

HEALTH LEGISLATION AMENDMENT BILL 1993

EXPLANATORY NOTE

GENERAL OUTLINE

Objective of the Legislation

The objectives of this omnibus Bill are to:

- (a) omit and amend various provisions of the *Cremation Act 1913*;
- (b) amend the *Chiropractors and Osteopaths Act 1979* with respect to the regulation of chiropractic and osteopathy companies;
- (c) amend the *Dental Act 1971* with respect to the registration of specialists, certain penalty provisions, and the payment period for annual licence fees;
- (d) amend the *Dental Technicians and Dental Prosthetists Act 1991* with respect to the qualifications for registration as a dental technician;
- (e) amend the *Health Act 1937* to: facilitate the release of confidential information in relation to cancer and perinatal records to the Commonwealth Government; introduce a penalty for breaching the conditions applicable to a Pest Control Operator's licence; introduce two new offences associated with infecting another person with a controlled notifiable disease; and amend the Act with regard to the meaning of "day hospital";
- (f) make minor amendments to the *Health Rights Commission Act 1991*;
- (g) repeal the *Inebriates Institutions Act 1896* and the *Inebriates Institutions Act Amendment Act 1968*; and validate the administration of Wacol Rehabilitation Clinic pursuant to the *Inebriates Institutions Act 1896*;
- (h) make minor amendment to the *Medical Act 1939* with regard to

the registration of medical specialists;

(i) validate and amend provisions of the *Mental Health Act 1974* with respect to: the establishment and administration of certain psychiatric facilities; the delivery of services within these facilities; the imposition of maintenance charges on patients in certain psychiatric facilities; the automatic deductions of maintenance charges from patients' trust accounts; and make other minor amendments in accordance with current drafting practices;

(j) amend the definition of "tissue" in the *Transplantation and Anatomy Act 1979* to overcome existing ambiguities and make other minor amendments in accordance with current drafting practices;

(k) repeal those provisions which impose age restrictions on persons holding office in eight registration Acts, the *Hospitals Foundations Act 1982* and the *Mental Health Act 1974*; and

(l) make minor amendments, predominately of a machinery nature, to the principal legislation listed above, such amendments being made in accordance with current drafting practices.

Reasons for the Bill

The *Health Legislation Amendment Bill 1993* is the second annual omnibus Bill to be brought forward by the Health portfolio in order to keep the extensive legislative base of this portfolio operative.

Estimated Cost for Government Implementation

There will be no cost for Government.

Consultation

The relevant government, industry, professional and community stakeholders have been consulted.

NOTES ON PROVISIONS**PART 1—PRELIMINARY**

Clause 1 sets out the short title of the Act.

Clause 2 provides for the commencement of the provisions of the Act. Sections 7 and 8 are to be commenced retrospectively to provide a period of time during which an existing chiropractic and osteopathy company can continue to practice before complying with regulatory provisions of the Act. The remainder of the Act commences on a day to be fixed by proclamation.

**PART 2—AMENDMENT OF THE CHIROPRACTORS
AND OSTEOPATHS ACT 1979**

Clause 3 identifies this Part as amending the *Chiropractors and Osteopaths Act 1979*.

Clause 4 omits the words ‘incorporated in Queensland’ from section 4A to allow a chiropractic and osteopathy company to be incorporated anywhere in Australia under the Corporations Law.

Clause 5 amends section 7 by omitting the restriction that prevents a person 70 years of age or more, from being eligible for appointment as a member of the Chiropractors and Osteopaths Board of Queensland.

Clause 6 amends section 9(3)(a) by omitting the stipulation that an office of a member of the Board becomes vacant upon the member attaining the age of 70 years.

Clause 7 extends the time in which a chiropractic and osteopathy company has to apply to the Board for approved name status under section 28B(2) from 18 June 1993 until 30 June 1994. The provision operates in conjunction with the amendments in Clauses 2(2) and 4.

Clause 8 provides a time period in which a company may engage in chiropractic and osteopathy without committing an offence under section

28C. This provision operates in conjunction with the amendments in Clauses 2(2) and 4.

PART 3—AMENDMENT OF CREMATION ACT 1913

Clause 9 identifies this Part as amending the *Cremation Act 1913*.

Clause 10 reworks section 2 by: inserting a new heading; omitting certain definitions which become redundant upon the repeal of sections 3 to 4P; and omitting redundant wording from the definition “Crematorium”.

Clause 11 omits existing sections 3 to 4P which currently provide for the regulation (establishment, licensing and operation) of crematoria. The overall intent of this Clause is to minimise Health portfolio regulation of crematoria, in favour of local authority regulation of this industry.

This Clause also inserts new sections 3, 4 and 4A. The new section 3 prohibits the cremation of a human body at a place, unless such use is a lawful use of the place under the *Local Government (Planning and Environment) Act 1990*. The new section 4 sets out the conditions under which an application can be made to the Minister to grant a permit to cremate a human body at a place which is not a place approved by a local authority. This provision enables, for example, the rites of certain ethnic communities. In granting such a permit the Minister is to have regard to the health and safety of the public. The new section 4A sets out the conditions under which an applicant can appeal the Minister’s decision, in relation to a permit, to a Magistrates Court.

Clause 12 omits the existing section 9, which becomes redundant upon the repeal of existing sections 3 to 4P.

Clause 13 remakes section 10 in the current drafting style for regulation making powers.

Clause 14 omits sections 11 to 13 which are redundant provisions.

PART 4—AMENDMENT OF DENTAL ACT 1971

Clause 15 identifies this Part as amending the *Dental Act 1971*.

Clause 16 amends section 18 to: provide the Dental Board of Queensland with the discretionary power to grant an application for registration as a dental specialist, provided that the Board is satisfied that the applicant possesses the necessary qualifications, experience and standing in the speciality; and rationalise the use of statutory instruments by changing Order in Council to regulation.

Clause 17 omits administrative detail regarding annual licence fees from section 24 and allows such detail to be prescribed by regulation.

Clause 18 reworks section 35 in the current drafting style for by-law making powers and changes the expression of penalties from monetary terms to penalty units.

Clause 19 omits section 36 which is a redundant provision.

Clause 20 omits section 37 which is a redundant provision.

PART 5—AMENDMENT OF DENTAL TECHNICIANS AND DENTAL PROSTHETISTS ACT 1991

Clause 21 identifies this Part as amending the *Dental Technicians and Dental Prosthetists Act 1991*.

Clause 22 amends section 3(1) by omitting the definition “medical practitioner” in reliance on section 36 of the *Acts Interpretation Act 1954*.

Clause 23 amends section 25 to provide the Dental Technicians and Dental Prosthetists Board of Queensland with the discretionary power to register an individual as a dental technician if the Board is satisfied that the applicant has successfully completed a course of training in or outside of Queensland which is at least equivalent to the completion of an apprenticeship as a dental technician under the *Employment, Vocational Education and Training Act 1989*.

PART 6—AMENDMENT OF HEALTH ACT 1937

Clause 24 identifies this Part as amending the *Health Act 1937*.

Clause 25 omits the current definition of “day hospital” in section 5. A new definition is inserted by Clause 29.

Clause 26 reworks the offence and penalty provisions in section 48(2) to make it an offence for a person to deliberately or recklessly infect another person, or deliberately or recklessly put another person at risk of infection from a controlled notifiable disease, unless the other person knew of the first mentioned person’s infection and voluntarily accepted the risk of being infected. The Clause also amends section 48(1) to substitute ‘regulation’ for ‘notification’ as the means by which a disease is declared to be or no longer to be a controlled notifiable disease.

Clause 27 amends section 62 to clarify that infirm persons may be removed to a public sector health service.

Clause 28 amends section 63 to cross refer to the detailed definition of ‘day hospital’ inserted by the following Clause.

Clause 29 inserts a new definition of ‘day hospital’. Subclause 2 states that a day hospital is a private hospital as defined by section 63 despite a day hospital not providing for reception of patients. At law ‘reception’ has the meaning of taking into a place and keeping there, and as this element of accommodation potentially conflicts with that part of the ‘day hospital’ definition which provides ‘does not require overnight hospitalisation’, the purpose of this subclause is to resolve that potential conflict. Subclause (3) makes it clear that the definition does not apply to a public sector hospital. Subclause (4) is a comfort provision clarifying that a medical centre and a medical practitioner’s general practice rooms are not within the definition.

Clause 30 reworks section 100E to clarify to whom and under what circumstances the Director-General may give information regarding persons suffering from cancer or suspected of suffering from cancer, furnished under section 100C.

Clause 31 reworks section 100I to clarify to whom and under what circumstances the Director-General may give information regarding perinatal statistics furnished under section 100H.

Clause 32 amends section 131Q to make it an offence for a Pest Control Operator to contravene a condition of his or her licence issued pursuant to section 131M and specifies the penalties for such an offence.

PART 7—AMENDMENT OF HEALTH RIGHTS COMMISSION ACT 1991

Clause 33 identifies this Part as amending the *Health Rights Commission Act 1991*.

Clause 34 amends section 27 to include the Anti-Discrimination Commission as another example of an interested organisation with which the Commissioner is required to co-operate.

Clause 35 amends section 32(1)(e) to allow the Minister to direct the Commissioner to intervene in disciplinary proceedings against a registered provider under section 130.

Clause 36 inserts a new section 33A to clarify the relationship between the Commission and the department with respect to budgetary matters.

Clause 37 amends section 52(3) by decreasing the quorum for meetings of the Health Rights Advisory Council from four to three members.

Clause 38 inserts a new section 68A requiring the Commissioner to invite submissions from a complainant and provider in the notice required under section 68 and in such other way as the Commissioner considers appropriate.

Clause 39 amends section 73 to correct a minor drafting error.

Clause 40 amends section 74(4) by adding a further provision that not only must a complaint be the subject of a civil proceeding, but a Court must have begun to hear the matter, before the Commissioner is prevented from taking action on a health service complaint.

Clause 41 amends section 78 by omitting the word “discussions” and inserting “negotiations” to more adequately reflect the processes associated with the conciliation of a health service complaint.

Clause 42 inserts a new section 87A to allow a conciliator to disclose

information gained through conciliation to support staff, subject to such staff being bound not to further disclose such information.

Clause 43 omits the existing section 130 and inserts a new provision that allows the Commissioner to intervene in disciplinary proceedings conducted by a body under a registration Act.

Clause 44 amends section 138 to correct minor drafting errors.

Clause 45 remakes section 142(1) in the current drafting style for regulation making powers.

PART 8—AMENDMENT OF THE HOSPITALS FOUNDATIONS ACT 1982

Clause 46 identifies this Part as amending the *Hospitals Foundations Act 1982*.

Clause 47 amends section 4 by: omitting the definition “financial year” in reliance on section 36 of the *Acts Interpretation Act 1954*; omitting the words “by Order in Council” from the definition “body corporate”; and correcting a drafting error in relation to the definition of “hospital”.

Clause 48 amends section 5 to rationalise the use of statutory instruments by omitting “Order in Council” in favour of statutory rule (by virtue of the meaning attached to ‘prescribed’ under section 36 of the *Acts Interpretation Act 1954*).

Clause 49 omits the existing section 7 and inserts a new provision that rationalises the use of statutory instruments by specifying that the Governor in Council may establish a body corporate by regulation, rather than by Order in Council. The Clause also omits redundant wording.

Clause 50 omits redundant wording from section 8(1).

Clause 51 updates a reference to the department and omits redundant wording from section 9.

Clause 52 omits redundant wording from section 10.

Clause 53 amends section 18 to rationalise the use of statutory

instruments by specifying that the Governor in Council declares by Gazette notice the number of members of a body corporate, rather than by Order in Council.

Clause 54 updates, in the current drafting style, the appointment mechanism of members of a body corporate in section 20(1). The Clause also omits the restriction on body corporate membership which is based on age (70 years).

Clause 55 amends section 21(4) by omitting the restriction that prevents a person 70 years of age or more from being eligible for appointment to a body corporate.

Clause 56 omits redundant wording from section 23.

Clause 57 amends section 24 by omitting the stipulation that an office of a member of a body corporate becomes vacant upon the member attaining the age of 70 years.

Clause 58 updates, in the current drafting style, the appointment mechanism of the chairman and deputy chairman of a body corporate in section 28.

Clause 59 updates the citation of the *Workers' Compensation Act 1990* in section 37.

Clause 60 rationalises the use of statutory instruments by changing "Order in Council" to "regulation" in section 41(1).

Clause 61 updates a reference to a "police officer" in section 44(6).

Clause 62 updates, in the current drafting style, the removal of an entry of a body corporate from the Register in section 56.

Clause 63 inserts a new section 57 providing for the winding up of bodies corporate in terms of the Corporations Law.

Clause 64 provides for the dissolution of a body corporate by regulation rather than Order in Council.

Clause 65 amends section 61 by cross referring to the amendment made in Clause 64.

Clause 66 inserts a new section 63 which sets out the Minister's delegation powers in the current drafting style.

Clause 67 inserts a new section 64 which sets out a body corporate's

delegation powers in the current drafting style.

Clause 68 amends section 71 by omitting that element of the evidentiary provision which breaches section 4 of the *Legislative Standards Act 1992*.

Clause 69 inserts a new section 72 in the current drafting style for regulation making powers and changes the expression of penalties from monetary terms to penalty units.

Clause 70 amends section 73 by changing the expression of penalties from monetary terms to penalty units and omits redundant wording.

PART 9—AMENDMENT OF MEDICAL ACT 1939

Clause 71 identifies this Part as amending the *Medical Act 1939*.

Clause 72 amends section 8 by omitting the restriction that prevents a person 70 years of age or more, from being eligible for appointment as a member of the Medical Board of Queensland.

Clause 73 amends section 9 by omitting the stipulation that an office of a member of the Board becomes vacant upon the member attaining the age of 70 years.

Clause 74 amends section 18(1) to establish that a medical practitioner who has either general or conditional registration and recognised specialist qualifications in a prescribed speciality of medicine, is entitled to specialist registration.

PART 10—AMENDMENT OF MENTAL HEALTH ACT 1974

Clause 75 identifies this Part and the Schedule to this Act as amending the *Mental Health Act 1974*.

Clause 76 amends section 28B by omitting the stipulation that an office

of a person assisting the Mental Health Tribunal becomes vacant upon the person attaining the age of 70 years.

Clause 77 inserts a new heading “Part 7—Financial Provisions” after section 72 and inserts a new section 72A to provide definitions of “authority” and “principal officer” for the purposes of the Part.

Clause 78 omits the existing section 73 and inserts new sections 73, 73A and 73B.

The new section 73 specifies that an authority is to maintain a Patients’ Trust Fund, into which funds received on behalf of patients are to be held in separate accounts. Subsection 3 allows an authority to withdraw amounts from a patient’s account in the Fund to meet prescribed charges for the patient’s maintenance. In doing so the authority is required to advise the patient of such deductions.

Section 73A sets out the conditions under which interest received on amounts in the Patients’ Trust Fund, and other amounts, are to be paid into a separate account in the Patients’ Trust Fund for the provision of amenities for the direct benefit of the whole, or part, of the patient population. This section also gives examples of things which may be provided for patients and specifies that an authority cannot use these funds to meet costs in administering the Fund.

Section 73B requires an authority to establish a committee, the majority membership of which is to be patients having accounts in the Fund, to advise on how amounts in the amenities account are to be used.

Clause 79 amends section 74 in keeping with the definition “authority” inserted by way of Clause 77.

Clause 80 inserts a new section 75 which empowers an authority to invest money held in trust under sections 73, 73A and 74 in accordance with the *Trusts Act 1973*.

Clause 81 inserts a new heading “Part 8—Validations” and inserts new sections 77 to 83. Sections 77 to 82 validate: the administration, by Regional Health Authorities, of Wacol Rehabilitation Clinic, psychiatric hospitals, security patients’ hospitals and other places for the period 1 July 1991 to 6 August 1992; the establishment of Barrett Psychiatry Centre and Barrett Adolescent Centre under section 16(1); the imposition of maintenance charges in psychiatric hospitals, security patients’ hospitals and

other places for defined periods of time; and the administration of money by Regional Health Authorities with regard to the automatic deduction of maintenance from, and the appropriation of interest received in respect of, Patients' Trust Funds. Section 83 repeals this Part and Schedule 1 when they have had effect, and clarifies in section 83(1) by reference to section 20A of the *Acts Interpretation Act 1954* that such repeal does not affect the validating effect of these provisions.

Clause 82 inserts Schedule 1.

Clause 83 reworks clause 14 of the Sixth Schedule of the Act to specifically refer to psychiatric hospitals, training centres, security patients' hospitals and other places established under section 16(1).

PART 11—AMENDMENT OF OCCUPATIONAL THERAPISTS ACT 1979

Clause 84 identifies this Part as amending the *Occupational Therapists Act 1979*.

Clause 85 amends section 7(1) by omitting the restriction that prevents a person 70 years of age or more, from being eligible for appointment as a member of the Occupational Therapists Board of Queensland.

Clause 86 amends section 9(3)(a) by omitting the stipulation that an office of a member of the Board becomes vacant upon the member attaining the age of 70 years.

PART 12—AMENDMENT OF PHARMACY ACT 1976

Clause 87 identifies this Part as amending the *Pharmacy Act 1976*.

Clause 88 amends section 8(1) by omitting the restriction that prevents a person 70 years of age or more, from being eligible for appointment as a member of the Pharmacy Board of Queensland.

Clause 89 amends section 10(3)(a) by omitting the stipulation that an office of a member of the Board becomes vacant upon the member attaining the age of 70 years.

PART 13—AMENDMENT OF PHYSIOTHERAPISTS ACT 1964

Clause 90 identifies this Part as amending the *Physiotherapists Act 1964*.

Clause 91 amends section 7 by omitting the restriction that prevents a person 70 years of age or more, from being eligible for appointment as a member of the Physiotherapists Board of Queensland and the stipulation that an office of a member of the Board becomes vacant upon the member attaining the age of 70 years.

PART 14—AMENDMENT OF PODIATRISTS ACT 1969

Clause 92 identifies this Part as amending the *Podiatrists Act 1969*.

Clause 93 reworks the definition “podiatry” in section 3 and rationalises the use of statutory instruments by changing Order in Council to regulation in that definition.

Clause 94 omits section 4 as a redundant provision.

Clause 95 amends section 6 by reworking, in the current drafting style, the appointment mechanism of members to the Podiatrists Board of Queensland and omits the restriction that prevents a person 70 years of age or more, from being eligible for appointment as a member of the Board.

Clause 96 amends section 7(1) by reworking, in the current drafting style, the appointment mechanism of the chairman and deputy chairman of the Board.

Clause 97 amends section 8 by omitting the stipulation that an office of a member of the Board becomes vacant upon the member attaining the age of 70 years and updates, in the current drafting style, the mechanism for the removal of a member from office.

Clause 98 omits redundant wording in section 26(2) in reliance on the definition of “medical practitioner” in section 36 of the *Acts Interpretation Act 1954*.

Clause 99 omits redundant wording in section 26A(2)(a), in reliance on the definition of “medical practitioner” in section 36 of the *Acts Interpretation Act 1954*.

Clause 100 amends section 30 by omitting that element of the evidentiary provision which breaches section 4 of the *Legislative Standards Act 1992*.

Clause 101 amends section 31 to provide, in the current drafting style, for by-law making powers.

PART 15—AMENDMENT OF PSYCHOLOGISTS ACT 1977

Clause 102 identifies this Part as amending the *Psychologists Act 1977*.

Clause 103 amends section 7(1) by omitting the restriction that prevents a person 70 years of age or more, from being eligible for appointment as a member of the Psychologists Board of Queensland.

Clause 104 amends section 9(3)(a) by omitting the stipulation that an office of a member of the Board becomes vacant upon the member attaining the age of 70 years.

PART 16—AMENDMENT OF SPEECH PATHOLOGISTS ACT 1979

Clause 105 identifies this Part as amending the *Speech Pathologists Act 1979*.

Clause 106 amends section 7(1) by omitting the restriction that prevents a person 70 years of age or more, from being eligible for appointment as a member of the Speech Pathologists Board.

Clause 107 amends section 9(3)(a) by omitting the stipulation that an office of a member of the Board becomes vacant upon the member attaining the age of 70 years.

Clause 108 fixes an incorrect reference to Speech Therapists in section 17(3)(a).

PART 17—AMENDMENT OF TRANSPLANTATION AND ANATOMY ACT 1979

Clause 109 identifies this Part as amending the *Transplantation and Anatomy Act 1979*.

Clause 110 omits from section 4(1) the definitions “medical practitioner” and “Minister” in reliance on section 36 of the *Acts Interpretation Act 1991*; and inserts a new definition of “tissue” which incorporates the exclusions previously specified by Order in Council.

Clause 111 amends section 5 to rationalise the use of statutory instruments by changing Order in Council to regulation and omits redundant wording in accordance with current drafting practice.

Clause 112 omits section 7 as a redundant provision.

Clause 113 omits Division 6, Regulations. The regulation making head of power provided for by this Division is now incorporated into section 52 by way of Clause 125.

Clause 114 amends section 37(1) to rationalise the use of statutory

instruments, by omitting the requirement that the establishment of schools of anatomy be authorised by Order in Council. The Clause also omits redundant wording concerned with revocation of such authorisation which is provided for by the *Acts Interpretation Act 1954*.

Clause 115 omits section 39, which sets out the regulation making head of power for Part VI, Schools of Anatomy. The regulation making head of power provided for by section 39 has been incorporated into section 52 by way of Clause 125.

Clause 116 changes the expression of penalties in section 40 from monetary terms to penalty units.

Clause 117 changes the expression of penalties in section 41 from monetary terms to penalty units.

Clause 118 amends section 42 by changing the expression of penalties from monetary terms to penalty units and aligns the penalty provision to that in section 40.

Clause 119 amends section 44 by omitting that element of the evidentiary provision which breaches section 4 of the *Legislative Standards Act 1992*.

Clause 120 changes the expression of penalties in section 45 from monetary terms to penalty units.

Clause 121 changes the expression of penalties in section 48 from monetary terms to penalty units.

Clause 122 changes the expression of penalties in section 48A from monetary terms to penalty units.

Clause 123 changes the expression of penalties in section 49(1) from monetary terms to penalty units.

Clause 124 amends section 50 by omitting redundant provisions.

Clause 125 remakes section 52, in the current drafting style, to provide for a comprehensive regulation making head of power.

Clause 126 omits section 53 which is a redundant provision.

Clause 127 omits section 54 which is a redundant provision.

PART 18—REPEALS

Clause 128 repeals the *Inebriates Institutions Act 1896* and the *Inebriates Institutions Act Amendment Act 1968*.

SCHEDULE

The Schedule gives effect to clause 75 and provides for minor amendments to the *Mental Health Act 1974*, including:

Clauses 1 to 3 rework existing definitions in accordance with current drafting practice and omit redundant provisions.

Clauses 4, 5, and 16 omit redundant provisions.

Clause 6 omits redundant wording.

Clause 7 remakes the existing delegations provision in section 11, omitting provisions made redundant by section 27A of the *Acts Interpretation Act 1954*.

Clauses 8, 15, 17—19, 20, 24, 35 and 55 rationalise the use of statutory instruments by changing Orders in Council to regulations.

Clauses 9—13, 21—23 and 37 make provision for appointments to be made by Gazette notice.

Clause 14 updates a reference to a repealed Act.

Clauses 25—28 and 30 update references to the Commissioner of the Police Service.

Clause 29 corrects a minor error in the heading to section 35.

Clauses 31—34 update references to the Court of Appeal.

Clauses 36, 38—40, 56—58 change the expression of penalties from monetary terms to penalty units.

Clauses 49—52 amend the relevant sections by omitting conclusive evidentiary provisions.

Clause 53 remakes section 72 in the current drafting style for regulation

making powers.

Clause 54 rationalises the use of statutory instruments by changing proclamation to regulation.

Clause 59 omits redundant provisions.