

# HEALTH AND OTHER LEGISLATION AMENDMENT BILL 1998

## EXPLANATORY NOTE

### GENERAL OUTLINE

#### Policy Objectives of the Bill

The main policy objectives of the Bill are to:

- reduce the incidence, morbidity and mortality associated with cancer of the cervix by establishing the Queensland Pap Smear Register and the associated infrastructure necessary to maintain an effective and efficient cervical screening program in Queensland;
- allow the Queensland Cancer Fund to maintain the Queensland Cancer Register, on behalf of the State, in order to make more effective use of the Register for epidemiological research, and to correct a number of minor deficiencies in the application of Division 10 (Cancer) of the *Health Act*
- transfer the majority of statutory public health powers from the Chief Health Officer to the Chief Executive of Queensland Health;
- repeal the provisions relating to food and other services within the *Health Services Act 1991*;
- correct an error preventing the enforcement of the *Dental Technicians and Dental Prosthetists By-Law 1992* by the Dental Technicians and Dental Prosthetists Board of Queensland;
- amend the *Nursing Act* to change the notification arrangements for nurses notifying the Queensland Nursing Council of changes in a nurse's particulars and other minor amendments;
- correct an error in the By-law making power under the *Speech Pathologists Act* (Section 37) which enables the Board to make By-laws without any requirement for Governor-in-Council approval.

#### How the Policy Objectives will be achieved

##### Pap Smear Register

The Pap Smear Register will be established in accordance with the National Cervical Screening Program which aims to reduce the incidence, morbidity and mortality associated with cervical cancer by:

- creating a central database of Pap smear results, comprised of information pertaining to the results of all Pap smears, normal and abnormal, and where relevant, the results of related histology or clinical management;
- assisting individual women by providing a back-up reminder service, and ensuring that women are aware of recommended follow-up action if a cervical abnormality is detected;
- providing accurate and comprehensive screening histories to health practitioners involved in the woman's clinical management and to pathology laboratories interpreting a woman's smear and making clinical management recommendations;
- providing data to monitor the quality of cervical screening in Queensland to monitor Program outcomes and help in formulating strategies to encourage women to participate in cervical screening.

The Pap Smear Register seeks to balance the principal policy objective of maximising women's participation in the Register with the need to accommodate concerns some women may have about privacy. The legislation achieves this objective by including statutory duties of confidentiality and penalties for breaches of this duty and also by incorporating provisions which enable women to opt off the Register if they do not wish to participate.

Experience from other jurisdictions (ie. New Zealand and New South Wales) was that poor participation rates resulted when women were required to actively choose to participate in the Register before their information was included. Poor participation rates had significant adverse effects upon the fulfilment of the identified public health policy objectives.

The evidence from these jurisdictions is that the low participation rate could not be attributed to significant levels of conscientious objection to participation in the Register, but rather due to the absence of proactive efforts by women to have themselves included in the Register.

Owing to the poor levels of recruitment to the Register, particularly for the groups of women at greatest risk of cervical cancer, the two jurisdictions which had initially required women to actively choose to participate in the Pap Smear Register, subsequently amended their legislation to bring it into line with all other Australian State and Territory jurisdictions which operate

Pap Smear Registers that presume participation *while also offering the choice of non-participation.*

Women will be able to “opt-off ” participation in the Register by advising their Pap smear provider, at the time of their Pap smear, that they do not wish to participate. In addition, should a woman wish to have her record removed from the Register she will be able to do so by sending a written request to the Chief Executive of Queensland Health. Where a woman has “opted-off”, laboratories and Pap smear providers will be required to ensure that no details relating to this woman are entered onto the Register.

Access to the Register will be limited to Pap smear providers and pathology laboratories seeking information about their own patients in order to provide them with health care services. The health care practitioners and pathology laboratories accessing information from the Register will be prohibited from disclosing information to anyone other than another practitioner for the clinical management of the woman. Security protocols will be introduced administratively to support these provisions and the legislation incorporates a statutory duty for the Chief Executive to monitor access to the Register in order to verify that all access is by authorised persons for legitimate purposes. This will be achieved by the operation of computer audit trails. Penalties are provided where a breach of confidentiality is detected.

In addition, the Bill contains provisions authorising the Chief Executive to disclose information in limited and prescribed circumstances. The authority to disclose information is confined to the following situations:

- where the woman consents to the disclosure;
- information which is in a non-identifying form;
- the disclosure is authorised or permitted under an Act or is required by law;
- to the Queensland Cancer Register (eg. where the Pap Smear Register becomes aware of a diagnosed cancer);
- to researchers authorised to conduct scientific studies where authorised by the Governor in Council and;
- to the Commonwealth or another State if the Chief Executive determines it is in the public interest and the information is given pursuant to a prescribed agreement (eg. to equivalent Registries in other Australian jurisdictions for women who move interstate).

### **Transfer of the Cancer Register to the Queensland Cancer Fund**

The second significant aspect to this Bill involves amendments to Part 3, Division 10 of the *Health Act* which provides for the establishment and maintenance of the Queensland Cancer Register. The Bill proposes that the Chief Executive be able to enter into an agreement with “a contractor” prescribed under a regulation, to maintain the Register on behalf of the State. It is proposed that the Queensland Cancer Fund will be the prescribed contractor. The Queensland Cancer Fund has agreed to assume responsibility for the maintenance of the Register as well as offer employment to the people employed by Queensland Health to maintain the Register.

The key objective of this proposal is to make more effective use of the Register for epidemiological research and thereby reduce the morbidity and mortality associated with cancer. The primary benefit associated with the transfer of the Register is the establishment and funding of at least \$200,000 per annum for a Cancer Epidemiology Research Unit by the Cancer Fund. Based on the experience of other States, such a Unit would be able to make significantly better use of the data provided by the Register.

As part of the legislative arrangements for the transfer of the Cancer Register, specific amendments are proposed to impose strict duties of confidentiality on the Queensland Cancer Fund and its employees, while the Chief Executive of Queensland Health maintains the responsibility for determining the release of any identifiable data.

### **Division of Statutory Powers Between the Chief Health Officer and the Chief Executive of Queensland Health.**

The proposed amendment is in response to the restructure of Queensland Health in 1996. As a result of the restructure, the Chief Health Officer no longer has specific organisational responsibility for public health matters and does not have line management responsibility for officers to whom statutory public health powers are delegated.

The amendments rationalise the division of statutory powers within the Department between the Chief Health Officer and the Chief Executive to ensure that powers are held by officers who have the capacity to oversee the exercise of those powers within Queensland Health. The amendments also ensure that the Chief Executive, who is the accountable officer for Queensland Health under the *Financial Administration and Audit Act 1977* is also accountable for all public health matters, which are a core function of the Department’s activities.

Under the amendments, the Chief Executive will be responsible for all public health powers and functions, except the declaration of public health emergencies and the establishment of public health enquiries, which will be the responsibility of the Minister on advice of the Chief Health Officer and Chief Executive. The licensing of private hospitals will remain with the Chief Health Officer, as there may be a perceived conflict of interest if the Chief Executive were to license such facilities which may be in competition with public sector facilities, for which the Chief Executive is responsible.

The Chief Health Officer position will continue to be a statutory position providing high level medical advice to the Minister and the Director-General on health issues, especially on standards, quality, ethics and research issues. The Chief Health Officer would continue to be a member of the Medical Board, the Queensland Institute of Medical Research (QIMR) Council and the Radiological Advisory Council.

To ensure the *delivery* of public health services is overseen by a medical practitioner, the Bill requires there to be a manager of public health services for the State, who must be a medical practitioner.

### **Other Minor Amendments**

#### *Health Services Act 1991—Part 7—Provision of Facilities for Food and Other Services*

Since the sale of the Wacol Frozen Food Facility and the creation of Queensland Health as a single legal entity, there is no longer a need for the Act to provide the Minister with a statutory power to enter into a contract in relation to the provision of facilities for food and other services and require hospitals and other institutions to accept food and other services under the contract. The proposed amendments therefore repeal Part 7 of the Health Services Act.

#### *Dental Technicians and Dental Prosthetists Act 1991*

A technical error occurred in the drafting of section 55 of the *Dental Technicians and Dental Prosthetists Act 1991*. The proposed amendment is a non-controversial machinery amendment to overcome the error which presently prevents the Dental Technicians and Dental Prosthetists Board from enforcing the By-Law.

#### *Nursing Act 1992*

In order to improve the accuracy of information held by the Queensland Nursing Council and to increase registrants' compliance with notification requirements, the proposed amendment to section 50 of the *Nursing Act*

removes the existing requirement for the notification of change in particulars to be made in writing.

The Queensland Nursing Council has indicated that the amendment will be supported by administrative arrangements to verify a registrants identity when receiving a verbal request for a change in particulars. For some changes in particulars, (eg. change of name) registrants will be required to provide written documentation

#### *Speech Pathologists Act*

A minor but retrospective amendment to the *Speech Pathologists Act* remedies a drafting error in Section 37 of the Act, ensuring that Governor-in-Council approval is required whenever the Speech Pathologists Board makes a By-law. The amendment needs to take effect from 28 November 1995 when the Act in which the drafting error occurred, the *Statute Law (Miscellaneous Provisions) Act 1995* came into force.

## **Estimated cost for Government Implementation**

### **Pap Smear Register**

The Queensland Pap Smear Register will be funded jointly by the Commonwealth and Queensland Governments under the Public Health Outcomes Funding Agreement. The establishment of the Pap Smear Register is anticipated to cost approximately \$1.9 million over three financial years. The projected ongoing operational expenses for the Pap Smear Register will be about \$850,000 per annum. It is anticipated that the Commonwealth Government will continue to provide funds beyond 1999 as cervical cancer prevention has been identified as a National Health priority.

### **Other proposed amendments**

There are no additional costs associated with the other amendments in this Bill.

## **Consistency with Fundamental Legislative Principles**

The Bill is consistent with Fundamental Legislative Principles. Although the proposed amendment to Section 37 of the *Speech Pathologists Act* is retrospective in effect, it does not raise any fundamental legislative principle issues as it does not adversely affect the rights and liberties or impose obligations retrospectively.

## **Consultation**

### **Pap Smear Register**

Extensive consultation was undertaken with a variety of stakeholder groups including consumers, general practitioners, gynaecologists and pathologists. The response to the consultation was very positive. The majority of respondents from all stakeholder groups were supportive of the principles which were proposed to govern the implementation of the Register. The majority of women consulted recognised the benefits of an “opt-off” Register, and considered that the “opt-off” principle provides the best balance between privacy and efficacy.

Consultations with health practitioners and pathology laboratories indicate that both groups are willing to accept the duties involved in the implementation of the Register, provided that there are no offences attached to these duties and support is offered to pathology laboratories and health practitioners to promote and implement the Register, particularly during the introductory period.

Queensland Health will be implementing a comprehensive communications strategy to coincide with the establishment of the Register. A promotions officer has been employed to manage the communications strategy. Information kits will be distributed to all general practitioners and other Pap smear providers in Queensland and copies of information brochures will be included in the kits for distribution to all women attending for Pap smears. The other element to the communications strategy for the Register will be a general mailout to women in every household in Queensland to coincide with the commencement of the Register’s operation. At the same time, a 3 week radio and print media campaign will commence which will include regional newspapers and radio. Advertisements explaining the Register will also be placed in medical and nursing journals.

### **Transfer of the Cancer Register to the Queensland Cancer Fund**

Extensive consultations have been carried out with the Queensland Cancer Fund and focussed consultations were undertaken with a number of groups which represent those whose personal data is on the Cancer Register (such as the Palliative Care Association of Queensland, the Laryngectomy Association and the Breast Cancer Support Service). Other interested parties have been consulted through the Cancer Registry Advisory Committee, for example medical practitioners, pathologists, medical researchers and Chief Executives of hospitals. The various stakeholder groups consulted were very supportive of the proposed transfer of the

Register to the Queensland Cancer Fund, indicating a belief that it would be beneficial to patients with cancer and their families.

Consultations have also been undertaken with unions and the Queensland Health employees affected by the transfer of the Register. Neither group have raised any concerns regarding either the proposal that the Queensland Cancer Fund assume responsibility for the maintenance of the Register or the proposed arrangements for the employment of former Queensland Health Registry employees by the Fund.

### **Division of Statutory Powers Between the Chief Health Officer and the Chief Executive**

Options for the exercise of public health powers were outlined in the Draft Policy Paper on the Review of the *Health Act 1937*, (Public Health) released in February 1998.

## **NOTES ON PROVISIONS**

### **PART 1—PRELIMINARY**

*Clause 1* sets out the short title of the Act.

*Clause 2* provides that Section 14(2) and Schedule 2, amendment 1 of the *Speech Pathologists Act 1979*, are taken to have commenced on 28 November 1995 and the remaining provisions will commence on a day to be fixed by proclamation.

### **PART 2—AMENDMENT OF *HEALTH ACT 1937***

*Clause 3* provides that this part of the Bill amends the *Health Act 1937*.

*Clause 4* requires there to be a manager of public health services for the State, who must be a medical practitioner. The manager is to be employed as a public service employee (under the *Public Service Act 1996*) or as a health service employee (under the *Health Services Act 1991*). The function of the position is, subject to the Chief Executive, to manage the delivery of public



health services in the State.

*Clause 5* amends and repeals a number of definitions consequential to the amendments to the Act and incorporates a range of additional definitions.

*Clause 6* amends various terms in s.100C to conform with modern drafting practices, removes outdated references and makes amendments consequential to the transfer of statutory public health powers to the Chief Executive.

*Clause 7* omits the existing s.100D in the Division and replaces it with an equivalent provision which transfers the duty to establish the Register from the Chief Health Officer to the Chief Executive of Queensland Health.

This clause also inserts a new provision (s.100DA) in the Division enabling the Chief Executive to enter into an agreement with another person to maintain the Cancer Register on behalf of the Chief Executive. To ensure an appropriate level of accountability for the exercise of this discretion, the person must be prescribed under a regulation. As indicated above, it is proposed that this agreement will be with the Queensland Cancer Fund. This section also creates a duty for the Chief Executive to ensure the contractor complies with the terms of the agreement.

A new provision (s.100DB) enables the Chief Executive to require returns about cancer to be given to the contractor instead of the Chief Executive. The clause incorporates a penalty for non compliance with the provision while also clarifying that a person who sends a return to the contractor instead of the Chief Executive does not commit an offence for not complying with the requirement to send the return to the Chief Executive. A new provision has been inserted requiring the Chief Executive to monitor the extent to which persons comply with the requirement to provide cancer returns to the contractor.

The clause also inserts a provision (s.100DC) which authorises the Chief Executive or the contractor to obtain further information from the person who provided the return about the cancer in order to ensure that the information in the Register is accurate and complete. While it is envisaged that in usual circumstances further information would be provided voluntarily on request, the Bill provides for the Chief Executive to issue a written notice requiring the person making the initial return to provide further information within a prescribed time and includes penalties for non-compliance.

*Clause 8* of the Bill amends the existing provisions of s.100E of the Act relating to the duties of confidentiality and the express authorisations for the disclosure of information held on the Register. It also amends the

application of the provisions relating to the existing duties of confidentiality by extending the duty to the Chief Executive and delegates of the Chief Executive and clarifying that the duty also captures the contractor and employees of a contractor. The penalty is also increased to 50 penalty units, a level equivalent to the penalties in other health legislation for breach of confidentiality (eg. s.63 of the *Health Services Act*).

The main feature of the proposed amendments is to provide a balance between protecting the privacy of the information with the need to provide limited authorisations to disclose information in specified circumstances to particular persons.

The most significant amendment to the existing disclosure authorisations in s.100E is to permit the disclosure of information to the contractor operating the Register on behalf of Queensland Health. The provision proposes that the Chief Executive be authorised to disclose information from the Register if the disclosure is made :

- in a form the Chief Executive reasonably believes does not identify any person; or
- to a contractor or an employee of a contractor to maintain the Register; or
- to a person who the Chief Executive has asked for further information about a return; or
- to a person authorised to conduct scientific research and studies under section 154M of the Act; or
- to an entity of the Commonwealth or another State Government if the Chief Executive is satisfied the disclosure is in the public interest and the information is given under an agreement which must be prescribed in regulation. (This provision is equivalent to section 63(2)(g) of the *Health Services Act 1991*).

The clause also contains a new provision authorising the contractor to disclose information from the Register if the disclosure is made :

- in a form the contractor reasonably believes does not identify any person; or
- to the Chief Executive, at the written request of the Chief Executive stating that the Chief Executive considers the disclosure is necessary for ensuring the proper administration of this division;
- to a person who the contractor has asked for further information

about a return; or

- to a researcher authorised to conduct scientific research and studies under s.154M on the written authorisation of the Chief Executive; or
- to an entity of the Commonwealth or State where the Chief Executive is satisfied the disclosure is in the public interest and the information is required under an agreement which must be prescribed in regulation on the written authorisation of the Chief Executive.

The provision introduces a new constraint upon entities of the Commonwealth or another State receiving information from the Cancer Register, prohibiting them from disclosing it to anyone else and clarifying that the information may only be used for the purpose for which it was given under the agreement.

A new provision is also inserted to clarify that the general duty of confidentiality which applies to all Queensland Health employees, (and more importantly) the wider range of express authorisations for the disclosure of information which exist under *s.63 of the Health Services Act 1991*, do not apply in respect to the Cancer Register. The intent of this provision is to ensure that only the narrower range of authorisations for disclosure available under s.100E apply to the Cancer Register.

The provision also incorporates a requirement for the Chief Executive to monitor compliance with the duty of confidentiality.

*Clause 9* inserts a new section authorising the Chief Executive to arrange for the transfer of information in the Cancer Register for inclusion in the Pap Smear Register and clarifies that a person does not commit an offence for a breach of confidentiality merely because the person does something under this arrangement.

Such a transfer of information is necessary to ensure that the Pap Smear Register is kept up to date in respect to notifications of cancer in order to ensure that invitation, reminder and recall letters are not sent inappropriately to women who may have recently been diagnosed with cancer or sent to the address of a woman who may have recently died of cancer.

*Clause 10* renumbers Part 3 division 11 as Part 3 division 12.

*Clause 11* inserts a new Part 3, division 11 of the Act—the Pap Smear Register.

Subdivision 1 of the new division 11 incorporates s.100FA which inserts a range of additional definitions in the Act. Section 100FB clarifies that this

division applies to a procedure performed in Queensland after the commencement of this section to obtain a Pap smear or histological sample from a woman. However, it does not apply to the procedure if the woman's usual place of residence is outside of Queensland at the time the smear or sample was taken. In these cases the usual practice is for the results of tests on Pap smears or histological samples to be forward to the Pap Smear Register in the State the woman resides in.

Subdivision 2 of division 11 outlines the establishment and purposes of the Register. Section 100FC outlines the duty of the Chief Executive to establish and maintain the Pap Smear Register and clarifies that the Register may be kept in an electronic form.

Section 100FD outlines the Register is established for the following purposes:

- to establish mechanisms to advise a woman who has an abnormal Pap smear result about appropriate medical investigation and intervention;
- to establish mechanisms to advise a woman to have the procedure to obtain another Pap smear because her previous Pap smear is technically unsatisfactory and cannot be assessed, including, for example, poor fixation of the smear;
- to provide a woman's registered screening history to the director of, or a nominated person at, the pathology laboratory where a woman's smear is being tested to assist in the interpretation of the smear and make clinical recommendations;
- to provide a woman's registered screening history to a health practitioner to help the practitioner in advising the woman about options for clinical management;
- to use information in the Register for sending notices to certain women about Pap smears or results of Pap smear tests or histology tests;
- to enhance pathology laboratories' access to information that will help them in assessing the proportion of correct predictions of detected lesions made by the pathology laboratory and other quality assurance measures;
- to provide data to help -
  - in monitoring changing disease trends; and
  - in studying the efficacy of the management and treatment of abnormal Pap smears; and

- in monitoring and evaluating the effectiveness of cervical screening programs; and
- in increasing public awareness of cancer of the cervix;
- to help in formulating strategies to encourage all women to participate in regular Pap smear testing and in particular -
  - women who have not had a Pap smear test; and
  - women, who according to their registered screening histories, are overdue for their next Pap smear.

Section 100FE provides for women to make choices to not participate in the Register and to change information held on the Register. The provision states that clinical and identifying information about a woman is to be included in the Register unless the woman chooses otherwise. As identified in the policy objectives of the Bill the legislation for the Register seeks to achieve a balance between maximising participation and ensuring women are informed about their right to elect not to have their clinical and identifying information included in the Register. To achieve this balance, this provision also permits a woman to request her registered screening history to be removed from the Register or for her identifying information to be changed. (Refer section 100FM and 100FN of this Bill).

Subdivision 3 outlines the duties of persons involved in obtaining and testing Pap smears and histological samples.

Section 100FF clarifies that the duties outlined in the subdivision apply to medical practitioners intending to obtain Pap smears or histological samples and other persons intending to obtain Pap smears.

Section 100FG states that a provider must be satisfied, on reasonable grounds, that a woman has been informed about the existence and purposes of the Register, the identifying and clinical information about the woman that may be recorded in the Register and that she may elect for her identifying and clinical information not to be automatically included in the Register.

If there is no indication on a provider's health records that a woman doesn't want her information included in the Register and the woman tells the provider that she does not want her information to be automatically included then, under section 100FH, the provider must make a notation in his or her health record that the woman's information must not be given to the Chief Executive; and the provider must ensure that each request for a Pap smear test or histology test includes a notation that the woman's information must not be given to the Chief Executive.

Under section 100FI, if a provider's records indicate that a woman has

previously elected not to have her information automatically included in the Register then the provider must ask the woman whether she wants to reconsider her decision. If the woman changes her mind and tells the provider she now wants her identifying and clinical information to be automatically included in the Register the provider must make a notation in his or her health records about the woman's decision and that the woman's information is to be given to the Chief Executive. Where the woman reconsiders her decision and tells the provider she still does not want her information to be automatically included in the Register, the provider must ensure that each request for a Pap smear or histology test includes a notation that the woman's information must not be given to the Chief Executive.

Under section 100FJ, the director of a pathology laboratory receiving a request to test a Pap smear or histological sample taken from a woman must give her information, as required under a regulation, to the Chief Executive. The provision also requires that the director of the pathology laboratory is to give the information to the Chief Executive no later than 4 weeks after the results of the test are given to the person who requested the test. However, where the request for the test includes a notation that the woman's information must not be given to the Chief Executive the director must not give the information to the Chief Executive.

Subdivision 4 deals with the duties of the Chief Executive in relation to the Pap Smear Register.

Section 100FK states that if the Chief Executive receives identifying and clinical information under this division for a woman who has no registered screening history, the Chief Executive must ensure the information is included in the Register and send the woman a notice stating that the information has been included in the register and:

- that her registered screening history may be removed from the Register; and
- that she may have her identifying information changed if she thinks it is incorrect; and
- how she may have her information removed or changed.

Section 100FL enables the Chief Executive to send reminder notices to women, where

- their registered screening history indicates they may be overdue for their next Pap smear; or
- where it is necessary to repeat a Pap smear because the previous Pap smear is unsatisfactory and cannot be assessed; or

- if the woman requires medical investigation and intervention because of an abnormal Pap smear result.

Section 100FM creates a duty for the Chief Executive to remove a woman's registered screening history from the Register if a woman requests this in writing, within 6 weeks of receiving such a request. The six week period is to allow the woman time to reconsider her decision. In circumstances where a woman indicates that her information was included in the Register in error the Chief Executive must remove the information from the Register as soon as is practicable after receiving her request.

The Chief Executive is obliged under s.100FN to change a woman's identifying information as soon as is practicable after receiving a written request from her advising that she considers the information is incorrect.

Subdivision 5 of the Bill relates to duties of confidentiality and authorities to access registered screening histories.

Section 100FO states that the Chief Executive, health service employees and public service employees involved in keeping the Register or exercising powers involving the Register have a duty of confidentiality and that they must not disclose or make use of confidential information gained by the person under this division unless the disclosure is made, or the information used, for purposes specified in an authority provided under this section. The provision also clarifies that the general duty of confidentiality for all Queensland Health employees, in section 63 of the *Health Services Act 1991*, does not apply in relation to the Pap Smear Register. The intent of including this clarification is to limit the authority for disclosure of information held on the Pap Smear Register to those specified in this provision.

Section 100FP states that a person receiving a written request from a woman for her registered screening history must give the woman a copy of her history. The provision also permits a person to whom the duty of confidentiality applies to disclose the information if the:

- woman to whom the information relates gives her written consent for the disclosure; or
- disclosure is made in a form which the person reasonably believes does not identify any woman; or
- disclosure is authorised or permitted under an Act or is required by law.

The provision also limits the authority to disclose information to:

- a Queensland Health employee who is involved in maintaining the

Register for the purpose of ensuring the accuracy, completeness and integrity of data comprising the Register;

- a person with Governor in Council approval to conduct scientific research and studies under section 154M of the Act;
- to an entity of the Commonwealth or another State Government if the Chief Executive is satisfied the disclosure is in the public interest and the information is given under an agreement which must be prescribed in regulation.

The provision also constrains entities of the Commonwealth or another State receiving information from the Pap Smear Register from disclosing it to anyone else and clarifies that the information may only be used for the purpose for which it was given under the agreement.

Section 100FQ authorises the Chief Executive to give a woman's registered screening history to a health practitioner only if the Chief Executive is satisfied on reasonable grounds that the woman is a patient of the practitioner and that the information is needed to decide when the woman is due for her next Pap smear, for the purposes of making a diagnosis or clinical management. This provision also prevents the Chief Executive from giving a woman's address to a health practitioner. The intent of this limitation is to minimise the risk of threat to the privacy and personal safety of women who provide information to the Pap Smear Register. It also prevents the Chief Executive from disclosing information identifying another health practitioner or a pathology laboratory without the written consent of the other health practitioner or the director of the pathology laboratory identified in the disclosure. The intent of this provision is to protect commercially or professionally sensitive information. These limitations will be managed with the application of computer security technology.

Section 100FR permits the director of a pathology laboratory to nominate by written notice to the Chief Executive, a person or persons employed at the laboratory to whom a woman's registered screening history may be given for the laboratory. The provision also permits a pathology laboratory to access the Register to obtain information about a woman under defined circumstances. Specifically, access is authorised where the laboratory has received a Pap smear or histological sample from a woman for testing and the director or nominated officer from the laboratory asks the Chief Executive to give the director or the nominee the woman's registered screening history. However the Chief Executive's authority to provide this information is constrained by a corresponding duty to ensure that the laboratory concerned is either:

- interpreting the results of a Pap smear test or histology test for the



woman and requires the information in order to make recommendations about clinical management for the woman; or

- the pathology laboratory has tested a Pap smear or histological sample for the woman and the director or nominated person is assessing the performance of the laboratory for quality assurance purposes.

The provision does not authorise the disclosure of a woman's address to the director of or a nominated person at the pathology laboratory, nor does it authorise the disclosure of information identifying a particular health practitioner or another pathology laboratory without the written consent of the health practitioner or director of the other pathology laboratory identified in the disclosure. The policy intent is the same as that which underpins the provisions of section 100FQ.

Section 100FS creates an offence for any person to seek or to obtain information, without authorisation under this division, from the Pap Smear Register or from the Chief Executive or a Queensland Health employee involved in keeping the Register. The proposed penalty for such an offence is 50 penalty units.

Under section 100FT (1), duties of confidentiality are created for health practitioners, directors and nominated persons of pathology laboratories to keep registered screening histories confidential when they access information under sections 100FQ and 100FR. Subsection 2 creates an offence for a disclosure which is not authorised under subsections (3) or (4) of this provision with a proposed penalty of 50 penalty units.

Section 100FT (3) authorises a health practitioner to disclose a woman's registered screening history to any of the following persons:

- the woman;
- another health practitioner who has referred or intends to refer the woman or with whom the health practitioner considers it necessary to discuss the woman's history for the clinical management of the woman.

Subsection (4) authorises the director of a pathology laboratory or a nominated person at a laboratory to disclose a woman's registered screening history to the following persons:

- the woman;
- the person who performed the Pap smear test or histology test;
- a medical practitioner, if the director of the pathology laboratory is satisfied the medical practitioner is involved in the clinical

management of the woman;

- other persons employed at the pathology laboratory involved in:
  - the interpretation of Pap smear tests or histology tests; or
  - assessing the performance of the laboratory for quality assurance purposes.

The Chief Executive is obliged under section 100FU to establish processes to monitor health practitioners' and pathology laboratories' access to information held on the Pap Smear Register. These processes must allow the Chief Executive to decide if—

- the health practitioner is accessing only the registered screening history for women for whom the health practitioner is making clinical diagnoses or other decisions about clinical management or follow-up Pap smears;
- someone else is accessing a woman's registered screening history other than the woman's health practitioner.

The provision also requires that in the case of pathology laboratories the processes must allow the Chief Executive to decide if—

- the director or nominated person is only accessing the information about women for whom the pathology laboratory is testing Pap smears or histology samples and making recommendations about clinical management for the women;
- the director or nominated person is accessing the information about women for whom the pathology laboratory has tested Pap smears or histology samples in order to assess the performance of the laboratory for quality assurance purposes;
- someone other than the director or a nominated person is accessing the registered screening histories of women.

It is intended that all of the above processes will be undertaken by means of computerised audit trails whereby all pathology laboratories and health care practitioners will be issued with identification details. These arrangements will permit the Chief Executive to monitor all access to the Pap Smear Register and compliance with the duties of confidentiality.

Subdivision 6 outlines the agreements and arrangements for information collected under the division and other matters.

Section 100FV authorises the Chief Executive to enter into an agreement with a contractor for the purpose of sending out letters welcoming women to the Pap Smear Register and also for sending reminder and recall letters to

women. The provision authorises the Chief Executive to disclose confidential information to the contractor to the extent that it is necessary for the contractor to perform the functions under the agreement, including to the contractor's employees and the persons to whom the notices are sent. The contractor is however, prohibited from disclosing the information to another person or to use the information other than to send out the notices in accordance with the agreement.

Section 100FW permits the Chief Executive to arrange for the transfer of confidential information from the Pap Smear Register to the Cancer Register. The provision clarifies that a person performing such a transfer does not commit an offence against the duty of confidentiality for the Pap Smear Register. The intent of this provision is to permit the transfer of information about diagnosed occurrences of cervical cancer from the Pap Smear Register to the Cancer Register to maximise the completeness of the Cancer Register data.

The Chief Executive is authorised to designate, via gazette notice, certain persons who perform procedures to obtain Pap smears as health practitioners under section 100FX. Under the women's cancer screening program, Queensland Health has endorsed a policy and provided training for registered nurses to perform Pap smears. In remote areas where there is limited access to medical practitioners, enrolled nurses and Aboriginal health workers may also perform Pap smears. The designation of people who are performing Pap smears as health practitioners is limited to this division. It is intended to ensure that the legislation permits medical practitioners and remote area health practitioners equivalent access to information held on the Pap Smear Register in order to facilitate the equitable delivery of cancer screening services for women throughout Queensland.

*Clause 12* renumbers s.180 (2)(e) and inserts a new regulation-making power relating to the information to be given to the Chief Executive for entering in the Pap Smear Register and the timing for the provision of the information.

*Clause 13* inserts provisions dealing with the transitional arrangements relating to the transfer of public health powers from the Chief Health Officer to the Chief Executive.

*Clause 14(1)* amends the Acts outlined in Schedule 1 which primarily relate to the transfer of statutory powers from the Chief Health Officer to the Chief Executive. In the case of amendments 2-4 to the *Food Act 1981*, amendments 3-15 of the *Health Act 1937* and 4-8 of the *Mental Health Act 1974*, the relevant powers are transferred to the Minister.

*Clause 14 (2)* amends the Acts outlined in Schedule 2 to the Bill

containing the following minor amendments:

- Omitting the current section 55 of the *Dental Technicians and Dental Prosthetists Act 1991* and replacing it with a provision which overcomes the error presently limiting the ability of the Dental Technicians and Dental Prosthetists Board to enforce the By-Law.
- Correcting errors in the *Health Act 1937* including the citation of the *Therapeutic Goods Act 1989* and amending section 100F(b) and (c) to accord with current drafting practice.
- Repealing Part 7 of the *Health Services Act 1991—Provision of Facilities for Food and Other Services* which is now redundant.
- Correcting an error in the *Medical Act 1939*.
- Substituting occurrences of references to “psychiatric nurses” with the contemporary term—“mental health nurses” in the *Nursing Act 1992*.
- Removing the requirement in section 50 (1) of the *Nursing Act 1992* referring to *written* notification for change of particulars to allow such notifications to be done orally, which is a more efficient way to deal with routine changes in particular. The Bill also reduces the time-frame to make such notifications from 2 months to 21 days. Amendment 8 inserts a transitional provision clarifying that the proposed time for a pre-existing requirement to notify is unaffected by the amendment
- Incorporating reference to enrolment *or endorsement* to correct an omission in the section.
- Omitting the current section 78 (4) of the *Nursing Act 1992* and replacing with a provision which removes reference to “interim” or “temporary” accreditation of nursing courses which are not forms of accreditation used by the Council.
- Inserting a new section 37(3) of the *Speech Pathologists Act 1979* to require Governor-in-Council approval whenever the Speech Pathologists Board makes a By-law.

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