘505A Appointment of certain health practitioners

‘(1) The administrator of an authorised mental health service may, by written instrument, appoint a person to be a health practitioner.

‘(2) However, a person may be appointed to be a health practitioner only if, in the administrator’s opinion, the person has the necessary training, qualifications and expertise in the provision of mental health services to be a health practitioner.

‘(3) An appointment made under this section may limit the exercise of the powers the person has as a health practitioner under this Act.’.

135 Amendment of s 555 (Involuntary treatment orders must be made for particular patients)

(1) Section 555(4) to (6)—

renumber as section 555(5) to (7).

(2) Section 555—

insert—

‘(4) Subsections (5) and (6) apply to the patient if the old order is taken, under this part, to have been made or confirmed by a psychiatrist.’.

136 Amendment of s 569 (Reviews by Patient Review Tribunal under ss 15 and 21 of repealed Act)

(1) Section 569(1), ‘, 21(6)’—

omit.

(2) Section 569(2) and (3)—

renumber as section 569(3) and (4).

(3) Section 569—

insert—

‘(2) However, for section 187(4) of this Act the application is taken to be an application to which section 187(4)(a) does not apply.’.

137 Replacement of s 572 (Reviews of mental condition of persons to decide fitness for trial)

Section 572—

omit, insert—

‘572 Reviews of mental condition of persons to decide fitness for trial

‘(1) This section applies if—

- (a) under section 34(1) or (4) of the repealed Act, a Patient Review Tribunal has found a person to be not fit for trial; and
- (b) immediately before the commencement day, proceedings against the person have not been discontinued.

‘(2) The finding is taken to be a review decision of the Mental Health Review Tribunal under—

- (a) section 212(1)—for a finding under section 34(1)(b) of the repealed Act; or
- (b) section 212(2)—for a finding under section 34(1)(c) or (4) of the repealed Act.

‘(3) For section 209(1), reviews by a Patient Review Tribunal of the mental condition of the person in relation to the person’s fitness for trial are taken to be reviews by the Mental Health Review Tribunal of the person’s mental condition.

‘(4) If the Governor in Council has, under section 34(3)(b) of the repealed Act, deferred the question mentioned in the section, the deferral is taken to be a deferral and order under section 214(2)(b).

‘(5) Section 213 does not apply to the review decision.

‘(6) For section 214, the Attorney-General is taken to have received notice of the review decision on the commencement day.

‘572A Continuing proceedings for persons found fit for trial on review

‘(1) This section applies if—

- (a) under section 34(1) or (4) of the repealed Act, a Patient Review Tribunal has found a person to be fit for trial; and
- (b) immediately before the commencement day, an order that proceedings against the person be continued has not been made.

‘(2) The finding is taken to be a decision of the Mental Health Review Tribunal made under section 212(1) on the commencement day.

‘(3) However, section 213 and 218(1)(a) do not apply to the decision.’.

138 Amendment of sch 2 (Dictionary)

(1) Schedule 2—

insert—

‘**“associate”** for—

- (a) chapter 6, part 5A—see section 228B(1)(b); or
- (b) chapter 7, part 8A—see section 313B(1)(b).

“contact” a person, for chapter 6, part 5A or chapter 7, part 8A, means—

- (a) intentionally initiate contact with the person in any way, including for example, by phone, mail, fax, email or other technology; or
- (b) intentionally follow, loiter near, watch or approach the person; or
- (c) intentionally loiter near, watch, approach or enter a place where the person lives, works or visits.

“interested person”, for a non-contact order, means any of the following persons named in the order—

- (a) a person in whose favour the order is made;
- (b) the person against whom the order is made.

“non-contact order” means an order in force under chapter 6, part 5A or chapter 7, part 8A, and includes an order of a Magistrates Court varying a non-contact order.

“personal offence” means an indictable offence committed, or alleged to have been committed, against the person of someone.

“victim”, of an alleged offence, means the person against whom the alleged offence is alleged to have been committed.’.

(2) Schedule 2, definition “justice of the peace (qualified)”—

omit, insert—

‘**“justice of the peace”** means a justice of the peace (magistrates court) or a justice of the peace (qualified) under the *Justices of the Peace and Commissioners for Declarations Act 1991*.’

(3) Schedule 2, definition “health practitioner”, paragraph (b)—
omit, insert—

‘(b) a person appointed under section 505A(1).’.

(4) Schedule 2, definition “patient”, from ‘for chapter 10’ to ‘means—’—

omit, insert—

‘for chapter 8, part 1—see section 318A; or

(b) for chapter 10, part 3—see section 351; or

(c) for chapter 14, part 2—see section 510; or

(d) for chapter 14, part 6—see section 531; or

(e) elsewhere—means—’.

PART 11—AMENDMENT OF OCCUPATIONAL THERAPISTS REGISTRATION ACT 2001

139 Act amended in pt 11

This part amends the *Occupational Therapists Registration Act 2001*.

140 Amendment of s 42 (Procedural requirements for applications)

(1) Section 42(2)—

renumber as section 42(4).

(2) Section 42—

insert—

‘(2) The approved form may require the disclosure of the applicant’s criminal history.’

‘(3) If the approved form requires the disclosure of the applicant’s criminal history, the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure.’.

141 Amendment of s 45 (Fitness to practise the profession)

(1) Section 45(1)(c) to (e)—

omit, insert—

‘(c) the applicant’s criminal history;’.

(2) Section 45(1)(f) to (h)—

renumber as section 45(1)(d) to (f).

(3) Section 45(2)—

omit, insert—

‘(2) When having regard to the applicant’s criminal history under subsection (1)(c), the board must have particular regard to the following—

- (a) any conviction of the applicant for an indictable offence;
- (b) any conviction of the applicant for an offence against the repealed Act, this Act, the *Health Practitioners (Professional Standards) Act 1999* or a corresponding law;
- (c) any conviction of the applicant for an offence, relating to the practice of the profession—
 - (i) against the *Health Act 1937* or the *Fair Trading Act 1989*; or
 - (ii) against another law applying, or that applied, in the State, the Commonwealth, another State or a foreign country.’.

(4) Section 45(3), ‘(1)(g)’—

omit, insert—

‘(1)(e)’.

(5) Section 45(4), ‘an’—

omit, insert—

‘the’.

(6) Section 45(6)—

omit, insert—

‘(6) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the asking for, or giving of, the report.’.

142 Amendment of s 47 (Appointment of appropriately qualified person to conduct health assessment)

(1) Section 47(4) and (5)—

renumber as section 47(6) and (7).

(2) Section 47—

insert—

‘(4) If the board considers it relevant to the assessment, it may disclose the applicant’s criminal history to a person appointed to conduct the assessment.

‘(5) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure.’.

143 Amendment of s 70 (Procedural requirements for applications)

Section 70(2), ‘must be made’—

omit, insert—

‘may only be decided by the board if it is received’.

144 Amendment of s 196 (Confidentiality of information)

Section 196(6), definition “information”, paragraph (b), ‘a request under section 45(4)’—

omit, insert—

‘this Act’.

145 Amendment of sch 3 (Dictionary)

Schedule 3—

insert—

‘**“criminal history”**, of a person, means all the following—

- (a) every conviction of the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act;
- (b) every charge made against the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act.’.

PART 12—AMENDMENT OF OPTOMETRISTS REGISTRATION ACT 2001

146 Act amended in pt 12

This part amends the *Optometrists Registration Act 2001*.

147 Amendment of s 42 (Procedural requirements for applications)

(1) Section 42(2)—

renumber as section 42(4).

(2) Section 42—

insert—

‘(2) The approved form may require the disclosure of the applicant’s criminal history.

‘(3) If the approved form requires the disclosure of the applicant’s criminal history, the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure.’.

148 Amendment of s 45 (Fitness to practise the profession)

(1) Section 45(1)(c) to (e)—

omit, insert—

‘(c) the applicant’s criminal history;’.

(2) Section 45(1)(f) to (h)—

renumber as section 45(1)(d) to (f).

(3) Section 45(2)—

omit, insert—

‘(2) When having regard to the applicant’s criminal history under subsection (1)(c), the board must have particular regard to the following—

- (a) any conviction of the applicant for an indictable offence;
- (b) any conviction of the applicant for an offence against the repealed Act, this Act, the *Health Practitioners (Professional Standards) Act 1999* or a corresponding law;
- (c) any conviction of the applicant for an offence, relating to the practice of the profession—
 - (i) against the *Health Act 1937* or the *Fair Trading Act 1989*; or
 - (ii) against another law applying, or that applied, in the State, the Commonwealth, another State or a foreign country.’.

(4) Section 45(3), ‘(1)(g)’—

omit, insert—

‘(1)(e)’.

(5) Section 45(4), ‘an’—

omit, insert—

‘the’.

(6) Section 45(6)—

omit, insert—

‘(6) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the asking for, or giving of, the report.’.

149 Amendment of s 47 (Appointment of appropriately qualified person to conduct health assessment)

(1) Section 47(4) and (5)—

renumber as section 47(6) and (7).

(2) Section 47—

insert—

‘(4) If the board considers it relevant to the assessment, it may disclose the applicant’s criminal history to a person appointed to conduct the assessment.

‘(5) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure.’.

150 Amendment of s 70 (Procedural requirements for applications)

Section 70(2), ‘must be made’—

omit, insert—

‘may only be decided by the board if it is received’.

151 Amendment of s 196 (Confidentiality of information)

Section 196(6), definition “information”, paragraph (b), ‘a request under section 45(4)’—

omit, insert—

‘this Act’.

152 Amendment of sch 4 (Dictionary)

Schedule 4—

insert—

‘**“criminal history”**, of a person, means all the following—

- (a) every conviction of the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act;
- (b) every charge made against the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act.’.

PART 13—AMENDMENT OF OSTEOPATHS REGISTRATION ACT 2001

153 Act amended in pt 13

This part amends the *Osteopaths Registration Act 2001*.

154 Amendment of s 42 (Procedural requirements for applications)

(1) Section 42(2)—

renumber as section 42(4).

(2) Section 42—

insert—

‘(2) The approved form may require the disclosure of the applicant’s criminal history.

‘(3) If the approved form requires the disclosure of the applicant’s criminal history, the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure.’.

155 Amendment of s 45 (Fitness to practise the profession)

(1) Section 45(1)(c) to (e)—

omit, insert—

‘(c) the applicant’s criminal history;’.

(2) Section 45(1)(f) to (h)—

renumber as section 45(1)(d) to (f).

(3) Section 45(2)—

omit, insert—

‘(2) When having regard to the applicant’s criminal history under subsection (1)(c), the board must have particular regard to the following—

- (a) any conviction of the applicant for an indictable offence;
- (b) any conviction of the applicant for an offence against the repealed Act, this Act, the *Health Practitioners (Professional Standards) Act 1999* or a corresponding law;

(c) any conviction of the applicant for an offence, relating to the practice of the profession—

- (i) against the *Health Act 1937* or the *Fair Trading Act 1989*; or
- (ii) against another law applying, or that applied, in the State, the Commonwealth, another State or a foreign country.’.

(4) Section 45(3), ‘(1)(g)’—

omit, insert—

‘(1)(e)’.

(5) Section 45(4), ‘an’—

omit, insert—

‘the’.

(6) Section 45(6)—

omit, insert—

‘(6) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the asking for, or giving of, the report.’.

156 Amendment of s 47 (Appointment of appropriately qualified person to conduct health assessment)

(1) Section 47(4) and (5)—

renumber as section 47(6) and (7).

(2) Section 47—

insert—

‘(4) If the board considers it relevant to the assessment, it may disclose the applicant’s criminal history to a person appointed to conduct the assessment.

‘(5) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure.’.

157 Amendment of s 70 (Procedural requirements for applications)

Section 70(2), ‘must be made’—

omit, insert—

‘may only be decided by the board if it is received’.

158 Amendment of s 196 (Confidentiality of information)

Section 196(6), definition “information”, paragraph (b), ‘a request under section 45(4)’—

omit, insert—

‘this Act’.

159 Amendment of s 218 (Existing registrations)

Section 218(2) and (3), ‘Subsection (5)’—

omit, insert—

‘Subsection (4)’.

160 Amendment of sch 2 (Dictionary)

Schedule 2—

insert—

‘**“criminal history”**, of a person, means all the following—

- (a) every conviction of the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act;
- (b) every charge made against the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act.’.

PART 14—AMENDMENT OF PHARMACISTS REGISTRATION ACT 2001

161 Act amended in pt 14

This part amends the *Pharmacists Registration Act 2001*.

162 Amendment of s 43 (Procedural requirements for applications)

(1) Section 43(2)—

renumber as section 43(4).

(2) Section 43—

insert—

‘(2) The approved form may require the disclosure of the applicant’s criminal history.

‘(3) If the approved form requires the disclosure of the applicant’s criminal history, the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure.’.

163 Amendment of s 46 (Fitness to practise the profession)

(1) Section 46(1)(c) to (e)—

omit, insert—

‘(c) the applicant’s criminal history;’.

(2) Section 46(1)(f) to (h)—

renumber as section 46(1)(d) to (f).

(3) Section 46(2)—

omit, insert—

‘(2) When having regard to the applicant’s criminal history under subsection (1)(c), the board must have particular regard to the following—

- (a) any conviction of the applicant for an indictable offence;
- (b) any conviction of the applicant for an offence against the repealed Act, this Act, the *Health Practitioners (Professional Standards) Act 1999* or a corresponding law;
- (c) any conviction of the applicant for an offence, relating to the practice of the profession—
 - (i) against the *Health Act 1937* or the *Fair Trading Act 1989*; or
 - (ii) against another law applying, or that applied, in the State, the Commonwealth, another State or a foreign country.’.

(4) Section 46(3), ‘(1)(g)’—

omit, insert—

‘(1)(e)’.

(5) Section 46(4), ‘an’—

omit, insert—

‘the’.

(6) Section 46(6)—

omit, insert—

‘(6) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the asking for, or giving of, the report.’.

164 Amendment of s 51 (Appointment of appropriately qualified person to conduct health assessment)

(1) Section 51(4) and (5)—

renumber as section 51(6) and (7).

(2) Section 51—

insert—

‘(4) If the board considers it relevant to the assessment, it may disclose the applicant’s criminal history to a person appointed to conduct the assessment.

‘(5) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure.’.

165 Amendment of s 74 (Procedural requirements for applications)

Section 74(2), ‘must be made’—

omit, insert—

‘may only be decided by the board if it is received’.

166 Amendment of s 201 (Confidentiality of information)

Section 201(6), definition “information”, paragraph (b), ‘a request under section 46(4)’—

omit, insert—

‘this Act’.

167 Amendment of sch 4 (Dictionary)

Schedule 4—

insert—

‘**“criminal history”**, of a person, means all the following—

- (a) every conviction of the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act;
- (b) every charge made against the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act.’.

**PART 15—AMENDMENT OF PHYSIOTHERAPISTS
REGISTRATION ACT 2001****168 Act amended in pt 15**

This part amends the *Physiotherapists Registration Act 2001*.

169 Amendment of s 42 (Procedural requirements for applications)

(1) Section 42(2)—

renumber as section 42(4).

(2) Section 42—

insert—

‘(2) The approved form may require the disclosure of the applicant’s criminal history.

‘(3) If the approved form requires the disclosure of the applicant’s criminal history, the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure.’.

170 Amendment of s 45 (Fitness to practise the profession)

(1) Section 45(1)(c) to (e)—

omit, insert—

‘(c) the applicant’s criminal history;’.

(2) Section 45(1)(f) to (h)—

renumber as section 45(1)(d) to (f).

(3) Section 45(2)—

omit, insert—

‘(2) When having regard to the applicant’s criminal history under subsection (1)(c), the board must have particular regard to the following—

- (a) any conviction of the applicant for an indictable offence;
- (b) any conviction of the applicant for an offence against the repealed Act, this Act, the *Health Practitioners (Professional Standards) Act 1999* or a corresponding law;
- (c) any conviction of the applicant for an offence, relating to the practice of the profession—
 - (i) against the *Health Act 1937* or the *Fair Trading Act 1989*; or
 - (ii) against another law applying, or that applied, in the State, the Commonwealth, another State or a foreign country.’.

(4) Section 45(3), ‘(1)(g)’—

omit, insert—

‘(1)(e)’.

(5) Section 45(4), ‘an’—

omit, insert—

‘the’.

(6) Section 45(6)—

omit, insert—

‘(6) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the asking for, or giving of, the report.’.

171 Amendment of s 47 (Appointment of appropriately qualified person to conduct health assessment)

(1) Section 47(4) and (5)—

renumber as section 47(6) and (7).

(2) Section 47—

insert—

‘(4) If the board considers it relevant to the assessment, it may disclose the applicant’s criminal history to a person appointed to conduct the assessment.

‘(5) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure.’.

172 Amendment of s 70 (Procedural requirements for applications)

Section 70(2), ‘must be made’—

omit, insert—

‘may only be decided by the board if it is received’.

173 Amendment of s 196 (Confidentiality of information)

Section 196(6), definition “information”, paragraph (b), ‘a request under section 45(4)’—

omit, insert—

‘this Act’.

174 Amendment of sch 4 (Dictionary)

Schedule 4—

insert—

‘“**criminal history**”, of a person, means all the following—

- (a) every conviction of the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act;
- (b) every charge made against the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act.’.

PART 16—AMENDMENT OF PODIATRISTS REGISTRATION ACT 2001

175 Act amended in pt 16

This part amends the *Podiatrists Registration Act 2001*.

176 Amendment of s 42 (Procedural requirements for applications)

(1) Section 42(2)—

renumber as section 42(4).

(2) Section 42—

insert—

‘(2) The approved form may require the disclosure of the applicant’s criminal history.

‘(3) If the approved form requires the disclosure of the applicant’s criminal history, the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure.’.

177 Amendment of s 45 (Fitness to practise the profession)

(1) Section 45(1)(c) to (e)—

omit, insert—

‘(c) the applicant’s criminal history;’.

(2) Section 45(1)(f) to (h)—

renumber as section 45(1)(d) to (f).

(3) Section 45(2)—

omit, insert—

‘(2) When having regard to the applicant’s criminal history under subsection (1)(c), the board must have particular regard to the following—

- (a) any conviction of the applicant for an indictable offence;
- (b) any conviction of the applicant for an offence against the repealed Act, this Act, the *Health Practitioners (Professional Standards) Act 1999* or a corresponding law;

(c) any conviction of the applicant for an offence, relating to the practice of the profession—

- (i) against the *Health Act 1937* or the *Fair Trading Act 1989*; or
- (ii) against another law applying, or that applied, in the State, the Commonwealth, another State or a foreign country.’.

(4) Section 45(3), ‘(1)(g)’—

omit, insert—

‘(1)(e)’.

(5) Section 45(4), ‘an’—

omit, insert—

‘the’.

(6) Section 45(6)—

omit, insert—

‘(6) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the asking for, or giving of, the report.’.

178 Amendment of s 47 (Appointment of appropriately qualified person to conduct health assessment)

(1) Section 47(4) and (5)—

renumber as section 47(6) and (7).

(2) Section 47—

insert—

‘(4) If the board considers it relevant to the assessment, it may disclose the applicant’s criminal history to a person appointed to conduct the assessment.

‘(5) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure.’.

179 Amendment of s 70 (Procedural requirements for applications)

Section 70(2), ‘must be made’—

omit, insert—

‘may only be decided by the board if it is received’.

180 Amendment of s 196 (Confidentiality of information)

Section 196(6), definition “information”, paragraph (b), ‘a request under section 45(4)’—

omit, insert—

‘this Act’.

181 Amendment of sch 4 (Dictionary)

Schedule 4—

insert—

‘**“criminal history”**, of a person, means all the following—

- (a) every conviction of the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act;
- (b) every charge made against the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act.’.

PART 17—AMENDMENT OF PRIVATE HEALTH FACILITIES ACT 1999

182 Act amended in pt 17

This part amends the *Private Health Facilities Act 1999*.

183 Amendment of s 13 (Suitability of persons)

Section 13(2)(e) and (f)—

omit, insert—

- ‘(e) whether the person held any of the following that was suspended or cancelled—

- (i) an authority;
- (ii) a licence under the repealed division;
- (iii) the equivalent of an authority under a corresponding law;
- (f) if the person is a corporation, whether any of the corporation's executive officers held any of the following that was suspended or cancelled—
 - (i) an authority;
 - (ii) a licence under the repealed division;
 - (iii) the equivalent of an authority under a corresponding law;’.

184 Amendment of s 80 (Grounds for suspension or cancellation)

Section 80(3)(c), before ‘has otherwise taken’—

insert—

‘as a debtor.’.

185 Amendment of s 81 (Show cause notice)

Section 81(2)(d), ‘stating’—

omit.

186 Amendment of s 87 (Appointment and qualifications)

Section 87(1), ‘, other than a police officer,’—

omit.

187 Amendment of s 106 (Tampering with seized things)

Section 106(2), penalty, ‘for subsection (2)’—

omit.

188 Amendment of s 125 (Compliance notices)

Section 125(2), after ‘chief health officer’—

insert—

‘or authorised person’.

189 Amendment of s 142 (Responsibility for acts or omissions of representatives)

Section 142(4), definition “state of mind”, ‘of a person’—

omit, insert—

‘, of a person,’.

190 Insertion of new s 143A

Part 11—

insert—

‘143A Authority holder to notify chief executive of certain events

‘(1) An authority holder must give the chief executive notice, in the approved form, of the happening of any of the following events within 21 days of becoming aware of the event happening—

- (a) the authority holder, or an associate of the authority holder, is affected by bankruptcy action, or control action under the Corporations Act;
- (b) any of the following persons is convicted of an indictable offence or an offence against a corresponding law—
 - (i) the authority holder;
 - (ii) an associate of the authority holder;
 - (iii) if the authority holder is a corporation, an executive officer of the authority holder;
- (c) the equivalent of an authority under a corresponding law, held by the authority holder or an associate of the authority holder, is suspended or cancelled;
- (d) if the authority holder is an individual who jointly holds the authority with 1 or more other individuals, the other individual or any of the other individuals dies.

Maximum penalty—50 penalty units.

‘(2) For subsection (1)(a), an authority holder or an associate of an authority holder is affected by bankruptcy action if the authority holder or associate—

- (a) is bankrupt; or
- (b) has compounded with creditors; or
- (c) as a debtor, has otherwise taken, or applied to take, advantage of any law about bankruptcy.

‘(3) For subsection (1)(a), an authority holder or an associate of an authority holder is affected by control action under the Corporations Act if the authority holder or associate—

- (a) has executed a deed of company arrangement under that Act; or
- (b) is the subject of a winding-up (whether voluntarily or under a court order) under that Act; or
- (c) is the subject of an appointment of an administrator, liquidator, receiver or receiver and manager under that Act.’.

PART 18—AMENDMENT OF PSYCHOLOGISTS REGISTRATION ACT 2001

191 Act amended in pt 18

This part amends the *Psychologists Registration Act 2001*.

192 Amendment of s 42 (Procedural requirements for applications)

(1) Section 42(2)—

renumber as section 42(4).

(2) Section 42—

insert—

‘(2) The approved form may require the disclosure of the applicant’s criminal history.

‘(3) If the approved form requires the disclosure of the applicant’s criminal history, the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure.’.

193 Amendment of s 45 (Fitness to practise the profession)

(1) Section 45(1)(c) to (e)—

omit, insert—

‘(c) the applicant’s criminal history;’.

(2) Section 45(1)(f) to (h)—

renumber as section 45(1)(d) to (f).

(3) Section 45(2)—

omit, insert—

‘(2) When having regard to the applicant’s criminal history under subsection (1)(c), the board must have particular regard to the following—

- (a) any conviction of the applicant for an indictable offence;
- (b) any conviction of the applicant for an offence against the repealed Act, this Act, the *Health Practitioners (Professional Standards) Act 1999* or a corresponding law;
- (c) any conviction of the applicant for an offence, relating to the practice of the profession—
 - (i) against the *Health Act 1937* or the *Fair Trading Act 1989*; or
 - (ii) against another law applying, or that applied, in the State, the Commonwealth, another State or a foreign country.’.

(4) Section 45(3), ‘(1)(g)’—

omit, insert—

‘(1)(e)’.

(5) Section 45(4), ‘an’—

omit, insert—

‘the’.

(6) Section 45(6)—

omit, insert—

‘(6) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the asking for, or giving of, the report.’.

194 Amendment of s 47 (Appointment of appropriately qualified person to conduct health assessment)

(1) Section 47(4) and (5)—

renumber as section 47(6) and (7).

(2) Section 47—

insert—

‘(4) If the board considers it relevant to the assessment, it may disclose the applicant’s criminal history to a person appointed to conduct the assessment.

‘(5) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure.’.

195 Amendment of s 76 (Procedural requirements for applications)

Section 76(2), ‘must be made’—

omit, insert—

‘may only be decided by the board if it is received’.

196 Amendment of s 212 (Confidentiality of information)

Section 212(6), definition “information”, paragraph (b), ‘a request under section 45(4)’—

omit, insert—

‘this Act’.

197 Amendment of sch 3 (Dictionary)

Schedule 3—

insert—

‘**“criminal history”**, of a person, means all the following—

- (a) every conviction of the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act;
- (b) every charge made against the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act.’.

PART 19—AMENDMENT OF QUEENSLAND INSTITUTE OF MEDICAL RESEARCH ACT 1945

198 Act amended in pt 19

This part amends the *Queensland Institute of Medical Research Act 1945*.

199 Replacement of s 1 (Short title and construction)

Section 1—

omit, insert—

‘1 Short title

‘This Act may be cited as the *Queensland Institute of Medical Research Act 1945*.’.

200 Amendment of s 2 (Interpretation)

(1) Section 2, heading—

omit, insert—

‘2 Definitions’.

(2) Section 2, definition “Director”, from ‘, but’ to ‘Associate Director’—

omit.

(3) Section 2, definition “National Health and Medical Research Council”, from ‘of the Commonwealth’—

omit, insert—

‘established under the *National Health and Medical Research Council Act 1992* (Cwlth).’.

201 Replacement of s 5 (Membership of Council)

Section 5—

omit, insert—

‘5 Membership of Council

‘The Council consists of the following members appointed by the Governor in Council—

- (a) the chief health officer (an “**official member**”);
- (b) the chairperson of the Trust (also an “**official member**”);
- (c) 2 nominees of the National Health and Medical Research Council, at least 1 of whom has expertise in health research;
- (d) 1 nominee of the senate of The University of Queensland;
- (e) 1 person with expertise in health research;
- (f) 1 medical practitioner with expertise in health research;
- (g) 1 person with expertise in health ethics;
- (h) 1 lawyer;
- (i) 2 persons with expertise in financial management, business or public administration.’.

202 Amendment of s 5A (Nominee Council members)

(1) Section 5A(1)—

omit, insert—

‘(1) This section applies if an entity is to nominate a person for membership of the Council under section 5(c) or (d).’.

(2) Section 5A(2), (3) and (6), ‘or body’—

omit.

203 Amendment of 7 (Quorum of Council)

(1) Section 7, heading, after ‘**Council**’—

insert—

‘and member acting as chairperson’.

(2) Section 7(1)—

omit, insert—

‘(1) A quorum for the Council is the number equal to one-half of the number of its members for the time being holding office or, if one-half is not a whole number, the next highest whole number.’.

(3) Section 7, heading before subsection (2)—

omit.

204 Amendment of s 8 (Meetings of Council)

(1) Section 8(1)—

omit.

(2) Section 8(2), ‘thereafter’—

omit.

(3) Section 8(6), ‘regulation,’—

omit.

205 Amendment of s 8C (Term of office of members of Trust)

(1) Section 8C(1)—

omit.

(2) Section 8C(2), ‘subsequent’—

omit.

(3) Section 8C(4), from ‘the Minister’ to ‘appointment’—

omit.

206 Amendment of s 8F (Meetings of Trust)

(1) Section 8F(1)—

omit.

(2) Section 8F(2), ‘thereafter’—

omit.

207 Amendment of s 11A (Appointment of personnel for joint research projects)

(1) Section 11A(1), ‘with the approval of the Governor in Council’—

omit.

(2) Section 11A(2)—

omit, insert—

‘(2) The Council may decide the period and terms of the appointment.’.

208 Replacement of s 12 (Power of Council to secure assistance from Government departments)

Section 12—

omit, insert—

‘12 Council may obtain assistance from departments

‘The Council may make arrangements with the chief executive of a department to use the services of officers of, and other persons employed in, the department.’.

209 Amendment of s 13A (Budget)

Section 13A(4) to (7)—

omit.

210 Amendment of s 14 (Gifts, devises and bequests)

(1) Section 14(1A)—

omit.

(2) Section 14(3), from ‘, or the’ to ‘may be,’—
omit.

211 Amendment of s 15 (Requirements in respect of property given, devised or bequeathed)

Section 15(3)(a), ‘Minister’—
omit, insert—
‘Council’.

212 Omission of s 17 (Entities to cooperate in medical science research)

Section 17—
omit.

213 Amendment of s 21 (Governor in Council may make regulations)

(1) Section 21(1)—
omit, insert—
‘(1) The Governor in Council may make regulations under this Act.’.

(2) Section 21(1A)(e)—
omit.

(3) Section 21, heading before subsection (2)—
omit.

(4) Section 21(2), ‘\$20’—
omit, insert—
‘5 penalty units’.

214 Insertion of new s 22

After section 21—
insert—

‘22 Transitional provision for Health Legislation Amendment Act 2001

‘The members of the Council holding office immediately before the commencement of this section cease to hold office on the commencement.’.

PART 20—AMENDMENT OF SPEECH PATHOLOGISTS REGISTRATION ACT 2001**215 Act amended in pt 20**

This part amends the *Speech Pathologists Registration Act 2001*.

216 Amendment of s 42 (Procedural requirements for applications)

(1) Section 42(2)—

renumber as section 42(4).

(2) Section 42—

insert—

‘(2) The approved form may require the disclosure of the applicant’s criminal history.

‘(3) If the approved form requires the disclosure of the applicant’s criminal history, the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure.’.

217 Amendment of s 45 (Fitness to practise the profession)

(1) Section 45(1)(c) to (e)—

omit, insert—

‘(c) the applicant’s criminal history;’.

(2) Section 45(1)(f) to (h)—

renumber as section 45(1)(d) to (f).

(3) Section 45(2)—

omit, insert—

‘(2) When having regard to the applicant’s criminal history under subsection (1)(c), the board must have particular regard to the following—

- (a) any conviction of the applicant for an indictable offence;
- (b) any conviction of the applicant for an offence against the repealed Act, this Act, the *Health Practitioners (Professional Standards) Act 1999* or a corresponding law;
- (c) any conviction of the applicant for an offence, relating to the practice of the profession—
 - (i) against the *Health Act 1937* or the *Fair Trading Act 1989*; or
 - (ii) against another law applying, or that applied, in the State, the Commonwealth, another State or a foreign country.’.

(4) Section 45(3), ‘(1)(g)’—

omit, insert—

‘(1)(e)’.

(5) Section 45(4), ‘an’—

omit, insert—

‘the’.

(6) Section 45(6)—

omit, insert—

‘(6) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the asking for, or giving of, the report.’.

218 Amendment of s 47 (Appointment of appropriately qualified person to conduct health assessment)

(1) Section 47(4) and (5)—

renumber as section 47(6) and (7).

(2) Section 47—

insert—

‘(4) If the board considers it relevant to the assessment, it may disclose the applicant’s criminal history to a person appointed to conduct the assessment.

‘(5) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure.’.

219 Amendment of s 70 (Procedural requirements for applications)

Section 70(2), ‘must be made’—

omit, insert—

‘may only be decided by the board if it is received’.

220 Amendment of s 196 (Confidentiality of information)

Section 196(6), definition “information”, paragraph (b), ‘a request under section 45(4)’—

omit, insert—

‘this Act’.

221 Amendment of sch 3 (Dictionary)

Schedule 3—

insert—

‘**“criminal history”**, of a person, means all the following—

- (a) every conviction of the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act;
- (b) every charge made against the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act.’.

PART 21—AMENDMENT OF TRANSPLANTATION AND ANATOMY ACT 1979

222 Act amended in pt 21 and sch 3

This part and schedule 3 amend the *Transplantation and Anatomy Act 1979*.

223 Insertion of new s 2

After section 1—

insert—

‘2 Act binds all persons

‘(1) This Act binds all persons including the State.

‘(2) Subsection (1) does not make the State liable to be prosecuted for an offence.’.

224 Amendment of s 22 (Authority to remove tissue where body of deceased in a hospital)

(1) Section 22(1) to (3)—

omit, insert—

‘(1) Subsection (2) applies if—

- (a) the body of a deceased person is in a hospital; and
- (b) it appears to a designated officer for the hospital, after making reasonable inquiries, that the deceased person had not, during his or her lifetime, expressed an objection to the removal after death of tissue from his or her body; and
- (c) the senior available next of kin of the deceased person has consented to the removal of tissue from the body of the deceased person for—
 - (i) transplanting it to the body of a living person; or
 - (ii) use of the tissue for other therapeutic purposes or for other medical or scientific purposes.

‘(2) The designated officer may, by signed writing, authorise the removal of tissue from the body of the deceased person under the consent.’.

(2) Section 22(4), ‘(1)(a)’—

omit, insert—

‘(1)(c)’.

(3) Section 22(6), ‘(1)’—

omit, insert—

‘(1)(c)’.

(4) Section 22(4) to (6)—

renumber as section 22(3) to (5).

(5) After section 22(5), as renumbered—

insert—

‘(6) A consent under subsection (1)(c), and a communication under subsection (3) by the senior available next of kin, must be in writing.

‘(7) However, if it is not practicable for the consent or communication to be given in writing because of the circumstances in which it is given, it may be given orally.

‘(8) If the consent or communication is given orally under subsection (7), the designated officer must ensure that, as soon as practicable—

- (a) the fact of the giving of the consent or communication and the details of the consent or communication are reduced to writing and placed on the deceased person’s hospital records; and
- (b) reasonable attempts are made to have the consent or communication confirmed in writing by the senior available next of kin.

‘(9) The designated officer must ensure that a document obtained under subsection (6) or (8)(b) is placed on the deceased person’s hospital records as soon as practicable.

‘(10) Subsection (8) does not affect the operation of subsection (7)’.

225 Amendment of s 24 (Consent by coroner)

Section 24(3), ‘22(6)’—

omit, insert—

‘22(5)’.

226 Amendment of s 25 (Effect of authority under this part)

Section 25, from ‘authority—’—

omit, insert—

‘authority for the purpose stated in the authority.’.

227 Amendment of s 26 (Authority for post-mortem where body of deceased in hospital)

(1) Section 26(1) to (3)—

omit, insert—

‘(1) Subsection (2) applies if—

- (a) the body of a deceased person is in a hospital; and
- (b) it appears to a designated officer for the hospital, after making reasonable inquiries, that the deceased person had not during, his or her lifetime, expressed an objection to a post-mortem examination of his or her body; and
- (c) the senior available next of kin of the deceased person has consented to a post-mortem examination of the body of the deceased person.

‘(2) The designated officer may, by signed writing, authorise a post-mortem examination of the body of the deceased person.’.

(2) Section 26(4) to (6)—

renumber as section 26(3) to (5).

(3) After section 26(5), as renumbered—

insert—

‘(6) A consent under subsection (1)(c), and a communication under subsection (3) by the senior available next of kin, must be in writing.

‘(7) However, if it is not practicable for the consent or communication to be given in writing because of the circumstances in which it is given, it may be given orally.

‘(8) If the consent or communication is given orally under subsection (7), the designated officer must ensure that, as soon as practicable—

- (a) the fact of the giving of the consent or communication and the details of the consent or communication are reduced to writing and placed on the deceased person’s hospital records; and
- (b) reasonable attempts are made to have the consent or communication confirmed in writing by the senior available next of kin.

‘(9) The designated officer must ensure that a document obtained under subsection (6) or (8)(b) is placed on the deceased person’s hospital records as soon as practicable.

‘(10) Subsection (8) does not affect the operation of subsection (7).’.

228 Amendment of s 28 (Consent by coroner)

Section 28(3), ‘26(6)’—

omit, insert—

‘26(5)’.

229 Amendment of s 29 (Effect of authority under this part)

(1) Section 29(1)(b), before ‘to remove’—

insert—

‘for that purpose,’.

(2) Section 29(2) and (3)—

omit, insert—

‘(2) An authority under this part is sufficient authority for the use, for medical purposes or scientific purposes, of tissue removed from the body of the deceased person for the examination, if the tissue is specimen tissue.

‘(3) An examination order made by a coroner is authority for the use, for medical purposes or scientific purposes, of tissue removed from the body of the deceased person for the examination, if the tissue is specimen tissue.

‘(4) Subsection (3) does not apply if a coroner orders that specimen tissue must not be used under the subsection.

‘(5) Subsections (3) and (4) apply despite any provision of the *Coroners Act 1958* that has the effect of requiring specimen tissue to be preserved for any period.

‘(6) Subsections (3) to (5) do not prevent a coroner deciding, under the *Coroners Act 1958*, when material that is specimen tissue need no longer be preserved for that Act.

‘(7) This section does not prevent tissue removed from the body of a deceased person for the purpose of an examination conducted under subsection (1), or under an examination order, being used for the purpose of the examination.

‘(8) In this section—

“**coroner**” means a coroner under the *Coroners Act 1958*.

“**examination order**” means an order made under the *Coroners Act 1958*, section 18(1), (2) or (3), requiring the making of a post mortem examination of the body, or a special examination of parts or contents of the body, of a deceased person.

“**medical purposes**” does not include therapeutic purposes.

“**specimen tissue**”—

(a) means—

- (i) a small sample of tissue kept in the form of a tissue block or tissue slide prepared to enable the microscopic examination of the tissue; or
- (ii) tissue taken from the tissue block; and

(b) does not include tissue that is, or is a large proportion of the totality of, an organ of a human body or human foetus.’.

230 Amendment of s 31 (Authority for anatomy where body of deceased in a hospital)

(1) Section 31(1) and (2)—

omit, insert—

‘(1) Subsection (2) applies if—

- (a) the body of a deceased person is in a hospital; and
- (b) it appears to a designated officer for the hospital, after making reasonable inquiries, that the deceased person had not, during his

or her lifetime, expressed an objection to the retention after the person's death of his or her body for—

- (i) anatomical examination; or
 - (ii) use of the body for the study and teaching of the anatomy of the human body; and
- (c) the senior available next of kin of the deceased person has consented to the retention of the body of the deceased person for any of the purposes mentioned in paragraph (b).

'(2) The designated officer may, by signed writing, authorise the retention and use of the body of the deceased person under the consent.'

(2) Section 31(3), 'subsection (1)(a)'—

omit, insert—

'subsection (1)(b)'.

(3) After section 31(4)—

insert—

'(5) A consent under subsection (1)(c), and a communication under subsection (3) by the senior available next of kin, must be in writing.

'(6) The designated officer must ensure that a document obtained under subsection (5) is placed on the deceased person's hospital records as soon as practicable.'

231 Amendment of s 34 (Consent by coroner)

Section 34(2), '31(1)'—

omit, insert—

'31(2)'.

232 Amendment of s 35 (Effect of authority under this part)

Section 35, from 'made for'—

omit, insert—

' , by the school of anatomy for the purpose stated in the authority.'

233 Insertion of new s 42A

After section 42—

insert—

‘42A Person who owns a prescribed tissue bank may charge amount to recover certain costs

‘(1) A person who owns a tissue bank prescribed under a regulation may charge an amount to recover the person’s reasonable costs associated with removing, evaluating, processing, storing and distributing donated tissue.

‘(2) A person does not commit an offence against section 42(1) merely by charging an amount under subsection (1).

‘(3) A person does not commit an offence against section 40(1) merely by paying an amount charged under subsection (1).

‘(4) A regulation may regulate the charging of an amount under subsection (1).

‘(5) An amount charged contrary to the regulation is not charged under subsection (1).

‘(6) In this section—

“**distributing**” means distributing from the tissue bank.

“**donated tissue**” means tissue removed under a consent or authority under this Act.

“**owns**” includes controls.

“**processing**” means processing at the tissue bank.

“**storing**” means storing at the tissue bank.

“**tissue bank**” means a facility at which donated tissue is stored.’.

234 Amendment of s 48 (Offences in relation to removal of tissue)

(1) Section 48(1), penalty—

omit, insert—

‘Maximum penalty—100 penalty units or 1 year’s imprisonment.’.

(2) Section 48(2), penalty—

omit, insert—

‘Maximum penalty—100 penalty units or 1 year’s imprisonment.’.

235 Insertion of new ss 49A to 49C

After section 49—

insert—

‘49A Reprisal and grounds for reprisals

‘(1) A person must not cause, or attempt or conspire to cause, detriment to another person in retaliation because, or in the belief that—

- (a) anybody has provided information about an alleged offence against this Act to a person for the purpose of having the alleged offence investigated or prosecuted; or
- (b) anybody has given, or may give, evidence to a court in proceedings for an offence against this Act.

‘(2) An attempt to cause detriment includes an attempt to induce a person to cause detriment.

‘(3) A contravention of subsection (1) is a reprisal or the taking of a reprisal.

‘(4) A ground mentioned in subsection (1) as the ground for a reprisal is the unlawful ground for the reprisal.

‘(5) For the contravention to happen, it is sufficient if the unlawful ground is a substantial ground for the act or omission that is the reprisal, even if there is another ground for the act or omission.

‘49B Offence for taking reprisal

‘A person who takes a reprisal commits an offence.

Maximum penalty—167 penalty units or 2 years imprisonment.’

‘49C Damages entitlement for reprisal

‘(1) A reprisal is a tort and a person who takes a reprisal is liable in damages to any person who suffers detriment as a result.

‘(2) Any appropriate remedy that may be granted by a court for a tort may be granted by a court for the taking of a reprisal.

‘(3) If the claim for damages goes to trial in the Supreme Court or the District Court, it must be decided by a judge sitting without a jury.’

236 Insertion of new pt 10

After section 52—

insert—

**‘PART 10—TRANSITIONAL PROVISION FOR HEALTH
LEGISLATION AMENDMENT ACT 2001****‘53 Dealing with certain bodies and tissue from commencement
of this section**

‘(1) This section applies if, immediately before the commencement of this section—

- (a) an authority mentioned in section 25, 29(1) or 35 of the pre-amended Act was in force in relation to the body of a person who was deceased at that time or tissue removed from the body; or
- (b) an authority mentioned in section 29(2), or an authority under section 29(3), of the pre-amended Act applied to tissue that had been removed from the body of a deceased person.

‘(2) From the commencement of this section, the body or tissue may only be used under this Act to the extent it could lawfully have been used under the post-amended Act if the post-amended Act were in force at the time the authority first had effect.

‘(3) In this section—

“**post-amended Act**” means this Act as in force from the commencement of this section.

“**pre-amended Act**” means this Act as in force before the commencement of this section.’.

PART 22—OTHER AMENDMENTS OF ACTS**237 Amendment of Acts in sch 4**

Schedule 4 amends the Acts mentioned in it.

SCHEDULE 1**AMENDMENT OF FOOD ACT 1981**

section 24

1 Section 7, ‘appliance’ and ‘appliances’—*omit, insert—*

‘equipment’.

2 Part 4, heading, ‘PREMISES’—*omit, insert—*

‘STORES’.

3 Part 4, heading, ‘APPLIANCES’—*omit, insert—*

‘EQUIPMENT’.

4 Section 20—*omit.***5 Section 21, ‘appliance’ and ‘appliances’—***omit, insert—*

‘equipment’.

6 Section 21(2), ‘subsection (1), of’—*omit, insert—*

‘subsection (1),’

SCHEDULE 1 (continued)

- 7 Section 21(2)(a), from ‘or preparation’ to ‘supplying’—**
omit, insert—
‘or handling’.
- 8 Section 21(2)(b) and (c) and (3), from ‘or preparation’ to ‘conveying’—**
omit, insert—
‘or handling’.
- 9 Section 21(11)(c)(i), (ii) and (iii), from ‘or preparation’ to ‘for sale’—**
omit, insert—
‘or handling for sale’.
- 10 Section 25—**
omit.
- 11 Section 26(2), ‘appliance’—**
omit, insert—
‘equipment’.
- 12 Section 28(1)(a) and (e), from ‘or prepared’ to ‘supplied’—**
omit, insert—
‘or handled’.
- 13 Section 28(1)(a)(ii), from ‘or preparation’ to ‘supplying’—**
omit, insert—
‘or handling’.

SCHEDULE 1 (continued)

14 Section 28(1)(a)(iv), ‘conveyance’—*omit, insert—*

‘transporting’.

15 Section 28(1)(b), from ‘or preparing’ to ‘conveying’—*omit, insert—*

‘or handling’.

16 Section 28(1)(e), ‘conveyance’—*omit, insert—*

‘transporting’.

17 Section 28(7), from ‘or prepared’ to ‘conveyed’—*omit, insert—*

‘or handled’.

18 Section 33(2), definition “prescribed number”, paragraph (b), ‘an appliance’—*omit, insert—*

‘equipment’.

19 Section 33(2), definition “prescribed number”, paragraph (e), ‘conveyance’—*omit, insert—*

‘transporting’.

20 Section 44(4)—*omit.*

SCHEDULE 1 (continued)

- 21 Section 49(1)(b), ‘exercised due diligence’—**
omit, insert—
‘exercised all due diligence’.
- 22 Section 52(5)(b)(ii), ‘exercised due diligence’—**
omit, insert—
‘exercised all due diligence’.
- 23 Section 55(1)(h)(ii), ‘appliance’—**
omit, insert—
‘equipment’.
- 24 Section 55(1)(h)(iii), ‘prepared or packed’—**
omit, insert—
‘handled’.
- 25 Section 55(1)(i)(ii), from ‘or packing’ to ‘conveying’—**
omit, insert—
‘or handling’.
- 26 Section 55(1)(i)(iii), ‘used for the preparation’—**
omit, insert—
‘used for the handling’.
- 27 Section 55(1)(i)(iii), from ‘intended’—**
omit, insert—
‘intended for sale;’.

SCHEDULE 1 (continued)

- 28 Section 55(1)(j), ‘prepared for sale, conveyed’—**
omit.
- 29 Section 57(2)(d), ‘appliances’—**
omit, insert—
‘equipment’.
- 30 Schedule 1 as renumbered, sections 4, 9, 13 and 19, ‘appliances’—**
omit, insert—
‘equipment’.
- 31 Schedule 1 as renumbered, section 9, from ‘preparation’ to ‘conveying’—**
omit, insert—
‘handling’.
- 32 Schedule 1 as renumbered, section 10, ‘the preparation of’—**
omit, insert—
‘handling’.
- 33 Schedule 1 as renumbered, section 11, from ‘prepared’ to ‘conveyed’—**
omit, insert—
‘handled’.
- 34 Schedule 1 as renumbered, section 13, ‘wholesomeness and purity’—**
omit, insert—
‘safety and suitability’.

SCHEDULE 1 (continued)

- 35 Schedule 1 as renumbered, section 13, before paragraph (a), from ‘preparation’ to ‘conveying’—**

omit, insert—

‘handling’.

- 36 Schedule 1 as renumbered, section 13(a), (b), (e), (j) and (k), from ‘prepared’ to ‘conveyed’—**

omit, insert—

‘handled’.

- 37 Schedule 1 as renumbered, section 13(c), from ‘preparation’ to ‘conveying’—**

omit, insert—

‘handling’.

- 38 Schedule 1 as renumbered, section 14(j), ‘or supply’—**

omit.

- 39 Schedule 1 as renumbered, section 19, from ‘preparing’ to ‘conveying’—**

omit, insert—

‘handling’.

- 40 Schedule 1 as renumbered, section 23, from ‘prepared’ to ‘conveyed’—**

omit, insert—

‘handled’.

SCHEDULE 1 (continued)

- 41 Schedule 1 as renumbered, section 24, ‘conveyance’—**
omit, insert—
‘transportation’.
- 42 Schedule 1 as renumbered, section 25, ‘preparation’—**
omit, insert—
‘handling’.
- 43 Schedule 1 as renumbered, section 26, from ‘preparation’ to ‘conveying’—**
omit, insert—
‘handling’.
- 44 Schedule 1 as renumbered, section 29, ‘prepared’—**
omit, insert—
‘handled’.

SCHEDULE 2**AMENDMENT OF MENTAL HEALTH ACT 2000**

section 102

1 Sections 27(1) and (2)(a)(ii), 28(1) and 29(2), ‘justice of the peace (qualified)’—*omit, insert—*

‘justice of the peace’.

2 Section 112(2), ‘for the patient’s treating health service’—*omit.***3 Section 193, heading, ‘to transfer’—***omit.***4 Section 224(1), ‘section 222’—***omit, insert—*

‘section 221’.

5 Sections 229(1), 233(2) and 447(1)(b), ‘an involuntary patient’—*omit, insert—*

‘a person’.

6 Sections 229(1)(a) and (b) and 233(2)(a), ‘patient’—*omit, insert—*

‘person’.

SCHEDULE 2 (continued)

7 Sections 229(1)(a), 233(2)(b) and 448(b), ‘patient’s’—

omit, insert—

‘person’s’.

8 Section 229(3)—

omit, insert—

‘(3) On making the application, the psychiatrist must tell the following about the application—

- (a) if the person is an involuntary patient—the patient and the patient’s allied person;
- (b) otherwise—the person.’.

9 Section 320(c), after ‘director’—

insert—

‘, other than if the decision is a decision to make a non-contact order’.

10 Section 322(1)(b) and (2)(c), after ‘director’—

insert—

‘, other than if the decision appealed against is a decision to make a non-contact order’.

11 Section 323(5)—

omit.

12 Section 326—

insert—

‘(2) However, subsection (1)(b) and (c) does not apply if the decision appealed against is a decision to make a non-contact order.’.

SCHEDULE 2 (continued)

13 Section 331, after ‘appeal’—*insert—*

‘, other than an appeal against a decision to make a non-contact order’.

14 Section 337(3) to (6)—*renumber* as section 337(4) to (7).**15 Section 337—***insert—*

‘(3) However, subsection (2)(a) and (c) do not apply if the decision appealed against is a decision to make a non-contact order.’.

16 Section 499(1)(a), ‘a public sector’—*omit, insert—*

‘an authorised’.

17 Chapter 13, part 4, heading, after ‘DOCTORS’—*insert—*

‘AND APPOINTED HEALTH PRACTITIONERS’.

18 Section 506—*omit, insert—***‘506 Register of authorised doctors and certain health practitioners.**

‘The administrator of an authorised mental health service must keep a register of—

- (a) authorised doctors for the health service; and
- (b) health practitioners appointed by the administrator under section 505A.’.

SCHEDULE 2 (continued)

19 Section 512(3), ‘authorised mental health practitioner’—

omit, insert—

‘authorised person’.

19A Section 515(3), ‘section 330(2)’—

omit, insert—

‘section 394(2)’.

20 After section 554—

insert—

‘Division 2A—Provisions about involuntary treatment orders taken to have been made under this part.’.

21 Schedule 1, amendment of Police Powers and Responsibilities Act 2000, amendment 1, ‘section 300’—

omit, insert—

‘section 372’.

SCHEDULE 3**AMENDMENT OF TRANSPLANTATION AND
ANATOMY ACT 1979**

section 222

- 1 Section 12(a), at the end—**
insert—
'and'.
- 2 Section 24(1)(a), at the end—**
insert—
'or'.
- 3 Section 28(1)(a), at the end—**
insert—
'or'.
- 4 Section 34(1)(a), at the end—**
insert—
'or'.
- 5 Section 42(1)(a), at the end—**
insert—
'or'.

SCHEDULE 3 (continued)

6 Section 48(1)(a), (b), (c)(ii), (d), (e)(i) and (e), at the end—*insert—*

‘or’.

7 Section 49(3)(a), (b), (c) and (d), at the end—*insert—*

‘or’.

SCHEDULE 4**AMENDMENT OF VARIOUS ACTS**

section 237

DRUGS MISUSE ACT 1986**1 Section 4, definition “environmental health officer”—***omit, insert—*

‘ “**environmental health officer**” means a person who is appointed as an inspector under the *Health Act 1937*, section 137.’.

2 Section 4, definition “official identity card”, ‘officer under the Health Act 1937.’—*omit, insert—*

‘inspector under the *Health Act 1937*, section 137.’.

3 Section 14(1), ‘an officer’ to ‘1937’—*omit, insert—*

‘an inspector appointed under the *Health Act 1937*, section 137’.

4 Section 14(2), ‘under the Health Act 1937, section 132.’—*omit, insert—*

‘as an inspector under the *Health Act 1937*, part 4A,²⁹ in relation to a relevant provision under that Act.’.

²⁹ *Health Act 1937*, part 4A (Monitoring, investigation and enforcement)

SCHEDULE 4 (continued)

HEALTH RIGHTS COMMISSION ACT 1991

- 1 Section 3(1), definition “disciplinary body”, paragraph (e), ‘Practitioner’—**

omit, insert—

‘Practitioners’.

- 2 Schedule 1, part 2, section 2, ‘1989’—**

omit, insert—

‘1995’.

LIQUOR ACT 1992

- 1 Section 233(2), definition “analyst”—**

omit, insert—

‘ “analyst” means a person who is appointed as a State analyst under the Health Act 1937, section 153Z.’.

NURSING ACT 1992

- 1 Section 2—**

omit.

SCHEDULE 4 (continued)

**TOBACCO AND OTHER SMOKING PRODUCTS
(PREVENTION OF SUPPLY TO CHILDREN) ACT 1998****1 Schedule, definition “prohibition sign”, ‘tobacco’—***omit, insert—*

‘smoking’.

**TRANSPORT OPERATIONS (ROAD USE
MANAGEMENT) ACT 1995****1 Schedule 4, definition “analyst”—***omit, insert—*

‘**“analyst”** means a person who is appointed as a State analyst under the *Health Act 1937*, section 153Z.’.