

Queensland



HEALTH LEGISLATION AMENDMENT ACT 2003

Act No. 68 of 2003

Queensland



HEALTH LEGISLATION AMENDMENT ACT 2003

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Queensland



Health Legislation Amendment Act 2003

Act No. 68 of 2003

An Act to amend Acts administered by the Minister for Health and for other purposes

[Assented to 22 October 2003]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Health Legislation Amendment Act 2003*.

2 Commencement

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

- (a) sections 12 to 27, 29, 30, 32 to 36, 42 to 44, 48, 66 to 69, 71(2), 74, 75; and
- (b) the schedule to the extent it amends the *Dental Technicians and Dental Prosthetists Registration Regulation 2002*.

(2) If under subsection (1), section 27 has not commenced 1 year after this Act is assented to, section 27 commences at that time.

PART 2—AMENDMENT OF CHIROPRACTORS REGISTRATION ACT 2001

3 Act amended in pt 2

This part amends the *Chiropractors Registration Act 2001*.

4 Insertion of new pt 4, div 1A

Part 4, before division 1—

insert—

‘Division 1A—Restricted core practice**‘120A Restriction**

‘(1) A person who is not a registrant, medical practitioner, osteopath or physiotherapist must not, in the course of providing a health service, perform spinal manipulation on a person.

Maximum penalty—1 000 penalty units.

‘(2) This section does not prohibit spinal manipulation on a person by a student, under the immediate personal supervision of a registrant, medical practitioner, osteopath or physiotherapist, in the course of the student’s training and instruction for a qualification as a chiropractor, medical practitioner, osteopath or physiotherapist.

‘(3) In this section—

“**osteopath**” means a person registered under the *Osteopaths Registration Act 2001*.

“**physiotherapist**” means a person registered under the *Physiotherapists Registration Act 2001*.

“**spinal manipulation**” means the high velocity application of force to a person’s body that affects a joint, or group of joints, of the person’s spinal column.’.

5 Replacement of pt 10, hdg (Repeal, transitional and savings provisions)

Part 10, heading—

omit, insert—

‘PART 10—REPEAL AND TRANSITIONAL PROVISIONS’.**6 Omission of pt 10, div 3 (Savings provisions)**

Part 10, division 3—

omit.

PART 3—AMENDMENT OF DENTAL PRACTITIONERS REGISTRATION ACT 2001

7 Act amended in pt 3

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

8 Amendment of s 15 (Membership of board)

(1) Section 15(1), ‘7’—

omit, insert—

‘9’.

(2) Section 15(2)(a)—

omit, insert—

‘(a) persons who are general registrants and persons who are dental auxiliary registrants (the “**registrant members**”); and’.

9 Amendment of s 16 (Registrant members)

(1) Section 16(a)—

omit, insert—

‘(a) at least 2 general registrants nominated by the bodies the Minister considers represent the interests of general registrants; and

(ab) at least 2 dental auxiliary registrants nominated by the bodies the Minister considers represent the interests of dental auxiliary registrants; and’.

(2) Section 16(c)—

omit, insert—

‘(c) at least 1 general registrant or dental auxiliary registrant nominated by the Minister.’.

10 Amendment of s 18 (Certain nominee board members)

Section 18(1), ‘16(a) or (b)’—

omit, insert—

‘16(a), (ab) or (b)’.

11 Amendment of s 22 (Vacation of office)

Section 22(2)(a), ‘general registrant’—

omit, insert—

‘general registrant or dental auxiliary registrant’.

12 Insertion of new pt 3, div 9A

Part 3, before division 10—

insert—

‘Division 9A—Dental auxiliary registration

‘Subdivision 1—Applications for dental auxiliary registration

‘133A Procedural requirements for applications

‘(1) An application for dental auxiliary registration must—

- (a) be made to the board; and
- (b) be in the approved form; and
- (c) be accompanied by—
 - (i) satisfactory evidence of relevant qualifications; and
 - (ii) the application fee prescribed under a regulation (the “**dental auxiliary application fee**”); and
 - (iii) the registration fee prescribed under a regulation (the “**dental auxiliary registration fee**”); and
 - (iv) any other documents, identified in the approved form, the board reasonably requires; and

- (v) if the applicant is registered under a corresponding law, written details of any conditions of the registration; and
- (d) state the category or categories of dental auxiliary to which the application relates.

‘(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.

‘(4) Information in the application must, if the approved form requires, be verified by a statutory declaration.

‘Subdivision 2—Eligibility for dental auxiliary registration

‘133B Eligibility

‘(1) An applicant for dental auxiliary registration is eligible for dental auxiliary registration if—

- (a) the applicant is qualified for dental auxiliary registration under section 133C; and
- (b) the applicant is fit to practise the profession.¹

‘(2) Without limiting subsection (1), the board may be satisfied the applicant is eligible for dental auxiliary registration by imposing conditions on the registration under section 133F.

‘133C When applicant is qualified for dental auxiliary registration

‘(1) An applicant for dental auxiliary registration is qualified for registration if—

- (a) the applicant has a qualification prescribed under a regulation for the category or categories to which the application relates; or

¹ See section 45 which states the matters to which the board may have regard in deciding whether an applicant is fit to practise the profession.

- (b) the applicant has a qualification that is substantially equivalent to, or based on similar competencies to that required for, a current Australian or New Zealand qualification; or
- (c) the applicant has passed a qualifying examination in the profession set by or for, or recognised by, the board.

‘(2) In deciding whether subsection (1)(b) is satisfied, the board may have regard to the following—

- (a) the advice and recommendations of—
 - (i) an entity recognised by the board as competent to assess qualifications in the profession; or
 - (ii) an entity responsible for accrediting courses, or accrediting institutions to educate persons, for the profession;
- (b) the attributes of the course leading to the applicant’s qualification;

Example of attributes of a course—

the course objectives and competencies

- (c) any other relevant issue.

‘(3) In this section—

“**current Australian or New Zealand qualification**” means an Australian or New Zealand qualification, mentioned in a regulation made under subsection (1)(a), that may be conferred or awarded as a result of the successful completion of a course offered, at the date of the applicant’s application for dental auxiliary registration, by the educational institution mentioned in relation to the qualification.

‘Subdivision 3—Decision on applications

‘133D Decision

‘The board must consider the application and decide to register, or refuse to register, the applicant as a dental auxiliary registrant in the category or categories to which the application relates.

‘Subdivision 4—Information in certificates of dental auxiliary registration

‘133E Forms of certificates of dental auxiliary registration

‘(1) A certificate of dental auxiliary registration must be in the approved form.

‘(2) The approved form must provide for the inclusion of the following—

- (a) the registrant’s name;
- (b) the category or categories to which the registration relates;
- (b) the period of the registration;
- (c) any conditions of registration.

‘Subdivision 5—Conditions of dental auxiliary registration

‘133F Imposition of conditions by board

‘(1) The board may decide to register an applicant for dental auxiliary registration for a category or categories on conditions the board considers necessary or desirable for the applicant to competently and safely practise the profession in the category or categories.

‘(2) If an applicant is registered in more than 1 category, different conditions may be stated for each category.

‘(3) If the board decides to register an applicant for dental auxiliary registration on conditions, it must as soon as practicable—

- (a) also decide the review period applying to the conditions; and
- (b) give the applicant an information notice about the decisions.

‘(4) If the board decides to register an applicant for dental auxiliary registration on conditions because of the applicant’s mental and physical health, it must also decide whether details of the conditions must be recorded in the register for the period for which the conditions are in force.

‘(5) The board must decide not to record details of the conditions mentioned in subsection (4) in the register unless it reasonably believes it is in the interests of users of the registrant’s services or the public to know the details.

‘Subdivision 6—Application of certain provisions

‘133G Application of certain provisions about general registration to dental auxiliary registration

‘(1) The following provisions (the “**stated provisions**”) apply to dental auxiliary registration and provisional dental auxiliary registration as if it were general registration and provisional general registration—

- (a) division 1 (Preliminary);
- (b) division 2 (Applications for general registration), other than sections 42, 43, 44, 51, 55 and 57;
- (c) division 3 (Provisional general registration);
- (d) division 4 (Renewal of general registrations);
- (e) division 5 (Restoration of general registrations);
- (f) division 6 (Cancellation of general registrations);
- (g) division 7 (Reviewing conditions of general registrations).

‘(2) For subsection (1)(b), section 45(3) applies as if the reference in that subsection to section 44(1)(c) were a reference to section 133C(1)(c).

‘(3) For subsection (1), the stated provisions apply as if—

- (a) an applicant for general registration were an applicant for dental auxiliary registration; and
- (b) an application for general registration were an application for dental auxiliary registration; and
- (c) general registration were dental auxiliary registration; and
- (d) provisional general registration were provisional dental auxiliary registration; and
- (e) a certificate of provisional general registration were a certificate of provisional dental auxiliary registration; and
- (f) a provisional general registrant were a provisional dental auxiliary registrant; and
- (g) a certificate of general registration were a certificate of dental auxiliary registration; and
- (h) a general registrant were a dental auxiliary registrant; and

- (i) the profession were the category or categories of the profession to which the dental auxiliary registration relates; and
- (j) the registration fee were the dental auxiliary registration fee; and
- (k) the restoration fee were the dental auxiliary restoration fee; and
- (l) a general registration period were a dental auxiliary registration period; and
- (m) an applicant for renewal of general registration were an applicant for renewal of dental auxiliary registration; and
- (n) an application for renewal of general registration were an application for renewal of dental auxiliary registration; and
- (o) an applicant for restoration of general registration were an applicant for restoration of dental auxiliary registration; and
- (p) an application for restoration of general registration were an application for restoration of dental auxiliary registration.

‘(4) The approved form for a certificate of provisional dental auxiliary registration must also provide for the inclusion of the category or categories to which the registration relates.’

13 Amendment of s 139 (Notification of certain events to interstate regulatory authorities and other entities)

(1) Section 139(1), ‘specialist registration’—

omit, insert—

‘specialist registration, dental auxiliary registration’.

(2) Section 139(3)(j), ‘or’—

omit, insert—

‘, dental auxiliary or’.

14 Insertion of new pt 4, div 1A

Part 4, before division 1—

insert—

‘Division 1A—Restricted practice of dentistry

‘139A Restriction

‘(1) A person who is not a general registrant, provisional general registrant or medical practitioner, must not practise dentistry.

Maximum penalty—1 000 penalty units.

‘(2) This section does not prohibit—

- (a) the extraction of a tooth by any person if—
 - (i) the extraction is urgent; and
 - (ii) no general registrant, provisional general registrant or medical practitioner is available; and
 - (iii) the extraction is performed without the application of a general or local anaesthetic; or
- (b) the provision of first aid treatment for dental emergencies; or
- (c) the application of a dressing to a tooth under the direction of a general registrant, provisional general registrant or medical practitioner; or
- (d) dentistry by a dental auxiliary registrant or provisional dental auxiliary registrant performing the following functions under the supervision of a supervising registrant—
 - (i) the general functions of a dental auxiliary registrant;
 - (ii) additional functions prescribed under a regulation that the dental auxiliary may perform because of the following—
 - (A) qualifications prescribed under a regulation;
 - (B) qualifications and experience that the Board considers qualifies the dental auxiliary to perform the additional functions; or
- (e) dentistry by a special purpose registrant or provisional special purpose registrant, other than a special purpose registrant or

provisional special purpose registrant whose registration is based on a qualification as a dental auxiliary; or

- (f) dentistry by a special purpose registrant or provisional special purpose registrant whose registration is based on a qualification as a dental auxiliary, under the supervision of a supervising registrant; or
- (g) dentistry by a person, undertaking study or training in the practice of the profession to obtain a qualification for general registration, under the immediate personal supervision of a supervising registrant; or
- (h) dentistry by a person undertaking study about, or training in, the performance of the functions of a dental auxiliary registrant, under the immediate personal supervision of a supervising registrant; or
- (i) dentistry by a dental auxiliary undergoing an examination conducted by or on behalf of the board under the immediate personal supervision of a supervising registrant.

Example for subsection (2)(b)—

The replacement of a footballer's tooth in its socket after it has been dislodged in a football match.

Example for subsection (2)(c)—

The application of a dressing to a tooth by a person in a community where a dentist is not available. A dentist gives instructions by phone to the person applying the dressing.

'(3) This section does not apply to the provision of a dental prosthetic service within the meaning of the *Dental Technicians and Dental Prosthetists Registration Act 2001* by a person registered under that Act as a dental prosthetist.

'(4) In this section—

“dentistry” means all or any of the following—

- (a) diagnosis of conditions of the mouth;
- (b) fitting or intra-oral adjustment for a person of artificial teeth or corrective or restorative dental appliances;
- (c) performance of exposure prone or irreversible procedures on a person's teeth, jaw, mouth and associated structures.

“direction” means direction by phone or other technology allowing reasonably contemporaneous and continuous oral communication.

“exposure prone procedure” means—

- (a) a sub-mucosal invasion with a surgical instrument; or
- (b) a procedure dealing with sharp tissues or bone spicules in a body cavity or site.

“irreversible procedure” means a treatment, or series of treatments, that causes a permanent change to the affected hard or soft tissues.

“supervising registrant” means a registrant, other than the following—

- (a) a dental auxiliary registrant or provisional dental auxiliary registrant;
- (b) a special purpose registrant or provisional special purpose registrant whose registration is based on a qualification as a dental auxiliary.’.

15 Replacement of s 140 (Taking of restricted titles etc.)

Section 140—

omit, insert—

‘140 Taking of restricted dental auxiliary registrant title etc.

‘(1) A person who is not a dental auxiliary registrant or a provisional dental auxiliary registrant must not take or use a restricted dental auxiliary registrant title.

Maximum penalty—1 000 penalty units.

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

- (a) the person takes or uses the restricted dental auxiliary registrant title as part of a business name for a business providing professional services; and
- (b) in the carrying on of the business by the person, a dental auxiliary registrant or provisional dental auxiliary registrant provides the professional services; and
- (c) the professional services are for the category of dental auxiliary registration for which the dental auxiliary registrant or provisional dental auxiliary registrant is registered under this Act.

‘(3) Also, subsection (1) does not apply to a person if the person—

- (a) is undertaking study or training in the practice of the profession to obtain a qualification for dental auxiliary registration in a category; and
- (b) takes or uses a restricted dental auxiliary registrant title for the category, in the course of the study or training, in conjunction with words that indicate the person is a student or trainee in the category.

‘(4) A person (the “**first person**”) must not, in relation to another person who the first person knows or ought reasonably to know is not a dental auxiliary registrant for a category or provisional dental auxiliary registrant for a category, use a restricted dental auxiliary registrant title for the category.

Maximum penalty—1 000 penalty units.

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

- (a) the other person is undertaking study or training in the practice of the profession to obtain a qualification for dental auxiliary registration in a category; and
- (b) the first person uses a restricted dental auxiliary registrant title for the category, in the course of the study or training, in conjunction with words that indicate the other person is a student or trainee in the category.

‘(6) A person who is not a dental auxiliary registrant for a category or a provisional dental auxiliary registrant for a category must not take or use a title (other than a restricted dental auxiliary registrant title), name, initial, symbol, word or description that, having regard to the circumstances in which it is used, indicates or could be reasonably understood to indicate—

- (a) the person is a dental auxiliary for the category; or
- (b) the person is authorised or qualified to practise the profession as a dental auxiliary for the category.

Maximum penalty—500 penalty units.

‘(7) A person (the “**first person**”) must not, in relation to another person who the first person knows or ought reasonably to know is not a dental auxiliary registrant for a category or a provisional dental auxiliary registrant for a category, use a title (other than a restricted dental auxiliary registrant title), name, initial, symbol, word or description that, having

regard to the circumstances in which it is used, indicates or could be reasonably understood to indicate—

- (a) the other person is a dental auxiliary for the category; or
- (b) the other person is authorised or qualified to practise the profession as a dental auxiliary for the category.

Maximum penalty—500 penalty units.

‘(8) This section does not apply to the taking or using of a restricted dental auxiliary registrant title by or in relation to special purpose registrants or provisional special purpose registrants.²

‘140A Taking of restricted general registrant title etc.

‘(1) A person who is not a general registrant or a provisional general registrant must not take or use a restricted general registrant title.

Maximum penalty—1 000 penalty units.

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

- (a) the person takes or uses the restricted general registrant title as part of a business name for a business providing professional services; and
- (b) in the carrying on of the business by the person, a general registrant or provisional general registrant provides the professional services.

‘(3) Also, subsection (1) does not apply to a person if the person—

- (a) is undertaking study or training in the practice of the profession to obtain a qualification for general registration; and
- (b) takes or uses a restricted general registrant title, in the course of the study or training, in conjunction with words that indicate the person is a student or trainee in the profession.

‘(4) A person (the “**first person**”) must not, in relation to another person who the first person knows or ought reasonably to know is not a general registrant or provisional general registrant, use a restricted general registrant title.

2 Section 140C deals with the restriction on the use of titles by special purpose registrants and provisional special purpose registrants.

Maximum penalty—1 000 penalty units.

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

- (a) the other person is undertaking study or training in the practice of the profession to obtain a qualification for general registration; and
- (b) the first person uses a restricted general registrant title, in the course of the study or training, in conjunction with words that indicate the other person is a student or trainee in the profession.

‘(6) A person who is not a general registrant or a provisional general registrant must not take or use a title (other than a restricted general registrant title), name, initial, symbol, word or description that, having regard to the circumstances in which it is used, indicates or could be reasonably understood to indicate—

- (a) the person is a dental practitioner; or
- (b) the person is authorised or qualified to practise the profession as a general registrant.

Maximum penalty—500 penalty units.

‘(7) A person (the “**first person**”) must not, in relation to another person who the first person knows or ought reasonably to know is not a general registrant or provisional general registrant, use a title (other than a restricted general registrant title), name, initial, symbol, word or description that, having regard to the circumstances in which it is used, indicates or could be reasonably understood to indicate—

- (a) the other person is a dental practitioner; or
- (b) the other person is authorised or qualified to practise the profession as a general registrant.

Maximum penalty—500 penalty units.

‘(8) This section does not apply to the taking or using of a restricted general registrant title by or in relation to special purpose registrants or provisional special purpose registrants.

‘140B Taking of restricted dental auxiliary registrant title for which not registered

‘(1) A dental auxiliary registrant or provisional dental auxiliary registrant must not take or use a restricted dental auxiliary registrant title

for a category unless the registrant is a dental auxiliary registrant or provisional dental auxiliary registrant for the category.

Maximum penalty—1 000 penalty units.

‘(2) Subsection (1) does not apply to a registrant if—

- (a) the registrant takes or uses the restricted dental auxiliary registrant title for a category as part of a business name for a business providing professional services; and
- (b) in the carrying on of the business by the registrant, a dental auxiliary registrant or provisional dental auxiliary registrant provides the professional services; and
- (c) the professional services are for the category of dental auxiliary registration for which the dental auxiliary registrant or provisional dental auxiliary registrant is registered under this Act.

‘(3) Also, subsection (1) does not apply to a registrant if the registrant—

- (a) is undertaking study or training in the practice of the profession to obtain a qualification for dental auxiliary registration in a category; and
- (b) takes or uses a restricted dental auxiliary registrant title for the category, in the course of the study or training, in conjunction with words that indicate the person is a student or trainee in the category.

‘(4) This section does not apply to the taking or using of a restricted dental auxiliary registrant title by or in relation to special purpose registrants or provisional special purpose registrants.

‘140C Restriction on use of titles by special purpose registrants and provisional special purpose registrants

‘(1) A person who is a special purpose registrant or provisional special purpose registrant must not take or use a restricted title unless the title relates to the special activity for which the registrant is registered under this Act.

Maximum penalty—1 000 penalty units.

‘(2) A person must not, in relation to a special purpose registrant or provisional special purpose registrant, use a restricted title unless the title

relates to the special activity for which the registrant is registered under this Act.

Maximum penalty—1 000 penalty units.

‘(3) A special purpose registrant or provisional special purpose registrant must not take or use a title (other than a restricted title), name, initial, symbol, word or description that, having regard to the circumstances in which it is used, indicates or could be reasonably understood to indicate the registrant is able to perform a special activity for which the registrant is not registered under this Act.

Maximum penalty—500 penalty units.

‘(4) A person must not, in relation to a special purpose registrant or provisional special purpose registrant, take or use a title (other than a restricted title), name, initial, symbol, word or description that, having regard to the circumstances in which it is used, indicates or could be reasonably understood to indicate the registrant is able to perform a special activity for which the registrant is not registered under this Act.

Maximum penalty—500 penalty units.’.

16 Amendment of s 141 (Taking of restricted specialist title etc.)

Section 141(3), penalty—

omit.

17 Amendment of s 144 (Claims by persons as to other persons’ registration)

Section 144—

insert—

‘(1A) A person must not hold out another person as being a dental auxiliary registrant if the person knows, or ought reasonably to know, the other person is not a dental auxiliary registrant.

Maximum penalty—1 000 penalty units.

‘(1B) A person must not hold out another person as being a dental auxiliary registrant for a category if the person knows, or ought reasonably to know, the other person is not a dental auxiliary registrant for the category.

Maximum penalty—1 000 penalty units.

‘(1C) A person must not hold out another person as being a general registrant if the person knows, or ought reasonably to know, the other person is not a general registrant.

Maximum penalty—1 000 penalty units.’.

18 Replacement of ss 145 and 146

Sections 145 and 146—

omit, insert—

‘145 Restrictions on registrants

‘A registrant must not—

- (a) claim, or hold himself or herself out to be a registrant for a type of registration for which he or she is not registered under this Act; or
- (b) allow himself or herself to be held out as a registrant for a type of registration for which he or she is not registered under this Act; or
- (c) claim, or hold himself or herself out, to be eligible to be a registrant for a type of registration for which he or she is not eligible to be registered under this Act.

Maximum penalty—100 penalty units.’.

19 Amendment of s 153 (Persons may be prohibited from supplying health services etc.)

Section 153(1)—

omit, insert—

‘(1) This section applies if a person is convicted of an offence against section 140, 140A, 140B, 141, 143, 144, 150(1)(a), (2) or (3), 152(1) or 156.’³.

20 Amendment of s 154 (Injunctions)

Section 154(1)(b), ‘140’—

omit, insert—

‘140, 140A, 140B’.

21 Amendment of s 201 (Powers of court on appeal)

Section 201(4)(b), ‘or specialist registration’—

omit, insert—

‘, specialist registration or dental auxiliary registration’.

22 Amendment of s 215 (Register to be kept)

(1) Section 215(3)(c)—

omit, insert—

‘(c) whether the registrant is a general registrant, provisional general registrant, specialist registrant, provisional specialist registrant, dental auxiliary registrant, provisional dental auxiliary registrant, special purpose registrant or provisional special purpose registrant;’.

(2) Section 215(3)—

insert—

‘(fa) if the registrant is a dental auxiliary registrant—the category or categories in which the registrant is registered under this Act;’.

3 Section 140 (Taking of restricted dental auxiliary registrant title etc.), 140A (Taking of restricted general registrant title etc.), 140B (Taking of restricted dental auxiliary registrant title for which not registered), 141 (Taking of restricted specialist title etc.), 143 (Claims by persons as to registration), 144 (Claims by persons as to other persons’ registration), 150 (Obligations of advertisers), 152 (Aiding, abetting etc. conduct that is a ground for disciplinary action) or 156 (Offence for taking reprisal)

23 Amendment of s 223 (Health records of persons convicted of an offence against s 140(1) or (6), 141(1) or 143)

(1) Section 223, heading, ‘141(1)’—

omit, insert—

‘140A(1) or (6), 140B(1), 141(1)’.

(2) Section 223(1)—

omit, insert—

‘(1) This section applies to a person who is convicted of an offence against section 140(1) or (6), 140A(1) or (6), 140B(1), 141(1) or 143.’⁴.

24 Amendment of s 230 (Deemed general or specialist registration of visiting practitioners)

(1) Section 230, heading, ‘general or specialist’—

omit.

(2) Section 230(2)—

insert—

‘(c) if the practitioner’s registration under an interstate law is equivalent to dental auxiliary registration under this Act—a dental auxiliary registrant.’

(3) Section 230(3) and (4), ‘general or specialist’—

omit, insert—

‘general, specialist or dental auxiliary’.

⁴ Section 140 (Taking of restricted dental auxiliary registrant title etc.), 140A (Taking of restricted general registrant title etc.), 140B (Taking of restricted dental auxiliary registrant title for which not registered), 141 (Taking of restricted specialist title etc.) or 143 (Claims by persons as to registration)

25 Replacement of pt 10, div 2, hdg (Transitional provisions)

Part 10, division 2, heading—

omit, insert—

***‘Division 2—Transitional provisions for Dental Practitioners
Registration Act 2001’.***

26 Omission of ss 262 and 263

Sections 262 and 263—

omit.

27 Omission of s 264 (Training, designation and duties of operative dental auxiliaries)

Sections 264—

omit.

28 Insertion of new pt 10, div 4

After section 266—

insert—

***‘Division 4—Transitional provisions for the Health Legislation
Amendment Act 2003***

‘267 Appointment of eligible persons to board

‘(1) This section applies to the first appointment of dental auxiliary registrants to the Board.

‘(2) A reference in part 2, division 2 to a dental auxiliary registrant is taken to be a reference to a deemed registrant.

‘(3) Subsection (4) applies if a deemed registrant appointed under this section does not become a dental auxiliary registrant within 6 months of the commencement of the *Health Legislation Amendment Act 2003*, section 12.

‘(4) The deemed registrant is taken to have vacated the deemed registrant’s membership of the board.

‘(5) In this section—

“**deemed registrant**” means a person who has the qualifications or experience as a dental auxiliary registrant that would, in the Minister’s opinion, make the person eligible for registration in the profession as a dental auxiliary registrant.’.

29 Insertion of new s 268

After section 267, as inserted by this Act—

insert—

‘268 Transitional provision for s 263

‘(1) This section applies to section 263 (the “**relevant section**”) until its omission by the *Health Legislation Amendment Act 2003*, section 26.

‘(2) A reference in the relevant section to a registrant, does not include the following—

- (a) a dental auxiliary registrant or provisional dental auxiliary registrant;
- (b) a special purpose registrant or provisional special purpose registrant whose registration is based on a qualification as a dental auxiliary.

‘(3) Also, a reference in the relevant section to an operative dental auxiliary includes the following—

- (a) a dental auxiliary registrant or provisional dental auxiliary registrant;
- (b) a special purpose registrant or provisional special purpose registrant whose registration is based on a qualification as a dental auxiliary.’.

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

Schedule 1—

insert—

'73, as applied section 133G(1)(d)	by	Deciding to refuse to renew a dental auxiliary registration
73, as applied section 133G(1)(e)	by	Deciding to refuse to restore a dental auxiliary registration
74, as applied section 133G(1)(d)	by	Deciding to renew a dental auxiliary registration on recency of practice conditions and deciding the review period applying to the conditions
74, as applied section 133G(1)(e)	by	Deciding to restore a dental auxiliary registration on recency of practice conditions and deciding the review period applying to the conditions
86, as applied section 133G(1)(f)	by	Deciding to cancel a dental auxiliary registration
94, as applied section 133G(1)(g)	by	Deciding to confirm or change conditions of a dental auxiliary registration and deciding the review period applying to the conditions
133D		Deciding to refuse to register an applicant for dental auxiliary registration as a dental auxiliary registrant in the category or categories to which the application relates
133F		Deciding to register a person as a dental auxiliary registrant on conditions and deciding the review period applying to the conditions'.

31 Amendment of sch 4 (Dictionary)

(1) Schedule 4, definitions “professional service”, “renewable registration” and “restricted title”—

omit.

(2) Schedule 4—

insert—

‘ **“category”**, in relation to registration as a dental auxiliary registrant, means any of the following—

- (a) dental therapy;
- (b) dental hygiene;
- (c) another category prescribed under a regulation.

“certificate of dental auxiliary registration” means a certificate of dental auxiliary registration issued under section 52(1), as applied by section 133G(1)(b).

“certificate of provisional dental auxiliary registration” means a certificate of provisional dental auxiliary registration issued under section 60(5), as applied by section 133G(1)(c).

“dental auxiliary” means a person qualified for dental auxiliary registration in 1 or more of the following categories—

- (a) dental therapy;
- (b) dental hygiene;
- (c) another category prescribed under a regulation.

“dental auxiliary application fee” see section 133A(1)(c)(ii).

“dental auxiliary registrant” means a person registered, under part 3, as a dental auxiliary registrant in a category or categories, but does not include a provisional dental auxiliary registrant.

“dental auxiliary registration” means registration of a person as a dental auxiliary registrant in a category or categories under part 3.

“dental auxiliary registration fee” see section 133A(1)(c)(iii).

“dental auxiliary registration period” see section 133G(3)(l).

“dental profession” includes dental auxiliaries.

“professional service” means a dental service, including a specialist dental service and a dental auxiliary service.

“provisional dental auxiliary registrant” means a person registered as a provisional dental auxiliary registrant in a category or categories under section 60, as applied by section 133G(1)(c).

“provisional dental auxiliary registration” means registration of a person as a provisional dental auxiliary registrant in a category or categories under section 60, as applied by section 133G(1)(c).

“renewable registration” means a general registration, specialist registration, dental auxiliary registration or special purpose registration.

“restricted title” means—

- (a) restricted dental auxiliary registrant title; or
- (b) restricted general registrant title.

“restricted dental auxiliary registrant title” means a title that consists of, or includes—

- (a) the words ‘dental therapist’ or ‘dental hygienist’; or
- (b) words prescribed under a regulation for a category of dental auxiliary prescribed under a regulation.

“restricted general registrant title” means a title that consists of, or includes, the words ‘dentist’, ‘dental practitioner’, ‘dental surgeon’ or ‘surgeon dentist’.

(3) Schedule 4, definition “certificate of registration”, after ‘certificate of specialist registration,’—

insert—

‘certificate of dental auxiliary registration,’.

(4) Schedule 4, definition “certificate of registration”, after ‘provisional specialist registration,’—

insert—

‘certificate of provisional dental auxiliary registration,’.

(5) Schedule 4, definition “information notice”, ‘general or specialist registration’—

omit, insert—

‘general, specialist or dental auxiliary registration’.

(6) Schedule 4, definition “information notice”, paragraph (e)(ii), after ‘57(4)’—

insert—

‘or 133F(5)’.

(7) Schedule 4, definition “review period”, ‘or specialist registration’—

omit, insert—

‘, specialist registration or dental auxiliary registration’.

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

32 Act amended in pt 4

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

33 Insertion of new pt 4, div 1A

Part 4, before division 1—

insert—

‘Division 1A—Restricted practice for dental prosthetic services

‘124A Authority to practise restricted to registrants

‘(1) A person must not provide a dental prosthetic service for payment or other consideration unless the person is a dental prosthetist, dentist or medical practitioner.

Maximum penalty—1 000 penalty units.

‘(2) A person must not employ another person to provide a dental prosthetic service, unless the other person is a dental prosthetist, dentist or medical practitioner.

Maximum penalty—100 penalty units.

‘(3) Subsections (1) and (2) do not apply to the provision of a dental prosthetic service by a person undergoing a course of training approved by the board under the immediate supervision of a dental prosthetist or a dentist.

‘124B Restriction on provision of dental prosthetic services

‘(1) A dental prosthetist must not supply and fit a partial artificial denture to a person, unless—

- (a) a dentist or medical practitioner has certified the oral health of the person is satisfactory; or
- (b) the dental prosthetist has successfully completed an approved dental prosthetics course or an approved oral pathology course.

Maximum penalty—100 penalty units.

‘(2) In this section—

“**approved dental prosthetics course**” means a course in dental prosthetics declared under a regulation to be an approved dental prosthetics course.

“**approved oral pathology course**” means a course in oral pathology declared under a regulation to be an approved oral pathology course.’.

34 Replacement of pt 10, hdg (Repeal, transitional and savings provisions)

Part 10, heading—

omit, insert—

‘PART 10—REPEAL AND TRANSITIONAL PROVISIONS’.

35 Omission of pt 10, div 3 (Savings provisions)

Part 10, division 3—

omit.

36 Amendment of sch 4 (Dictionary)

Schedule 4—

insert—

‘ **“artificial denture”** means a removable prosthesis that replaces missing natural teeth but is not held in place by a dental implant or intracoronal retainer or rest.

“dental prosthetic service” means the fitting of an artificial denture into a person’s healthy mouth without adjusting or altering the natural teeth or tissue in the mouth.

“dentist” means a registrant under the *Dental Practitioners Registration Act 2001*, other than—

- (a) a dental auxiliary registrant or provisional dental auxiliary registrant; or
- (b) a special purpose registrant or provisional special purpose registrant whose registration is based on a qualification as a dental auxiliary.

“healthy mouth” means a mouth and temporo-mandibular joint that are free of disease, damage or abnormality.’.

PART 5—AMENDMENT OF HEALTH ACT 1937**37 Act amended in pt 5**

This part amends the *Health Act 1937*.

38 Amendment of s 5 (Interpretation)

Section 5(1), definition “officer”, ‘Governor in Council’—

omit, insert—

‘chief executive’.

39 Amendment of s 27 (Appointment of officers)

Section 27, ‘Governor in Council’—

omit, insert—

‘chief executive’.

40 Amendment of s 27B (Rules as to competency of officers)

Section 27B(1), ‘Governor in Council’—

omit, insert—

‘chief executive’.

**PART 6—AMENDMENT OF HEALTH PRACTITIONERS
(PROFESSIONAL STANDARDS) ACT 1999****41 Act amended in pt 6**

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

42 Insertion of new pt 2, div 3, sdiv 1A

Part 2, division 3, before subdivision 1—

insert—

‘Subdivision 1A—Preliminary**‘13A Definitions for div 3**

‘In this division—

“category” means the category for which a dental auxiliary is registered in the dental profession under the *Dental Practitioners Registration Act 2001*.

“dental auxiliary” see the *Dental Practitioners Registration Act 2001*, schedule 4.

“dental profession” see the *Dental Practitioners Registration Act 2001*, schedule 4.’.

43 Amendment of s 18 (Restrictions on membership of panel)

Section 18—

insert—

‘(1A) Also, if the registrant is a dental auxiliary registrant, the members of the panel mentioned in section 17(2)(a) or (d)(ii) must be registrants for the category of dental auxiliary registration to which the disciplinary proceedings relate.’.

44 Amendment of s 39 (Panels of assessors)

Section 39(b)(ii)—

omit, insert—

‘(ii) a dentists or dental auxiliaries panel of assessors;’.

45 Amendment of s 245 (Notification of decision of tribunal)

Section 245(4)—

omit, insert—

‘(4) The decision takes effect on the day the tribunal makes its decision or, if the tribunal’s decision is to take effect on a later day, on the later day.

‘(5) If the registrant or the registrant’s representative is not present when the tribunal makes its decision, the decision takes effect on the later of—

- (a) the day the notice is given to the registrant; or
- (b) the day of effect stated in the notice.’.

46 Amendment of s 251 (Tribunal must give notice)

Section 251(3)—

omit, insert—

‘(3) The decision takes effect on the day the tribunal makes its decision or, if the tribunal’s decision is to take effect on a later day, on the later day.

‘(4) If the registrant or the registrant’s representative is not present when the tribunal makes its decision, the decision takes effect on the later of—

- (a) the day the notice is given to the registrant; or
- (b) the day of effect stated in the notice.’.

47 Amendment of s 383 (Board to give notice to commissioner at end of dealing with complaint)

Section 383(1)(b), from ‘section 74(6)’—

omit, insert—

‘section 74(6), 77(3) or 85(8), advised the registrant’s board that the commissioner intends to conciliate, or continue to conciliate, the complaint.’.

48 Amendment of schedule (Dictionary)

Schedule, definition “health service provider”, ‘school’—

omit.

PART 7—AMENDMENT OF HEALTH RIGHTS COMMISSION ACT 1991

49 Act amended in pt 7

This part amends the *Health Rights Commission Act 1991*.

50 Amendment of s 79 (Decisions not to take action)

Section 79(10)—

omit, insert—

‘(10) The commissioner may decide not to take action on a health service complaint if the complaint has been conciliated.’.

51 Amendment of s 85 (Public interest)

Section 85—

insert—

‘(5) On receiving a report under subsection (4) or otherwise becoming aware of an issue involving the public interest, the commissioner may—

- (a) for a complaint about a registered provider—refer it to the registered provider’s registration board or another entity; or
- (b) for a complaint about a provider other than a registered provider—investigate it under part 7 or refer it to another entity.

‘(6) The commissioner must not refer a health service complaint to a registration board or another entity without first consulting the registration board or other entity.

‘(7) A consultation under subsection (6) may be in the form of a standing arrangement between the commissioner and the board or may be more specific.

‘(8) If the commissioner refers a complaint to a registration board or other entity, the commissioner must, at the time of the referral, advise the registration board or entity if the commissioner intends to continue to conciliate the complaint, or a complaint from which it was separated under section 58, after the board or entity has finished dealing with it.

‘(9) The commissioner must not continue a conciliation of a complaint referred to a registration board or other entity until the board or entity gives the commissioner—

- (a) for a registration board other than the Queensland Nursing Council—a notice under the *Health Practitioners (Professional Standards) Act 1999*, section 383; or
- (b) for the Queensland Nursing Council—a notice under the *Nursing Act 1992*, section 118A; or

- (c) for another entity—notice that the entity has finished dealing with the complaint.

‘(10) However, the commissioner may continue a conciliation of the complaint before receiving notice from the registration board or other entity that it has finished dealing with the matter if—

- (a) the provider has agreed to conciliation for the sole purpose of arranging a financial settlement or other compensation with the user; and
- (b) if the complaint has been referred to a registration board—the commissioner and the board agree that the conciliation will not compromise or interfere with the board’s actions in relation to the complaint; and
- (c) if the complaint has been referred to another entity—the commissioner and the entity agree that the conciliation will not compromise or interfere with the entity’s actions in relation to the complaint.

‘(11) Subject to section 133,⁵ the commissioner must, within 14 days of referring the complaint to the board or other entity, give written notice of the referral—

- (a) to the provider; and
- (b) to the complainant.’.

52 Amendment of s 92 (Confidentiality of conciliation)

Section 92—

insert—

‘(2) Subsection (1)(b) does not apply to the discussion by a conciliator of matters arising in relation to the performance of the conciliator’s functions with another conciliator or the commissioner.’.

5 Section 133 (Dispensing with notice)

53 Insertion of new s 127A

In part 7, after section 127—

insert—

‘127A Conciliation after investigation

‘(1) This section applies if the commissioner considers that a matter that has been the subject of an investigation under this part should be conciliated under part 6.

‘(2) The commissioner may conciliate the complaint under part 6.’.

**PART 8—AMENDMENT OF HEALTH SERVICES
ACT 1991****54 Act amended in pt 8**

This part amends the *Health Services Act 1991*.

55 Amendment of s 10 (Appointment of members)

Section 10(1)—

omit, insert—

‘(1) A council is to consist of not more than 10 members appointed by the Governor in Council.’.

56 Amendment of s 14 (Vacation of office)

Section 14(b)—

omit, insert—

‘(b) resigns from office by signed notice of resignation given to the Minister; or’.

57 Insertion of new ss 14A and 14B

After section 14—

insert—

‘14A When notice of resignation takes effect

‘A notice of resignation under section 14(b) takes effect when the notice is given to the Minister or, if a later time is stated in the notice, the later time.

‘14B Effect of vacancy in membership of council

‘The performance of a function, or the exercise of a power, by a council is not affected by a vacancy in the membership of the council.’.

58 Amendment pt 9, hdg (Repeals, savings and transitional provisions)

Part 9, heading, after ‘SAVINGS’—

insert—

‘, VALIDATING’.

59 Insertion of new pt 9, div 4

After part 9, division 3—

insert—

*‘Division 4—Validating provision for Health Legislation
Amendment Act 2003*

‘81 Validation

‘(1) Subsection (2) applies if—

- (a) a council performed a function, or exercised a power, before the commencement of the *Health Legislation Amendment Act 2003*, section 55; and
- (b) at the time of the performance of the function, or the exercise of the power, the council’s membership was less than the minimum number required under section 10(1), as in force before the

commencement of the *Health Legislation Amendment Act 2003*, section 55; and

- (c) the performance of the function, or the exercise of the power would have been valid except for the council's membership being less than the minimum number required.

'(2) The performance of the function, or the exercise of the power, is taken to have been valid despite the council's membership being less than the minimum number required.'

PART 8A—AMENDMENT OF HOSPITALS FOUNDATIONS ACT 1982

59A Act amended in pt 8A

This part amends the *Hospitals Foundations Act 1982*.

59B Insertion of new s 71A

After section 71—

insert—

'71A Amalgamation of bodies corporate

'(1) Two or more bodies corporate may apply to the Minister to be amalgamated as a single body corporate.

'(2) The application must—

- (a) state the names of the bodies corporate applying to be amalgamated; and
- (b) state whether—
 - (i) all the bodies corporate are to be dissolved and a new body corporate established; or
 - (ii) 1 of the bodies corporate is to continue and the others are to be dissolved and subsumed into the body corporate that is to continue; and

- (c) for an application to which paragraph (b)(i) applies, state the name proposed for the proposed new body corporate; and
- (d) for an application to which paragraph (b)(ii) applies, state which body corporate is to continue; and
- (e) state the object or objects to which it is intended the proposed new or continuing body corporate will apply its property; and
- (f) state the name of each hospital proposed to be an associated hospital for the proposed new or continuing body corporate; and
- (g) include or be accompanied by the other information or documents the Minister reasonably requires.

‘(3) If the Minister is satisfied the bodies corporate should be amalgamated, the Minister may recommend the Governor in Council make a regulation for the purpose of amalgamating the bodies corporate.

‘(4) A regulation under subsection (3)—

- (a) must amalgamate the bodies corporate by—
 - (i) dissolving each body corporate (the “**discontinued body corporate**”) and establishing a new body corporate (the “**new body corporate**”); or
 - (ii) identifying the body corporate that is to continue (the “**continuing body corporate**”), dissolving each of the other bodies corporate (the “**discontinued body corporate**”) and subsuming it into the continuing body corporate; and
- (b) may do any of the following—
 - (i) provide for the assets and liabilities of a discontinued body corporate, without any conveyance, transfer or assignment, to become the assets and liabilities of the new body corporate or continuing body corporate;
 - (ii) provide that the rights and obligations of a discontinued body corporate become the rights and obligations of the new body corporate or continuing body corporate;
 - (iii) provide that if a legal proceeding might have been continued or started by or against a discontinued body corporate, it may be continued or started by or against the new body corporate or continuing body corporate;

- (iv) provide that in an instrument (other than a statutory instrument) in existence at the amalgamation, a reference to a discontinued body corporate is a reference to the new body corporate or continuing body corporate;
- (v) provide that the general fund established by a discontinued body corporate becomes part of the general fund of the new body corporate or continuing body corporate;
- (vi) provide that any trust fund of a discontinued body corporate becomes a trust fund of the new body corporate or continuing body corporate;
- (vii) provide that a bequest to a discontinued body corporate, whether made before or after the amalgamation, is a bequest to the new body corporate or continuing body corporate;
- (viii) make provision to facilitate anything else for, or relating to, the amalgamation.

‘(5) On the dissolution of a body corporate under this section, its members go out of office.

‘(6) A new body corporate is taken to have been established under section 7.

‘(7) To remove any doubt, it is declared sections 56 to 61 do not apply to an amalgamation under this section.

‘(8) In this section—
 “bequest” of property includes devise, gift and grant of property.’.

PART 9—AMENDMENT OF NURSING ACT 1992

60 Act amended in pt 9

This part amends the *Nursing Act 1992*.

61 Amendment of s 4 (Definitions)

(1) Section 4, definitions “code of conduct” and “committee”—
omit.

(2) Section 4—

insert—

‘ **“approved code of practice”** means a code of practice approved by the Minister under section 101A(3).

“convicted”, for an offence, includes a plea of guilty or a finding of guilt by a court even though a conviction is not recorded.

“corresponding law” means a law applying in another State, the Commonwealth or a foreign country that provides for the same matter as this Act.

“criminal history”, of a person, means—

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

“disciplinary action” means—

- (a) for a nurse, midwife or other person authorised to practise nursing—any action the tribunal may take at the end of disciplinary proceedings; or
- (b) for a person who was a nurse, midwife or other person authorised to practise nursing, but is not a nurse, midwife or other person authorised to practise nursing at the time of the tribunal’s decision at the end of disciplinary proceedings relating to the person—a decision the tribunal may make at the end of the proceedings.

“disciplinary matter” means a matter that may provide a ground for disciplinary action to be taken, under section 104, against a person.

“disciplinary proceedings” means proceedings conducted by the tribunal under part 5, division 4.

“entity acting on behalf of a user” means—

- (a) an entity chosen by the user to act on the user’s behalf; or
- (b) if it would be difficult or impossible for the user to choose an entity to act on the user’s behalf—an entity that has a sufficient interest in the health or welfare of the user.

“foreign regulatory authority” means—

- (a) an interstate regulatory authority; or
- (b) an entity established under the law applying in a foreign country, other than New Zealand, having functions similar to the functions of the council under this Act.

“ground for disciplinary action” means a ground mentioned in section 104A.

“interstate regulatory authority” means an entity established under the law of another State or New Zealand having functions similar to the functions of the council under this Act.

“Nursing Tribunal” means the professional conduct committee previously established under this Act and continued in existence, under section 84, under the name Nursing Tribunal.

“tribunal” means the Nursing Tribunal.’.

62 Amendment of s 7 (Council’s functions)

(1) Section 7(f), ‘determine a code of conduct’—

omit, insert—

‘develop or adopt codes of practice’.

(2) Section 7(m)—

omit, insert—

‘(m) consult and cooperate with foreign regulatory authorities and other relevant entities about the following—

- (i) nurse education;
- (ii) nursing practice;
- (iii) the regulation of nursing and midwifery; and

(n) carry out other functions conferred on it by this or another Act.’.

63 Amendment of s 10 (By-laws)

(1) Section 10(2)(c) and (r), ‘the committee’—

omit, insert—

‘the tribunal’.

(2) Section 10(2)(y)—

omit, insert—

‘(y) publishing reports about disciplinary proceedings.’.

64 Amendment of s 43 (Delegation by council)

Section 43(2), from ‘any’—

omit, insert—

‘section 10, 63, 65, 67, 69 or 104.⁶’.

65 Amendment of s 47 (Committees of council)

Section 47(1), ‘17 (Disclosure of interests)’—

omit, insert—

‘17’.

66 Amendment of s 54 (Qualifications for registration or enrolment)

Section 54—

insert—

‘**(3A)** In deciding whether the person is competent and fit to practise nursing, the council may have regard to the person’s criminal history.

‘**(3B)** The council may ask the commissioner of the police service for a written report about the person’s criminal history.

‘**(3C)** If asked by the council, the commissioner of the police service must give the council a written report about the person’s criminal history, including the criminal history in the commissioner’s possession or to which the commissioner has access.

‘**(3D)** The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the asking for, or giving of, the report.’.

6 Section 10 (By-laws), 63 (Provisional registration or enrolment), 65 (Limited registration or enrolment), 67 (Immediate suspension of registration or enrolment by council), 69 (Review of suspension for health reasons) or 104 (Referral of charge to tribunal)

7 Section 17 (Disclosure of interests)

67 Amendment of s 55 (Application for registration or enrolment)

Section 55—

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.’.

68 Amendment of s 64 (Temporary registration)

(1) Section 64(1)(c)(ii)(B), ‘nursing;’—

omit, insert—

‘nursing; and’

(2) Section 64(1)(c)—

insert—

‘(iii) the person is a suitable person to be temporarily registered as a registered nurse;’.

(3) Section 64—

insert—

‘(1A) The approved form may require the disclosure of the person’s criminal history.

‘(1B) If the approved form requires the disclosure of the person’s criminal history, the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure.’.

69 Insertion of new s 64A

After section 64—

insert—

‘64A Suitability to be temporarily registered

‘(1) In deciding whether a person is a suitable person to be temporarily registered as a registered nurse, the council may have regard to the following—

- (a) the person's criminal history;
- (b) any other issue relevant to the person's ability to undertake the activity the subject of the application.

'(2) The council may ask the commissioner of the police service for a written report about the person's criminal history.

'(3) If asked by the council, the commissioner of the police service must give the council a written report about the person's criminal history, including the criminal history in the commissioner's possession or to which the commissioner has access.

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

70 Amendment of s 65 (Limited registration or enrolment)

(1) Section 65(1)(b) and (6), 'Professional Conduct Committee'—
omit, insert—

'tribunal'.

(2) Section 65(2)(b), 'committee's'—
omit, insert—

'tribunal's'.

(3) Section 65(8), 'committee'—
omit, insert—

'tribunal'.

71 Amendment of s 66 (Concerns about condition of applicants and nurses)

(1) Section 66—
insert—

'(2A) The council must as soon as practicable give the commissioner written notice of a referral, under subsection (2), about a registered or enrolled nurse.'

(2) Section 66—

insert—

‘(2B) If, under subsection (2), the council refers an applicant for registration or enrolment to the panel for assessment—

- (a) the council may disclose the applicant’s criminal history to the panel if the council considers it relevant to the assessment; and
- (b) the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure.’.

(3) Section 66—

insert—

‘(7) Also, the council must as soon as practicable give the commissioner written notice of—

- (a) any recommendation made under subsection (5) about the person; and
- (b) what action, if any, it decides to take in response to the recommendation.’.

72 Amendment of s 67 (Immediate suspension of registration or enrolment by council)

(1) Section 67(1) and (4), after ‘nurse’s conduct’—

insert—

‘or practice’.

(2) Section 67—

insert—

‘(3A) Also, the council must as soon as practicable give the commissioner written notice of the suspension, stating the reasons for the suspension.’.

(3) Section 67(5)(b), from ‘, alleging’ to ‘conduct’—

omit, insert—

‘on the basis that there may be a ground for disciplinary action to be taken against the nurse’.

(4) Section 67(6)—

omit, insert—

‘(6) If a charge is preferred under subsection (5), the suspension applies until the determination of the matter referred to the tribunal for hearing and determination under section 104(1A).⁸’.

73 Amendment of s 68 (Immediate suspension of registration or enrolment by executive officer)

Section 68(3)—

omit, insert—

‘(3) The executive officer must as soon as practicable give the nurse and commissioner written notice of the suspension, stating the reasons for the suspension.’.

74 Amendment of s 77 (Authorisation to practise)

(1) Section 77(1), after ‘competencies’—

insert—

‘and the council is satisfied the person is a suitable person to practise midwifery.’.

(2) Section 77(4)—

omit, insert—

‘(4) A person who is not a nurse may be authorised by the council to practise nursing subject to any conditions imposed by the council if the council is satisfied the person is a suitable person to practise nursing.’.

8 Section 104 (Referral of charge to tribunal)

75 Insertion of new s 77A

Part 3, division 5, after section 77—

insert—

‘77A Suitability to practise midwifery or nursing

‘(1) This section applies for the purpose of the council deciding whether—

- (a) a person is a suitable person to practise midwifery under section 77(1); or
- (b) a person is a suitable person to practise nursing under section 77(4).

‘(2) The council may have regard to the following—

- (a) the person’s criminal history;
- (b) any other issue relevant to the person’s ability to practise midwifery or nursing.

‘(3) The council may—

- (a) ask the person for details of the person’s criminal history; or
- (b) ask the commissioner of the police service for a written report about the person’s criminal history.

‘(4) If asked by the council, the commissioner of the police service must give the council a written report about the person’s criminal history, including the criminal history in the commissioner’s possession or to which the commissioner has access.

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

76 Replacement of pt 5, div 1, hdg (Professional Conduct Committee)

Part 5, division 1, heading—

omit, insert—

‘Division 1—Nursing Tribunal’.

77 Replacement of s 84 (Professional Conduct Committee)

Section 84—

omit, insert—

‘84 Continuation of Professional Conduct Committee under the name Nursing Tribunal

‘The entity named Professional Conduct Committee is continued in existence under the name Nursing Tribunal.’.

78 Amendment of s 85 (Committee’s functions)

(1) Section 85, heading, ‘**Committee’s**’—

omit, insert—

‘Tribunal’s’.

(2) Section 85, ‘committee’—

omit, insert—

‘tribunal’.

(3) Section 85(b), from ‘whether’ to ‘conduct’—

omit, insert—

‘about whether a ground for disciplinary action is established’.

79 Replacement of pt 5, div 2, hdg (Code of conduct)

Part 5, division 2, heading—

omit, insert—

‘Division 2—When part does not apply’.

80 Omission of ss 99 and 100

Sections 99 and 100—

omit.

81 Insertion of new pt 5, div 2A

After section 101—

insert—

‘Division 2A—Codes of practice**‘101A Council may develop or adopt code of practice**

‘(1) The council may develop a code of practice, or adopt another entity’s code of practice, to provide guidance for nurses, midwives and other persons authorised to practise nursing as to appropriate professional conduct or nursing practice.

‘(2) In developing or amending a code of practice, or before adopting a code of practice, the council must consult with—

- (a) the commissioner; and
- (b) community groups and other entities in the State that the council considers have an interest in consumer health issues; and
- (c) professional associations in the State that the council considers are representative of nurses, midwives or other persons authorised to practise nursing; and
- (d) universities and training institutions, established in Queensland, that are engaged in nurse education; and
- (e) professional colleges established in Australia that the council considers are relevant to nurses, midwives or other persons authorised to practise nursing; and
- (f) any other entity the Minister directs the council to consult with.

‘(3) A code of practice, or an amendment of a code of practice, has no effect until it is approved by the Minister by gazette notice.

‘(4) The council must review its approved codes of practice on a regular basis.

‘101B Inspection of approved codes of practice etc.

‘(1) The executive officer must keep copies of approved codes of practice available for inspection at the council’s office by members of the public during ordinary office hours.

‘(2) Also, the council must ensure that nurses, midwives and other persons authorised to practise nursing are notified of the approval of a code of practice and any amendment of the code.

‘101C Use of approved code of practice in disciplinary proceedings

‘(1) An approved code of practice is admissible as evidence in disciplinary proceedings brought by the council against a nurse, midwife or other person authorised to practise nursing.

‘(2) The code may only be used to provide evidence, in the disciplinary proceedings, of appropriate professional conduct or nursing practice.’.

82 Replacement of pt 5, div 3, hdg (Contraventions of code of conduct)

Part 5, division 3, heading—

omit, insert—

‘Division 3—Complaints and investigations’.

83 Replacement of s 102 (Complaints concerning conduct)

Section 102—

omit, insert—

‘102 Who may make complaint about nurse, midwife or other person authorised to practise nursing

‘A complaint about a nurse, midwife or another person authorised to practise nursing (the “**other person**”) may be made by any entity, including, for example—

- (a) the user of a service provided by the nurse, midwife or other person; or
- (b) an entity acting on behalf of the user of a service provided by the nurse, midwife or other person; or
- (c) another nurse, midwife or other person; or
- (d) the chief executive; or
- (e) the Minister; or
- (f) a foreign regulatory authority.

‘102AA Grounds for complaint

‘(1) An entity may complain about a relevant person by complaining to the council about any aspect of the relevant person’s conduct or practice, or another matter relating to the relevant person, that appears to provide a ground for disciplinary action against the relevant person.

‘(2) Also, a complaint may be made about a matter for which a complaint could be made under the *Health Rights Commission Act 1991*, section 57.⁹

‘(3) In this section—

“**relevant person**” means a nurse, midwife or other person authorised to practise nursing.

‘102AB How complaint is made

‘A complaint to the council about a nurse, midwife or other person authorised to practise nursing must be in writing and contain particulars of the allegation on which it is based.

‘102AC Entity making complaint to reveal identity

‘(1) An entity making a complaint about a relevant person must give the council—

- (a) the entity’s name and address; and
- (b) any other information relating to the entity’s identity that the council reasonably requires.

‘(2) However, the council may accept a complaint from a complainant who does not comply with subsection (1) if the council reasonably believes it is in the public interest to do so.

‘(3) If the council accepts a complaint under subsection (2), the council must provide the relevant person with written notice of its reasons for accepting the complaint.

‘(4) In this section—

“**relevant person**” means a nurse, midwife or other person authorised to practise nursing.’

9 *Health Rights Commission Act 1991*, section 57 (Health service complaint)

84 Amendment of s 102A (Action by council on receipt of complaint about conduct)

(1) Section 102A, heading, ‘**about conduct**’—

omit.

(2) Section 102A(1), ‘the conduct of’—

omit.

(3) Section 102A(2), from ‘by a’ to ‘representative’—

omit, insert—

‘a user complaint’.

(3) Section 102A(3), from ‘by a’ to ‘representative’—

omit, insert—

‘not a user complaint’.

(4) Section 102A(4), from ‘from’ to ‘representative’—

omit, insert—

‘not a user complaint’.

(5) Section 102A—

insert—

‘(6) In this section—

“**user complaint**” means a complaint by—

- (a) a user of a service provided by a nurse, midwife or other person authorised to practise nursing; or
- (b) a representative of a user mentioned in paragraph (a).’.

85 Amendment of s 102C (Investigation to be undertaken by council)

(1) Section 102C(2), from ‘conduct an’—

omit, insert—

‘investigate a relevant person if it reasonably believes an aspect of the relevant person’s conduct or practice, or another matter relating to the relevant person, may provide a ground for disciplinary action against the relevant person.’.

(2) Section 102C—

insert—

‘(3) In this section—

“**relevant person**” means a nurse, midwife or other person authorised to practise nursing.’.

86 Amendment of s 102D (Action may be taken in relation to former nurses etc.)

Section 102D, from ‘ground’ to ‘have’—

omit, insert—

‘basis that there may be a ground for disciplinary action to be taken against the person in relation to something that’.

87 Amendment of s 103 (Investigation by council)

(1) Section 103(1), from ‘if an investigation’ to ‘person’s conduct’—

omit, insert—

‘if a person is to be investigated’.

(2) Section 103(1)(a), ‘102’—

omit, insert—

‘102AA’.

(3) Section 103(1)(d), from ‘that an’ to ‘conduct of’—

omit, insert—

‘to investigate’.

(4) Section 103(5)(a), from ‘of findings’—

omit, insert—

‘of—

- (i) findings about the complaint or other matter the subject of the investigation; and
- (ii) opinions based on the findings; and’.

88 Amendment of s 103A (Council to keep commissioner informed about investigation)

Section 103A(5), after ‘complaint’—

insert—

‘or other matter the subject of the investigation’.

89 Amendment of s 104 (Referral of charge to Professional Conduct Committee)

(1) Section 104, heading, ‘**Professional Conduct Committee**’—

omit, insert—

‘**tribunal**’.

(2) Section 104(1)—

omit, insert—

‘(1) The council may prefer a charge against a person and refer it to the tribunal if the council reasonably believes a disciplinary matter exists in relation to the person.’.

(3) Section 104(1A) and (3), ‘committee’—

omit, insert—

‘tribunal’.

(4) Section 104(2), from ‘committee’—

omit, insert—

‘tribunal and the person of the ground for disciplinary action that is the basis of the charge.’.

90 Insertion of new pt 5, div 3A

After section 104—

insert—

*‘Division 3A—Grounds for disciplinary action***‘104A Grounds**

‘(1) Each of the following is a ground for disciplinary action against a relevant person—

- (a) the relevant person has behaved in a way that constitutes unsatisfactory professional conduct;
- (b) the relevant person has failed to comply with a condition of practice imposed under this Act;
- (c) the relevant person has failed to comply with a lawful demand of the council, executive officer or tribunal, or an inspector or another entity authorised to make the demand under this Act;
- (d) the relevant person does not meet, or no longer meets, the requirements to be a nurse, midwife or other person authorised to practise nursing;
- (e) the relevant person has failed to comply with a provision of this Act;
- (f) the relevant person has been convicted of an offence against an Act of the State, the Commonwealth or another State related to nursing practice;
- (g) the relevant person has been convicted of an indictable offence.

‘(2) Also, if a relevant person is impaired, the relevant person’s impairment is taken to be a ground for disciplinary action against the relevant person.

‘(3) In this section—

“authorised person” means a person authorised to practise nursing under section 77(2), (3) or (4).

“impairment”, of a relevant person, means the relevant person has a physical or mental impairment, disability, condition or disorder that detrimentally affects, or is likely to detrimentally affect, the relevant person’s physical or mental capacity for nursing practice and includes substance abuse or dependence.

“relevant person” means a nurse, midwife or authorised person.

“unsatisfactory professional conduct”, for a relevant person, includes the following—

- (a) professional conduct that is of a lesser standard than that which might reasonably be expected of the relevant person by the public or the relevant person's professional peers;
- (b) professional conduct that demonstrates incompetence, or a lack of adequate knowledge, skill, judgment or care, in nursing practice;
- (c) infamous conduct in a professional respect;
- (d) misconduct in a professional respect;
- (e) conduct discreditable to the nursing profession;
- (f) providing a person with health services of a kind that are excessive, unnecessary or not reasonably required for the person's wellbeing;
- (g) influencing, or attempting to influence, the conduct of another nurse, midwife or authorised person in a way that may compromise patient care;
- (h) fraudulent or dishonest behaviour in nursing practice'.

91 Replacement of pt 5, div 4, hdg (Professional Conduct Committee proceedings)

Part 5, division 4, heading—

omit, insert—

'Division 4—Tribunal proceedings'.

92 Amendment of s 116 (Action by committee)

(1) Section 116, 'committee'—

omit, insert—

'tribunal'.

(2) Section 116(1), from 'finds' to 'proved'—

omit, insert—

'decides a ground for disciplinary action against the person is established'.

(3) Section 116(3), from ‘a charge’ to ‘proved’—

omit, insert—

‘a charge against a person, the tribunal decides a ground for disciplinary action against the person is not established’.

(4) Section 116(4)—

omit, insert—

‘(4) The tribunal may make any order about costs it considers appropriate to a maximum amount equivalent to 135 penalty units.’.

93 Amendment of s 118A (Council to give notice to commissioner at end of dealing with matter)

(1) Section 118A(1)(a), ‘a professional conduct committee’—

omit, insert—

‘tribunal’.

(2) Section 118A(1)(b), from ‘section 74’—

omit, insert—

‘section 74, 77(3) or 85(8) that the commissioner intends to conciliate, or continue to conciliate, the complaint.’.

(2) Section 118A(2), ‘professional conduct committee’—

omit, insert—

‘tribunal’.

94 Insertion of new pt 5, div 6

After section 121—

insert—

‘Division 6—Other matters

‘121A Aiding, abetting etc. conduct that is a ground for disciplinary action

‘(1) A person (the “**first person**”) must not aid, abet, counsel, procure or induce a nurse, midwife or other person authorised to practise nursing to

engage in conduct the first person is aware, or ought reasonably be aware, is conduct forming the basis for a ground for disciplinary action.

Maximum penalty—1 000 penalty units.

‘(2) To remove doubt, it is declared that a nurse, midwife or other person authorised to practise nursing may be induced by threats or promises.’.

95 Amendment of s 129 (Entry and search—evidence of offences)

Section 129(2)(b)(ii)—

omit, insert—

- ‘(ii) if a proceeding for an offence against this Act involving the the evidence is started within 6 months after its seizure—until the end of the proceeding and any appeal from the proceeding; or
- (iii) if disciplinary proceedings involving the evidence are started within 6 months after its seizure—until the end of the proceedings and any appeal from the proceedings; and’.

96 Amendment of s 133 (Inspector may require name and address)

(1) Section 133(1)(a), ‘or a contravention of a code of conduct’—

omit.

(2) Section 133(1)(b), ‘has contravened a code of conduct’—

omit, insert—

‘a disciplinary matter exists in relation to the person’.

(3) Section 133(6)(a), ‘having contravened a code of conduct’—

omit, insert—

‘a disciplinary matter existing in relation to a person’.

(4) Section 133(6)(b), ‘to have contravened the code of conduct’—

omit, insert—

‘a ground for disciplinary action against the person is not established’.

97 Amendment of pt 7, div 3, hdg (Investigation of complaints relating to code of conduct)

Part 7, division 3, heading, '*of complaints relating to code of conduct*'—

omit, insert—

'under section 103'.

98 Amendment of s 136 (Powers of inspectors)

Section 136(2), from 'if a reference'—

omit, insert—

'if—

- (a) a reference to evidence of an offence against this Act were a reference to evidence about a disciplinary matter; and
- (b) a reference to a proceeding for an offence against this Act were a reference to disciplinary proceedings.'

99 Amendment of s 137 (Appeals)

(1) Section 137(1)(c) and (3)(c), 'committee'—

omit, insert—

'tribunal'.

(2) Section 137(10)—

omit, insert—

'(10) The judge may make any order about the costs of the appeal the judge considers appropriate.'

100 Amendment of s 138 (Holders of office to act honestly and with propriety)

(1) Section 138(1), definition "person to whom this section applies", paragraph (b), 'committee'—

omit, insert—

'tribunal'.

(2) Section 138(3)(b) and (4)(b), ‘the committee’—
omit, insert—
‘the tribunal’.

101 Amendment of s 139 (Confidentiality of documents and information)

(1) Section 139(1), definition “person to whom this section applies”, paragraph (b), ‘committee’—

omit, insert—
‘tribunal’.

(2) Section 139—
insert—

‘(2A) A person to whom this section applies may disclose a protected document or protected information to a foreign regulatory authority if the disclosure is necessary for the authority to perform its functions.’.

102 Insertion of new ss 140A–140C

After section 140—
insert—

‘140A Notice of certain convictions to be given to council

‘(1) This section applies if a relevant person—

- (a) is convicted of an indictable offence; or
- (b) is convicted of an offence against a corresponding law.

‘(2) The relevant person must, within 30 days after the conviction, give the council notice of the conviction.

Maximum penalty—50 penalty units.

‘(3) The notice must be in the approved form.

‘(4) Information in the notice must, if the approved form requires, be verified by a statutory declaration.

‘(5) In this section—

“**relevant person**” means a nurse, midwife or other person authorised to practise nursing.

‘140B Notice of certain judgments and settlements to be given to council

‘(1) This section applies if—

- (a) a relevant person is a party to proceedings in a court, brought by another party against the relevant person, claiming damages or other compensation for alleged negligence by the relevant person in the practice of nursing; and
- (b) there is—
 - (i) a judgment in relation to the proceedings; or
 - (ii) a settlement of the proceedings, or part of the proceedings.

‘(2) The relevant person must give the council notice of the judgment or settlement within 30 days after the date of the judgment or settlement.

Maximum penalty—50 penalty units.

‘(3) The notice must be in the approved form.

‘(4) Information in the notice must, if the approved form requires, be verified by a statutory declaration.

‘(5) To remove doubt, it is declared that subsections (2) and (3) apply despite any agreement entered into by the parties to the settlement.

‘(6) Subsection (2) does not apply to a settlement of proceedings under an agreement reached in conciliation under the *Health Rights Commission Act 1991*, part 6¹⁰ or a relevant interstate law.

‘(7) In this section—

“**relevant interstate law**” means a law of another State that provides for the same matter as the *Health Rights Commission Act 1991*, part 6.

“**relevant person**” means a nurse, midwife or other person authorised to practise nursing.

10 *Health Rights Commission Act 1991*, part 6 (Conciliation)

‘140C Notice about certain events to be given to council

‘(1) This section applies if—

- (a) a relevant person is also registered, enrolled or authorised to practise under a corresponding law; and
- (b) after the relevant person becomes a nurse, midwife or other person authorised to practise nursing, the relevant person’s registration, enrolment or authorisation under the corresponding law is affected by disciplinary action or is otherwise cancelled, suspended or made subject to a condition or undertaking (the **“relevant action”**).

‘(2) The relevant person must, within 30 days after the registration, enrolment or authorisation is affected by the relevant action, give the council notice about the relevant action.

Maximum penalty—50 penalty units.

‘(3) The notice must be in the approved form.

‘(4) Information in the notice must, if the approved form requires, be verified by a statutory declaration.

‘(5) In this section—

“relevant person” means a nurse, midwife or other person authorised to practise nursing.’.

103 Insertion of new pt 9, div 4

After section 153—

insert—

‘Division 4—Provision for Health Legislation Amendment Act 2003

‘154 Continuation of Professional Conduct Committee under the name Nursing Tribunal

‘The continuation in existence of the entity named Professional Conduct Committee under the name Nursing Tribunal, under section 84, does not affect anything done by or in relation to the entity before the commencement of this section.’.

PART 10—AMENDMENT OF OPTOMETRISTS REGISTRATION ACT 2001

104 Act amended in pt 10

This part amends the *Optometrists Registration Act 2001*.

105 Insertion of new pt 4, div 1A

Part 4, before division 1—

insert—

‘Division 1A—Restricted core practice

‘120A Restriction

‘(1) A person who is not a registrant or medical practitioner must not prescribe an optical appliance for a person.

Maximum penalty—1 000 penalty units.

‘(2) In this section—

“**optical appliance**” means spectacles, contact lenses or another appliance for correcting, remedying or relieving a defect of sight.’

106 Replacement of pt 10, hdg (Repeal, transitional and savings provisions)

Part 10, heading—

omit, insert—

**‘PART 10—REPEAL AND TRANSITIONAL
PROVISIONS’.**

107 Omission of pt 10, div 3 (Savings provisions)

Part 10, division 3—

omit.

PART 11—AMENDMENT OF PHYSIOTHERAPISTS REGISTRATION ACT 2001

108 Act amended in pt 11

This part amends the *Physiotherapists Registration Act 2001*.

109 Replacement of pt 10, hdg (Repeal, transitional and savings provisions)

Part 10, heading—

omit, insert—

‘PART 10—REPEAL AND TRANSITIONAL PROVISIONS’.

110 Omission of pt 10, div 3 (Savings provisions)

Part 10, division 3—

omit.

PART 12—AMENDMENT OF PODIATRISTS REGISTRATION ACT 2001

111 Act amended in pt 12

This part amends the *Podiatrists Registration Act 2001*.

112 Replacement of pt 10, hdg (Repeal, transitional and savings provisions)

Part 10, heading—

omit, insert—

‘PART 10—REPEAL AND TRANSITIONAL PROVISIONS’.

113 Omission of pt 10, div 3 (Savings provisions)

Part 10, division 3—

omit.

PART 13—AMENDMENTS OF ACTS AND REGULATIONS**114 Amendments—schedule**

(1) The schedule amends the Acts and regulations mentioned in it.

(2) The amendment of a regulation in the schedule does not affect the power of the Governor in Council to further amend the regulation or to repeal it.

SCHEDULE

AMENDMENT OF ACTS AND REGULATIONS

section 114

HEALTH RIGHTS COMMISSION ACT 1991

- 1 **Section 3, definition “professional conduct committee”**—
omit.
- 2 **Section 3**—
insert—
‘**“Nursing Tribunal”** means the Nursing Tribunal under the *Nursing Act 1992*.’.
- 3 **Section 3, definition “disciplinary body”, paragraph (c)**—
omit, insert—
‘(c) the Nursing Tribunal; or’.
- 4 **Section 130(4), ‘a professional conduct committee’**—
omit, insert—
‘the Nursing Tribunal’.

SCHEDULE (continued)

NURSING ACT 1992

- 1 Section 4, definition “chairperson” paragraph (b), sections 86 to 89, 92, 93, 95 to 98, 105 to 111, 113 to 115, 117, 118 and 145(2), ‘committee’—**

omit, insert—

‘tribunal’.

- 2 Sections 86 to 88, headings, ‘Committee’s’—**

omit, insert—

‘Tribunal’s’.

- 3 Section 112, heading, ‘committee’—**

omit, insert—

‘tribunal’.

- 4 Sections 117 and 118, headings, ‘committee’s’—**

omit, insert—

‘tribunal’s’.

**DENTAL PRACTITIONERS REGISTRATION
REGULATION 2001**

- 1 Section 14(4)(a)—**

omit.

- 2 Section 14(8)—**

omit.

SCHEDULE (continued)

**DENTAL TECHNICIANS AND DENTAL
PROSTHETISTS REGISTRATION REGULATION 2002****1 Section 10, heading, ‘s 240’—***omit, insert—***‘s 124B’.****2 Section 10, ‘section 240(1)’—***omit, insert—***‘section 124B(2)’.**