

# HEALTH LEGISLATION AMENDMENT BILL 1996

## EXPLANATORY NOTES\*

### GENERAL OUTLINE

#### Policy Objectives of the Bill

The objectives of this omnibus Bill are to:

- make a range of minor amendments to 5 Health portfolio Acts to ensure the effective operation of the portfolio's extensive legislative base; and
- make a machinery amendment to the *Statute Law Revision Act 1995*.

The policy objectives of the amendments contained in the Bill are as follows:

#### *Dental Act 1971*

- to ensure that dental companies incorporated anywhere in Australia and providing dental services in Queensland are subject to the provisions of the Act.

#### *Health Act 1937*

- to replace the term “dangerous drug” with “controlled drug” to ensure consistency in terminology with the *Standard for the Uniform Scheduling of Drugs and Poisons* (“the Standard”) published by the Commonwealth;
- to ensure the term “drug dependent person” extends to the use of

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\* These Explanatory Notes relate to the Bill as introduced into the Legislative Assembly. This Bill was amended in Committee—see Endnotes.

poisons to reflect the rescheduling of certain dangerous drugs as poisons;

- to enable the adoption of Appendix P (Uniform Paint Standard) of the Standard which contains model provisions relating to the use of lead and other specified substances in paint and to the packaging and labelling of paint;
- to provide appropriate monitoring powers and enforcement provisions to ensure compliance with Appendix P of the Standard; and
- to ensure the effective operation of the offence provision relating to the use of pesticides by unlicensed pest control operators and to prohibit licensees from permitting persons under 18 years from using as well as preparing pesticides for use in connection with a licensee's activities.

#### *Hospitals Foundations Act 1982*

- to enable a body corporate constituting a hospital foundation to pursue its objects with more than one hospital;

#### *Medical Act 1939*

- to ensure that medical companies incorporated anywhere in Australia and providing medical services in Queensland are subject to the provisions of the Act;
- to ensure that transitional provisions in section 88 of the Act apply to specialists as well as medical practitioners;
- to validate the registration of certain medical specialists whom the Medical Board purported to register under the Act and to provide that those specialists are also taken to have been registered as medical practitioners; and
- to provide for the Governor in Council to appoint a member of the Medical Board who is a medical practitioner to be president of the Board instead of the Chief Health Officer holding this office on an ex officio basis.

#### *Nursing Act 1992*

- to allow members of the Queensland Nursing Council ("the

Council”) to participate in Council meetings by telephone or other forms of communication;

- to permit the Council to pass resolutions without conducting a meeting;
- to allow persons entitled under the Act to be paid fees and allowances to waive payment of same;
- to authorise the Council to release information from its Register or Roll to the Australian Nursing Council Inc. and to prescribe what particulars on the Register or Roll may not be inspected by the public;
- to provide a means whereby the Council may refuse to register/re-register or enrol/re-enrol a person if the Council is not satisfied that the person is competent and fit to practise nursing (for example, as a result of the person’s conduct in the course of practising whilst unregistered or which resulted in the person’s registration being cancelled under the repealed *Nursing Act 1976*);
- to enable the Council, following suspension of a nurse, to investigate the matter and either lift the suspension or refer a charge against the nurse to the Professional Conduct Committee;
- to allow the Council to cancel or suspend the registration or enrolment of a nurse whose registration or enrolment has been cancelled or suspended under a law of a foreign country;
- to remove the obligation on the Council to give a direction regarding re-registration, or to require that certain items (eg. licence certificate) be surrendered to the Council, when a nurse voluntarily relinquishes his/her registration;
- to remove the time limitation in relation to the payment of fees for applications for restoration of registration;
- to increase, from eight to sixteen, the number of persons who constitute the Professional Conduct Committee;
- to clarify the powers of the chairperson of the Professional Conduct Committee in relation to preliminary or directions hearings;
- to specify a time limitation for the commencement of

prosecutions under the Act; and

- to ensure consistency in the use of terms in the Act and to clarify of meaning of certain provisions in the Act;

*Statute Law Revision Act 1995*

- to correct an error in a reference to the Act.

### **Estimated Cost for Government Implementation**

There will be no cost to Government.

### **Consistency with Fundamental Legislative Principles**

The Bill is consistent with the fundamental legislative principles set out in the *Legislative Standards Act 1992*. The amendments to the *Medical Act 1939* which are to commence retrospectively are for the benefit of the medical specialists to whom they apply and do not adversely effect the rights of any person.

### **Consultation**

The following stakeholders have been consulted:

*Dental Act 1971*—Dental Board of Queensland

*Health Act 1937*—Australian Environmental Pest Managers' Association

*Hospitals Foundations Act 1982*—all Hospital Foundations

*Medical Act 1939*—Medical Board of Queensland

*Nursing Act 1992*—Queensland Nursing Council.

## **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 24 and 31 (which amend the transitional provisions in section 88 of the *Medical Act 1939*) are to commence on the date section 88 commenced to ensure that medical specialists, who were registered as at that date but were omitted from the operation of that section, are not disadvantaged. Part 7 is also to commence retrospectively to coincide with the commencement of the *Statute Law Revision Act 1995*. Sections 7 to 10, 16, 17, 35(2), 41 to 43, 45 to 47, 54 and 55 are to commence on a day to be fixed by proclamation.

## **PART 2—AMENDMENT OF THE DENTAL ACT 1971**

*Clause 3* identifies this Part as amending the *Dental Act 1971*.

*Clause 4* amends section 4 by inserting a new heading, omitting the words “incorporated in Queensland” from the definition of “dental company” and inserting a definition of “company” by reference to the *Corporations Law*.

*Clause 5* amends section 7(2)(d) by replacing the term “a barrister or solicitor of the Supreme Court” with “a Queensland lawyer”.

## **PART 3—AMENDMENT OF THE HEALTH ACT 1937**

*Clause 6* identifies this part as amending the *Health Act 1937*.

*Clause 7* amends s.5(1) by:

- omitting the definition “dangerous drug” and inserting the definition “controlled drug”; and
- making a consequential amendment to the definition “drug dependent person” and extending the scope of that term to include poisons.

*Clause 8* inserts a new heading in Division 3, Part 4.

*Clause 9* omits section 127 and 128 which relate to the use of lead in paint and to the labelling of paint. These matters are now dealt with under the new provisions contained in Clause 10.

*Clause 10* inserts a new Division 3A which:

- provides for the adoption of the Appendix P of the Standard by inserting a new section 129F which makes it an offence for a person to manufacture, sell, supply or use paint otherwise than in compliance with Appendix P of the Standard;
- inserts a new section 129G which authorises officers, for the purpose of monitoring compliance with Appendix P of the Standard, to take samples of paint from a house or premises for analysis and limits the exercise of that power to cases where the occupier consents to the taking of the sample or where the officer enters under a judicial order made under section 160 of the Act;
- inserts a new section 129H which enables notices to comply to be given by the Chief Health Officer to a person who has not complied with Appendix P of the Standard and specifies the form of such notices and the penalty for non-compliance with a notice; and
- inserts a new section 129I which enables a regulation to be made prescribing the method of analysis to be used in monitoring compliance with Appendix P of the Standard.

*Clause 11* omits section 130D(1)(c) which is a redundant provision.

*Clause 12* omits section 130E(3) which is a redundant provision.

*Clause 13* amends section 131K by:

- omitting the offence provision in section 131K(2) and inserting a new provision making it an offence for an unlicensed pest control operator to use pesticides;
- inserting a new section 131K(3) to exclude the application of section 131K(2) to pest control operators using pesticides in the presence, and under the supervision, of a licensee;
- omitting the existing offence provision in section 131K(3) and

remaking same in a new section 131K(4) which clarifies the circumstances in which a licensee may permit a non-licensee to prepare or use pesticides in carrying out a licensee's activities as pest control operator; and

- inserting penalty provisions in section 131K(1)(2) and (4).

*Clause 14* inserts a penalty provision in section 131KA.

*Clause 15* inserts a new section 181 to provide that references to various repealed regulations made under the Act are to be taken as references to the *Health Regulation 1996* which repealed and consolidated such regulations.

*Clause 16* amends various provisions in the Act as a consequence of the substitution of the term “dangerous drug” with “controlled drug” in Clause 7.

*Clause 17* amends various provisions in the Act as a consequence of the substitution of the term “dangerous drugs” with “controlled drugs” in Clause 7.

## **PART 4—AMENDMENT OF HOSPITALS FOUNDATIONS ACT 1982**

*Clause 18* identifies this Part as amending the *Hospitals Foundations Act 1982*.

*Clause 19* amends section 4 by omitting the definition “the associated hospital” and inserting a new definition “associated hospital”.

*Clause 20* omits section 6(1)(c) and inserts a new provision as a consequence of the amendments in Clause 19.

*Clause 21* amends section 7(2) to correct an inconsistency with section 20(1) in relation to the mode of appointment of members of the body corporate constituting a hospital foundation.

*Clause 22* amends various provisions in the Act as a consequence of the amendments in Clause 19.

*Clause 23* amends section 57(4)(d) as a consequence of the amendments

in Clause 19 and clarifies, for the purposes of the *Corporations Law*, the meaning of the principal place of business of a body corporate established under the Act.

*Clause 24* amends various provisions in the Act as a consequence of the amendments in Clause 19.

## **PART 5—AMENDMENT OF THE MEDICAL ACT 1939**

*Clause 25* identifies this Part as amending the *Medical Act 1939*.

*Clause 26* amends section 4 by omitting the words “incorporated in Queensland” from the definition of “medical company” and inserts new definitions of “register” and “company”.

*Clause 27* relocates a provision omitted by Clause 26(5) and updates the provision in accordance with current drafting practice.

*Clause 28* amends section 8 by:

- omitting the provision in section 8(1)(a) that the Chief Health Officer is ex officio president of the Medical Board of Queensland;
- inserting a new section 8(2A) to provide that the Governor in Council is to appoint a member of the Board who is a medical practitioner to be the president; and
- making other necessary consequential amendments to the section relating the office of president.

*Clause 29* makes a minor amendment to section 9 as a consequence of the amendments in Clause 28.

*Clause 30* omits section 35(1)(h) as section 35(1)(h)(i) was originally inserted in error and section 35(1)(h)(ii) is redundant.

*Clause 31* inserts a new heading for Part 13 of the Act.

*Clause 32* amends section 88 to ensure that the transitional arrangements specified in that section apply to specialists as well as medical practitioners.



*Clause 33* inserts a new section 88A which:

- validates the registration of certain specialists whom the Medical Board purported to register under now repealed provisions in the Act and who were entitled to be registered as medical practitioners;
- provides that such persons are taken to have been registered as medical practitioners with effect from the date of their purported registration as a specialist and requires the Medical Board to register such persons as medical practitioners; and
- removes any time limitations to which such person's registration is subject.

## **PART 6—AMENDMENT OF THE NURSING ACT 1992**

*Clause 34* identifies this Part as amending the *Nursing Act 1992*.

*Clause 35* amends section 4 in accordance with current drafting practice.

*Clause 36* amends section 11(d) by omitting “1 legal practitioner” and inserting “1 lawyer”.

*Clause 37* inserts new provisions in section 16 to enable the Council to permit its members to participate in Council meetings by telephone or other forms of communication.

*Clause 38* inserts a new section 16A which provides a mechanism by which the Council can pass resolutions without conducting a meeting.

*Clause 39* inserts a new provision in section 23 permitting a Council member to waive payment of remuneration or allowances payable under that section.

*Clause 40* inserts a new provision in section 47 permitting a member of a committee of the Council to waive payment of remuneration or allowances payable under that section.

*Clause 41* inserts new provisions in section 53 which:

- enable the Council to prescribe under a by-law what particulars on the Register or Roll may not be inspected by the public; and
- authorise the Council to release information from its Register or Roll to the Australian Nursing Council Inc.

*Clause 42* amends section 54 by:

- inserting a new section 54(2A) which extends the qualifications for registration or enrolment of a nurse to include a requirement that a person must satisfy the Council that the person is competent and fit to practise nursing; and
- providing that the operation of section 54(2A) is not limited by the provisions in section 54(3).

*Clause 43* amends section 55(c)(ii) by omitting “the prescribed register or roll fee” and inserting “the annual certificate fee”.

*Clause 44* amends section 58 to provide that the section applies subject to section 72.

*Clause 45* amends section 59(c) by omitting “register or roll” and inserting “annual licence certificate”.

*Clause 46* amends section 63(9)(c) by omitting “register or roll” and inserting “annual licence certificate”.

*Clause 47* amends section 64 by:

- omitting section 64(1)(b)(ii) and inserting “(ii) the annual licence certificate”; and
- omitting “register” in section 64(6)(c) and inserting “annual licence certificate”.

*Clause 48* amends section 65(2),(3) and (9) by omitting “limitations and restrictions”.

*Clause 49* amends section 66(5) by omitting “restrictions” and inserting “conditions”.

*Clause 50* amends section 67 by inserting new provisions which:

- require the Council, following suspension of a nurse under the section, to investigate the matter and either lift the suspension or prefer a charge against the nurse to the Professional Conduct Committee; and

- provide that where a charge is preferred, the suspension applies until the matter is heard and determined by the Committee.

*Clause 51* amends section 70 to empower the Council to cancel or suspend the registration or enrolment of a nurse whose registration or enrolment has been cancelled or suspended under a law of a foreign country and to provide the Council with a discretion to suspend for a lesser period than the suspension imposed under the other law.

*Clause 52* amends section 71 to limit its application to Part 3, Division 3 of the Act and provides the Council with discretion to determine whether items issued by the Council to a nurse in relation to the nurse's registration (eg. annual licence certificate, badge) should be surrendered by a nurse who voluntarily seeks cancellation of registration under section 70(1)(b).

*Clause 53* amends section 72(1) by omitting the reference to section 70(1)(b) and by inserting a reference to section 31 of the *Nursing Act 1976* so as to extend the application of section 72(1) to include persons who were deregistered under section 31 of the *Nursing Act 1976* before its repeal.

*Clause 54* amends section 74 by omitting section 74(3) to (7) and substituting new provisions which largely remake, in accordance with current drafting practice, the former provisions and in addition:

- omit the time limitation in relation to the payment of fees for applications for restoration of registration or enrolment;
- require applications for restoration of registration or enrolment to be in the form approved by the Council;
- insert a requirement that the applicant must be qualified to be registered or enrolled; and
- authorise the Council, if it not satisfied that the applicant has practised during the 5 years before the application, to re-register or re-enrol an applicant subject to conditions of practice it considers appropriate.

*Clause 55* makes minor amendments to section 75 consistent with terminology used elsewhere in the Act.

*Clause 56* amends section 76(1)(a) by omitting the words "limitations and restrictions".

*Clause 57* amends section 87 to increase, from eight to sixteen, the

number of persons who constitute the Professional Conduct Committee.

*Clause 58* inserts a new provision in section 91 permitting a member of the Professional Conduct Committee to waive payment of remuneration or allowances payable under that section.

*Clause 59* amends section 94 by omitting “legal practitioner” and inserting “lawyer”.

*Clause 60* inserts a new provision in section 96 which specifies the matters in relation to which the Professional Conduct Committee, when constituted solely by the chairperson, may make decisions and give directions.

*Clause 61* amends section 103 by:

- amending section 103(1) to clarify that the section applies to investigations made following the suspension of a nurse under section 67(1) as well as in respect of a complaint under section 102(1);
- inserting a new section (1A) to provide that all investigations must be undertaken by an inspector; and
- omitting and remaking section 103(4)-(6) with minor amendments to clarify their intent and to ensure consistency with other provisions in the Act.

*Clause 62* amends section 104 by inserting a new provision that the Council must, upon preferring a charge against a suspended nurse, immediately refer the matter to the Professional Conduct Committee for hearing and determination.

*Clause 63* amends section 116 by omitting various terms and providing an example of the type of conditions that the Professional Conduct Committee may impose under section 116(1)(h).

*Clause 64* amends section 137(1)(a)(vii) to clarify that a right of appeal exists in relation to a decision of the Council to cancel a person’s registration or enrolment.

*Clause 65* amends section 145 to specify the period within which proceedings for an offence against the Act must be commenced.

*Clause 66* amends the heading in section 148.

**PART 7—AMENDMENT TO THE STATUTE LAW  
REVISION ACT 1995**

*Clause 67* identifies this Part as amending the *Statute Law Revision Act 1995*.

*Clause 68* amends Schedule 1 to correct an error in a reference to the Act.

**Amendments agreed to in Committee**

**1. Clause 11—**

At page 11, lines 1 to 4—

*omit, insert—*

**‘Amendment of s 130D (Order made upon practitioner’s recommendation)**

**‘11. Section 130D(1)(c), ‘section 130(2)’—**

*omit, insert—*

**‘section 130C(3)’.’.**

**2. Clause 12—**

At page 11, lines 5 to 8—

*omit, insert—*

**‘Amendment of s 130E (Conditional leave of absence or release on parole)**

**‘12. Section 130E(3), ‘section 130’—**

*omit, insert—*

**‘section 130D(1)’.’.**

**3. Clause 60—**

At page 28, line 18, ‘section 103(5) and (6)(b)’—

*omit, insert—*

**‘section 103(4) and (5)(b)’.**