

HEALTH PRACTITIONERS (PROFESSIONAL STANDARDS) BILL 1999

EXPLANATORY NOTES

GENERAL OUTLINE

Policy objectives of the Bill

The principal policy objectives of the Bill are:

- to protect the public by ensuring health care is delivered by registrants in a professional, safe and competent way
- to uphold the standards of practice within the health professions
- to maintain public confidence in the health professions
- to establish a uniform approach to the handling of complaints about registrants, the investigation and discipline of registrants, and the management of impaired registrants
- to provide a system to deal with complaints about registrants that is complementary to that of the Health Rights Commission ("the commission") established under *the Health Rights Commission Act 1991*.

In addition, the Bill amends the *Health Rights Commission Act 1991* to address various operational issues with the administration of the Act raised by the Health Rights Commissioner ("the commissioner").

Reasons why the proposed legislation is necessary

Currently, the discipline of registrants occurs under eleven separate health practitioner registration Acts, namely:

- *Chiropractors and Osteopaths Act 1979*
- *Dental Act 1971*

- *Dental Technicians and Dental Prosthetists Act 1991*
- *Medical Act 1939*
- *Occupational Therapists Act 1979*
- *Optometrists Act 1974*
- *Pharmacy Act 1976*
- *Physiotherapists Act 1964*
- *Podiatrists Act 1969*
- *Psychologists Act 1977*
- *Speech Pathologists Act 1979*

This legislation, which was enacted between 1939 and 1991, is not uniform in respect of the grounds for disciplinary action, the adjudicative processes or the sanctions which may be imposed where a registrant is found guilty of misconduct.

Also, the disciplinary provisions of the existing Acts do not meet community or professional expectations, nor do they conform with current drafting practice or fundamental legislative principles (for example, all boards rely on the application of the *Commissions of Inquiry Act 1950* to undertake disciplinary proceedings).

The disciplinary provisions of the existing Acts compromise the State's ability to protect the public in that:

- the grounds for taking disciplinary action against registrants are unreasonably narrow (in comparison with jurisdictions such as Victoria—this issue is discussed below)
- the disciplinary actions which may be taken against registrants are too limited (for example, there is currently no disciplinary power to impose conditions on a registrant's registration)
- the boards' powers to investigate complaints and breaches of professional standards are inadequate or non-existent
- the non-medical registration boards have no power to immediately suspend or impose conditions on a registrant where there is an imminent risk to the life, health or safety of a person

- complainants have no statutory rights in the disciplinary process (for example, there is no requirement to notify complainants of disciplinary proceedings and no right for them to attend the proceedings).

An additional concern is that the current disciplinary provisions are not very detailed and, consequently, the rights of registrants during the investigative and disciplinary processes are not comprehensively set out. The existing disciplinary processes are, arguably, unfair to registrants in that the non-medical boards both prosecute and adjudicate disciplinary matters.

The disciplinary provisions of the current Acts are also deficient in respect of inadequate external accountabilities. For example, disciplinary proceedings for the non-medical boards are not required to be open to the public and disciplinary decisions and the reasons for decisions are not required to be publicly accessible or otherwise reported. The Minister also has no explicit power to require a board to investigate a complaint about a registrant.

The existing Acts are inflexible in that they generally only provide one process for dealing with disciplinary matters. With the exception of the *Medical Act 1939*, which establishes the Medical Assessment Tribunal to hear disciplinary matters regarding medical practitioners, registration boards can currently only deal with disciplinary matters by way of an inquiry (utilising the powers under the *Commissions of Inquiry Act 1950*). This means that all disciplinary matters, regardless of their seriousness, are dealt with in the same way.

The disciplinary provisions of the current Acts do not dovetail with the *Health Rights Commission Act 1991* and this creates the potential for delays and increases the risk that professional standards issues will be overlooked. Of particular concern are:

- the absence of parallel jurisdictions to accept complaints (the commission's jurisdiction to accept complaints is broader than the grounds for disciplinary action in some respects and narrower in others)
- doubts about the admissibility of the commission's investigation reports in board disciplinary proceedings and the inadequate powers of the boards to investigate disciplinary matters (currently, the commissioner may only refer a complaint where he or she is satisfied the board has adequate functions and powers of investigation)

- deficiencies in the statutory consultation requirements (for example, the commissioner is not required to consult a board before making an “assessment” decision and a board is not required to advise the commissioner when disciplinary proceedings are being commenced); and inflexible referral requirements (for example, boards must immediately refer all complaints to the commissioner, including complaints which are more appropriately dealt with through intervention by a board to protect the public)
- also, the commissioner cannot refer complaints to a board without assessment—which causes unnecessary delays in matters being addressed.

The main operational problems with the *Health Rights Commission Act 1991* addressed by this Bill are:

- inefficiencies related to the receipt and consideration, and assessment phases of the Act
- the lack of power to refer complaints to other bodies at the conclusion of assessment
- the inability to take more than one action on a complaint
- the inability to split complaints involving multiple issues or respondents into component parts.

Means of achieving objectives

The objects of the legislation are primarily achieved in the following ways:

- *Uniform disciplinary arrangements*

A uniform approach to the discipline of registrants is achieved through the creation of a “generic” Bill which applies to all registrants (ie, chiropractors, dentists, dental technicians, dental prosthetists, medical practitioners, occupational therapists, optometrists, osteopaths, pharmacists, physiotherapists, podiatrists, psychologists and speech pathologists). If other health professions are registered in the future (for example, medical radiation technologists), the Bill can easily be amended to accommodate them and thereby ensure a uniform approach is maintained.

- *Complaints*

Health complaints provide the main trigger for disciplinary proceedings against registrants and, given that disciplinary proceedings are the principal strategy for protecting the public and upholding professional standards, the Bill establishes processes to facilitate complaints and provides increased flexibility for the handling of complaints by the boards and the Health Rights Commission. The Bill also incorporates strategies to ensure that professional standards issues arising out of complaints are given statutory priority and are not inadvertently overlooked.

Specifically, the Bill facilitates complaints by:

- providing the boards and the commission with the function of receiving complaints—some complainants, particularly third parties, have indicated that they would prefer to make complaints directly to a board
- removing the requirement for third party complaints to be immediately referred to the commission
- providing statutory protection for persons who honestly, and on reasonable grounds, make complaints to boards
- the incorporation of various rights for complainants and witnesses—for example, to be given notice of disciplinary proceedings, to attend the proceedings, be accompanied and advised of the outcome of proceedings, to have their identity suppressed if mentioned in proceedings
- providing for increased public involvement in the discipline of registrants (for example, all adjudicative bodies must include at least one public member), and requiring all disciplinary bodies to be constituted by at least one person of the same gender as the complainant.

In addition, increased flexibility in complaint handling is achieved by:

- reducing the circumstances under which a board must immediately refer a complaint to the commission (ie. to complaints made by users or their representatives)
- enabling a board and the commissioner to agree that it is in the public interest for the board to retain certain complaints rather than refer them to the commission

- enabling the commissioner and a board to agree that it is in the public interest for the commissioner to refer a complaint directly to a board without assessment
- enabling the commissioner to take multiple actions on complaints and split complaints with multiple issues or multiple respondents

The Bill ensures that professional standards issues arising out of complaints are not overlooked by requiring the most significant statutory decisions under the Bill and the *Health Rights Commission Act 1991* to be informed by the views of both the boards and the commissioner. Specifically, this is achieved by:

- requiring the boards and the commission to give each other copies of all complaints received regarding registrants
- enabling boards to make submissions on complaints being assessed by the commission
- requiring consultation between the commission and the boards at the conclusion of assessment (and preventing the rejection of a complaint where a board considers it should be investigated)
- requiring boards to provide the commissioner with a report at the conclusion of all investigations and to have regard to any comments, information or recommendations provided by the commissioner in determining the action to be taken
- requiring the commissioner to be notified when a matter is referred for disciplinary proceedings (as the commissioner retains the power to intervene in disciplinary proceedings) and advised of the decision of the disciplinary body and the reasons for the decision.

The Bill ensures that priority will be given to professional standards issues (that is, the public interest issues) because of the consultation and decision-making processes described above. In addition, where the commissioner and a board cannot agree on the action to be taken at the conclusion of the assessment of a complaint about a registrant, the Minister will determine if a matter should be referred to a board for investigation or other action. The key considerations for the Minister will be the statutory purposes of disciplinary proceedings and disciplinary action and the grounds for disciplinary action under the Bill.

- *Immediate suspension and imposition of conditions*

In order to effectively respond to imminent threats that a registrant may pose to the life, health, safety or welfare of a person or class of persons, including themselves, the Bill creates a reserve power for a board to immediately suspend or impose conditions on their registration. Where a board exercises this power it must immediately investigate the matter or refer it to the Health Practitioner Tribunal ("the tribunal") for hearing. The Bill limits the board to taking the least onerous action necessary to achieve the objectives of the legislation, particularly protection of the public. A registrant has a right of appeal to the tribunal regarding the exercise of this power.

- *Investigations*

Effective investigation processes are essential to properly inform a board's decision to pursue disciplinary proceedings to protect the public. Accordingly, the Bill confers various powers upon investigators and board investigation committees to investigate allegations about registrants. The powers are standard investigation powers, although there is also an additional power to require a registrant to undergo a health assessment and a power to seek expert advice.

It should be noted that the Bill gives boards the power to commence investigations on the basis of a complaint or where they suspect, on reasonable grounds, that any aspect of the conduct or practice or another matter concerning the registrant appears to constitute grounds for disciplinary action against the registrant. This self-initiating power of investigation provides an additional means of protecting the public.

At the conclusion of the investigation, the board must provide a report to the commissioner. As mentioned above, this accountability mechanism will maintain public confidence in the investigative decisions and provide an additional means of ensuring professional standards issues are appropriately dealt with. It should be noted that the commissioner has no power to veto a board's decision regarding the action required following investigation but the commissioner could alert the Minister to any concerns with the actions taken or not taken.

- *Disciplinary proceedings*

The primary purpose of disciplinary proceedings is to determine whether disciplinary action is required to protect the public. The taking of disciplinary action is the principal public protection strategy under the Bill.

The disciplinary process, and the information dissemination strategies outlined below, uphold standards within the professions, deter misconduct and maintain public confidence in the professions.

The Bill provides a flexible model for the discipline of registrants involving a choice of three adjudicative bodies:

- **registration boards** (established under the health practitioner registration Acts) which will deal with minor disciplinary matters. Boards may undertake disciplinary proceedings by way of a board hearing or correspondence with the registrant. Boards may also establish disciplinary committees (comprising board members) to adjudicate on disciplinary matters.
- **professional conduct review panels** (comprising 3 or 4 members, at least 2 of whom are members of the registrant's profession and 1 is a public member; a panel may include 1 member of the registrant's board) which will deal with routine disciplinary matters by way of an informal and, where possible, collaborative and re-directive hearing process.
- **health practitioner tribunal** (constituted by a District Court Judge who is assisted by 3 assessors, 2 of whom are members of the registrant's profession and 1 is a public member) which will generally deal with the most serious disciplinary matters (ie. those which, if substantiated, may result in the cancellation or suspension of a registrant's registration) and those cases where a registrant elects to have a matter heard by the tribunal rather than a board or panel.

In order to increase the degree of public protection provided by the legislation, the grounds for taking disciplinary action against a registrant under the Bill have been expanded. Currently, disciplinary action may be taken where a registrant has been found guilty of "conduct discreditable to the profession" or "misconduct in a professional respect". These terms have been judicially interpreted to mean conduct which is *substantially* below the standards of the profession as judged by members of the profession. Under the Bill, disciplinary action will be able to be taken where it is established that the registrant has engaged in "unsatisfactory professional conduct". The Bill provides an inclusive definition of this term based on recent Victorian and New South Wales legislation (see clause 124 in the Notes on Provisions section of these Explanatory Notes). Importantly, this term includes professional conduct that is of a *lesser*

standard than that which might reasonably be expected of the registrant by the public or the registrant's professional peers.

The Bill also expands the disciplinary actions which may be taken where a case against a registrant is established. The following table sets out the actions which may be imposed by each of the adjudicative bodies:

TABLE 1: Disciplinary actions which may be taken by adjudicative bodies

Disciplinary action	Board	Panel	Tribunal
Advise, caution, reprimand	X	X	X
Undertaking with registrant	X	X	X
Conditions on registration		X	X
Require attendance for further health assessments, etc	X		X
Undertaking with financial assurance			X
Require the registrant to do, or refrain from doing, any thing			X
Fine			X
Suspend registration			X
Cancel registration			X
Order suspension of disciplinary action			X

Expanding the types of actions which may be taken by adjudicative bodies creates increased opportunities to ensure that disciplinary orders are made which achieve the objects of the legislation, in particular, the protection of the public. The power to impose a fine is considered an important tool to deter misconduct by other registrants and thereby maintain standards within the profession. The power to suspend disciplinary orders, subject to the registrant's satisfactory professional conduct or practice is also likely to be a powerful tool for maintaining standards and protecting the public.

Where possible, the provisions of the Bill dealing with the adjudicative bodies are uniform. For example, all bodies are required to comply with natural justice but are not bound by the rules of evidence. Also, the notice requirements and the rights of complainants are the same in each case. The major differences between the adjudicative bodies are:

- the extent of independence from the boards—panels are largely independent, the tribunal is totally independent
- the formality of the processes to be used—which increases in accordance with the seriousness of the disciplinary matter (ie. proceedings are most formal before the tribunal)
- responsibility for decision making—board and panel decisions are majority vote; the judge constituting the tribunal decides all questions of fact and law in tribunal proceedings
- the involvement of lawyers in proceedings—parties may only be represented before the tribunal
- a registrant has the right to elect to have a matter to be dealt with by the tribunal rather than a panel or the board
- whether the proceedings are open to the public—only tribunal proceedings are open
- the disciplinary action that may be taken—refer Table 1
- the enforcement of non-compliance with hearing powers—the tribunal deals with such matters as contempt, boards and panels deal with such matters as statutory offences
- appeal processes

The principal strategies for maintaining public confidence in the professions and the disciplinary processes are:

- statutory clarification of the purpose of the disciplinary process
- the involvement of the District Court in the hearing of the most serious disciplinary matters
- the requirement for tribunal proceedings to be open to the public
- the new statutory rights conferred on complainants with respect to the disciplinary process discussed above
- the various information dissemination strategies discussed below.

- *Dissemination of information regarding disciplinary proceedings*

The Bill contains a range of strategies to ensure the public, the profession and other relevant entities are informed about the outcome of disciplinary proceedings. Specifically:

- the proceedings of the tribunal are open to the public except for impairment matters or where the constituting member determines that there are special circumstances which require the proceedings, or part of the proceedings, to be closed in the public interest
- the Executive Officer of the Office of Health Practitioner Registration Boards is required to maintain a publicly accessible record of the decisions and reasons for decisions of all disciplinary bodies
- at the conclusion of disciplinary proceedings, the registrant, the board, the commissioner and the complainant (if any) must be informed of the decision and the reasons for the decision. The disciplinary body also has a discretion to notify any other person given an attendance notice in respect of the proceeding
- at the conclusion of disciplinary proceedings, the board must notify all interstate regulatory authorities with which the person is registered of the outcome and may notify various other prescribed entities where it is satisfied that the entity needs to know and that doing so will achieve the objectives of the legislation
- where a disciplinary body takes disciplinary action (for other than impairment matters), any conditions or undertakings must be noted on a publicly accessible register and the details of the conditions or undertakings must also be recorded (except where it is not in the interests of the users of the registrant's services or the public to know the details of the conditions). Suspensions must also be recorded for the period in which they apply and disciplinary bodies have a discretion to require other disciplinary actions to be recorded
- the boards' annual reports must include certain information regarding complaints, investigations and disciplinary proceedings undertaken under the Bill

- boards also have a general power under the Bill, subject to the statutory duty of confidentiality, to inform registrants of the nature and outcome of disciplinary proceedings in newsletters and reports.

The purposes of informing registrants, the public and other entities (in the ways described above) are to:

- inform and educate registrants about professional conduct issues in order to promote high standards of practice and deter unsatisfactory professional conduct and practice;
 - maintain public confidence in the disciplinary processes and the health professions; and
 - to enable the public to make informed choices regarding registrants.
- *Management of impaired registrants*

The Bill provides an alternative to the disciplinary process to manage registrants who are impaired (that is, have a physical or mental impairment, disability, condition or disorder that detrimentally affects, or is likely to detrimentally affect, their physical or mental capacity to practise). However, the impairment provisions do not prevent boards from using the investigative and disciplinary provisions of the Bill to deal with impaired registrants, if this is considered more appropriate. It is intended that where a registrant's impairment manifests in conduct which gives rise to serious complaints from users or their representatives, the investigative and disciplinary provisions of the legislation will be utilised to protect the public.

A two-stage process is available under the Bill to deal with impaired registrants. The first stage involves the board informally negotiating an undertaking with the registrant to manage the impairment. Where the registrant is unwilling to cooperate with the board or an undertaking cannot be made, the second stage is triggered. The key feature of the second stage is the establishment of a health assessment committee, with coercive powers, to assess the nature and extent of any impairment suffered by the registrant and advise the board as to any conditions which should be imposed on the registrant's registration to protect the public.

Importantly, under the Bill, all matters which may, if substantiated, provide grounds for cancellation or suspension of a registrant's registration must be referred to the tribunal for disciplinary proceedings. To deal with

those situations where a registrant's health may be an issue, the tribunal has a power to require a board to establish a health assessment committee to advise the tribunal as to whether the registrant is impaired. This approach is essential to maintain public confidence in the model as it provides an assurance that the most serious allegations of misconduct, even if caused by an impairment, will be dealt with by an independent adjudicator.

In order to protect the privacy of the registrant, the impairment process is conducted in private (although in the case of matters referred to the tribunal, the tribunal has the discretion to open the proceedings to the public where it is in the public interest to do so) and the complainant is not advised of the details of any conditions or undertakings entered into. Also, the details of any conditions or undertakings pertaining to impaired registrants are generally not recorded on the publicly accessible register. Finally, in order to encourage self/peer reporting to boards, the information provided to the commissioner at the conclusion of impairment processes is limited.

Estimated cost for Government implementation

As the Health Practitioner Tribunal is a new jurisdiction for the District Court, it will have resource implications for the Department of Justice and Attorney-General. The tribunal will deal with the most serious disciplinary matters from all registered health practitioners and will replace the Medical Assessment Tribunal (in the Supreme Court) which currently hears disciplinary matters regarding medical practitioners. It is estimated that this will entail an extra 15 sitting days per annum to deal with disciplinary matters, plus a further 5-10 days per annum to deal with appeals and applications for review/reinstatement of registration.

Queensland Health will meet the structural costs related to the independent adjudicative bodies (ie. non-judicial meeting fees and expenses, registry/secretariat costs). It is estimated that the structural costs will be approximately \$245,000 per annum, including the provision of registry support to the tribunal.

The legislation will have a minor effect on board costs (for example, boards may need to engage an additional investigator) but these will be more that offset by Queensland Health funding the non-judicial structural costs related to the independent adjudicative bodies.

Consistency with Fundamental Legislative Principles

Aspects of the Bill which raise possible fundamental legislative principles issues are outlined below:

- *Immediate suspension*

Clause 59, which confers on a registration board the power to suspend or impose conditions on the registration of a registrant where it reasonably believes the registrant poses an imminent risk to the life, health, safety or welfare of a person and it is necessary to take the action to protect the person, raises Fundamental Legislative Principles (FLP) issues.

In view of the need for action to be taken immediately, a board is not required to provide the registrant with an opportunity to be heard before making its decision under this provision. It is arguable that the absence of a requirement to seek submissions is a breach of natural justice. The provision is defensible on the ground that action may only be taken if there is an *imminent* risk to persons. In these circumstances, seeking submissions from the registrant will result in an unreasonable delay and increase the risk of harm to a person or persons. It should be noted that a board must immediately notify the registrant of its decision under this provision.

Also, this power has the potential to impact significantly on the livelihood of a registrant (who could effectively be prohibited from practising). However, the circumstances under which the power may be used are tightly defined and the power is essential to ensure the public is protected from dangerous registrants (or to protect registrants from themselves). It should also be noted that a board is required to impose the least onerous action necessary to protect the public.

It should be noted that the registrant has a right of appeal to the tribunal (constituted by a District Court Judge) and clause 330 specifies that the tribunal must hear and determine the matter as quickly as possible. In effect, this means that a registrant could file an appeal immediately after being issued with a notice under this clause.

- *Consequences of non-cooperation with health assessment committee*

Clause 289 of the Bill specifies that if a registrant fails, without reasonable excuse, to attend or cooperate with a health assessment when required to do so, the board may suspend the registrant's registration until

(i) they attend and cooperate or (ii) the registrant requires the matter to be referred to the tribunal and the tribunal stays the suspension or decides the matter.

While the imposition of a suspension under these circumstances could impact adversely on the livelihood of a registrant for an unspecified period, the provision is defensible on the grounds that a registrant is forewarned of the consequences of non-compliance and the registrant can elect to have the matter immediately referred to the tribunal.

This power is necessary as a registrant who is impaired (for example, through a drug addiction) may be a risk to themselves and their patients. It is essential for a health assessment to be undertaken on such persons to determine the extent of their impairment.

- *Board adjudication of disciplinary matters*

Division 4 of part 6 of the Bill establishes a scheme which provides registration boards with responsibility for adjudication of disciplinary matters regarding registrants. The board also has responsibility under the Bill for investigating disciplinary matters and determining whether disciplinary proceedings should be taken. If a board, on hearing a matter, finds the grounds for disciplinary action have been established, it may advise, caution, reprimand or enter into an undertaking with the practitioner.

It is arguable that conferring upon the board responsibility for investigation, prosecution and determination of disciplinary matters is a breach of natural justice in that the board, as a party to the disciplinary proceeding, cannot be an unbiased adjudicator. The approach to this issue is defensible on the grounds that the actions which may be taken by the board are relatively minor in nature and the registrant may elect to have the matter heard by the tribunal.

- *Board involvement on Professional Conduct Review Panels*

Clause 18 provides that, subject to certain limitations, a board member may be a member of a professional conduct review panel. Under division 5 of part 6, panels have the power to adjudicate on disciplinary matters regarding registrants. Panels have all the disciplinary powers of a board (discussed above) and an additional power to order the imposition of conditions on a registrant's registration. Such conditions could significantly impact on the livelihood of the registrant.

For the reasons outlined above, it is arguable that the involvement of a board member on a panel is a breach of natural justice (because the board is a party to the disciplinary proceedings before the panel and the board member who is on the panel will not be totally disinterested in the outcome). The approach to this issue is defensible on the grounds that the majority of panel members are independent of the board; a board member is ineligible for appointment to a panel if they have previously been involved in the investigation of the matter or privy to board deliberations or decisions about the matter; a board member cannot be appointed as panel chairperson and the registrant has the right to opt to have the matter heard by the Health Practitioner Tribunal—an independent tribunal chaired by a District Court Judge.

- *Immunity for complainants and others*

Clause 387 effectively confers an immunity upon any person who, honestly and on reasonable grounds, gives information for the purpose of this Bill (for example, a complainant).

As the boards rely upon complaints and information to trigger the processes which are used to protect the public, it is essential to remove any significant deterrents to the making of complaints. It is important to acknowledge that persons who make complaints under this legislation do not receive any personal advantage from doing so (for example, they do not receive compensation for damages). The provision is defensible on the grounds that if complainants could be sued for defamation or breach of confidence it is unlikely that complaints would be made and, consequently, the public protection objectives of the legislation would be frustrated.

Further, clause 387 provides a restricted immunity. The immunity is only available for persons giving information to relevant entities for the purposes of making a complaint or in the course of an investigation or another purpose under the Bill.

Also, this provision is standard for legislation of this kind and effectively mirrors section 135 of the *Health Rights Commission Act 1991*.

Consultation

The issues addressed by this Bill have been the subject of consultation as part of the Review of Medical and Health Practitioner Registration Acts. The Review has involved an unprecedented degree of public consultation over a 6 year period. The major consultation strategies used by the Review include:

- *Public consultation documents*

The following public consultation documents have been released:

- Medical Act Information Paper (1993)
- Medical Act Discussion Paper (1994)
- Health Practitioner Registration Acts Discussion Paper (1994)
- Review of Medical and Health Practitioners Registration Acts—Draft Policy Paper (1996)

In total, over 5000 copies of these consultation documents were distributed and over 450 submissions were made to the Review. In addition, the Draft Policy Paper was made available on the Internet and attracted over 6000 “hits”.

- *Public meetings*

Public meetings were held in Brisbane, Toowoomba, Maroochydore, Southport, Cairns and Townsville to discuss issues raised in the Discussion Papers (1994).

- *Stakeholder advisory groups*

The following groups contributed to the research and policy development phase of the Review:

- Medical Act Steering Committee (comprising senior public and private sector medical practitioners, Medical Board members, representatives of the Australian Medical Association—Queensland Branch and the Health Rights Commissioner)
- Departmental Advisory Group (comprising registration board members employed by Queensland Health and the Health Rights Commissioner)

In addition, during the research and policy development phase, consultation was undertaken with:

- public members of the registration boards and the Health Rights Advisory Council; and
- nominees of all registration boards and peak professional associations.
- *Intensive consultation with key stakeholders*

During 1997, 31 key stakeholders (including registration boards, peak professional associations and consumer groups) were consulted regarding issues raised in their submissions on the Draft Policy Paper.

- *Exposure draft of the Bill*

In February 1999, nominees of the following key stakeholders were provided with an Exposure Draft of the Bill to comment on the workability issues:

- health practitioner registration boards
- peak health professional associations
- Queensland Consumers Association
- Brisbane Consumers Association
- Queensland Council of Social Service
- Health Rights Commission
- Medical Assessment Tribunal
- District Court
- Office of Health Professional Registration Boards
- Queensland Nursing Council
- Queensland Nurses Union
- United Medical Protection.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Division 1—Introduction

Clause 1 sets out the short title of the Act.

Clause 2 provides for the Act to commence on a day fixed by proclamation.

Clause 3 provides for a dictionary of certain terms used in the Bill to be included as a schedule to the Act.

Clause 4 specifies that the Act is part of a legislative scheme consisting of:

- the health practitioner registration Acts—*Chiropractors and Osteopaths Act 1979, Dental Act 1971, Dental Technicians and Prosthetists Act 1991, Medical Act 1939, Occupational Therapists Act 1979, Optometrists Act 1974, Pharmacy Act 1976, Physiotherapists Act 1964, Podiatrists Act 1969, Psychologists Act 1977, Speech Pathologists Act 1979*—these Acts provide, in part, for the establishment of registration boards to regulate the professions. The boards have significant additional functions under the *Health Practitioners (Professional Standards) Act* (see clause 11).
- the *Health Practitioner Registration Boards (Administration) Act 1999* which is concerned with the establishment of mechanisms for the provision of administrative support to the registration boards, including the appointment of the Executive Officer.
- the *Medical Act and Other Acts (Administration) Act 1966*—which provides, in part, for the appointment of inspectors to enforce the health practitioner registration Acts and various other matters related to the administration of those Acts.

Clause 5 specifies that the Act is to be read in conjunction with the *Health Rights Commission Act 1991*. That Act provides, in part, for complaints to be made about registered health practitioners; the assessment

of complaints by the commissioner; consultation between registration boards and the commissioner in certain circumstances; and the referral of complaints to boards under certain circumstances.

Division 2—Objects

- *Clause 6* sets out the objects of the Act.

As detailed in the General Outline section of these Explanatory Notes, the primary focus of the Bill is the protection of the public. These objects are very important for guiding those administering the legislation.

Clause 7 sets out the ways in which the objects of the Act are primarily achieved. The matters listed under this clause are the principal functions, processes or mechanisms, which enable the objects of the legislation to be met.

Division 3—Operation of Act

Clause 8 specifies that all persons, including the State, are bound by the Act. However, the State may not be prosecuted for an offence against the Act.

Division 4—Application of Act to former registrants

Clause 9 provides for the application of certain parts of the Act to former registrants (in respect of conduct which occurred while they were registered). For example, complaints may be made, investigated and disciplinary proceedings undertaken in respect of former registrants. The policy objective of this provision is to discourage registrants withdrawing their registration in order to avoid disciplinary proceedings. An adverse finding against a former registrant would be a relevant consideration in any future applications for registration in Queensland or elsewhere.

PART 2—ADMINISTRATION

Division 1—Preliminary

Clause 10 summarises the purposes of part 2 of the Act.

Division 2—Boards

Clause 11 specifies the boards' functions under this Act. The key functions are:

- the receipt of complaints regarding its registrants
- the carrying out of investigations into the professional conduct and practice of its registrants
- bringing disciplinary proceedings against its registrants before the panel or tribunal
- the adjudication of the least serious types of disciplinary matters
- the management of its impaired registrants
- consultation and co-operation with the Health Rights Commissioner, foreign regulatory authorities (including interstate regulatory authorities) and other relevant entities in relation to actions taken against its registrants under this Act
- monitoring compliance with the Act (including conditions and undertakings).

An explanation of these functions is provided under the clause of the Act which deals with the particular function or in the General Outline section of the Explanatory Notes.

Clause 12 provides that a board may delegate powers under this Act, other than certain specified powers, to a board member; to the Executive Officer; or, with the agreement of the Executive Officer, another appropriately qualified member of the staff of the office.

Clause 13 confers on the Minister a reserve power to give a board a direction in the public interest. However, the provision expressly excludes the giving of a direction about taking disciplinary action, the suspension of a registrant's registration or the imposition of conditions on registration. This provision provides a means for the Minister to seek reports to ensure that the legislation is being administered appropriately and to give directions as to how the legislation should be administered. The Minister could also use this power to require a matter to be investigated. In order to ensure the Minister exercises the powers under this section appropriately, information about any direction given to a board must be included in the board's annual report.

Division 3—Professional conduct review panels

Clause 14 specifies that the functions of professional conduct review panels are to hear and determine disciplinary matters regarding registrants, excluding those disciplinary matters which may, if proven, result in the suspension or cancellation of a registrant's registration (such matters must be dealt with by the health practitioner tribunal). It is intended that a panel will hear routine disciplinary matters (with minor matters being heard by the board itself and the most serious matters being heard by the tribunal).

Clause 15 specifies that a panel is to be established by the secretary giving written notification to the panel members when a disciplinary matter is referred by a board. A panel is not a permanent or ongoing entity, rather it is established for the hearing of a particular disciplinary matter and it ceases to exist at the conclusion of the proceedings regarding that matter.

Clause 16 specifies that a panel ceases to exist when it has performed its functions or is no longer able to perform the functions for which it was established. For example, a panel would cease to exist when it decides the matter referred to it (clauses 200 and 324), when it directs the referral of a matter to the tribunal or board (clause 178), when a registrant elects to have a matter referred to the tribunal (clause 177), when a panel member is absent and the registrant who is the subject of the proceedings does not consent to the remaining members continuing to hear the matter (clause 189).

Clause 17, which must be read in conjunction with clauses 18, 19 and 20, specifies that a panel must comprise at least 3 and not more than 4 members. Whether a panel has 3 or 4 members will be determined by the secretary having regard to the nature of the disciplinary matter concerned. In general, it is anticipated that the majority of panels will be comprised of 3 members.

For all panels, at least 2 members must be members of the registrant's profession (ie. a member of the relevant professional panel of assessors or a registrant member of the relevant board) and at least 1 member must be a member of the public panel of assessors.

Where a panel is comprised of 4 members, the fourth person may be a member of the relevant board (including a member who is a registrant, a member appointed to represent the interests of users or a lawyer), or the public panel of assessors, or relevant professional panel of assessors. This approach provides flexibility to enable, for example, an additional member of the profession to be involved in the hearing of matters related to clinical practice issues; an additional member of the public to be involved in the hearing of matters related to a registrant's professional conduct; or a legally qualified person (ie. board member) to be involved in the hearing of matters raising complex legal issues.

Within the parameters of these provisions, including such issues as gender and personal or professional interest, the secretary will choose panel members on the basis of considerations such as the board's advice, the curricula vitae provided by the members of the relevant panels of assessors, the availability and interest of the members and the experience of the members.

Clause 18 specifies certain restrictions upon membership of the panel, namely:

- if the registrant is registered in more than one profession, the relevant professional panel of assessors from which members are to be selected is the one which corresponds to the board which commenced the proceedings (for example, if a person is registered as both a podiatrist and a chiropractor and disciplinary proceedings are commenced by the Podiatrists Board of Queensland, the relevant professional panel of assessors would be the Podiatrists Panel of Assessors)
- if the proceeding is the result of a complaint, at least 1 member of the panel must be the same gender as the complainant

- the secretary must be satisfied that the members of the panel do not have a personal or professional connection with the registrant that may prejudice the fair hearing of the matter.

Clause 19 provides that, in order to facilitate the selection of members of the panel, a board is to indicate to the secretary whether the matter raises issues of a specialist or technical nature and, if so, the desirable professional background or skills of the professional members of the panel. The secretary must have regard to the board's advice in selecting the members of the panel. It is anticipated that, in referring a disciplinary matter regarding a specialist, a board will recommend a panel comprise at least one member of the registrant's speciality. Also, in referring a matter about a general practitioner, a board will generally recommend that at least 1 general practitioner be included on the panel.

Clause 20 specifies that a board may nominate only one of its members for appointment to a panel and, if it does so, the secretary must appoint that person. This section prohibits the nomination of a board member who has been directly involved in the investigation of the matter (for example, as an investigator), in order to ensure that the registrant's right to a fair hearing is not prejudiced by the appointment of a person who may have a pre-existing view of the matter. Importantly, a board is not required to nominate a board member for appointment to the panel and, in many cases, may choose not to do so.

Clause 21 specifies that the panel is to be chaired by a member of the professional panel of assessors chosen by the secretary. The requirement for a member of the registrant's profession to chair the panel ensures that there will be, in effect, a majority of registrants for panel decisions (ie. in a 4 person panel the chair has the casting vote—see clause 145).

Clause 22 creates an entitlement for members of the panel to be paid. The provision is cast in such a way as to enable members to waive payment.

Clause 23 provides for the Governor in Council to appoint a public service employee as secretary of the professional conduct review panels. In order to ensure the independence of the secretary, this provision prohibits certain persons from being appointed (for example, board members). The Executive Officer of the Office of Health Practitioner Registration Boards is not a public service officer and, consequently, is not qualified for appointment as secretary.

Clause 24 specifies the conditions of appointment of the secretary, including the circumstances under which a person ceases to hold office as secretary.

Clause 25 provides an inclusive list of the secretary's functions under this Act.

Division 4—Health Practitioners Tribunal

Clause 26 establishes the Health Practitioners Tribunal.

Clause 27 specifies that all judges of the District Court are, by virtue of their office, members of the tribunal. This provision also specifies that, for each matter to be heard, the tribunal is constituted by one of the judges. The appointment of all judges of the District Court to the tribunal is intended to ensure matters can be heard expeditiously throughout the entire State. It is anticipated that, in practice, some, but not all, of the judges will specialise in this jurisdiction. *Clause 213* specifies that the chairperson (ie. the Chief Judge of the District Courts) is to allocate cases.

Clause 28 provides that the tribunal may sit in more than 1 place at the same time. This provision enables a number of matters to be heard concurrently. The term "constituting member" (which is defined in the dictionary) is used throughout the Act to refer to the Judge constituting the tribunal for a particular matter. Where a number of matters are being dealt with concurrently there will be a number of constituting members.

Clause 29 specifies that the Chief Judge of the District Courts is the chairperson of the tribunal. The chairperson has responsibility for allocation of matters among the members of the tribunal (*clause 213*), consenting to rules regarding the tribunal made by the Governor in Council (*clause 258*), the issuing of practice directions regarding the procedures of the tribunal (*clause 259*) and approval of forms pertaining to the tribunal (*clause 397*).

Clause 30 specifies the functions of the tribunal. The primary function of the tribunal is to conduct hearings and make decisions in relation to disciplinary matters about registrants, including the hearing of appeals from decisions of a panel and applications for review of tribunal decisions. The tribunal will also hear appeals from decisions to immediately suspend or impose conditions on registrants under part 4, board decisions under part 7 and certain decisions to suspend, cancel or impose conditions on registration under part 8. It is anticipated that, in practice, the major work of the tribunal

will involve the adjudication of the most serious disciplinary matters involving registrants (ie. those which warrant cancellation or suspension of registration).

Clause 31 specifies that, for the purpose of conducting hearings under this Act, the tribunal is to be assisted by 3 assessors (1 member of the public panel of assessors and 2 members of the professional panel of assessors) chosen by the registrar. It should be noted that the assessors do not need to be involved in directions hearings (clause 217) or where the tribunal considers it necessary to conduct an urgent hearing and it is not practicable to involve the assessors.

Within the parameters of clauses 32 and 33, including such issues as gender and personal or professional interest, the registrar will choose the assessors on the basis of considerations such as the board's advice, the curricula vitae provided by the members of the relevant panels of assessors, the availability and interest of the members and the experience of the members.

Clause 32. This provision specifies certain restrictions upon the selection of assessors, namely:

- if the registrant is registered in more than 1 profession, the relevant professional panel of assessors from which members are to be selected is the one which corresponds to the board which commenced the proceedings (for example, if a person is registered as a podiatrist and a chiropractor, and disciplinary proceedings are commenced against the person by the Podiatrists Board of Queensland, the relevant professional panel of assessors would be the Podiatrists Panel of Assessors)
- a person cannot be appointed as an assessor if they were a member of a panel that made a decision in relation to the matter being heard by the tribunal (this includes a matter where a panel directs a board to refer it to the tribunal)
- if the proceeding is the result of a complaint, at least 1 assessor or the constituting member must be the same gender as the complainant
- the registrar must be satisfied that the assessors do not have a personal or professional connection with the registrant that may prejudice the assessor in assisting the tribunal.

Clause 33 requires the board to indicate to the registrar of the tribunal whether a matter which has been referred raises issues of a specialist or technical nature and, if so, the desirable professional background or skills of the assessors to be selected from the professional panel of assessors. The registrar must have regard to the board's advice in selecting the assessors. It is anticipated that, in referring a disciplinary matter regarding a specialist, a board will recommend that at least one of the assessors be a member of the registrant's speciality. Also, in referring a matter about a general practitioner, a board will generally recommend that at least 1 general practitioner be selected as an assessor.

Clause 34 sets out the function and powers of assessors. The function of an assessor is to advise the constituting member about questions of fact arising during the hearing. By virtue of clause 227, the assessors do not decide matters before the tribunal. In order to enable the assessors to perform their function, the assessors have the power to ask questions of witnesses and discuss questions of fact with the parties. In practice, the assessors may also be requested to advise the tribunal on the practicability of disciplinary orders and review draft decisions prepared by the constituting member, etc.

Clause 35 creates an entitlement for assessors to be paid. The provision is cast in such a way as to enable members to waive payment.

Clause 36 provides that the registrar of the tribunal is the registrar of the District Court at Brisbane.

Clause 37 provides an inclusive list of the registrar's functions under this Act.

Clause 38 allows the registrar of the tribunal to delegate the registrar's powers to another registrar or deputy registrar of the District Court who is not a judicial registrar.

Division 5—Panels of assessors

Clause 39 establishes 1 public panel of assessors and 13 professional panels of assessors (one for each profession which is subject to this Act). The members of the panels of assessors are eligible to be appointed as the assessors assisting the tribunal and the members of professional conduct review panels.

Clause 40 specifies that the Governor in Council may, by gazette notice, appoint individuals as members of the panels of assessors. This provision also specifies that the size of the panel of assessors is to be determined by the Minister having regard to the likely demand for members and, for the professional panels, the diversity of the profession. It is anticipated that, in practice, there will be considerable variation in the size of the professional panels of assessors reflecting the relative sizes of the professions and the extent of disciplinary activity.

Clauses 40-41 set out the criteria for appointment to the panels of assessors, including the circumstances under which a person is ineligible for appointment or disqualified from being a member of a panel. In practice, it is anticipated that only well regarded members of the professions will be appointed to the professional panels of assessors and that appointees to the public panels of assessors will also be of high standing within the community.

Clause 42 specifies that the Minister must invite nominations from the public, registrants and various entities for appointees to the panels of assessors. Applicants will be required to demonstrate that they meet the criteria for appointment and advise of any special skills or experience they have which is relevant to the functions of the assessors. The applications of the persons appointed to the panels of assessors will be used by the secretary and the registrar in the selection process for panel members and assessors assisting the tribunal.

Clause 43 specifies that members of the panels of assessors are appointed for up to 5 years.

Clause 44 specifies that members of the panels of assessors are appointed on conditions decided by Governor in Council, except where otherwise provided for by the Act.

Clause 45 specifies the circumstances under which the office of a member of a panel of assessors is vacated.

PART 3—COMPLAINTS

Division 1—Preliminary

Clause 46 sets out the purposes of part 3, namely:

- to provide for complaints to be made to boards about registrants and former registrants
- to state how a complaint must be made
- to state how complaints must be dealt with under this Act.

Division 2—Making a complaint

Clause 47 specifies that any entity may make a complaint regarding a registrant. Section 36 of the *Acts Interpretation Act 1954* defines “entity” to include a person and an unincorporated body. “Person” is defined to include an individual and a corporation.

Clause 48 specifies that a complaint may be made to a board about any aspect of the conduct or practice of a registrant or another matter which appears to constitute grounds for disciplinary action under clause 124. This includes unsatisfactory professional conduct and impairment (as defined in the dictionary), non-compliance with this Act or a health practitioner registration Act or other Act related to the practice of the profession and a conviction of an indictable offence.

Also, this provision specifies that a complaint may be made to a board about any matter for which a complaint may be made under section 58 of the *Health Rights Commission Act 1991*. By virtue of clause 434, which amends section 58 of the *Health Rights Commission Act 1991*, the grounds for complaint to a board and the commission will effectively be the same.

Clause 49 specifies that complaints must be made in writing and contain the particulars of the allegations. It should be noted that the boards have a general power under clause 63 to undertake an investigation without a complaint. If information was provided orally to a board or board member, the board could carry out an investigation under that section.

Clause 50 specifies that an entity making a complaint must provide the board with their name and address and other identifying information required by the board. However, the board may accept a complaint which does not meet these requirements where it believes it is in the public interest to do so. If the board accepts a complaint in the public interest, the board must disclose the reasons for accepting the complaint to the registrant. The disclosure to the registrant will generally occur when the registrant is informed of the action taken (for example, a decision to investigate, notice of hearing, etc).

Division 3—How complaints are dealt with

Clause 51 specifies how complaints made by users or entities acting on behalf of users are to be dealt with by a board. In general, complaints made by users or their representatives are to be immediately referred to the commissioner. However, where a board considers it is in the public interest to do so, it may seek the commissioner's agreement to retain the complaint and take a prescribed statutory action (for example, investigate the complaint, start disciplinary proceedings). If the board retains the complaint it must provide the commissioner with a copy of the complaint. It should also be noted that section 144 of the Health Rights Commission Act prohibits the commission from accepting complaints regarding incidents which arose before the commencement of the Health Rights Commission Act on 1 July 1992 (unless the complainant became aware of the subject matter of the complaint within the preceding 12 months). Consequently, the board does not have to refer such complaints to the commissioner.

Clause 52 specifies the effect of referring a complaint to the commissioner. This provision also authorises a board to give the commissioner information, comments and recommendations relating to the complaint and the registrant against whom the complaint was made.

Clause 53 specifies how third party complaints (ie. complaints other than those made by users or entities acting on behalf of users), user complaints about incidents before the commencement of the *Health Rights Commission Act 1991*, and complaints referred by the Health Rights Commissioner, are to be dealt with by a board. This provision requires the board to consider the complaint and take a prescribed statutory action (for example, investigate the complaint, start disciplinary proceedings). In order

to ensure that the commissioner can fulfil the function of overseeing the health system, copies of these complaints must also be provided to the commissioner.

Clause 54 specifies the circumstances under which a complaint mentioned in clause 53 must or may be rejected by a board. These include complaints that:

- are too old to be investigated or otherwise dealt with (however, complaints which the board believes may provide grounds for cancellation or suspension of registration cannot be rejected under this section)
- are frivolous, vexatious or trivial
- have already been adequately dealt with by the board or another appropriate entity
- relate to a person who is no longer registered.

This provision also specifies that, despite rejecting a complaint, the complaint may, if substantiated, be taken into account at a later time as part of a pattern of conduct or practice that may result in disciplinary action. It is important to emphasise that only complaints which can be substantiated will form the basis for disciplinary proceedings.

Section 74 of the *Health Rights Commission Act 1991* provides the criteria for the rejection of complaints referred to the commissioner under clause 51 of this Bill.

Clause 55 specifies that the board must notify the complainant, registrant and the commissioner of a decision to reject a complaint within 14 days and state the reasons for the decision.

Clause 56 provides that a board may seek further information from the complainant or require a complaint or further information to be confirmed by statutory declaration. However, this power cannot be used where the complaint is required to be referred to the commissioner under clause 51 because such complaints must be referred without delay and the commissioner has an equivalent power under sections 64 and 65 of the *Health Rights Commission Act 1991*.

Clause 57 provides a board with a discretion to continue to deal with a complaint which has been withdrawn by the complainant. In deciding whether to start or continue to deal with a complaint which has been

withdrawn, the board must have regard to the objects of the Act and the grounds for disciplinary action. It is anticipated that, subject to clause 54 (which sets out the circumstances for rejection of complaints), a board will continue to deal with all complaints which suggest grounds for disciplinary action.

PART 4—IMMEDIATE SUSPENSION OF REGISTRANTS OR IMPOSITION OF CONDITIONS ON THEIR REGISTRATION

Clause 58 specifies that the purpose of this part is to give boards the power to effectively respond to imminent threats posed by registrants to the life, health, safety or welfare of a person or class of persons.

Clause 59 provides a board with the power to suspend or impose conditions on a registrant at any time where it reasonably believes it is necessary to do so to protect the life, physical or psychological health, safety or welfare of a person or class of persons. This power also applies where a registrant poses a risk to themselves. Where a board acts under this provision, it must immediately give notice to the registrant and investigate the matter or refer it to the tribunal for hearing. If the board investigates the matter and decides to take action it must, under clause 118, refer it to the tribunal for hearing. This provision also sets out the circumstances under which the order ceases to apply.

The powers available under this section are reserve powers which will only be invoked where a board reasonably suspects there is a need to take immediate action to protect a person. However, it is not necessary for a board to have conclusive evidence of imminent risk to exercise this power. The power may be invoked at any time (for example, on receipt of a complaint, during an investigation or while the registrant is being dealt with under part 7). The inclusion of a power to act where the registrant poses a risk to themselves is intended to deal with registrants who are seriously impaired and who may, for example, self-prescribe and administer medication and, consequently, harm themselves.

A registrant may appeal an order under this provision (see clause 325), however the appeal is limited to the decision to immediately impose the order. Disciplinary proceedings will address the registrant's conduct or practice which formed the basis of the decision to act under this part.

Clause 60 requires a board which immediately suspends or imposes conditions on a registrant to record the details of the action in the board's register for the period the suspension or conditions are in force.

PART 5—INVESTIGATIONS

Division 1—Preliminary

Clause 61 sets out the purposes of part 5, namely to:

- outline the circumstances when an investigation may or must be conducted;
- to specify that a board may undertake investigation without first receiving a complaint;
- outline the boards' investigation powers; and
- to specify the actions which may be taken at the conclusion of an investigation.

Division 2—General provisions about investigation

Clause 62 specifies the circumstances under which a board must carry out an investigation. This provision summarises the duties to investigate under other provisions of the Act and the *Health Rights Commission Act 1991*.

Clause 63 provides a board with a self initiating power of investigation. The provision specifies that the board may undertake an investigation where it suspects, on reasonable grounds, that an aspect of the conduct or practice, or other matter, concerning the registrant appears to constitute grounds for disciplinary action. The purpose of this provision is to enable the board to

promptly respond to any issues which come to its attention other than by way of complaint. For example, a board may consider that there are grounds to investigate a registrant where it is alerted to a report of a criminal matter involving a registrant. In practice, the provision is most likely to be used where the board or a board member is approached by a registrant with concerns about another registrant. The board is duty bound in such circumstances to give consideration to such concerns but will probably only invoke the investigative powers where it is satisfied that doing so is appropriate. The key considerations will be the reliability of the person making the approach and also the relative seriousness of the concerns raised.

Sub-clause (3) of this clause clarifies that a board may not concurrently deal with a matter under parts 5 and 7. The provision is a linking one that clarifies that either the investigative processes or the impairment processes are to be used and that both cannot be used concurrently in respect of the same matter. However, a board could concurrently investigate one matter regarding a registrant and deal with a second matter through the impairment processes. This particular scenario is specifically authorised by sub-clause (4).

Clause 64 specifies who may investigate a complaint and prohibits the selection of certain persons to carry out investigations.

There are two ways an investigation may be carried out—an investigation committee comprised of some or all of the board members or, alternatively, appropriately qualified individuals appointed as investigators. This clause needs to be read in conjunction with divisions 3, 4 and 5 of this part (which provide for the functions and powers of investigators and investigation committees). It is anticipated that, in practice, most investigations will be undertaken by investigators, rather than investigation committees. However, the legislation provides both options so that, where appropriate, all or a number of board members may carry out the investigation.

Clause 65 specifies that investigations must be carried out as quickly as possible. This clause also assigns a statutory priority to the investigation of complaints from people who are seriously ill and registrants who have been the subject of action under part 4 (which deals with immediate suspension, etc).

Clause 66 specifies that a registrant needs to be given notice of an investigation. It also specifies the contents of the notice and the circumstances under which a notice is not required. The notice must specify the manner in which the registrant may make submissions (either verbally or in writing or both).

Clause 67 specifies that a registrant may make submissions in response to the notice in the way stated in the notice.

Division 3—Investigation committees

Clause 68 specifies that an investigation committee has the function of conducting the particular investigation for which the committee is established by the board. It is to be noted that investigation committees are established on an ad hoc basis to deal with particular investigations and are not permanent or legal entities.

Clause 69 specifies that an investigation committee has the powers assigned to it under the Act. This provision needs to be read in conjunction with the clauses 78 and 81 which provide that an investigation committee may compel attendance, information, things (including documents) and that the committee may inspect, make copies of, or take extracts from documents or things. An investigation committee may also retain possession of a document or thing if it's necessary for the purposes of the investigation.

There is an important distinction between the powers of investigation committees and the powers of investigators under this Bill. Investigation committees are limited to the powers described. Investigators have a broader range of powers (ie. entry, search and seizure). This will be relevant for boards in deciding who is to conduct investigations.

Division 4—Investigators

Clause 70 specifies that an investigator has the function of conducting an investigation as directed by the board.

Clause 71 specifies that an investigator has the powers provided for under this Act.

Clause 72 clarifies that the powers of the investigator may be limited by condition of appointment or as part of the direction to conduct the investigation. The purpose of this section is to enable the board to appropriately limit the powers available to the investigator having regard to the nature of the matter to be investigated.

Clause 73 specifies who may be appointed as an investigator. Paragraph (c) which is a standard provision in the health practitioners legislation scheme, clarifies that the appointment of a member of the staff of the Office of Health Practitioner Registration Boards as investigator cannot occur without the approval of the Executive Officer.

Clause 74 specifies that an investigator holds office on the condition stated in the instrument of appointment and provides for investigators to resign by notice given to the board.

Clause 75 requires the board to provide each investigator with an identity card containing a recent photograph of the person and other relevant particulars. The provision allows for a single identity card to be issued for this Act and another Act.

Clause 76 sets out the circumstances under which an identity card issued to an investigator must be returned to the board.

Clause 77 requires an investigator to first produce or display the investigator's identity card before exercising any powers under the Act. The provision also creates an exception to the general duty where it is not practicable to comply; in which case the investigator must produce the identity card at the first reasonable opportunity.

Division 5—Investigation powers

Clause 78 specifies the powers of investigators and investigation committees to require information and things (including documents). The provision also enables investigators or investigation committees to require persons to attend for the purpose of answering questions or producing things (including documents).

Clause 79 specifies that it is an offence not to comply with a requirement under clause 78 without reasonable excuse.

Clause 80 specifies that it is a reasonable excuse not to comply with clause 78 if the giving of information, the answering of a question, or the production of a document or thing, might incriminate the individual.

Clause 81 specifies the powers of an investigation committee in respect of things (including documents) which are produced.

Clause 82 outlines the circumstances under which an investigator may enter a place for the purpose of an investigation. For the purpose of this provision, a “public place” would include a registrant’s waiting room.

Clause 83 outlines the procedures an investigator must follow when seeking consent to enter any place.

Clause 84 makes provision for any investigator to apply to a magistrate for a warrant to enter a place. Under this provision a magistrate may refuse to consider an application until the investigator provides the magistrate with the information he or she has requested.

Clause 85 sets out the conditions under which the magistrate may issue a warrant and specifies the information that must be stated in a warrant.

Clause 86 makes provision for an investigator to apply for a warrant by phone, fax, radio or other form of communication because of urgent or other special circumstances.

Clause 87 outlines the procedures that must be followed by an inspector prior to entering a place under a warrant.

Clause 88 specifies the powers that are available to an investigator who has entered a place.

Clause 89 makes it an offence for a person to fail to help an investigator unless the person has a reasonable excuse.

Clause 90 makes it an offence for a person to fail to give information to an investigator when directed to do so unless the person has a reasonable excuse.

Clause 91 provides an investigator with the power to seize the thing at a public place if the investigator reasonably believes the thing is relevant to the investigation. Neither a warrant nor consent is required to seize such evidence.

Clause 92 deals with the investigator's power to seek evidence at places, other than public places, with consent or warrant. Where the investigator enters a place with a warrant the investigator may seize evidence for which the warrant was issued. If the investigator enters with the occupier's consent, the investigator's powers to seize things are limited to evidence that is relevant to the investigation but consent is not required to seize such things. The provision also includes a power to seize other things relevant to the investigation under certain circumstances.

Clause 93 authorises an investigator to secure a seized thing either by moving it to another place or taking reasonable action to restrict access to it. This provision is most likely to be used where a piece of equipment is implicated in an investigation and it is necessary to secure it to preserve its evidentiary value.

Clause 94 makes it an offence for a person to tamper, or attempt to tamper, with the thing which has been seized.

Clause 95 makes provision for an investigator to require the person in control of the thing to be seized to take it to a stated reasonable place by a stated reasonable time and, if necessary, to remain in control of it at this place for a reasonable time. It is an offence for a person to fail to comply with the requirement or a further requirement made under this clause unless the person has a reasonable excuse. This provision is most likely to be used where it is not practicable for the investigator to seize the thing on the spot (for example, a large piece of equipment).

Clause 96 requires an investigator to issue a receipt for any seized thing and give the receipt to the person from whom it was seized. This clause also creates some exceptions to the duty to provide a receipt.

Clause 97 sets out the circumstances under which a seized thing will be forfeited to the State, for example, if the owner cannot be found after reasonable inquiries or if it cannot be returned to the owner after making reasonable efforts.

Clause 98 enables the Executive Officer, Office of Health Practitioner Registration Boards, to deal with the thing which has been forfeited to the State as he or she considers appropriate, including destruction or disposal of the thing.

Clause 99 sets out the circumstances under which an investigator must return a thing which has been seized but not forfeited to the State, for example, at the conclusion of disciplinary proceedings and any appeal from those proceedings.

Clause 100 provides for the owner of any seized thing to have access to it for inspection or, if it is a document, copying, until it is forfeited or returned.

Clause 101 requires an investigator to give written notice if an investigator damages property when exercising or purporting to exercise a power, or a person acting under the direction of the authority of an investigator, damages the property. The notice must set out the particulars of the damage and be given to the person who appears to be the owner of the property. The provision also creates certain exceptions to this requirement.

Clause 102 creates a right for a person to claim compensation from a board where a person incurs loss or expense because of powers exercised by an investigator under specified sub- divisions of this Act.

Clause 103 makes it an offence for a person to provide an investigation committee or investigator with information that the person knows is false or misleading in a material particular.

Clause 104 makes it an offence for a person to give an investigation committee or an investigator a document which the person knows is false or misleading in a material particular. The provision also specifies the circumstances under which an offence is not committed.

Clause 105 makes it an offence for a person to obstruct an investigator unless the person has a reasonable excuse.

Clause 106 makes it an offence to impersonate an investigator.

Clause 107 creates a power for a board to require a registrant to undergo a health assessment in certain circumstances. The board must give the registrant notice of the requirement and the registrant must comply with the notice unless they have a reasonable excuse. The circumstances under which the board may exercise this power are restricted to those where there appear to be grounds for disciplinary action against the registrant and the nature of those grounds is such that it is reasonable to require the registrants undergo an assessment.

Clause 108 provides for a board to appoint an appropriately qualified medical practitioner(s), registrant or other person to conduct a health assessment under clause 107. This provision also prohibits the board obtaining this report from an individual who has a personal or professional connection with the registrant.

Clause 109 specifies that the report of the health assessment is to be provided to the board and except under specified circumstances, also given to the registrant or a medical practitioner nominated by the registrant. If the report is given to a medical practitioner nominated by the registrant, that practitioner must advise the board about the information they have given the registrant. The provision also specifies the matters the report must include.

Clause 110 provides a registrant with the right to make submissions on the assessment report (or the information provided to the registrant under clause 109). The submissions must be made within a prescribed period.

Clause 111 creates a power for the board to obtain a report from a relevant expert about a matter which is the subject of an investigation. It is anticipated that, in practice, these reports will be obtained where there is an issue of a specialist or technical nature and the board is of the view that there is a need for independent opinion as to the appropriateness of the registrant's clinical practice. This provision also prohibits the board obtaining this report from an individual who has a personal or professional connection with the registrant.

Clause 112 limits the way in which the health assessment reports and expert reports provided under clauses 109 and 111 may be used. This provision prevents such reports being used in court proceedings.

Clause 113 specifies that persons who provide health assessments or expert assistance are entitled to be paid. This provision does not prevent waiver of payment by the persons concerned.

Division 6—Action following investigation

Clause 114 specifies that where an investigation is undertaken by an investigator or an investigation committee (other than a committee comprised of all the members of the board), the investigator or the committee must prepare, for the board, a preliminary report regarding the investigation.

Clause 115 requires a board to prepare an investigation report and sets out the matters which must be included in that report. This section also clarifies that a board may adopt without amendment, the preliminary investigation report prepared by the investigator or investigation committee.

Clause 116 specifies that, where a board undertakes an investigation it must, if asked to do so by the commissioner, provide the commissioner with reasonable reports about the investigation. This section also requires the board to provide the commissioner with a report at the conclusion of the investigation. This provision specifies the minimum matters which must be included in the report given to the commissioner. In practice, a board may give the commissioner the report prepared under clause 115 or a different report. This provision also enables the commissioner to make comment or recommendations or provide information regarding the investigation report. A board cannot make a decision regarding the action to be taken until the commissioner provides comments, indicates comments will not be provided or the timeframe for comments (generally 14 days) has passed.

It is anticipated that in practice the commissioner will generally provide comment only on those investigations where the commissioner has some concerns about the investigative process or the boards' recommendations. It is likely that in many cases the commissioner will not have comments to make regarding the investigation report. The commissioner's role in considering the boards' investigation report provides an important accountability upon the boards' investigative process and provides an opportunity for the decision as to the action to be taken to be informed by an independent perspective.

Clause 117 clarifies that the commissioner may, at any time, give the Minister a report about investigations conducted by the boards or about a particular investigation. This is a reserve power designed to reinforce the accountability of the registration boards for the quality and appropriateness of the investigations undertaken and acknowledges the Minister's responsibility for administration of the Act.

Clause 118 specifies the actions a board must take at the conclusion of an investigation (after considering the commissioner's comments, if any, about the matter). This clause obliges the board to refer the most serious disciplinary matters (ie. those which would, in the board's view, provide grounds for suspension or cancellation of a registrant's registration) to the tribunal and also requires those matters which were commenced by way of an immediate suspension or other action under part 4 to be referred to the

tribunal. For all other circumstances, the board has the discretion to determine the action to be taken. Importantly, this provision specifies that even though a board may decide under this section to take no action on a complaint, the board is not prevented from taking the matter into account as part of a pattern of conduct or practice that may provide grounds for disciplinary action against the registrant. This provision is particularly important in ensuring that disciplinary proceedings regarding registrants are fully informed by any relevant past history. However, disciplinary action will only be taken where allegations have been proven before the disciplinary body.

Clause 119 specifies that as soon as making a decision as to the action to be taken under clause 118, the board must take the action.

Clause 120 specifies that on completion of investigation, the board must provide notice of its decision as to the action to be taken to the registrant and, if the investigation was the result of a complaint, to the complainant. Importantly, this clause confers upon the registrant a right to elect to have a disciplinary matter heard by the tribunal rather than by another disciplinary body (ie. the board or a panel). The registrant must make this decision within fourteen days.

Clause 121 specifies that if a board enters into an undertaking with a registrant under clause 118 (at the conclusion of an investigation), the undertaking and the details of the undertaking must be recorded on the register except under certain circumstances.

PART 6—DISCIPLINARY PROCEEDINGS

Division 1—Preliminary

Clause 122 specifies the purposes of part 6, namely to:

- set out the purposes of disciplinary proceedings and disciplinary action;
- states the circumstances under which disciplinary proceedings may commence;

- provide the grounds for disciplinary action and processes for adjudication of disciplinary matters regarding registrants.

A further purpose of this part is to enable disciplinary proceedings to be taken against former registrants.

A distinction is made under this Act between “disciplinary proceedings” (which are the processes from filing a notice of referral to determining disciplinary matters, including certain appeals and reviews), “hearing” (which is the actual hearing of the matter) and “disciplinary action” (which is the outcome of the disciplinary proceedings when the case against the registrant has been proved).

Clause 123 specifies the purposes of disciplinary proceedings and disciplinary action, namely to:

- protect the public;
- uphold the standards of practice within the health professions; and
- maintain public confidence in the health professions.

The purposes of disciplinary proceedings and disciplinary action are relevant considerations for the disciplinary bodies making decisions as to the disciplinary action which should be imposed upon a registrant. It should be noted that there are no other purposes for taking disciplinary proceedings or imposing disciplinary action under this Bill.

Division 2—Grounds for disciplinary action

Clause 124 specifies each of the grounds for taking disciplinary action against a registrant. It should be noted that only one ground needs to be met for disciplinary action to be taken but that proceedings may be taken on the basis of more than one ground.

- “*Unsatisfactory Professional Conduct*”

In practice it is likely that the majority of disciplinary proceedings will be taken on the basis that the registrant has behaved in a way which constitutes “unsatisfactory professional conduct”. This term is defined in the dictionary in the schedule to the Act. “Unsatisfactory professional conduct” is defined to include professional conduct that is of a lesser standard than that which might reasonably be expected of the registrant by the public or by

the registrant's professional peers. Under current health practitioner legislation, disciplinary action may only be taken against a registrant where the practitioner's conduct is *substantially below* the standards considered acceptable to the profession. This new definition broadens the circumstances under which disciplinary action may be taken. This definition, which is based on recent Victorian legislation concerning health practitioners, is designed to afford a higher degree of public protection.

To remove any doubt, the definition of "unsatisfactory professional conduct" also includes "infamous conduct in a professional respect", "misconduct in a professional respect" and "conduct discreditable to the profession". These terms have been subject to judicial interpretation and they have been included in this definition in order to remove any doubt that conduct which has previously been found to come within the meaning of those particular terms is, explicitly, "unsatisfactory professional conduct" for the purpose of this Act. However, "unsatisfactory professional conduct" clearly includes a broader range of matters than those covered by these terms.

Paragraph (b) of the definition of "unsatisfactory professional conduct" reflects recent New South Wales legislation concerning registered health practitioners. It has been incorporated to remove any doubt that professional conduct which demonstrates a lack of adequate knowledge, skills, judgement or care, or which demonstrates incompetence is, explicitly, "unsatisfactory professional conduct" for the purposes of this Act.

- *Other grounds for taking disciplinary action*

The other grounds for taking disciplinary action against a registrant include contraventions of a provision of this Act or a health practitioner registration Act, including a failure to comply with conditions or undertakings imposed on the registrant's registration. In addition, disciplinary action may be taken if the registrant does not meet, or no longer meets, the criteria for registration under the health practitioner registration Act under which they were registered. Finally, disciplinary action may be taken if a registrant has been convicted of an indictable offence or a finding of inappropriate practice has been made under the *Health Insurance Act 1973 (Commonwealth)*. An important distinction is to be made in respect of disciplinary action on the basis of a conviction of an indictable offence. While all the other grounds for disciplinary action (except impairment—see below) are concerned with the professional conduct or practice of a registrant, this ground is not limited to a registrant's conduct in a

professional capacity, that is, a conviction of any indictable offence in Queensland (or, by virtue of the *Acts Interpretation Act 1954* or conviction of an equivalent offence in another jurisdiction) is, itself, grounds for disciplinary action. It should be noted that the professional conduct of a registrant who is an owner or manager of a health practitioner business or a supervisor of a registrant is also within the reach of the disciplinary provisions of the Bill.

This provision also specifies that, if a registrant is impaired, the registrant's impairment is taken to be a ground for disciplinary action against the registrant. It is not necessary for the registrant's impairment to have resulted in misconduct in a professional context in order to provide grounds for action. This is because some impairments, for example drug dependency, have the potential to impact on a registrant's professional conduct.

Division 3—Starting disciplinary proceedings

Clause 125 specifies that a board may commence disciplinary proceedings against a registrant if it reasonably believes there are grounds for disciplinary action to be taken. This provision also clarifies that proceedings may be started on the basis of one or more complaints, including complaints suggesting a pattern of conduct or practice that may result in disciplinary action. It is not necessary for a complaint to have been investigated under part 5 for a board to commence disciplinary proceedings against a registrant. In cases where disciplinary proceedings are on the basis of a conviction of an indictable offence, for example, the board may determine that the investigative process is unnecessary and that the matter can be dealt with by proceeding directly to disciplinary proceedings.

This provision also clarifies that a board may start disciplinary proceedings on the basis of more than one disciplinary matter.

Clause 126 specifies that disciplinary proceedings start when a notice is filed with the secretary of the panels or the registrar of the tribunal, or by provision of notice to the registrant and other specified persons where the matter is being dealt with by the board itself (including a disciplinary committee). This provision also specifies the contents of the referral notice. This provision is used for all referrals for disciplinary proceedings (other than appeals and reviews).

Division 4—Disciplinary proceedings conducted by board

Clause 127 specifies that a board has jurisdiction to conduct proceedings relating to any disciplinary matter involving a registrant. This provision needs to be read in conjunction with clauses 118 and 133 (which provide registrants with the right to elect to have a matter dealt with by the tribunal) and clause 134 which specifies that those matters which, in the board's view, appear to provide grounds for cancellation or suspension of a registrant's registration must be dealt with by the tribunal.

Clause 128 clarifies that a board or disciplinary committee appointed by the board (comprised of some or all board members) may undertake disciplinary proceedings through either a hearing process or written correspondence with the registrant.

Clause 129 allows the board or disciplinary committee to deal with other matters which arise during the proceedings in addition to the disciplinary matter which is the initial subject of the proceeding. Where additional matters are introduced the proceedings may or must be adjourned under certain circumstances. It is not necessary for the additional matter to arise during the hearing for this provision to be triggered. For example, if the board received an additional complaint about a registrant after proceedings had commenced, it could, if considered it appropriate, utilise this provision to ensure the additional matter was taken into account during the proceedings.

Clause 130 specifies that subdivision 2 applies if disciplinary proceedings by the board or disciplinary committee take the form of a hearing.

Clause 131 specifies that a board or disciplinary committee must give the registrant and various other entities at least 14 days notice of an intention to conduct a hearing. The provision also specifies the contents of the notice.

Clause 132 provides for substituted service of a notice under certain circumstances.

Clause 133 confers on a registrant who is to be the subject of disciplinary proceedings before a board or disciplinary committee a right to choose to have the matter heard by the tribunal. This provision is necessary to fully protect the rights of registrants (ie. to ensure that a registrant has the opportunity to a hearing before a judge and to be legally represented). This provision does not apply if the registrant was the subject of an investigation,

because at the conclusion of the investigation the registrant is given the same opportunity to require the matter to be referred to the tribunal for hearing (see clause 120).

Clause 134 enables a board to refer a disciplinary matter to a panel or the tribunal if issues arise during the hearing which indicate that a referral is appropriate. This provision also requires a board, except under certain circumstances, to refer a matter to the tribunal if issues arise which indicate that the matter may, if substantiated, provide grounds for cancellation or suspension of the registrant's registration. Under this provision a board or committee may decide that a matter should be dealt with under the impairment part. In practice, this will only occur where the issues relate solely or principally to impairment, rather than the other grounds for disciplinary action. The notice requirements associated with the referral are also set out in this provision.

Clause 135 enables a disciplinary committee to require a board to refer a disciplinary matter to a panel or the tribunal (or deal with it under the impairment part) under certain circumstances. The notice requirements associated with the referral are also set out in this provision.

Clause 136 sets out the procedural requirements for the hearing (ie. complying with natural justice and acting quickly and with as little formality and technicality as is consistent with a fair and proper consideration of the matter) and other powers and duties in respect of the proceedings.

Clause 137 specifies that a hearing is to be conducted at the times and places the board or disciplinary committee decides.

Clause 138 specifies that the hearing is not open to the public.

Clause 139 requires a registrant to appear at the hearing in person and allow a registrant to be accompanied by a person, including a lawyer. The provision enables the board or disciplinary committee to allow a person, other than a lawyer, to speak on behalf of the registrant. The prohibition on legal representation is considered essential to ensure an informal and non-legalistic approach to the hearing. Importantly, a registrant may choose, under clauses 120, 133 and 155, to have a disciplinary matter dealt with by the tribunal and be represented by a lawyer during that hearing. The provision also confers a right upon the complainant to attend the hearing and be accompanied by a lawyer or other person.

Clause 140 enables a board to exclude the complainant from all or part of the hearing before giving evidence if their attendance would seriously prejudice the fair hearing of the matter. In practice, the complainant will only be excluded to the extent necessary to prevent any serious prejudice.

Clause 141 enables a board or disciplinary committee to direct a person attending the hearing (other than the registrant) to leave the hearing if they are causing a disruption.

Clause 142 provides a board or disciplinary committee with the power to engage a lawyer or other person to assist at the hearing. However, this person's role is restricted to advising the board or disciplinary committee and they are explicitly prevented for asking questions of the registrant and other persons appearing at the hearing.

Clause 143 provides that witnesses may be compelled to attend the hearing to give answers, evidence and things (including documents). Important additional hearing powers conferred by section 27 of the *Acts Interpretation Act 1954* are the power to receive evidence, examine witnesses and administer oaths to witnesses.

Clause 144 clarifies that proceedings may be adjourned or may proceed in the absence of the registrant.

Clause 145 specifies that questions are determined by a majority vote and that, in the event of a tied vote, the chairperson has a casting vote.

Clause 146 specifies the way in which a matter is to be dealt with if a board member ceases to be a board member or is otherwise unable to take further part in the proceedings.

Clause 147 specifies the way in which a matter is to be dealt with if a disciplinary committee member ceases to be a disciplinary committee member or is otherwise unable to take further part in the proceedings.

Clause 148 provides a power for things (including documents) produced at a hearing to be inspected, copied, photographed and, where necessary, retained.

Clause 149 specifies that the adjudicative body may receive in evidence a transcript of evidence taken in a proceeding before a disciplinary body, court or tribunal constituted in Australia or a foreign country and may draw conclusions of fact from the evidence. The provision also clarifies that the tribunal may adopt decisions, findings, judgements or reasons for judgement of the disciplinary body, court or tribunal.

Clause 150 creates an entitlement for witnesses who attend a hearing to be paid an amount prescribed by regulation by the party who calls them. The provision is cast in such a way as to enable the witness to waive payment.

Clause 151 requires a board or disciplinary committee to keep, in a way it considers appropriate, a record of evidence given to it in relation to disciplinary proceedings. It is not anticipated that a transcript will be kept of the proceedings.

Clause 152 specifies that subdivision 3 applies if disciplinary proceedings by a board or disciplinary committee take the form of correspondence between the board or disciplinary committee and a registrant.

Clause 153 requires a board or disciplinary committee to give the registrant and other entities at least 14 days notice of an intention to conduct disciplinary proceedings by correspondence. The provision also specifies the contents of the notice.

Clause 154 provides for substituted service of a notice under certain circumstances.

Clause 155 confers on a registrant who is to be the subject of adjudication by a board or disciplinary committee a right to elect to have the matter heard by the tribunal. This provision is necessary to fully protect the rights of registrants (ie. to ensure that a registrant has the opportunity to a hearing before a judge and to be legally represented). This provision does not apply if the registrant was the subject of an investigation, because at the conclusion of the investigation the registrant is given the same opportunity to require the matter to be referred to the tribunal for hearing.

Clause 156 provides a board or disciplinary committee with the power to require information relevant to disciplinary proceedings (being dealt with by correspondence) from the registrant or another person.

Clause 157 clarifies that even if a registrant does not make a submission, the board or disciplinary committee may continue to deal with the matter and make a decision regarding disciplinary action.

Clause 158 makes it an offence for a person to fail to attend or continue to attend the hearing, take an oath or affirmation, answer a question or produce a document or thing unless the person has a reasonable excuse.

Clause 159 makes it an offence for a person to fail to give information as required under clause 156 unless the person has a reasonable excuse.

Clause 160 specifies that it is reasonable excuse to fail to answer a question or produce a document or thing if doing so might tend to incriminate the individual.

Clause 161 makes it an offence for a person to knowingly provide information at a hearing which is false or misleading in a material particular.

Clause 162 makes it an offence for a person to give a document which is false or misleading in a material particular. The provision also specifies the circumstances under which the provision of such a document does not constitute an offence.

Clause 163 makes various types of conduct at a hearing by a board or disciplinary committee an offence, including any matter which would be contempt of court in a court of record.

Clause 164 specifies that a decision must be made as to whether the grounds for disciplinary action against the registrant have been established as soon as practicable after completing the hearing (or within 14 days from receipt of submissions if the matter is being dealt with by correspondence). The provision includes matters which must be taken into account in determining if the registrant has engaged in “unsatisfactory professional conduct”. The requirement to have regard to previous *relevant* decisions of a disciplinary body or the Medical Assessment Tribunal is a reference to precedent generally and is not intended to imply that a finding in respect of the appropriateness of a clinical procedure regarding one profession (for example, medicine) must automatically apply to another (for example, chiropractic). For the purpose of considering previous decisions, the provision creates an entitlement to access decisions of other disciplinary bodies (including the decisions of boards before the commencement of this Act) and the former Medical Assessment Tribunal.

Clause 165 prescribes the actions that must be taken if the grounds for disciplinary action against the registrant are established. The provision also specifies the circumstances under which disciplinary action may or must be recorded on the register.

Clause 166 prescribes the actions that must be taken if the grounds for disciplinary action are established against a former registrant.

Clause 167 sets out some of the matters which must or may be considered in making a decision as to the disciplinary action to be imposed. Other considerations may include the seriousness of the conduct, the likelihood the conduct will recur, the registrant's attitude toward the conduct (including any remorse demonstrated) and any decisions made by other disciplinary bodies regarding the registrant. For the purpose of considering previous decisions, the provision creates an entitlement to access decisions of other disciplinary bodies (including the decisions of boards before the commencement of this Act) and the former Medical Assessment Tribunal.

Clause 168 specifies the persons who must be given notice of a board's or committee's decisions as to whether the grounds for disciplinary action have been established in respect of a registrant or former registrant, the disciplinary action (if any) to be imposed and the nature of any action to be recorded on the register. The provision also specifies the contents of the notice.

Clause 169 specifies additional information to be included in the notice provided under clause 168.

Clause 170 specifies what may or must be recorded in the board's register if disciplinary action is taken.

Division 5—Professional conduct review panels

Clause 171 specifies a panel's jurisdiction to conduct disciplinary proceedings against registrants. This provision needs to be read in conjunction with clauses 120 and 177 which enable registrants to elect to have matters dealt with by the tribunal and clause 178 which require matters which indicate grounds for cancellation or suspension of a registrant's registration to be referred to the tribunal.

This provision also clarifies that a panel may deal with one or more disciplinary matters in disciplinary proceedings regarding a registrant.

Clause 172 allows the panel to deal with other matters which arise during the proceedings in addition to the disciplinary matter which is the initial subject of the proceeding. Where additional matters are introduced, the proceedings may or must be adjourned under certain circumstances. It is not necessary for the additional matter to arise during the hearing for this

provision to be triggered. For example, if the board received an additional complaint about a registrant after proceedings had commenced, it could, if the panel considered it appropriate, utilise this provision to ensure the additional matter was taken into account during the proceedings.

Clause 173 specifies that the parties to a disciplinary proceeding before a panel are the registrant to whom the proceeding relates and the board that referred the matter to the panel. Where the Health Rights Commissioner exercises his or her power under section 130 of the *Health Rights Commission Act 1991* to intervene in the proceedings, the commissioner also becomes a party.

Clause 174 specifies that the secretary must give the registrant and various other entities at least 14 days notice of an intention to conduct a hearing. The provision also specifies the contents of the notice.

Clause 175 provides for substituted service of a notice under certain circumstances.

Clause 176 specifies that a panel may, on its own initiative or at the request of a party, hold a pre-hearing conference for the purpose of considering or giving directions in respect of any matter or proceeding within its jurisdiction (for example, establishing the persons to whom attendance notices are to be issued and the timetable for calling of witnesses). The provision enables a panel to delegate the power to hold a conference to the secretary and also specifies the way in which the conference may be conducted. A panel may require a party to attend a pre-hearing conference.

Clause 177 confers on a registrant who is to be the subject of adjudication by a panel a right to elect to have the matter heard by the tribunal. This provision is necessary to fully protect the rights of registrants (ie. to ensure that a registrant has the opportunity to a hearing before a judge and to be legally represented). This provision does not apply if the registrant was the subject of an investigation because, at the conclusion of the investigation, the registrant is given the same opportunity (under clause 120) to require the matter to be referred to the tribunal for hearing.

Clause 178 enables a panel to require a board to refer a disciplinary matter to the tribunal if issues arise during the hearing which indicate that a referral is appropriate. This provision also requires a panel, except under certain circumstances, to direct a board refer a matter to the tribunal if issues

arise which indicate that the matter may, if substantiated, provide grounds for cancellation or suspension of the registrant's registration. Under this provision a panel may also refer a matter back to the board to deal with under the impairment part. In practice, the panel will only refer matters back to the board where the issues relate solely or principally to impairment, rather than the other grounds for disciplinary action. The notice requirements associated with the referral are also set out in this provision.

Clause 179 sets out the procedural requirements for the hearing (ie. complying with natural justice and acting quickly and with as little formality and technicality as is consistent with a fair and proper consideration of the matter) and other powers and duties in respect of the proceedings.

Clause 180 specifies that the panel is to sit at the times and places decided by the chairperson of the panel.

Clause 181 specifies that the hearing by the panel is not open to the public.

Clause 182 requires a registrant to appear at the hearing in person and allows the registrant to be accompanied by a person, including a lawyer. The provision enables the panel to allow a person, other than a lawyer, to speak on behalf of the registrant. The board may also nominate a person, other than a lawyer, to appear on its behalf at the hearing. The provision also confers a right to attend (and by accompanied by a lawyer or other person) on the complainant. The prohibition on legal representation is considered essential to ensure an informal and non-legalistic approach to the hearing. Importantly, a registrant may choose, under clauses 120 and 177, to have a disciplinary matter dealt with by the tribunal and be represented by a lawyer during that hearing.

Clause 183 enables a panel to exclude the complainant from all or part of the hearing before giving evidence if their attendance would seriously prejudice the fair hearing of the matter. In practice, the complainant will only be excluded to the extent necessary to prevent any serious prejudice.

Clause 184 enables a panel to direct a person attending the hearing (other than the registrant) to leave the hearing if they are causing a disruption. This provision is in addition to clause 199 (which deals with contempt). Clause 199 also applies to registrants.

Clause 185 provides that a panel may also be assisted at the hearing by the secretary or a person (including a lawyer) appointed by the Secretary. However, the assisting person's role is restricted to advising the panel and they are explicitly prevented for asking questions of the registrant and other persons appearing at the hearing. In practice, it is anticipated that this role will be largely undertaken by the secretary.

Clause 186 provides that witnesses may be compelled to attend the hearing to give answers, evidence and things (including documents). A party may also apply for an attendance notice to be given to a person and the notice must be issued except where it is considered unnecessary or inappropriate by the secretary. Important additional hearing powers conferred by section 27 of the *Acts Interpretation Act 1954* are the power to receive evidence, examine witnesses and administer oaths to witnesses.

Clause 187 clarifies that proceedings may be adjourned or may proceed in the absence of a party.

Clause 188 provides that a question before the panel must be decided by a majority of votes and that in the event of a tied vote, the chairperson of the panel (who must be a member of the relevant professional panel of assessors) has the casting vote.

Clause 189 specifies the way in which a matter is to be dealt with if a panel member ceases to be a panel member or is otherwise unable to take part in the proceedings.

Clause 190 enables a panel to, at any time, make an interim order of the kind it could make at the conclusion of disciplinary proceedings. An interim order will be made where the panel considers it necessary to ensure the objectives of the Act are being achieved in the period between the commencement of proceedings and the determination of the matter. An interim order is most likely to be made where it is necessary to adjourn the proceedings and the panel is concerned that public protection may be compromised if an order is not made.

Where a panel imposes an interim order it must also decide whether the details of the order are to be recorded on the register.

Clause 191 provides a power for things (including documents) produced at a hearing to be inspected, copied, photographed and, where necessary, retained.

Clause 192 specifies that the adjudicative body may receive in evidence a transcript of evidence taken in a proceeding before a disciplinary body, court or tribunal constituted in Australia or a foreign country and may draw conclusions of fact from the evidence. The provision also clarifies that the tribunal may adopt decisions, findings, judgements or reasons for judgement of the disciplinary body, court or tribunal.

Clause 193 creates an entitlement for witnesses who attend a hearing to be paid an amount prescribed by regulation by the party who calls them. The provision is cast in such a way as to enable the witness to waive payment.

Clause 194 requires a panel to keep, in a way it considers appropriate, a record of evidence given to it in relation to disciplinary proceedings as this material may be required for the purpose of an appeal. While it is not anticipated that transcripts will be routinely kept of the proceedings, this provision specifies responsibility for payment if the proceedings are transcribed. In the event that proceedings are transcribed, a copy of the transcript will be retained by the secretary.

Clause 195 makes it an offence for a person to fail to attend or continue to attend the hearing, take an oath or affirmation, answer a question or produce a thing unless the person has a reasonable excuse.

Clause 196 specifies that it is a reasonable excuse to fail to answer a question or produce a document or thing if doing so might tend to incriminate the individual.

Clause 197 makes it an offence for a person to knowingly provide information at a hearing which is false or misleading in a material particular.

Clause 198 makes it an offence for a person to give a document which is false or misleading in a material particular. The provision also specifies the circumstances under which the provision of such a document does not constitute an offence.

Clause 199 makes various types of conduct at a hearing an offence, including any matter which would be contempt of court in a court of record.

Clause 200 specifies that a decision must be made as to whether the grounds for disciplinary action against the registrant have been established as soon as practicable after completing the hearing. The provision includes matters which must be taken into account in determining if the registrant has engaged in “unsatisfactory professional conduct”. The requirement to have

regard to previous *relevant* decisions of a disciplinary body or the Medical Assessment Tribunal is a reference to precedent generally and is not intended to imply that a finding in respect of the appropriateness of a clinical procedure regarding one profession (for example, medicine) must automatically apply to another (for example, chiropractic). For the purpose of considering previous decisions, the provision creates an entitlement to access decisions of other disciplinary bodies (including the decisions of boards before the commencement of this Act) and the former Medical Assessment Tribunal.

Clause 201 prescribes the actions that must be taken if the grounds for disciplinary action against the registrant are established. If a panel imposes conditions on a registrant under this provision, the panel may also determine the period within which the registrant may apply for a review of the decision (refer clause 315).

Clause 202 specifies the circumstances under which disciplinary action taken by a panel may or must be recorded on the register.

Clause 203 prescribes the actions that must be taken if the grounds for disciplinary action are established against a former registrant. The provision also enables a panel to decide on conditions that are to be imposed on any future registration of the person as a registrant.

Clause 204 sets out some of the matters which must or may be considered in making a decision as to the disciplinary action to be imposed. Other considerations may include the seriousness of the conduct, the likelihood the conduct will recur, the registrant's attitude toward the conduct (including any remorse demonstrated) and any decisions made by other disciplinary bodies regarding the registrant. For the purpose of considering previous decisions, the provision creates an entitlement to access decisions of other disciplinary bodies (including the decisions of boards before the commencement of this Act) and the former Medical Assessment Tribunal.

Clause 205 specifies the persons who must be given notice of a panel's decisions as to whether the grounds for disciplinary action have been established in respect of a registrant, the disciplinary action (if any) to be imposed and the nature of any action to be recorded on the register. The provision also specifies the contents of the notice.

Clause 206 specifies additional information to be included in the notice provided under clause 205.

Clause 207 specifies that a panel's decision is binding on all parties. However, this provision needs to be read in conjunction with division 3 of part 9 which provides a right of appeal to the tribunal in respect of panel decisions.

Clause 208 requires a board to give effect to and implement a decision of a panel, unless the decision is stayed by the tribunal under clause 325. This provision also requires a board to amend the board's register in the way specified in the notice of the panel's decision.

Clause 209 clarifies that a document relating to a proceeding requiring authentication by a panel is sufficiently authenticated if it is signed by the chairperson of the panel, a panel member or the secretary.

Clause 210 specifies that judicial notice must be taken of the signature of the chairperson of the panel, a panel member or the secretary if it appears on a document issued by the panel.

Division 6—Health Practitioners Tribunal

Clause 211 sets out the tribunal's jurisdiction (for example, to hear disciplinary matters regarding registrants, including appeals and applications for review).

This provision also clarifies that the tribunal may deal with one or more disciplinary matters in disciplinary proceedings regarding a registrant.

Clause 210 allows the tribunal to deal with other matters which arise during the proceedings in addition to the disciplinary matter which is the initial subject of the proceeding. Where additional matters are introduced the proceedings may or must be adjourned under certain circumstances. It is not necessary for the additional matter to arise during the hearing for this provision to be triggered. For example, if the board received an additional complaint about a registrant after proceedings had commenced, it could, if the tribunal considered it appropriate, utilise this provision to ensure the additional matter was taken into account during the proceedings.

Clause 213 provides that, as soon as practicable after a matter is referred to the registrar, the chairperson of the tribunal must choose a tribunal member to hear the matter (ie. "the constituting member"). In addition, the registrar is to choose the assessors to assist the tribunal for that matter. The process for choosing assessors is discussed under clause 31 above.

Clause 214 specifies that the parties to a disciplinary proceeding before the tribunal are the registrant to whom the proceeding relates and the board that referred the matter to the tribunal. Where the Health Rights Commissioner exercises his or her power under section 130 of the *Health Rights Commission Act 1991* to intervene in the proceedings, the commissioner also becomes a party.

Clause 215 specifies that the registrar must give the registrant and various other entities at least 14 days notice of an intention to conduct a hearing. The provision also specifies the contents of the notice.

Clause 216 provides for substituted service of a notice under certain circumstances.

Clause 217 specifies that the tribunal may, on its own initiative or at the request of a party, hold a directions conference for the purpose of considering or giving directions in respect of any matter or proceeding within its jurisdiction. The provision enables the tribunal to delegate the power to hold a conference to the registrar and also specifies the way in which the conference may be conducted. As a directions conference deals principally with procedural issues, it is not likely that the assessors will be involved, however, the provision enables them to participate where the tribunal considers it necessary or desirable. The tribunal may require a person to attend a directions conference.

Clause 218 specifies the tribunal's power to require a board to establish a health assessment committee to assess the health of a registrant whom the tribunal believes may be impaired. The tribunal may exercise this power at any time (and, in practice, may be exercised before the hearing commences) and the committee's findings and recommendations are a relevant consideration for deciding whether the registrant is impaired. In practice, where a registrant's impairment manifests in misconduct, the tribunal will generally decide if the registrant is impaired and whether another ground for disciplinary action has been established.

This provision also specifies that where a registrant has been suspended under clause 289 (and the matter has been referred to the tribunal), the tribunal may stay the suspension.

Clause 219 sets out the procedural requirements for the hearing (ie. observing natural justice and acting quickly and with as little formality and technicality as is consistent with a fair and proper consideration of the matter) and other powers and duties in respect of the proceedings.

Clause 220 specifies that the tribunal is to sit at the times and places decided by the tribunal.

Clause 221 provides that the tribunal may decide to receive evidence or submissions by telephone, videolink or another form of communication.

Clause 222 specifies that a hearing by the tribunal (other than a hearing dealing solely with an allegation of impairment) is open to the public except under certain circumstances. However, the hearing of an impairment matter is closed to the public except under certain circumstances.

Clause 223 empowers the tribunal to suppress the name of the registrant to whom the proceeding relates. The tribunal would only make an order under this section where doing so was consistent with the purposes of the disciplinary proceedings set out in clause 123.

Clause 224 provides the tribunal with the power to make various orders relating to the procedures for the giving of evidence by special witnesses (for example, children).

Clause 225 specifies that the tribunal may excuse the registrant attending all or part of the hearing. The provision also provides that the parties may be represented by a lawyer or other person.

Clause 226 enables the tribunal to exclude the complainant and other witnesses from all or part of the hearing before giving evidence if their attendance would seriously prejudice the fair hearing of the matter. In practice, the complainant will only be excluded to the extent necessary to prevent any serious prejudice.

Clause 227 provides that all questions of law or fact before the tribunal are to be decided by the constituting member (ie. the judge allocated responsibility for hearing the matter). However, the judge may have regard to the views of the assessors in determining questions of fact.

Clause 228 specifies the way in which a matter is to be dealt with if the constituting member or an assessor ceases to be a tribunal member or assessor or is otherwise unable to take part in the proceedings.

Clause 229 provides that witnesses may be compelled to attend the hearing to give answers, evidence and things (including documents). A party may also apply for an attendance notice to be given to a person and the notice must be issued except where it is considered unnecessary or inappropriate. Important additional hearing powers conferred by section 27

of the *Acts Interpretation Act 1954* are the power to receive evidence, examine witnesses and administer oaths to witnesses.

Clause 230 clarifies that proceedings may be adjourned or proceed in the absence of a party.

Clause 231 enables the tribunal to, at any time, make an interim order of the kind it could make at the conclusion of disciplinary proceedings. An interim order will be made where the tribunal considers it necessary to ensure the objectives of the Act are being achieved in the period between the commencement of proceedings and the determination of the matter. An interim order is most likely to be made where it is necessary to adjourn the proceedings and the tribunal is concerned that public protection may be compromised if an order is not made.

Where the tribunal imposes an interim order it must also decide whether the details of the order are to be recorded on the register.

Clause 232 provides a power for things (including documents) produced at a hearing to be inspected, copied, photographed and, where necessary, retained.

Clause 233 specifies that the adjudicative body may receive in evidence a transcript of evidence taken in a proceeding before a disciplinary body, court or tribunal constituted in Australia or a foreign country and may draw conclusions of fact from the evidence. The provision also clarifies that the tribunal may adopt decisions, findings, judgements or reasons for judgement of the disciplinary body, court or tribunal.

Clause 234 creates an entitlement for witnesses who attend a hearing to be paid an amount prescribed by regulation by the party who calls them. The provision is cast in such a way as to enable the witness to waive payment. The tribunal may decide not to compel a witness to give evidence until the party has paid the witnesses expenses and allowance or given a security for them.

Clause 235 requires the tribunal to keep, in a way it considers appropriate, a record of evidence given to it in relation to disciplinary proceedings. The *Recording of Evidence Act 1962* applies to the tribunal.

Clause 236, which must be read in conjunction with clause 238, sets out the conduct which constitutes contempt of the tribunal. Contempt includes any matter which would be contempt of court if the tribunal were a court of record.

Also, it is contempt of the tribunal to publish, in a public way, information which identifies a witness or other individual mentioned or otherwise involved in the proceedings (excluding a party) or a registrant about whom a suppression order is made. Clause 238 authorises publication where the tribunal or individual concerned consents.

Clause 237 specifies that it is reasonable excuse for a person to fail to answer a question or produce a document or thing when required to do so by the tribunal if answering the question or producing the document or thing might tend to incriminate the individual.

Clause 238 specifies certain conduct which is not contempt.

Clause 239 sets out the tribunal's power to punish contempt, the procedures to be followed by the tribunal and the penalties which may be imposed (ie. up to 167 penalty units or 2 years imprisonment). This provision also provides for a financial assurance provided for an undertaking to be forfeited where the registrant has not complied with the undertaking.

Clause 240 specifies that a decision must be made as to whether the grounds for disciplinary action against the registrant have been established as soon as practicable after completing the hearing. The provision includes matters which must be taken into account in determining if the registrant has engaged in "unsatisfactory professional conduct" or is "impaired". The requirement to have regard to previous *relevant* decisions of a disciplinary body or the Medical Assessment Tribunal is a reference to precedent generally and is not intended to imply that a finding in respect of the appropriateness of a clinical procedure regarding one profession (for example, medicine) must automatically apply to another (for example, chiropractic). For the purpose of considering previous decisions, the provision creates an entitlement to access decisions of other disciplinary bodies (including the decisions of boards before the commencement of this Act) and the former Medical Assessment Tribunal.

Clause 241 prescribes the actions that must be taken if the grounds for disciplinary action against the registrant are established. If the tribunal imposes conditions on a registrant under this provision, the tribunal may also determine a period within which the registrant may apply for a review of the decision (refer part 9).

Clause 242 requires the tribunal to make a decision as to recording disciplinary action in the register. The provision specifies the circumstances under which disciplinary action may or must be recorded. This provision makes a distinction between impairment and other grounds for disciplinary action in respect of the circumstances under which the details of any conditions imposed must be recorded. The general requirement for conditions to be imposed is reversed in the case of registrants disciplined solely on the basis of impairment.

Clause 243 prescribes the actions that must be taken if the grounds for disciplinary action are established against a former registrant. The provision also enables the tribunal to decide on conditions that are to be imposed on any future registration of the person as a registrant. In addition, if the tribunal decides that it would have cancelled the registrant's registration, the tribunal must decide the period during which the person must not be registered in the future.

Clause 244 sets out some of the matters which must or may be considered in making a decision as to the disciplinary action to be imposed. Other considerations may include the seriousness of the conduct, the likelihood the conduct will recur, the registrant's attitude toward the conduct (including any remorse demonstrated) and any decisions made by other disciplinary bodies regarding the registrant. For the purpose of considering previous decisions, the provision creates an entitlement to access decisions of other disciplinary bodies (including the decisions of boards before the commencement of this Act) and the former Medical Assessment Tribunal.

Clause 245 specifies the persons who must be given notice of the tribunal's decisions as to whether the grounds for disciplinary action have been established in respect of a registrant and the disciplinary action (if any) to be imposed. The provision also specifies the contents of the notice.

Clause 246 specifies additional matters which must be included in the notice provided under clause 245.

Clause 247 enables the tribunal to make an order under clause 241 to suspend a decision to take certain disciplinary actions. The provision also requires the tribunal to determine the period, of up to 5 years, within which the registrant must not be the subject of disciplinary action by the tribunal in order to avoid the application of suspended decision. This provision is intended to encourage proper practice and conduct by registrants, as any adverse finding by a panel or the tribunal is sufficient to trigger action under this subdivision.

Clause 248 specifies that the registrant is not required to comply with the decision which was suspended unless the tribunal makes a decision under clause 250.

Clause 249 specifies that where a board refers a matter to the tribunal and, the referral notice specifies that the conduct at issue occurred during the period in which the registrant was subject to a suspended order (made under clause 247), the chairperson of the tribunal must nominate a tribunal member to deal with the matter (including the fact that the matter occurred during the period of the suspended order).

Clause 250 specifies the tribunal's powers to deal with the breach of a suspended order following consideration of submissions from the parties. The provision specifies the actions the tribunal must take where it is satisfied that disciplinary action has been taken during the period of the suspended decision. The tribunal must impose the suspended decision, or part of the suspended decision, unless the tribunal considers it would be unjust to do so (in which case the tribunal is to extend the period of the suspended decision for up to 1 year). The provision also sets out various matters for the tribunal to have regard to in determining if it would be unjust.

Clause 251 specifies the entities to whom the tribunal must give notice if it makes a decision under clause 250.

Clause 252 specifies the tribunal's decision is binding on the parties.

Clause 253 requires a board to give effect to and implement a decision of the tribunal, unless the decision is stayed by the Court of Appeal under clause 329. This provision also requires a board to amend the board's register in the way specified in the notice from the tribunal under clause 245

Clause 254 specifies that a fine imposed by the tribunal is a debt due to the board to which the matter relates and that it may be recovered by the board in a court of competent jurisdiction.

Clause 255 sets out the tribunal's power to make an order for costs. The provision also specifies the matters which must (for example, the costs of investigations) and must not (for example, whether a fine has been imposed) be taken into account in making a decision about an order for costs. It is not intended that the tribunal's decision regarding costs will be influenced by whether the matter could have been heard by a panel or board.

Clause 256 clarifies that a document relating to a proceedings requiring authentication by the tribunal is sufficiently authenticated if it is signed by the constituting member (ie. the judge) for the proceeding.

Clause 257 specifies that judicial notice must be taken of the signature of a constituting member if it appears on a document issued by the tribunal.

Clause 258 allows the Governor-in-Council, with the consent of the chairperson of the tribunal, to make rules, not inconsistent with the Act, about the practice and procedure of the tribunal.

Clause 259 allows the chairperson to issue practice directions of a general nature and allows the constituting member to issue practice directions in respect of a particular case.

Division 7—Dissemination of information

Clause 260 specifies the purpose of this division, namely to provide information to registrants, the public and other relevant entities about decisions in relation to disciplinary proceedings about registrants. This provision also specifies the purpose of providing the information. The dissemination of information regarding disciplinary proceedings is an important pro-active strategy to inform and educate registrants about acceptable professional conduct and practice and to assure the community that registrants who engage in unsatisfactory conduct are being appropriately disciplined.

Clause 261 specifies where disciplinary action is taken against a registrant, a board must notify all interstate regulatory authorities with which the registrant is registered of the action. This provision also provides the board with the discretion to notify various other entities about the outcome of the disciplinary proceedings. However, the board may only notify other entities of the outcome of disciplinary proceedings where the board is satisfied, on reasonable grounds, that the entity needs to know about the decision and that notifying them will assist in achieving the objects of the Act.

Clause 262 provides a board with the power to notify registrants as to the nature and outcome of disciplinary proceedings taken. In practice it is anticipated that this will occur by way of the boards' annual report and newsletters to registrants. A board may not disclose the name of a

registrant under this section unless the proceedings have been heard by the tribunal in public and a suppression order has not been made in respect of the registrant's identity.

Clause 263 requires records of the decisions and reasons for the decisions of each of the disciplinary bodies to be kept and a copy provided to the Executive Officer. The Executive Officer must maintain a publicly accessible collection of these matters and has the discretion to keep the records in a form that he or she considers appropriate. This provision also includes special provisions to protect the confidentiality of registrants dealt with by a board, panel and, under certain circumstances, the tribunal. The purpose of this provision is to establish within a single location a comprehensive collection of decisions related to disciplinary proceedings. This will be particularly useful for research purposes and the development or refinement of standards of practice. It is anticipated that, in practice, the records will be kept in an electronic form and it would be desirable for them to also be available through the Internet.

Clause 264 specifies various matters which must be included in a board's annual report. Specifically, boards are required to report on the number and type of complaints received and the number, the type of investigations and disciplinary proceedings undertaken in the reporting period and various other matters. It is particularly important for the reports to identify the conduct or practice forming the basis of complaints, investigations and disciplinary proceedings.

Clause 265 requires the secretary to give the Minister a report on an annual basis regarding the activities of the panels. Specifically the report is to include information regarding the number of disciplinary proceedings heard by the panel for each profession, the amount of funds expended on the panels in the reporting period and any other information required by the Minister.

PART 7—MANAGEMENT OF IMPAIRED REGISTRANTS BY BOARDS

Division 1—Preliminary

Clause 266 specifies that the purpose of this part is to provide an alternative to disciplinary proceedings for dealing with impaired registrants. “Impairment of a registrant” is defined in the dictionary as “a physical or mental impairment disability condition or disorder that detrimentally affects or is likely to detrimentally affect the person’s physical or mental capacity to perform the registrant’s profession and includes substance abuse or dependence”. The definition is concerned with issues regarding the registrant’s health only.

Clause 267 specifies how the purpose of part 7 is to be achieved—namely by specifying the process to deal with impaired registrants and providing for the establishment of health assessment committees.

Clause 268 specifies that a board may take action under this part where it suspects a registrant is impaired. However, if, at any time, a board suspects that there may be grounds for cancellation or suspension of a registrant’s registration, the board must cease dealing with the matter under this part and refer it to the tribunal or investigate it.

The board does not need to receive a complaint to exercise powers under this part and a board may go directly to this part in some circumstances (ie. no complaint received and the matter is not one which requires referral to the tribunal or action under part 4). It is anticipated that, in practice, this part will be most often used where a registrant approaches a board with concerns about their own impairment or where a registrant informally alerts the board (or a board member) to concerns about another registrant.

This provision also clarifies that, subject to the duty to refer the most serious matters to the tribunal, a board has two options for dealing with registrants who are impaired. It may deal with them under part 7 or alternatively deal with them under part 5 (Investigation) and/or part 6 (Disciplinary Proceedings). The major considerations impacting upon the way in which matters involving impaired registrants are dealt with will be whether the impairment has manifest in conduct by the registrant which

would provide grounds for disciplinary action (and, if so, the seriousness of the conduct) and the types of powers that may be necessary to assess the matter. It is not anticipated that part 7 will be used frequently where a suspected impairment has been identified through complaints alleging unsatisfactory professional conduct (except where the tribunal requires a health assessment committee to be established under clause 218).

While some coercive powers are available to health assessment committees under this Act (for example, the power to compel information and things), the committees do not have an investigative function and, consequently, are not given coercive powers to enter premises, search and seize things. However, health assessment powers and full investigative powers (including entry, search and seizure) are available under part 5 and, if such powers are necessary, a board could deal with a matter under that part.

It should be noted that this part cannot be used to deal with matters regarding former registrants.

Division 2—Informal management of impaired registrants

Clause 269 specifies the purpose of division 2 of part 7, namely to provide for the informal management of impaired registrants.

Clause 270 clarifies that a board may, without the use of any coercive powers, request information from any person about a registrant it believes is impaired.

Clause 271 requires a board, if it chooses to deal with a matter under this part, to issue a notice to a registrant who is, or may be, impaired, seeking the registrant's agreement to undergo a health assessment. The provision also specifies the contents of the notice.

Clause 272 specifies the consequences if the registrant does not cooperate with the voluntary health assessment process under this division. Specifically, a board may investigate the matter, initiate disciplinary proceedings, or refer the matter to a health assessment committee. In addition, a board can exercise its powers under part 4 at any time.

Clause 273 specifies the procedure for a health assessment under this division. Specifically, the assessment is to be carried out at the board's expense and as soon as practicable after the registrant agrees to undergo an assessment. A copy of the assessment report is to be given to the board and except under specified circumstances, also given to the registrant or a medical practitioner nominated by the registrant. If the report is given to a medical practitioner nominated by the registrant, that practitioner must advise the board about the information they have given the registrant.

Clause 274 enables a registrant to make submissions to a board on the health assessment report prepared under clause 273. This provision also allows the registrant to provide the board with other recent relevant health assessment reports.

Clause 275 specifies that, after considering the health assessment report and any submissions or other reports provided by the registrant, the board must make a decision as to whether the registrant is impaired.

Clause 276 requires a board which decides, under clause 275, that a registrant is impaired to determine the action that is appropriate in the circumstances (including no action). If the registrant is impaired, the board may, with the registrant's agreement, enter into an undertaking with the registrant. However, if the board and the registrant are unable to agree on an undertaking or the registrant is not competent to enter into an undertaking, the board must refer the matter to a health assessment committee. Alternatively, a board may investigate the matter or refer it for disciplinary proceedings by a panel or tribunal.

Clause 277 allows a board which decides, under clause 275, that a registrant is not impaired but against whom there are grounds for disciplinary action, to conduct an investigation of the matter or start disciplinary proceedings.

Clause 278 requires the board to give a registrant notice of its decision under clauses 275-277 as to whether the registrant is impaired and the action to be taken.

Clause 279 specifies additional information to be included in the notice given under clause 278.

Clause 280 creates an entitlement for persons who carry out health assessments and prepare health assessment reports to be paid by the board. The provision is cast in such a way as to enable these persons to waive payment.

Clause 281 shields a health assessment report prepared for the purpose of division 2 from use in any proceedings before a court (except disciplinary proceedings). The purpose of shielding these reports to ensure that they are used only for the purpose for which they were created and not for any other kind of actions.

Division 3—Health assessment committees

Clause 282 specifies the circumstances under which a health assessment committee is to be established, namely—at the direction of the tribunal, where a registrant makes a request for a further health assessment under clause 306 (subject to any orders in respect of the period within which the registrant may apply) or where the board decides one is appropriate under clauses 272 or 276.

Clause 283 specifies the composition of the health assessment committee. A committee must include at least one medical practitioner and one practitioner of the same profession as the registrant. The principal reason for including a person of the same profession as the registrant is to ensure that the committee is appropriately alerted to any nexus between the requirements of day to day practice of the profession and the registrant's health. This will be particularly relevant where the committee needs to make a recommendation to a board as to the types of conditions that are appropriate for the registrant.

Clause 284 creates an entitlement for members of the health assessment committee to be paid by the board. The provision is cast in such a way to enable members to waive payment. Importantly, this provision also requires any costs related to the health assessment (for example, diagnostic tests) to also be paid by the board.

Clause 285 specifies the functions of the health assessment committee, namely, to:

- assess whether the registrant is impaired;
- to advise as to the nature and extent of the impairment and make recommendations about the appropriate course of action to be taken in order to protect the public.

Importantly, neither the board nor the tribunal are bound by the committee's recommendations.

Clause 286 requires the board to give the registrant notice as soon as a health assessment committee is established. This provision specifies the matters to be addressed in the notice.

Clause 287 specifies that a registrant may make submissions to a health assessment committee and may provide the committee with a copy of any recent relevant health assessments undergone by the registrant.

Clause 288 specifies the powers of a health assessment committee to require a registrant to undergo a health assessment (including answer questions) or to produce a stated thing (including a document).

Clause 289 specifies that if a registrant fails to attend or cooperate with the health assessment, the board may—suspend the registrant’s registration, investigate the matter, or refer the matter to a tribunal or panel for disciplinary proceedings. If the board suspends the registrant, the suspension remains in place until the registrant attends and cooperates in undergoing the health assessment or the matter is stayed or decided by the tribunal. In addition, a failure to comply with a direction of the tribunal to undergo a health assessment is contempt.

Clause 290 provides the committee with the power to require persons other than the registrant to give information to the committee or attend before the committee to answer questions or produce things (including documents).

Clause 291 makes it an offence to fail to comply with a requirement made under clause 290 without reasonable excuse.

Clause 292 clarifies that it is reasonable excuse to not comply with a direction if it might tend to incriminate the individual.

Clause 293 specifies the committee’s powers in respect of things (including documents) produced to the committee.

Clause 294 makes it an offence for a person to say anything or give information to a health assessment committee that the person knows is false or misleading in a material particular.

Clause 295 makes it an offence for a person to give a health assessment committee a document containing information the person knows is false or misleading in a material particular (except under certain circumstances).

Clause 296 requires the health assessment committee to prepare a report regarding the health assessment. The provision specifies the contents of the report. In particular, if the findings or recommendations are not unanimous, the report must include the different views of the committee members and the basis for the committee members' views. This provision also specifies that a copy of the report must be provided to the body which referred the matter to the committee (ie. either the board or the tribunal) and to the registrant or a medical practitioner nominated by the registrant except under certain circumstances. A medical practitioner who is given a health assessment committee report on behalf of a registrant must give written notice of the information from the report provided to the registrant.

Clause 297 enables the registrant to make a submission regarding the health assessment committee's report or the information provided by the medical practitioner nominated by the registrant within a prescribed period.

Division 4 – Decision by board about impairment

Clause 298 specifies that upon receipt of a health assessment committee's report and any submissions made by the registrant, the board must make a decision as to whether or not the registrant is impaired.

Clause 299 specifies the various actions that the board may take if it finds, under clause 298, that a registrant is impaired. This includes the power to require the registrant to attend for further health assessments or tests, including, for example, random urine drug screening blood tests or hair tests. It should be noted that the registrant is responsible for meeting the costs of any *further* health assessments or tests which are required by the board under this section.

Clause 300 specifies that if a board decides, under clause 298, that a registrant is not impaired but that grounds for disciplinary action exist, the board may investigate the matter or start disciplinary proceedings.

Division 5—Action after decision about impairment

Clause 301 specifies that, as soon as practicable after making a decision under clauses 298-300, a board must give the registrant notice of its decision. The provision also specifies the contents of the notice.

Clause 302 specifies additional information which must be included in the notice issued under clause 301.

Clause 303 specifies the board's obligations in respect of the recording of conditions and undertakings entered into under clauses 276 and 299.

Clause 304 specifies that as soon as practicable after making a decision about impairment under this part, a board must, under certain circumstances, give notice to the commissioner and the complainant. The provision also sets out the contents of the notices. The provision requires the complainant to be notified in general terms as to the outcome of the impairment processes. The limitations on the provision of information to complainants and the commissioner are considered essential by the professions to encourage registrants to notify the board of impaired colleagues and to self-notify impairment. The information given to the commissioner is the minimum necessary for accountability purposes.

Division 6—Miscellaneous

Clause 305 specifies that any conditions or orders which are imposed under clause 299(2) remain in force until the registrant asks for a further assessment and the board makes a decision in respect of the matter.

Clause 306 provides a registrant whose registration is the subject of conditions or an order under clause 299(2) with a right to apply for a further health assessment (subject to any order under clause 299 regarding the period within which the registrant may not ask for a further assessment).

Clause 307 shields a health assessment report prepared for the purpose of division 3 from use in any proceedings before a court (except disciplinary proceedings). The purpose of shielding these reports is to ensure that they are used only for the purpose for which they were created and not for any other kind of actions.

Clause 308 clarifies that if a board establishes a health assessment committee the board is responsible for paying the costs of the committee.

PART 8—POWERS RESULTING FROM ACTION UNDER FOREIGN LAW

Division 1—Preliminary

Clause 309 specifies the purpose of part 8, namely to protect the public by enabling disciplinary action taken under foreign law to be applied to a registrant's registration without disciplinary proceedings taken under this Act.

This part complements section 32 of the *Trans-Tasman Mutual Recognition (Queensland) Act 1999* which provides for the automatic application of disciplinary decisions by New Zealand regulatory authorities, other than the Medical Council of New Zealand, to a registrant's registration in an equivalent occupation within Queensland (regardless of whether the registrant's registration is obtained pursuant to mutual recognition law).

Given the reach of the *Trans-Tasman Mutual Recognition (Queensland) Act 1999*, the decisions of New Zealand regulatory authorities, except the Medical Council of New Zealand, are excluded from the application of this part.

Clause 310 sets out the definition of "foreign law" for the purpose of this part.

Division 3—Action taken by board on basis of foreign law

Clause 311 applies where disciplinary action has been taken against a registrant under a foreign law and the board believes it is necessary for equivalent action to be taken in Queensland in order to achieve the objectives of the Act.

The board is required to ask a registrant whose registration has been cancelled, suspended or subjected to conditions under a foreign law to show cause why an equivalent action should not be taken in Queensland. The board must consider any submissions made by the registrant and make a decision. The registrant and the commissioner must be notified of the decision and the provision sets out the contents of the notice.

Clause 312 specifies that if the cancellation, suspension or conditions end under the foreign law, the registrant's registration in Queensland is (subject to other disciplinary action taken under this Act) affected in the same way. The provision also specified when the registrant's registration is affected and sets out the notice requirements.

Subclause (2)(d) applies where the conditions under the foreign law are changed for a reason relating to the matter for which the conditions were initially imposed under the foreign law.

Division 4—Miscellaneous

Clause 313 specifies that where a board takes action against a registrant under this part the nature of the action must be recorded on the register.

PART 9—REVIEWS AND APPEALS

Division 1—Preliminary

Clause 314 sets out the purposes of this part.

Division 2—Review of conditions imposed under decision of panel

Clause 315 sets out the panel decisions which may be reviewed (ie. a decision to impose or vary conditions on a registrant's registration under clauses 201(2)(b) or 324). The purpose of the review process is to create a mechanism to remove or vary panel decisions in those cases where the registrant's circumstances have changed since the original decision was made. The object of the review is to determine whether the conditions are still appropriate, not to review whether the original decision was correct.

Clause 316 provides that a registrant has a right of review of a panel decision to impose conditions except under certain circumstances.

Clause 317 sets out how a review is started.

Clause 318 requires the secretary to give notice of the review to the board and the commissioner and sets out the contents of the notice.

Clause 319 requires the secretary to establish a panel on receipt of a notice of review. The provisions of the Act dealing with the establishment of a panel for disciplinary proceedings apply. It should be noted that the panel which is established to hear the application for review need not be the same panel which imposed the conditions.

Clause 320 specifies that the review may, at the discretion of the panel, be dealt with by hearing or written submission.

Clause 321 requires the secretary to give the registrant, the registrant's board and the commissioner notice of an intention to conduct a review hearing. The provision also sets out the contents of the notice.

Clause 322 states the procedures to be followed in conducting a hearing for a review by a review panel. By virtue of the definition of "disciplinary matter" and "disciplinary proceedings", part 6, division 5 of the Act applies, where appropriate, to matters dealt with by a review panel. Clause 322(1) is included to assist in the understanding of this division. This sub-clause does not affect the application of other provisions of part 6 as provided for in that part.

Clause 323 sets out the procedures for review in the form of written submissions. The provision also specified matters which may be considered in the review.

Clause 324 sets out a panel's powers on review. By application of provisions from the disciplinary proceedings part, a review panel is required to take the same matters into account as a panel in making a review decision. In order to prevent the review process from being abused, the panel may determine the period of time within which further applications for review may not be made. In addition, provisions about deciding to record conditions on the register and the issuing of notices and the effect of the decision are applied by this clause.

Division 3—Appeals to tribunal

Clause 325 sets out the decisions under this Act that are appealable to the tribunal. These include board decisions (in respect of immediate suspension or imposition of conditions, impairment and the application of foreign

disciplinary decisions) and panel decisions (in respect of disciplinary action and reviews of conditions). Decisions to record undertakings and disciplinary action on the register are also appealable.

Clause 326 specifies who may appeal an appealable decision (ie. the registrant or the registrant's board). The parties to the appeal are the registrant, the registrant's board and, if the commissioner intervenes, the commissioner.

Clause 327 sets out how an appeal is commenced.

Clause 328 requires the registrar to give notice of appeal to the parties to the appeal. The provision also sets out the contents of the notice.

Clause 329 enables the tribunal to grant a stay of an appealable decision. However, the tribunal may not stay a decision to immediately suspend or impose conditions on a registrant under part 4.

Clause 330 provides for an appeal against an immediate suspension to be decided as quickly as possible.

Clause 331 specifies that the appeal is by way of rehearing on the evidence or other material before the original decision making body, however, the tribunal may give leave for new evidence to be introduced.

Clause 332 requires the registrar to give the parties notice of the tribunal's intention to conduct a hearing for an appeal. The provision also sets out the contents of the notice.

Clause 333 states the procedures to be followed in conducting a hearing for an appeal. By virtue of the definition of "disciplinary matter" and "disciplinary proceedings", part 6, division 6 of the Act applies, where appropriate, to matters dealt with by the tribunal for an appeal. Clause 333(1) is included to assist in the understanding of this division. This sub-clause does not affect the application of other provisions of part 6 as provided for in that part.

Clause 334 enables the tribunal to deal with an appeal by way of written submissions.

Clause 335 sets out the procedures for appeals dealt with by way of written submissions.

Clause 336 sets out the powers of the tribunal on hearing appeals and details the decisions the tribunal may make. The provision distinguishes between decisions under part 4 and other appeals.

Division 4—Review of certain tribunal decisions

Clause 337 sets out the tribunal decisions which may be reviewed (ie. certain disciplinary actions and decisions on review of disciplinary action). The purpose of the review process is to create a mechanism to remove or vary tribunal decisions in those cases where the registrant’s circumstances have changed since the original tribunal decision was made. The object of the review is to determine whether the conditions are still appropriate, not to review whether the original decision was correct.

Clause 338 provides that a registrant has a right to a review of a tribunal decision mentioned in clause 337 except under certain circumstances.

Clause 339 provides that a review is started by filing a notice with the registrar. The contents of the notice are also specified.

Clause 340 requires the registrar to give notice of the application for review to the board and the commissioner. The contents of the notice are also specified.

Clause 341 specifies that the review may be dealt with by way of hearing or written submissions.

Clause 342 requires the registrar to give the registrant, the registrant’s board and the commissioner notice of the tribunal’s intention to conduct a review. The provision sets out the contents of the notice.

Clause 343 states the procedures to be followed in conducting a hearing for a review by the tribunal. By virtue of the definition of “disciplinary matter” and “disciplinary proceedings”, part 6, division 6 of the Act applies, where appropriate, to matters dealt with by the tribunal for a review. Clause 343(1) is included to assist in the understanding of this division. This sub-clause does not affect the application of other provisions of part 6 as provided for in that part.

Clause 344 sets out the procedures for review in the form of written submissions.

Clause 345 sets out the considerations for the tribunal in deciding the review tribunal’s powers on completing the review. In order to prevent the review process from being abused, the tribunal may determine the period of time within which further applications for review may not be made.

Division 5—Appeals to Court of Appeal from decisions of tribunal

Clause 346 sets out the decisions of the tribunal which are appealable to the Court of Appeal (ie. decisions regarding disciplinary action and applications for review of tribunal decisions).

Clause 347 specifies who may appeal a tribunal decision.

Clause 348 clarifies that appeals against tribunal decisions are limited to questions of law only.

Clause 349 provides that an appeal is started by filing an application with the registrar of the Court of Appeal.

Clause 350 requires the appellant to serve notice of the appeal on the other parties within 14 days of filing the application with the registrar of the Court of Appeal.

Clause 351 provides for tribunal decisions to be stayed to secure the effectiveness of the appeal.

Clause 352 specifies that the procedures for hearing appeals are to be in accordance with the rules of court applicable to the appeal or, if the rules make no provision or insufficient provision, in accordance with the directions of the Court.

Clause 353 sets out the powers of the Court of Appeal in making a decision in respect of an appeal.

PART 10—INSPECTORS***Division 1—Preliminary***

Clause 354 specifies the purposes of part 10 namely to provide for the appointment of inspectors to enforce compliance with this Act and to specify the functions and powers of inspectors.

Division 2—Inspectors’ functions and powers

Clause 355 specifies that an inspector has the function of conducting an investigation to enforce compliance of this Act. An important distinction needs to be made between investigators appointed under part 5 and inspectors appointed under this part for the purpose of enforcement. Investigators are involved in the gathering of information related to potential disciplinary matters whereas inspectors are concerned with gathering information to prove breaches of the provisions of this Act.

Clause 356 specifies that an inspector has the powers given to that person under this Act.

Clause 357 provides for the powers of an inspector to be limited under an instrument of appointment. In practice, it is intended that an inspector appointed by a board may only exercise powers in respect of matters related to that board’s activities.

Division 3 – Appointment of inspectors and other matters

Clause 358 specifies the persons who may be appointed as inspectors. It should be noted that the secretary of the Professional Conduct Review Panels is, *ex officio*, an inspector for the purpose of this Act. This provision also clarifies that it is possible to appoint a person both as an investigator and inspector.

Clause 359 specifies that an inspector holds office on the condition stated in the instrument of appointment and deals with other matters related to the appointment conditions of an inspector.

Clause 360 requires an identity card to be provided to an inspector, including a recent photograph of the person plus other relevant particulars.

Clause 361 requires a person who ceases to be an inspector to return the person’s identity card.

Clause 362 requires an inspector to first produce or display the inspector’s identity card before exercising any powers under the Act. However, provision is also made for the inspector to produce the card at the first reasonable opportunity where it is not immediately practicable to do so.

Division 4 – Particular powers of inspectors

Clause 363 sets out the powers of an inspector to require a person to give information (including documents) where the inspector reasonably believes an offence has been committed and the person may be able to give information about the offence. This provision also makes it an offence to fail, without reasonable excuse, to give information required by an inspector.

Clause 364 clarifies that it is a reasonable excuse to fail to comply with the direction of an inspector under clause 363 if doing so might tend to incriminate the individual.

Clause 365 makes it an offence for a person to give information to an inspector that the person knows is false or misleading in a material particular except under certain circumstances.

Clause 366 specifies the powers of an inspector to keep documents compelled under clause 363 for the purpose of the investigation.

Division 5—Impersonation of inspectors

Clause 367 makes it an offence for a person to pretend to be an inspector.

PART 11—LEGAL PROCEEDINGS

Clause 368 clarifies that all offences against this Act are summary offences except those pertaining to clauses 391 (which deals with false complaints and information) and clause 389 (which deals with reprisal) which are indictable offences. It should be noted that proceedings for an offence may be taken by any person.

Clauses 369-370 set out the procedures and limitations for dealing with indictable offences under this Act.

Clause 371 specifies the time frame within which proceedings must start.

Clause 372 provides that, in a proceeding or an offence relating to false or misleading information or a statement, it is enough for the charge to state that the information or statement was false or misleading.

Clause 373 specifies that where a board initiates proceedings for an offence against this Act and a penalty is imposed, a Court must order the penalty to be paid to the board. Where proceedings are initiated by anyone other than the board, section 43 of the *Acts Interpretation Act 1954* will apply in respect of the issue of the payment of penalties.

PART 12—GENERAL

Division 1—Codes of Practice

Clause 374 provides boards with the power to develop or adopt codes of practice to provide guidance to registrants as to appropriate professional conduct in the practice of the profession. This provision also specifies that before making, amending or adopting a code the board must consult with an appropriately wide range of prescribed entities. This provision also specifies that a code of practice must be approved by the Minister by Gazette Notice and must be regularly reviewed by the board.

This provision is cast in a broad way to enable boards to take a range of approaches to the content of codes of practice. For example, a code may be issued in respect of a single topic like the use of a particular diagnostic procedure or it may address broader issues of professional conduct and practice. It would be possible for registration boards to issue a number of codes of practice using the powers under this provision. In view of the fact that many professional associations already have codes of conduct, this provision enables those codes to be adopted or modified for adoption as a board code of practice.

Clause 375 requires any approved code to be available for public inspection and also imposes duties on the board to ensure that registrants are notified of the approval of the code, any changes to the code.

Clause 376 clarifies that a code of practice approved under this part is admissible as evidence in disciplinary proceedings brought against a registrant under this Act.

Division 2—Investigations and certain disciplinary proceedings and disciplinary action

Clause 377 provides a board with the discretion to end an investigation where a person ceases to be a registrant and obliges the cessation of an investigation if the registrant is deceased. The provision also sets the considerations for the board in exercising a discretion under this section.

Clause 378 provides disciplinary bodies with the discretion to end disciplinary proceedings regarding a registrant who has ceased to be registered and obliges the cessation of disciplinary proceedings if the registrant is deceased.

Clause 379 specifies that if a board enters into an undertaking with the registrant, then a copy of the undertaking must be provided to the commissioner except in certain circumstances. A copy is not to be provided where the registrant is impaired and the actions taken under part 7 are not the result of a complaint made by a user or entity acting on behalf of a user, or a complaint made to the commissioner.

The provision also requires any undertaking entered into to specify the period, not greater than 3 years, for which it is in force.

Clause 380 specifies that it is an offence for a registrant to fail to comply with conditions imposed on the registrant's registration. It should also be noted that a failure to comply with a provision of this Act and a conviction for an offence against this Act are, of themselves, grounds for disciplinary action to be taken against a registrant under clause 124.

Clause 381 specifies the effect of a suspension of a registrant's registration under this Act. The provision also specifies that, at the conclusion of the suspension a person is registered on the same conditions and in the same type of registration that applied before the person's registration was suspended. This is subject to certain qualifications spelt out in the provision.

Division 3—Giving information and notices

Clause 382 authorises a board member or the Executive Officer, Office of Health Practitioner Registration Boards to disclose to the Chief Executive of the Department of Health, information acquired under this Act which is relevant to the suitability of a person to hold an authority or approval under the *Health (Drugs and Poisons) Regulation 1996*. The purpose of any such disclosure would be to assist the Chief Executive to make a decision as to whether a registrant's authority or approval should be changed or withdrawn in order to protect the public.

Clause 383 requires a board to give the commissioner notice when the matter is no longer being dealt with under this Act (in order to enable the commissioner to commence conciliation of a complaint which is the subject of multiple actions under the *Health Rights Commission Act 1991*). In practice, this notice will be issued in conjunction with other notices provided to the commissioner (for example, notices regarding disciplinary action).

Clause 384 requires a board to give all interstate regulatory authorities with which the registrant is registered notice of certain decisions under this Act. This provision also provides a board with the discretion to notify other prescribed entities under certain circumstances.

Clause 385 authorises a Court to provide a board with a certificate of conviction where a registrant is convicted of an indictable offence. Also this clause authorises a coroner who makes a finding about a matter relevant to a registrant's practice to give a transcript of evidence to the registrant's board.

Division 4—Protections

Clause 386 confers upon tribunal members, panel members and board members involved in adjudicative activities, the same protection and immunity that they would have as District Court Judges performing the functions of a Judge. A similar protection and immunity is conferred on assessors. The provision also confers upon parties appearing before disciplinary bodies, the same protections and immunities they would have as parties before a proceeding within the District Court. Similarly, persons required to attend or appear before a disciplinary body as witnesses are given the same protections and immunities as witnesses attending before the District Court.

Clause 387 protects a person who, honestly and on reasonable grounds, gives information to certain prescribed entities for the purpose of this Act. By virtue of this provision the person is not liable civilly, criminally or under an administrative process for giving information.

Clause 388, which is based on section 41 of the *Whistleblowers Protection Act 1994*, establishes that it is unlawful for anyone to take reprisal against a person for making a complaint to a board or assisting various entities involved in the administration of the Act. The provision also establishes a test for determining when unlawful reprisal has taken place.

Clause 389, which is based on section 42 of the *Whistleblowers Protection Act 1994* and section 139 of the *Health Rights Commission Act 1991*, establishes that a person who takes an unlawful reprisal against anyone who makes a complaint or assists an entity involved in the administration of the Act commits a criminal offence. The provision also sets out a defence in proceedings relevant to a reprisal.

Clause 390, which is based on section 43 of the *Whistleblowers Protection Act 1994*, enables any person who suffers reprisal for making a complaint or assisting an entity involved in the administration of the Act to sue for damages, including pain and suffering. The provision also specifies the powers of the Court to grant an appropriate remedy and specifies that if the matter is to go to trial in the Supreme Court or the District Court, it must be decided by a Judge sitting without a jury. This limitation is because Judges are better placed to determine the public interest in assessing the extent of liability, including the effect on persons should excessive damages claims be upheld.

Division 5—False information and confidentiality

Clause 391 makes it an offence for a complainant or a person who gives information for the purpose of an investigation, to intentionally provide a statement or other information that is false or misleading in a material particular. It should be noted that this clause mirrors Section 135A of the *Health Rights Commission Act 1991*.

Clause 392 creates a duty of confidentiality upon specified persons involved in the administration of the Act. This provision also creates exceptions to the duty of confidentiality.

Clause 393 specifies that where the Minister authorises the disclosure of confidential information under clause 392 a statement containing prescribed information must be included in the board's annual report.

Division 6—Miscellaneous

Clause 394 provides for a combined notice to be issued where a board, the secretary or the registrar is required to issue more than one notice to a person under this Act.

Clause 395 specifies that it is not necessary to provide notices to certain complainants under certain circumstances.

Clause 396 provides for board meetings to be held by distance communication and for board decisions to be made by flying minutes. The current health practitioner registration Acts do not contain provisions allowing for this form of decision making and it is intended that this provision will ultimately be relocated to the new health practitioner registration Acts. The provision is required immediately to facilitate the making of decisions under part 4, in particular.

Clause 397 enables the chairperson of the tribunal to approve forms for use by the tribunal under this Act. Also, the provision enables the secretary to approve forms for the panels.

Clause 398 specifies that Governor in Council may make regulations under the Act.

PART 13—TRANSITIONAL PROVISIONS

Clause 399 provides a definition of “commencement day” for the purpose of this part.

Clause 400 specifies that certain types of matters which were not finalised before the commencement day (and appeals subsequently arising out of these matters), may be dealt with under the provisions of the existing health practitioner registration Acts.

The provision also specifies that a person's appeal rights under the previous legislation are preserved. This ensures that if a registrant had a right of appeal from a disciplinary decision, but had not started the appeal on the commencement day, the registrant may still appeal (subject to statutory time limits).

Clause 401 specifies that if a board receives a complaint or other information about a registrant which occurred before the commencement day, the board may only take action on the matter if the board could have taken disciplinary action under the previous legislation. The purpose of this provision is to ensure that registrants are not disciplined for conduct which occurred prior to the commencement of this Act where, at the time it occurred, disciplinary proceedings could not have been taken. This provision acknowledges that the grounds for disciplinary proceedings under this Bill are broader than those which currently exist.

Clause 402 specifies that, for the purpose of deciding whether there is a pattern of conduct or practice, a board may only consider the conduct or practice of a registrant prior to the commencement of this Act, if disciplinary action could have been taken against the registrant under the health practitioner registration Act.

Clause 403 clarifies that all existing orders of the registration boards and the Medical Assessment Tribunal are saved and continue to have effect as if they were an order of a disciplinary body under this Act.

This provision also specifies that final orders under clause 401 are taken to be orders of the tribunal.

Clause 404 vests custody of the records of the Medical Assessment Tribunal (MAT) in the registrar of the Health Practitioner Tribunal.

PART 14—CONSEQUENTIAL AND OTHER AMENDMENTS

Division 1—Amendment of Chiropractors and Osteopaths Act 1979

Division 2—Amendment of Dental Act 1971

Division 3—Amendment of Dental Technicians and Dental Prosthetists Act 1991

Clauses 405-427 make consequential amendments to the *Chiropractors and Osteopaths Act 1979*, *Dental Act 1971* and *Dental Technicians and Dental Prosthetists Act 1991* by removing all provisions under those Acts concerned with the discipline of registrants. The disciplinary powers contained in these Acts are consolidated under the *Health Practitioners (Professional Standards) Act 1999*. The Acts are further amended to clarify the notice requirements of the respective boards upon refusal of an application for registration and the right of appeal of the applicant.

Division 4—Amendment of Health Act 1937

Clause 428 specifies that division 4 amends the *Health Act 1937*.

Clause 429 inserts a definition of a “health practitioner registration Act”, “registrant” and “registrant’s board” into the *Health Act 1937*.

Clause 430 inserts a new section 18A into the *Health Act 1937* which specifies that where an action is commenced against a registrant or nurse for an offence against an Act administered by the Minister, or where there is an alteration to the prescribing rights or authority of a registrant, nurse or veterinary surgeon under the *Health (Drugs and Poisons) Regulation 1996*, the chief executive is to give notice to:

- for a registrant—the registrant’s board
- for a nurse—the Queensland Nursing Council

- for a veterinary surgeon—the Veterinary Surgeons Board of Queensland

The purpose of this provision is to ensure that the entities responsible for the registration of the professions can, where appropriate, take action to protect the public from such persons.

Division 5—Amendment of the Health Rights Commission Act 1991

Clause 431 specifies that division 5 of the *Health Practitioners (Professional Standards) Act 1999* amends the *Health Rights Commission Act 1991*.

Clause 432 changes the heading of section 3 of the *Health Rights Commission Act 1991* from “Definitions” to “Interpretation” and inserts a new definition for the term “disciplinary body”.

Clause 433 inserts the new division heading of “Division 1—Health service complaints” into part 5 of the *Health Rights Commission Act 1991* before section 58.

Clause 434 amends section 58 of the *Health Rights Commission Act 1991* by expanding the grounds of complaint to the Health Rights Commission. The purpose of this provision is to ensure that a complaint may be made to the commission about any matter which would provide grounds for disciplinary action against the provider under the *Health Practitioners (Professional Standards) Act 1999* or the *Nursing Act 1992*.

Clause 435 inserts a new section 58A into the *Health Rights Commission Act 1991* which enables the commissioner to split a complaint into two or more complaints under certain circumstances (for example, where the complaint concerns more than 1 provider). Thus each aspect of the complaint may be dealt with separately. In order to ensure that proceedings are not compromised by the disclosure of confidential information provided within the privileged environment of conciliation, the provision prohibits concurrent conciliation and other action on the separated complaints except under specified circumstances.

Clause 436 inserts a new section 59A into the *Health Rights Commission Act 1991* which provides that where the commissioner receives a complaint about a person who is no longer registered and the complaint concerns their professional conduct at a time when they were

registered, the commissioner is to deal with the complaint as if it were a complaint against a registered provider. This is consistent with the *Health Practitioners (Professional Standards) Act 1999* and the *Nursing Act 1992* which enable boards to deal with matters regarding former registrants.

Clause 437 amends section 60(3) of the *Health Rights Commission Act 1991* by clarifying that a health service complaint may be made to the commissioner by an attorney appointed under the *Powers of Attorney Act 1998* or the adult guardian under that Act, on behalf of a person with impaired capacity.

Clause 438 omits section 66 to section 68A of the *Health Rights Commission Act 1991* and inserts a division heading, “Division 2—Assessment of health service complaints” and new sections 66 to 68A. As a consequence:

- the current receipt and consideration and assessment phases have been combined into one assessment phase
- the commissioner is to assess a health service complaint when certain threshold tests have been satisfied (for example, that the complainant is eligible to make the complaint under sections 59 or 60)
- the commissioner has the discretion to refer a complaint about a registered provider to the relevant registration board without assessing it if it is in the public interest to do so and the relevant registration board agrees to the referral
- the commissioner must provide notice that a complaint is to be assessed to the complainant and the provider and, where the provider is a registered provider, the provider’s registration board
- the commissioner may invite submissions on the complaint from the complainant and the provider and must seek submissions from a registered provider’s registration board. Time frames for the receipt of submissions are stipulated.

The purpose of these amendments is to consolidate the processes for receipt and consideration and assessment of complaints in order to improve the efficiency and effectiveness of the operations of the Commission.

The introduction of various threshold tests for assessment will facilitate compliance with statutory timeframes and enable the Commission to direct resources to other statutory functions (for example, considering investigation reports by registration boards, etc).

The capacity to refer complaints directly to registration boards without assessment is designed to expedite action being taken on serious public interest matters. It should be noted that the statutory prohibition upon the commission taking any further action on such complaints does not prevent the commissioner dealing with complaints separated from the complaint referred to the board.

It is anticipated that the commissioner will routinely seek submissions from providers who are the subject of complaints being assessed, except where the commissioner clearly intends to reject the complaint. Where the complaint is sufficiently comprehensive, it will not be necessary for the commissioner to seek submissions from the complainant. The requirement to seek submissions from relevant registration boards is to ensure professional standards issues are identified early.

Clause 439 amends section 69 of the *Health Rights Commission Act 1991* by specifying that the commissioner must consult with a registered provider's registration board before deciding whether or not to take action on a complaint at the conclusion of assessment. The purpose of the consultation is to inform the commissioner's decision under section 71A about the action to be taken and, in particular, to ensure that professional standards issues (ie. those issues which may provide grounds for disciplinary action) are not overlooked. Any comments the board makes in relation to the complaint must be provided to the commissioner within a specified time frame. The provision also specifies that the commissioner must not decide to take no action on a complaint where the registration board considers it warrants investigation or other action by the board.

Clause 440 amends section 70(2) of the *Health Rights Commission Act 1991* by inserting references to the new section 71A. The effect of this consequential amendment is to require the commissioner to give notice of assessment decisions regarding registered providers and non-registered providers.

Clause 441 omits the existing section 71 and inserts new sections 71, 71A and 71B into the *Health Rights Commission Act 1991*. These provisions distinguish the actions the commissioner may take on complaints about registered providers from those about non-registered providers.

In the case of non-registered providers, the commissioner may take multiple actions on a complaint. Thus, in addition to the power to conciliate and/or investigate a complaint, the commissioner has the discretion to refer a complaint to another entity at the conclusion of assessment, for example, the Queensland Police Service. The commissioner may also take multiple actions on a complaint about a registered provider. These are, conciliation, referral to the relevant registration board for investigation, or, referral to another entity. Where the commissioner refers a complaint to another entity or a board, conciliation will generally not commence until the entity or board has concluded dealing with the matter.

The purpose of these provisions is to increase the options for taking action on complaints at the conclusion of assessment. The provisions acknowledge the desirability of conciliation to resolve disputes between users and providers, but clarify that, except under certain circumstances, conciliation must not commence until disciplinary or other proceedings have concluded. The restriction on concurrent conciliation and other action is necessary to protect the integrity of the board's or entity's processes (particularly disciplinary and enforcement processes) and remove any grounds for challenge on the basis of disclosure of information which is protected by the conciliation process.

In order to ensure that professional standards issues are not overlooked, section 71A provides for Ministerial adjudication where either the commissioner or the board, but not both, consider a complaint requires investigation or other action by a board.

The provision also sets out certain notice requirements upon a board or other entity which has a complaint referred to it by the commissioner.

Clause 442 amends and inserts new provisions into section 72 of the *Health Rights Commission Act 1991*, which stipulate that the commissioner must assess a complaint within 60 days after commencing the assessment. The commissioner may extend that time limit by 30 days if certain criteria are established. Furthermore, if the commissioner is obliged to consult with a registration board, the period of assessment is extended by an amount of

time equivalent to the time taken to undertake the consultation (ie. 14 days or the longer period determined by the commissioner under section 69). Consequent to the consolidation of the current receipt and consideration and assessment phases into a single statutory “assessment” phase, an additional 6 days will be available to the commissioner for the assessment of complaints.

Clause 443 inserts section 72A into the *Health Rights Commission Act 1991* which obliges the commissioner to immediately refer a complaint about a registered provider to the provider’s registration board, where the complaint indicates that immediate action should be taken by the board to protect a person or persons from imminent risk. Subject to section 133 of the Act, the commissioner must give notice of the referral to the complainant and the provider.

Clause 444 amends section 73 of the *Health Rights Commission Act 1991* by inserting a new section heading, “Commissioner’s powers during assessment”, and clarifying that these powers may be exercised during the assessment phase.

Clause 445 amends section 74 of the *Health Rights Commission Act 1991* by inserting a new section 74(5A). The provision qualifies section 74(5) which states that the commissioner is not to take action on a complaint that is made outside the statutory time limit of 12 months. The qualification is that where the matter of the complaint concerns a registered provider and may, in the commissioner’s opinion, warrant the suspension or cancellation of the provider, subsection (5) does not apply. This allows serious complaints about registered providers to be addressed without regard to the general limitations period for making complaints. This clause also amends the definition of the term “appropriate tribunal” to reflect changes to the disciplinary bodies under the *Health Practitioners (Professional Standards) Act 1999*.

Clause 446 inserts a new division heading, “Division 3—General”, and new section 74A into the *Health Rights Commission Act 1991*. This provision, which is based on the previous section 74, clarifies the commissioner’s powers to gather information at any time in relation to a health service complaint and to endeavour to resolve a complaint by whatever means the commissioner considered appropriate. It should be noted that the legislation does not mandate an active role for the commission in the local resolution of complaints.

Clauses 447-448 amend section 82 and section 84 of the *Health Rights Commission Act 1991* (consequent to the amendments made by clause 441) to distinguish the actions that may be taken by the commissioner in respect of complaints about registered providers and other providers on ending conciliation.

Clause 449 amends section 85 of the *Health Rights Commission Act 1991* to clarify that documents prepared for conciliation are privileged. This provision removes any doubt as to the protections available and, consequently, removes a potential deterrent to conciliation.

Clause 450 amends section 89(5) of the *Health Rights Commission Act 1991* by stating that information obtained pursuant to a notice under section 89 is admissible in a disciplinary proceeding before a board. While the investigation of complaints regarding registered providers will be undertaken by boards (rather than the commissioner), it is possible that professional standards issues regarding registered providers will arise in the course of the commissioner's investigations of complaints regarding other providers (for example, hospitals). This provision removes any doubt that information compelled during a commission investigation is admissible in disciplinary proceedings under the *Health Practitioners (Professional Standards) Act 1999* and the *Nursing Act*.

Clause 451 omits section 94 and inserts a new section 94 of the *Health Rights Commission Act 1991*. The new provision clarifies that the commissioner may refer a matter raised in the course of investigating a complaint to another entity to take appropriate action. This is in addition to the commissioner's power to refer a matter to another entity after assessing a complaint and the provision could be used when professional standards issues regarding a registered provider arise in the course of the commissioner investigating a complaint about a non-registered provider.

Clause 452 makes amendments to section 95 of the *Health Rights Commission Act 1991* to clarify that the entity to which a matter is referred by the commissioner under section 94 is to deal with it in the most appropriate manner (not just by way of investigation).

Clause 453 amends section 119(d) of the *Health Rights Commission Act 1991* by enabling the commissioner to provide a copy of investigation reports to registration boards, regardless of whether the investigation concerned a registered provider. This provision is required to deal with situations where investigations raise issues about registrants.

Clause 454 omits sections 121 to 123 of the *Health Rights Commission Act 1991* consequent to the insertion of new provisions in part 5, division 2 of the Act concerning the referral of complaints about registered providers to registration boards by the commissioner.

Clause 455 omits sections 125 to 129 of the *Health Rights Commission Act 1991* and inserts a new section 125 which clarifies that a registration board may ask the commissioner for information about any complaints the commissioner has received that relate to the particular board's registrants. The omitted provisions, where appropriate, have been relocated to elsewhere in the *Health Rights Commission Act 1991* or are addressed by the *Health Practitioners (Professional Standards) Act 1999*.

Clause 456 makes amendments to section 130 of the *Health Rights Commission Act 1991* to clarify that the commissioner may intervene in a matter before various disciplinary bodies (to reflect the new disciplinary arrangements established under the *Health Practitioners (Professional Standards) Act 1999*) or in an appeal from a disciplinary proceeding. Furthermore, the provision states that the commissioner may be represented by a lawyer before the Tribunal or a Professional Conduct Committee but not before a panel. Before a panel, the commissioner may only be represented by a person other than a lawyer. Consistent with the approach to legal representation used under the *Health Practitioners (Professional Standards) Act 1999* and the *Nursing Act 1992*, the commissioner's rights to representation before disciplinary bodies mirror those available to other parties.

Clause 457 inserts new sections 133A and 133B into the *Health Rights Commission Act 1991*. Section 133A clarifies that the commissioner may issue a combined notice in circumstances where the commissioner is required to give a person more than one notice, to reduce the number of notices being sent to complainants and providers.

Section 133B specifies that the commissioner may provide information gathered in the course of an assessment or investigation to a registration board or other entity when a complaint is referred to such board or entity. The provision of this information will inform the investigation and any proceedings taken regarding registered providers.

Clause 458 amends section 138 of the *Health Rights Commission Act 1991* by clarifying that information gathered by the commissioner that concerns a registered provider may be disclosed to a disciplinary body or for the purposes of the *Health Practitioners (Professional Standards) Act 1999*.

Clause 459 omits the heading of section 144 of the *Health Rights Commission Act 1991* and inserts the new heading, “Transitional for Health Rights Commission Act 1991 (Act No. 88 of 1991)” in order to distinguish the original transitional provision under this Act and the transitional provision inserted at section 145 by the *Health Practitioners (Professional Standards) Act 1999*.

Clause 460 inserts a new transitional provision into the *Health Rights Commission Act 1991* at section 145 to allow the commission to continue to deal with complaints received prior to the commencement of part 14, division 5 of the *Health Practitioners (Professional Standards) Act 1999* as though that part had not commenced.

This clause also inserts a new section 146 which provides for the Act to be numbered and renumbered when it is next reprinted.

Clause 461 amends Schedule 1 part 1 item 10 of the *Health Rights Commission Act 1991* to remove any doubt that hypnosis is a declared health service for the purpose of that Act.

Clause 462 makes a consequential amendment to Schedule 2, item 5 of the *Health Rights Commission Act 1991* to insert the correct title of the “Queensland Nursing Council” into the list of declared registration boards.

Division 6—Amendment of Health Services Act 1991

Clause 463 specifies that division 6 amends the *Health Services Act 1991*.

Clause 464 specifies that the confidentiality obligations of section 63(1) of the *Health Services Act 1991* do not apply to the giving of information to a registration board or the Queensland Nursing Council for the purpose of making a complaint or giving information about a complaint, or for the purpose of answering questions or giving information in an investigation or disciplinary proceeding. This will enable the giving of information to certain disciplinary bodies without the possibility of breaching the *Health Services Act 1991*.

Division 7—Amendment of Medical Act 1939

Clause 465 specifies that division 7 amends the *Medical Act 1939*.

Clause 466 repeals the definitions of “complaints investigation committee” and “impairment” from the *Medical Act 1939*. The definition of “tribunal” is amended to refer to the Health Practitioners Tribunal under the *Health Practitioners (Professional Standards) Act 1999*. A definition of the terms “panel” and “unsatisfactory professional conduct” is also inserted. These changes give effect to the consolidation of disciplinary powers under the *Health Practitioners (Professional Standards) Act 1999*.

Clause 467 omits section 4B of the *Medical Act 1939* which defines “impairment”.

Clause 468 omits part 2 of the *Medical Act 1939*. As all powers in relation to disciplining registered health practitioners are found in the *Health Practitioners (Professional Standards) Act 1999*, the power of the Governor in Council to refer matters to the Medical Assessment Tribunal is unnecessary. Accordingly, those powers are removed with the omission of part 2.

Clauses 469-471 repeal sections 12(2), 13(1) and 13C(3) of the *Medical Act 1939* regarding inquiries by the board. Powers in relation to discipline of medical practitioners are now consolidated under the *Health Practitioners (Professional Standards) Act 1999*.

Clause 472 amends section 16 of the *Medical Act 1939* by removing sections 16(1C)(p) and (q) which deal with the power to make by-laws concerning suspended registrants. Matters concerning suspended registrants are now dealt with under the *Health Practitioners (Professional Standards) Act 1999*.

Clause 473 omits section 17F of the *Medical Act 1939*, which deals with the power of the board to impose conditions on the registration of impaired practitioners. Such powers are now consolidated in the *Health Practitioners (Professional Standards) Act 1999*.

Clause 474 omits the term “misconduct in a professional respect” from section 19D of the *Medical Act 1939* consequent to the new ground for disciplinary action under the *Health Practitioners (Professional Standards) Act 1999*. Section 19D enables the board to refuse to register a person who has been deregistered for a reason that would be a ground for disciplinary action to be taken under the *Health Practitioners (Professional Standards) Act 1999*.

Clause 475 omits part 4, division 4 of the *Medical Act 1939* which concerns the suspension of a registrant’s registration for the protection of the public. These powers are now consolidated in the *Health Practitioners (Professional Standards) Act 1999*.

Clause 476 omits references in sections 21(1)(c), (d) and (e) of the *Medical Act 1939* to appeals against disciplinary actions of the board. A registrant’s right of appeal regarding disciplinary action taken under the *Health Practitioners (Professional Standards) Act 1999* is contained in that Act.

Clause 477 amends section 21B of the *Medical Act 1939* by inserting a reference to part 4A, division 3 of that Act to clarify that this section (which deals with hearing of appeals) applies only to board inquiries into applications for registration. This change is consequent to the relocation of the power to hold inquiries into disciplinary matters to the *Health Practitioners (Professional Standards) Act 1999*.

Clause 478 omits part 4, division 6 of the *Medical Act 1939* which deals with notification of complaints and disciplinary matters to medical registration authorities in other states. Notification of such matters is now dealt with by the *Health Practitioners (Professional Standards) Act 1999*.

Clauses 479-480 amend the headings of part 4A, division 3 and section 25 of the *Medical Act 1939* to reflect that the specific purpose of the part is to empower the Board to hold inquiries into applications for registration.

Clauses 481-486 amend the *Medical Act 1939* by removing or amending references to disciplinary issues under that Act. In particular, part 5 of the Act, which refers to the Medical Assessment Tribunal, is omitted. Provisions dealing with disciplinary powers and the establishment of the Health Practitioner Tribunal are now consolidated under the *Health Practitioners (Professional Standards) Act 1999*.

It should be noted that clause 400 provides that complaints and disciplinary matters being dealt with before the commencement of the *Health Practitioners (Professional Standards) Act 1999* are to be dealt with as if this Act has not commenced. Accordingly, the Medical Assessment Tribunal will continue to exist until all existing matters being dealt with by the tribunal or eligible for referral to the tribunal are concluded.

Clause 487 inserts new provisions into the *Medical Act 1939* that:

- make it an offence for a medical practitioner to provide a certificate (for example, a medical certificate), notice or report (for example, a medico-legal report for the purposes of litigation) that is false or misleading
- make it an offence for a medical practitioner to fail to notify police of information that comes to hand in the course of acting in the medical practitioner's professional capacity that indicates the commission of a crime
- prohibit a medical practitioner from paying or giving any other benefit to a person for referring a patient to that medical practitioner and prohibit a medical practitioner from accepting a payment or other benefit in exchange for referring a patient to another person.

These matters were previously included in the extended meaning of "misconduct in a professional respect", however, this definition has been omitted consequent to the *Health Practitioners (Professional Standards) Act 1999*. It is more appropriate for these matters to be statutory offences. It should be noted that under clause 124 disciplinary action may be taken on the basis of a conviction of an offence against the *Medical Act 1939*.

Clause 488 amends section 58(1)(a)(iv) of the *Medical Act 1939* consequent to the new grounds for disciplinary action under the *Health Practitioners (Professional Standards) Act 1999*.

Clause 489 omits part 9A of the *Medical Act 1939*. This removes the powers of a board to apply to the Supreme Court of Queensland to have a medical practitioners registration suspended pending the outcome of a criminal proceeding. Such matters are now dealt with under the *Health Practitioners (Professional Standards) Act 1999*.

Clause 490 amends section 67(7) of the *Medical Act 1939* by clarifying that the Medical Board may exercise the powers of investigation under the *Health Practitioners (Professional Standards) Act 1999* in order to take possession of or safeguard medical records. It is intended that these powers will be available for this purpose, on a temporary basis, until new health practitioner legislation is enacted and specific powers are included for this purpose.

Clause 491 omits references to disciplinary action in relation to “misconduct in a professional respect” (and sections 37 and 37A) in section 76A of the *Medical Act 1939* consequent to the use of the disciplinary provisions of the *Health Practitioners (Professional Standards) Act 1999*.

Clause 492 omits section 79(2) and 79(2A) of the *Medical Act 1939* consequent to the use of the disciplinary provisions of the *Health Practitioners (Professional Standards) Act 1999*.

Clause 493, consequent to the repeal of the provisions dealing with the Medical Assessment Tribunal discussed above, omits section 86(2) from the *Medical Act 1939* and thus removes the power of the Governor in Council to make regulations in relation to the Medical Assessment Tribunal.

Division 8—Amendment of Nursing Act 1992

Clause 494 states that division 8 amends the *Nursing Act 1992*.

Clause 495 inserts into section 4 of the *Nursing Act 1992* the term “commissioner”.

Clause 496 omits section 102 of the *Nursing Act 1992* and inserts various new provisions (102-102D) concerning the interaction between the Health Rights Commission and the Queensland Nursing Council and complaints about the conduct of nurses and other persons authorised to practise nursing. In particular, this provision specifies:

- a person may complain in writing to the Queensland Nursing Council if they are aggrieved by the conduct of a nurse. If the complaint is by a user of nursing services it must be referred to the Health Rights Commission except under certain circumstances

- where a complaint is referred to the Health Rights Commission it is deemed to be a health services complaint made under the *Health Rights Commission Act 1991* and the Council must not take action on the matter unless it is referred back by the commissioner
- the Council must investigate a complaint if the Minister decides under the *Health Rights Commission Act 1991* that the Council should investigate, or if the Council and the commission agree that the Council should investigate
- the Council may take action against former registrants for breaching the code of conduct when they were practising.

Clause 497 inserts into section 103(1) of the *Nursing Act 1992* a new paragraph. This clarifies that the Council is to undertake an investigation of a complaint referred by Health Rights Commissioner. This amendment means that the relationship between the Council and the Health Rights Commission mirrors the relationship between other health practitioner registration boards and the commission that is established under the *Health Practitioners (Professional Standards) Act 1999*.

Clauses 498-501 amend the *Nursing Act 1992* by clarifying the interaction of the Council with the Health Rights Commission and other entities, in relation to complaints about nurses. These changes mean that the Council interacts with the commission and other entities in the same way that other health professional registration boards do under the *Health Practitioners (Professional Standards) Act 1999*. In particular:

- the Council is to keep the commissioner informed about its investigations
- the Council may, in addition to any other action taken, refer a complaint to another entity, such as the Police, where that entity has powers or functions that enable it to take action on the matter referred
- the Council is to give the commissioner notice of referral of a charge to the professional conduct committee
- the professional conduct committee is to give the commissioner a copy of the written reasons for findings and orders made by it

- the Council is to give the commissioner notice when it ceases dealing with a matter which the commissioner has advised is to be conciliated.

Clause 502 inserts a new section 142A to provide the Council with the power to issue combined notices under the Act.

Clause 503 inserts a new section 153 into the *Nursing Act 1992*. The purpose of this provision is to ensure that where a complaint about a nurse is made to the Council before the commencement of part 14 of the *Health Practitioners (Professional Standards) Act 1999* (ie. the amendments to the *Nursing Act 1992*) and the Council has not finally dealt with it, the Council may continue to deal with the matter as if part 14 had not commenced.

Division 9—Amendment of Occupational Therapists Act 1979

Division 10—Amendment of Optometrists Act 1974

Division 11—Amendment of Pharmacy Act 1976

Division 12—Amendment of Physiotherapists Act 1964

Division 13—Amendment of Podiatrists Act 1969

Division 15—Amendment of Psychologists Act 1977

Division 16—Amendment of Speech Pathologists Act 1979

Clauses 504-544 (excluding clauses 531-532) make consequential amendments to the *Occupational Therapists Act 1979*, *Optometrists Act 1974*, *Pharmacy Act 1976*, *Physiotherapists Act 1964*, *Podiatrists Act 1969*, *Psychologists Act 1977* and *Speech Pathologists Act 1979* by removing all provisions under those Acts concerned with the discipline of registrants. The disciplinary powers contained in these Acts are consolidated under the *Health Practitioners (Professional Standards) Act 1999*. The *Occupational Therapists Act 1979*, *Podiatrist Act 1977*, *Psychologists Act 1977* and *Speech Pathologists Act 1979* are further amended to clarify the notice requirements of the respective boards upon refusal of an application for registration and the right of appeal of the applicant.

Division 14—Amendment of Police Powers and Responsibilities Act 1997

Clauses 531-532 clarify that an investigator appointed under the *Health Practitioners (Professional Standards) Act 1999* is a public official for the purpose of the *Police Powers and Responsibilities Act 1997*. This provision enables an investigator to obtain police assistance.

Schedule

Schedule sets out the dictionary of terms used in the Act.