

HEALTH LEGISLATION AMENDMENT BILL 2003

EXPLANATORY NOTES

GENERAL OUTLINE

Policy Objectives of the Bill

The main policy objectives of the Bill are to amend:

- the *Chiropractors Registration Act 2001*, the *Optometrists Registration Act 2001*, the *Physiotherapists Registration Act 2001* and the *Podiatrists Registration Act 2001* to remove broad statutory definitions restricting practices to particular professions and to replace these with specific practice restrictions, to implement the recommendations of the National Competition Policy review of restricted core practices for health practitioners;
- the *Dental Practitioners Registration Act 2001*, the *Dental Practitioners Registration Regulation 2001*, the *Dental Technicians and Dental Prosthetists Registration Act 2001* and the *Health Practitioners (Professional Standards) Act 1999* to incorporate the recommendations of the National Competition Policy review on the restrictions on the practice of dentistry;
- the *Health Act 1937* to empower the Chief Executive of Health, rather than the Governor in Council, to appoint medical inspectors, health officers and other officers, consistent with similar appointment provisions in the Act;
- the *Health Practitioners (Professional Standards) Act 1999* to give effect to the Health Practitioners Tribunal's decision from the date it is delivered by the Tribunal, or as otherwise ordered;
- the *Health Rights Commission Act 1991* to enable referral of public interest issues to registration boards after successful conciliation, to clarify the Commissioner's powers to decide not to take action after unsuccessful conciliation, to enable a conciliator to discuss confidential complaint matters with a

colleague and to clarify that a matter may be referred from investigation to conciliation; and

- the *Health Services Act 1991* to provide more flexible membership requirements for District Health Councils to accommodate periodic vacancies, and to ensure that the functions of a council are not affected merely because of a vacancy.
- the *Nursing Act 1992* to provide a greater degree of public protection, and to achieve greater consistency with the *Health Practitioners (Professional Standards) Act 1999* and Health Practitioner Registration Acts by, for example, broadening the grounds for complaint and disciplinary action against nurses.-

Means of Achieving Objectives

Amendment of dental practitioners, dental technicians and dental prosthetists legislation

The Bill amends the *Dental Practitioners Registration Act 2001*, the *Dental Practitioners Registration Regulation 2001*, the *Dental Technicians and Dental Prosthetists Registration Act 2001* and the *Health Practitioners (Professional Standards) Act 1999* to incorporate the recommendations of the National Competition Policy review on the restrictions on the practice of dentistry. The amendments will:

- retain a statutory definition of dentistry to capture only those facets of the practice which pose a high risk of harm to patients
- continue to restrict who may practice dentistry, namely registered dentists, dental specialists and medical practitioners and, to the extent that their duties fall within the definition of dentistry, registered dental prosthetists and dental auxiliaries (dental hygienists and dental therapists)
- retain a simplified statutory definition of dental prosthetic work
- restrict the provision of dental prosthetic services to dental prosthetists, dentists and medical practitioners
- retain the current restriction on the provision of partial dentures to dental prosthetists
- remove the restriction on the performance of dental technical work to dental technicians

- provide for the registration of dental auxiliaries by the Dental Board of Queensland
- remove the restriction on the employment of school dental therapists to the public sector
- remove the requirement for dental hygienists to work in a one-to-one ratio with a dentist
- enable the Dental Board to authorise a dental therapist, under the supervision of a dentist, to perform additional functions, if the therapist has the necessary qualifications or skills.

Amendment of health practitioner registration legislation – restricted core practices

The Bill amends the *Chiropractors Registration Act 2001*, the *Optometrists Registration Act 2001*, the *Physiotherapists Registration Act 2001* and the *Podiatrists Registration Act 2001* to implement the recommendations of the National Competition Policy review of restricted core practices for health practitioners. The amendments will:

- remove broad statutory definitions restricting practices to particular professions and replace these with restrictions on practices which pose a high risk of harm to patients;
- restrict the practice of spinal manipulation to registered chiropractors, medical practitioners, osteopaths and physiotherapists; and
- restrict the practice of prescribing optical appliances for the correction or relief of visual defects to registered optometrists and medical practitioners.

Amendment of Health Act 1937

The Bill amends the Health Act to streamline the appointment of various officers. The amendments will empower the Chief Executive of Health, rather than the Governor in Council, to appoint medical inspectors, health officers and other officers, consistent with similar appointment provisions in the Act.

Amendment of Health Practitioners (Professional Standards) Act 1999 – Health Practitioner Tribunals

The Bill amends the Health Practitioners (Professional Standards) Act to give effect to the Health Practitioners Tribunal's decision from the date it is delivered by the Tribunal, or as otherwise ordered.

Amendment of Health Rights Commission Act 1991

The Bill amends the Health Rights Commission Act to clarify the powers of the Health Rights Commissioner and to ensure the effective operation of the Health Rights Commission. The amendments will enable referral of public interest issues to registration boards after successful conciliation; clarify the Commissioner's powers to decide not to take action after unsuccessful conciliation; enable a conciliator to discuss confidential complaint matters with a colleague; and clarify that a matter may be referred from investigation to conciliation.

Amendment of Health Services Act 1991

The Bill amends the *Health Services Act 1991* to provide more flexible membership requirements for District Health Councils by specifying that councils should be comprised of not more than 10 members and that a vacancy in the membership of a council does not affect the performance of a council's functions or the exercise of its powers. In addition, the Bill clarifies how a member of a council may resign their office and when the resignation takes effect.

Amendment of Nursing Act 1992

The Bill amends the Nursing Act to provide greater consistency with the model of occupational regulation adopted in Queensland through the introduction of the Health Practitioner Registration Acts in 2001 and the *Health Practitioners (Professional Standards) Act 1999*. The amendments will:

- provide the Queensland Nursing Council (QNC) with the capacity to access information about the criminal history of an applicant for registration or enrolment as a nurse, or for an authorisation to practise nursing. The amendments expressly over-ride the protection provided by the *Criminal Law (Rehabilitation of Offenders) Act 1986*;
- remove provisions of the Act which refer to a 'code of conduct', and insert new grounds for disciplinary action and processes for the making of complaints similar to those in the *Health Practitioner (Professional Standards) Act 1999*;

- require the QNC to provide the Health Rights Commissioner with copies of all concerns raised regarding the health of a nurse, midwife or person authorised to practise nursing; the action taken by QNC in respect of such matters; and when the immediate suspension powers under the Nursing Act are used. This will ensure that the information available to the Health Rights Commissioner about nurses is consistent with the information provided about other registered health practitioners;
- change the name of the Professional Conduct Committee to the ‘Nursing Tribunal’;
- provide the QNC with powers to disclose any information obtained about a person’s affairs to an interstate or foreign nursing regulatory authority;
- enable the Nursing Tribunal to issue cost orders;
- enable the District Court to order costs on appeals, as considered appropriate; and
- insert an “undue influence” offence to make it an offence for a person to aid, abet, counsel, procure or induce nurses, midwives or other persons authorised to practise nursing, to engage in conduct that may be the basis for disciplinary action.

Estimated Cost for Government Implementation

The Bill will not have any significant financial impact on Government.

Consistency with Fundamental Legislative Principles

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

Amendment of Nursing Act 1992

Amendments to the Nursing Act to over-ride the protection provided by the *Criminal Law (Rehabilitation of Offenders) Act 1986* raises a fundamental legislative principle issue, as the power to access a person’s criminal history may be regarded as adversely affecting an individual’s privacy.

When deciding whether a person is to be registered, enrolled or authorised to practise nursing under the Act, the QNC must assess whether the person is fit or suitable to practise nursing. The capacity of the QNC to

access information about a person's full criminal history will assist the QNC to undertake this assessment. The QNC will have a more complete picture of an applicant's criminal history, including information about 'old' convictions which may indicate a pattern of behaviour that could compromise the applicant's ability to practise the profession safely and competently.

Provisions of this kind are common in occupational registration legislation where, for the purpose of protecting the public, the integrity of industry participants must be ensured. Those aspects of the Bill that provide for the amendment of the Act are consistent with the scope of criminal history provisions in other legislation that deal with the employment or registration of people who work primarily with children and other vulnerable people. These include for example, legislation such as the *Medical Practitioners Registration Act 2001*, other health practitioner registration Acts, the *Education (Teachers Registration) Act 1988* and *Commission for Children and Young People Act 2000*.

While the amendments make provision for an applicant's criminal history to be taken into account by the QNC, the possession of a criminal history does not necessarily make an applicant ineligible for registration, enrolment or authorisation nor does it mean that the QNC must automatically refuse to register, enrol or authorise the applicant to practise. For example, the nature of a person's criminal history may be such that the QNC is satisfied that the applicant is fit to practise, subject to certain conditions on their registration; or that it has no bearing whatsoever on the applicant's suitability to practise nursing. If a person is aggrieved by a decision of the QNC to refuse an application for registration, the person may appeal against the decision to a District Court Judge.

Amendment of Dental Practitioners Registration Act 2001

The amendment of the Dental Practitioners Registration Act will extend the existing power of the Dental Board of Queensland to ask for and obtain an applicant's full criminal history to applicants for registration as a dental auxiliary. The Bill provides for dental auxiliaries to be registered. As a result, over-riding the protection provided by the *Criminal Law (Rehabilitation of Offenders) Act 1986* in relation to dental auxiliaries raises a fundamental legislative principle issue, as the power to access a person's criminal history may be regarded as adversely affecting an individual's privacy.

The provision currently exists in relation to registered dentists, consistent with the scope of criminal history provisions in other legislation

dealing with the registration of people who work primarily with children and other vulnerable people.

Similar to the reasons provided above in the case of amendments to the Nursing Act, the capacity of the Dental Board of Queensland to access information about a person's full criminal history will assist the Board to undertake an assessment of an applicant's fitness to practise. The Board will have a more complete picture of an applicant's criminal history, including information about 'old' convictions which may indicate a pattern of behaviour that could compromise the applicant's ability to practise the profession safely and competently.

While the amendments make provision for an applicant's criminal history to be taken into account by the Board, the possession of a criminal history does not necessarily make an applicant ineligible for registration nor does it mean that the Board must automatically refuse to register, enrol or authorise the applicant to practise. For example, the nature of a person's criminal history may be such that the Board is satisfied that the applicant is fit to practise, subject to certain conditions on their registration; or that it has no bearing whatsoever on the applicant's suitability to practise nursing. If a person is aggrieved by a decision of the Board to refuse an application for registration, the person may appeal against the decision to a District Court Judge.

Consultation

Amendment of dental practitioners, dental technicians and dental prosthetists legislation

Public notification of the Terms of Reference and Public Benefit Test Plan ("PBT") for the National Competition Policy Review on the Restrictions of the Practice of Dentistry was made in the Courier Mail and major regional newspapers in April 1999. A PBT Report, prepared by external consultants, was released for stakeholder comment in June 2001.

Queensland Health conducted an information session in July 2001 for key stakeholders to provide them with an overview of the regulatory model proposed by the PBT Report and guidance about the issues to be addressed in submissions.

Queensland Health conducted a workshop with key stakeholders in August 2002 to consider issues relating to the appropriateness and workability of the regulatory model detailed in the PBT Report.

Focused consultation on the workability of draft provisions was conducted in May 2003 with key stakeholders including the Dental Board of Queensland, the Dental Technicians and Dental Prosthetists Registration Board, the Australian Dental Association, the Association of Dental Prosthetists, the Dental Technicians Association, the Dental and Oral Health Therapists Association and the Dental Hygienists Association.

Amendment of health practitioner registration legislation – restricted core practices

Consultation was conducted with the health professions and the community over a number of years in conjunction with the review of health practitioner registration Acts. As part of the review, a *Draft Policy Paper on the Review of the Medical and Health Practitioners Registration Acts* was released in 1996, which canvassed views on policy proposals for the regulation of practice. In accordance with National Competition Policy, the Review of Restricted Core Practices of Health Practitioners (the Restricted Core Practices Review) was established to examine statutory practice restrictions.

During the course of the Restricted Core Practices Review, professional associations, registration boards and other key stakeholders participated in focus groups during development of the Public Benefit Test Report. The resulting Public Benefit Test Report was released for consultation in August 2001. Focused consultation on the workability of draft provisions was conducted in May 2003 with all health practitioner registration boards and the Queensland branches of relevant professional associations, including the Australian Medical Association, the Australian Orthopaedic Association, the Australian Physiotherapy Association, the Australian Osteopathic Association, the Australian Podiatrists Association, the Chiropractors Association of Australia and the Optometrists Association Australia.

Amendment of Health Practitioners (Professional Standards) Act 1999 – Health Practitioner Tribunals

The District Court, the Health Rights Commissioner and the health practitioner registration boards were consulted about the proposed amendments.

Amendment of Health Rights Commission Act 1991

The Health Rights Commissioner and the health practitioner registration boards were consulted about the proposed amendments.

Amendment of Health Services Act 1991

The Department of Justice and the Attorney-General were consulted about the proposed amendments.

Amendment of Nursing Act 1992

The QNC, Queensland Nurses Union of Employees, Australian and New Zealand College of Mental Health Nurses Inc (Qld), Australian College of Midwives Inc (Qld), Royal College of Nursing Australian (Qld Chapter), Directors of Nursing Association Qld Inc, Health Rights Commissioner, Queensland Police and the Department of Justice and Attorney-General were consulted about the proposed amendments.

NOTES ON PROVISIONS**PART 1—PRELIMINARY**

Clause 1 sets out the short title of the Act.

Clause 2 provides for the commencement of the provisions of the Act. Generally, matters dealing with the amendments to the *Dental Practitioners Registration Act 2001* (other than certain matters relating to the membership of the Dental Board of Queensland and a transitional provision), the *Dental Technicians and Dental Prosthetists Registration Act 2001*, the *Dental Technicians and Dental Prosthetists Registration Regulation 2001* and certain amendments to the *Nursing Act 1992* will commence upon proclamation. The remaining provisions will commence upon assent.

**PART 2—AMENDMENT OF CHIROPRACTORS
REGISTRATION ACT 2001**

Clause 3 specifies that this part amends the *Chiropractors Registration Act 2001*.

Clause 4 inserts a new division 1A in part 4 to establish the restricted practice of spinal manipulation. The objective of this clause is to protect health consumers by making it an offence for a person who is not a registered chiropractor, medical practitioner, osteopath or physiotherapist to perform spinal manipulation on a person in the course of providing a health service. A maximum penalty of 1000 penalty units applies for a contravention of this restriction.

The clause clarifies that a student of one of these professions may, in the course of their training, perform spinal manipulation under the immediate supervision of registered chiropractor, medical practitioner, osteopath or physiotherapist.

The clause also defines the term ‘spinal manipulation’ for the purposes of this provision.

Clause 5 replaces the existing heading to part 10 of the Act to reflect the nature of the amendments to that part, that is, the omission of the savings provisions (see clause 6 below).

Clause 6 amends the Act by omitting part 10, division 3, consistent with the objective of removing the broad restriction on the practice of chiropractic.

PART 3—AMENDMENT OF DENTAL PRACTITIONERS REGISTRATION ACT 2001

Clause 7 specifies that this part amends the *Dental Practitioners Registration Act 2001* (“the Act”).

Explanation of key terms used in part 3

- “category” is defined in clause 31 to identify the different occupational groups falling within the generic description of ‘dental auxiliary’.
- “dental auxiliary” is defined in clause 31 to mean a person who is qualified for dental auxiliary registration in 1 or more of the following categories: dental therapy, dental hygiene or another category prescribed by regulation. The primary difference between the categories is the qualifications required to perform the functions for each category of dental auxiliary.

- “dental auxiliary registrant” is defined in clause 31 to mean a person registered under Part 3 of the Act as a dental auxiliary registrant but does not include a provisional dental auxiliary registrant.
- “general registrant” is currently defined to mean a person registered, under Part 3 of the Act, as a general registrant, but does not include a provisional general registrant (see Schedule 4 of the Act)
- “profession” is currently defined for the purposes of the Act to mean the dental profession. However, in order to clarify that this term includes dental auxiliaries, the term has been redefined to include dental auxiliaries.
- “restricted title” is to be defined in Schedule 4 to mean either a restricted general registrant title or a restricted dental auxiliary registrant title. Both of these generic restricted titles are further defined. A ‘restricted dental auxiliary registrant title’ is defined to mean a title that consists of or includes the words ‘dental therapist’, ‘dental hygienist’ or words that refer to a category of dental auxiliary prescribed by regulation. ‘Restricted general registrant title’ means a title that consists of or includes the words ‘dentist’, ‘dental practitioner’, ‘dental surgeon’ or ‘surgeon dentist’.

Clause 8 amends section 15, which sets out the membership for the Dental Board of Queensland (“the board”) established by section 9 of the Act. The membership requirements for the board are amended to provide for dental auxiliary representation and, as a consequence, the minimum size of the board (currently seven) is to be increased to nine to include dental auxiliary members.

Clause 9 amends section 16, which sets out the minimum requirements for the appointment of registrant members to the board. The amendment provides for at least two dental auxiliary registrants to be nominated by bodies representing the interests of dental auxiliaries, as is currently the case for general registrants.

Clause 10 amends section 18, which sets out the process by which professional bodies, educational institutions and community organisations are to provide nominations for appointment to the Dental Board. The amendments update references to those provisions of section 16 that are amended by the Bill.

Clause 11 amends section 22, which clarifies when a member of the board is taken to have vacated his or her office as a member of the board. The amendment updates the section to include a reference to dental auxiliary registrants.

Clause 12 inserts a new division 9A into Part 3 of the Act to provide for the registration of dental auxiliaries.

Generally, the provisions allow for a person to apply to the board for registration as a dental auxiliary in the category or categories of dental auxiliary stated on his or her application. If the person is eligible for registration as a dental auxiliary, the board may register the person as a dental auxiliary in the category or categories of dental auxiliary to which the application relates. The categories, defined in clause 31, include dental therapy and dental hygiene. This approach is similar to that adopted for specialist registration where the board, subject to eligibility requirements, may register a person as a specialist registrant, in a prescribed specialty.

The provisions dealing with applications, eligibility, conditions and decisions on registration of dental auxiliaries are closely modelled on the general registration provisions. Accordingly, the sections dealing with dental auxiliary registration, 133A – 133C, mirror (with necessary adaptations), the general registration provisions, sections 42 – 44 of the Act. Likewise, other provisions dealing with dental auxiliary registration, sections 133D, 133E and 133F mirror (with necessary adaptations) sections 51, 55 and 57 of the Act which deal with general registration.

It is important to note the following points in regard to dental auxiliary registration:

- Section 133A provides that the approved application form for registration as a dental auxiliary may require the disclosure of the applicant's criminal history. The section further provides that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure. This is consistent with the approach taken for general registration (section 42 of the Act) and generally consistent with other occupational regulation legislation where, for the purpose of protecting public health and safety, the integrity of registrants must be ensured. It should be noted that any information obtained under this provision by the board will be protected by the confidentiality obligations under section 218 of the Act.
- Section 133F empowers the board to register an applicant for dental auxiliary registration, subject to conditions the board

considers are necessary or desirable for the applicant to practise competently and safely. If a registrant is registered in more than one category, different conditions may be imposed for each category. It will be an offence for a registrant to contravene a condition, including a recency of practice condition, imposed on his or her registration (see section 57 of the Act).

Section 133G 'cross-applies' relevant provisions from part 3, divisions 1 - 7 for the purpose of applying for dental auxiliary registration and registering a person as a dental auxiliary under this part. This cross - application avoids unnecessary duplication of provisions that have general application for all registrants. A similar approach was taken in the Act for specialist registration (see section 113) and special purpose registration (see sections 120, 127 and 131). The cross – application under section 133G means that:

- the board's powers for dealing with applications for dental auxiliary registration are the same as those for dealing with applications for general registration;
- the matters that the board may have regard to in deciding whether a dental auxiliary is fit to practice the profession are the same as those used to determine whether a general registrant is fit to practice the profession;
- the process and timeframes for deciding an application for dental auxiliary registration are the same as those for deciding an application for general registration and registering a general registrant;
- an authorised person or the board has the power to provisionally register an applicant for dental auxiliary registration;
- the board's powers for dealing with applications for renewal of dental auxiliary registration, including recency of practice requirements, are the same as those for dealing with applications for renewal of general registration;
- the board's powers for dealing with applications for restoration of dental auxiliary registration are the same as those for dealing with applications for restoration of general registration;
- the decision to cancel and the process for cancelling a dental auxiliary registration are the same as those for cancelling a general registration; and

- avenues of appeal against decisions made by the board, for example a decision to refuse to register an applicant for general registration, apply equally to dental auxiliary registration.

Clause 13 extends the application of section 139 of the Act to dental auxiliary registrants. Section 139 of the Act applies when a person's registration (other than provisional registration) is affected under this Act either by cancellation, the imposition of conditions or removal of those conditions. In these circumstances the board must notify all Australian and New Zealand regulatory authorities with which the board knows the person is registered, of the event. This provision also gives the board discretion to notify other entities, specified in subsection 120(3), of these events. However, the board may only exercise this discretion if it believes that the entity needs to know about the event and that notifying the entity will assist in achieving the objectives of this Act.

Clause 14 inserts a new division 1A in Part 4. The purpose of division 1A is to restrict the practice of dentistry to specified persons and provides a limited range of exemptions to that restriction. The term 'dentistry' is defined in section 139A(4). Section 139A restricts the practice of dentistry to general registrants, provisional general registrants or medical practitioners. A maximum penalty of 1000 penalty units applies for a contravention of this restriction. Section 139A exempts the following from this restriction:

- the emergency extraction of a tooth undertaken by an unqualified person without the use of anaesthetic;
- first aid dental treatment,

Example –

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

- the application of a dressing to a tooth, as a temporary measure, under the direction of a general registrant, provisional general registrant or medical practitioner. The term 'direction' is defined in section 139A(4) to mean direction by phone or other technology allowing reasonably contemporaneous and continuous oral communication

Example –

The application of a dressing to a tooth by a remote area nurse where a dentist is not available. A dentist gives instructions by phone to the remote area nurse applying the dressing;

- dentistry by a dental auxiliary, under the supervision of a supervising registrant, performing the general or other authorised functions of a dental auxiliary. The term ‘supervising registrant’ is separately defined in section 139A(4);
- dentistry by special purpose registrants or provisional special purpose registrants; and
- dentistry by student dentists and student dental auxiliaries under the supervision of a supervising registrant

The restriction does not apply to registered dental prosthetists providing ‘dental prosthetic services’ within the meaning of that term in the *Dental Technicians and Dental Prosthetists Registration Act 2001* as the definition of ‘dentistry’, incorporates dental prosthetic services (see paragraph (b), definition of ‘dentistry’ in clause 14).

Clause 15 inserts new 140, 140A 140B and 140C in Part 4 Division 1 of the Act (Restricted titles and holding out). The provisions adapt the existing provisions under division 1 as a consequence of the registration of dental auxiliaries under the Act. The policy objective of the provisions is to protect health consumers, in relation to the taking and use of restricted titles, by enabling consumers to distinguish between the different types of registrants and between registrants and other persons who are not registered under the Act.

Section 140 replaces the existing section 140. Section 140(1) now prohibits persons who are not dental auxiliary registrants or provisional dental auxiliary registrants from taking or using a restricted dental auxiliary registrant title. Clause 31 defines the term ‘restricted dental auxiliary registrant title’ to mean words that consist of or includes the words ‘dental therapist’, dental hygienist’ or words that refer to a category of dental auxiliary prescribed under a regulation.

The prohibition under section 140(1) extends to registrants (for example, general registrants who are not also registered as dental auxiliaries), as well as non-registrants. However, subsection 140(2) allows persons, who are not dental auxiliary registrants, to use a restricted dental auxiliary registration title in limited circumstances. This provision essentially allows a person who has a business that employs, or otherwise engages, dental auxiliary registrants to provide professional services to use a restricted dental auxiliary registrant title in its business name. In addition, subsection 140(3) allows a person undergoing study or training to obtain a qualification for dental auxiliary registration in a category to, for example, wear a ‘student dental therapist’ badge.

Section 140(4) prohibits, for example, a business owner, using a restricted dental auxiliary registrant title in relation to his or her employees who are not registered as dental auxiliaries. Section 140(5) is a corollary to section 140(3) and provides an exemption to the offence under subsection 140(4) for persons ‘holding out’ dental auxiliary students in limited circumstances.

Section 140(6) covers other circumstances where a person may mislead health consumers into believing the person is a registered dental auxiliary by using words or symbols to indicate that the person is a dental auxiliary for a category. The provision also covers circumstances where a person claims to be authorised or qualified to practise the profession as a dental auxiliary for a category. Section 140(7) is a corollary to section 140(6) and applies, for example, to an owner or manager of a business in relation to his or her employees or staff.

Section 140(8) provides that the section does not apply in relation to special purpose or provisional special purpose registrants. Section 140C deals with these registrants.

Section 140A is a corollary to section 140 as it applies to persons and registrants who are not general registrants or provisional general registrants.

Section 140B is a corollary to section 140 as it applies to dental auxiliary registrants in a category of dental auxiliary registration. Generally, the provision prohibits a dental auxiliary registered in one category from taking or using a restricted dental auxiliary registrant title for another category unless the person is registered in that other category. The exemptions to this prohibition are similar to those under section 140, which allow:

- business persons who employ, or otherwise engage, dental auxiliary registrants of a particular category to provide professional services to use a restricted dental auxiliary registrant title relating to the category in its business name; and,
- student auxiliaries in a category to take or use the restricted dental auxiliary registrant title for the category.

Section 140C is a corollary to section 140 as it applies to special purpose and provisional special purpose registrants.

Clause 16 amends subsection 141(3) of the Act to correct a drafting error. The subsection currently provides a penalty which does not relate to an offence.

Clause 17 amends section 144 of the Act by prohibiting persons holding out other persons as general registrants, dental auxiliary registrants or dental auxiliary registrants for a category.

Clause 18 replaces sections 145 and 146, with a new section 145 to make it an offence for a registrant to:

- claim or hold out to be, or to be eligible to be, another type of registrant under this Act; or
- allow himself or herself to be held out as being another type of registrant; or
- claim or hold out to be eligible to be another type of registrant.

Example –

- (a) A dental auxiliary registered under the Act only in the category of dental therapy can not claim or hold out to be registered as a dental auxiliary in the category of dental hygiene.
- (b) A general registrant who is not registered under the Act as a dental auxiliary in the category of dental therapy can not claim or hold out to be registered as a dental auxiliary in the category of dental therapy.

Clause 19 amends section 153 of the Act to update section references in the section as a result of the amendments brought about by clause 14.

Clause 20 amends section 154 of the Act to similarly update section references in the section as a result of the amendments brought about by clause 14.

Clause 21 extends the application of section 201 to dental auxiliary registration. Section 201 sets out the powers available to the District Court to deal with an appeal against a decision made under this Act.

Clause 22 extends the application of section 215 to dental auxiliary registrants. Section 215 requires the board to maintain a current register about registrants, which must contain, at a minimum, the information specified in subsection 215(3).

Clause 23 amends section 223 of the Act to update section references in the section as a result of the amendments brought about by clause 14.

Clause 24 extends the application of section 230 to dental auxiliary registrants. Section 230 provides deemed general or specialist registration under this Act to interstate registered practitioners who are engaged to provide dental, dental specialist or dental auxiliary services to persons participating in, or preparing for, declared sporting, cultural or other events in Queensland.

Clause 25 replaces the heading for division 2 of part 10 of the Act to reflect the nature of the amendments to that part, that is, the omission of the savings provisions (see clause 26 below).

Clause 26 omits sections 262 and 263. Section 262 is to be omitted as the terms defined under this section become redundant upon the omission of sections 263 and 264. Section 263 is to be omitted as the prohibited practices in this section have been updated and relocated to section 139A (see clause 14).

Clause 27 omits section 264. Section 264 of the Act provides the head of power for the regulations to prescribe the designation and duties of dental auxiliaries. As the term ‘dental auxiliary’ is defined in the Bill and the Bill makes provision for the registration of dental auxiliaries, the prescription of the designation of dental auxiliaries in a regulation is now redundant. The duties of dental auxiliaries will no longer be a matter for prescription by regulation. This will bring dental auxiliaries in line with other occupational groups who do not have their duties prescribed by regulation.

Clause 28 inserts a new division 4 in part 10 comprised of sections 267 and 268. Section 267 is a transitional provision allowing the Minister to immediately appoint unregistered dental auxiliaries to the board as registrant members (see clauses 8 and 9). The provision deems the appointees as registrant members for the purposes of taking and holding office as a registrant member of the board pending their registration as dental auxiliaries under the Act. Section 267(3) and (4) provide that where a deemed registrant does not become registered as a dental auxiliary within 6 months of the commencement of the provisions dealing with dental auxiliary registration (see clause 12), the deemed registrant is taken to have vacated his or her membership of the board.

Clause 29 inserts a new section 268 into the Act. Section 268 provides for the current practice restriction under section 263 of the *Dental Practitioners Registration Act 2001* to be applied to dental auxiliary registrants until such time as the new practice restriction under clause 14 comes into effect. The new section 139A, among other matters, sets out the circumstances under which dental auxiliary registrants are exempt from the restriction on the practice of dentistry. The transitional arrangements under section 268 will ensure that there is sufficient ‘lead in time’ for dental auxiliaries to be registered by the board, prior to the new practice restriction coming into effect.

Clause 30 amends Schedule 1, which lists, for information purposes, those decisions made under this Act for which information notices must be

given and against which an appeal may be made to the District Court under Part 6 of the Act.

Clause 31 amends the dictionary in Schedule 4 of the Act. This clause:

- inserts a number of new definitions for those terms used in relation to the registration of dental auxiliaries;
- inserts a definition for the term “restricted dental auxiliary registrant title” and “restricted general registrant title”. As a consequence of these amendments it was necessary to omit the definition of “restricted title” from the dictionary;
- replaces the definitions “professional service” to include a dental auxiliary service and the definition “renewable registration” to include dental auxiliary registration; and
- amends the terms “certificate of registration”, “information notice” and “review period” to encompass dental auxiliary registration.

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

Clause 32 specifies that this part amends the *Dental Technicians and Dental Prosthetists Registration Act 2001*.

Clause 33 inserts a new part 4 division 1A (sections 124A – 124B) into the Act to restrict the provision of dental prosthetic services to certain persons. The term ‘dental prosthetic service’ is defined in Clause 36.

Section 124A(1) restricts the provision of dental prosthetic services to dental prosthetists, dentists or medical practitioners. A maximum penalty of 1000 penalty units applies for a contravention of this restriction.

Section 124A(2) restricts the employment of persons for the purposes of providing dental prosthetic services unless the employee is a dental prosthetist, dentist or medical practitioner. A maximum penalty of 100 penalty units applies for a contravention of this restriction.

Section 124A(3) exempts student dental prosthetists, under the immediate supervision of a dental prosthetist or dentist, from the restriction on the provision of dental prosthetic services.

Section 124B(1) restricts the provision of partial artificial dentures by dental prosthetists unless the dental prosthetist has:

- received from a dentist or a medical practitioner a certificate as to the oral health of the patient; or
- successfully completed an approved dental prosthetic course or an approved oral pathology course.

A maximum penalty of 100 penalty units applies for a contravention of this restriction.

Section 124B(2) defines the terms ‘approved dental prosthetic course’ and ‘approved oral pathology course’ as used in 124B(1).

Clause 34 replaces the existing heading to part 10 of the Act to reflect the nature of the amendments to that part, that is, the omission of the savings provisions (see clause 35 below).

Clause 35 repeals sections 240 – 244 of the Act. Sections 240 - 244 are saved provisions under the Act which are now incorporated into the body of the Act or have been made redundant by provisions of this Bill.

Section 240 of the Act defines certain terms used in the savings provisions of the Act. Some of the definitions in this saved provision have been incorporated into the Act whilst other terms have been omitted. In line with the policy objective of removing all current restrictions on the provision of dental technical work, the definition of ‘dental technical work’ has been omitted from the Act. The term ‘fitting’, as it is used to describe a dental prosthetic process, has likewise been omitted on the basis that it has an accepted meaning within the industry and need not be further defined.

Section 241 which exempts medical practitioners and dentists from the restriction on the provision of dental prosthetic services has been omitted as the exemption is now contained within section 124A of the Act.

Section 242 requires the Dental Technicians and Dental Prosthetists Registration Board (“the board”) to enter, in the register kept by the board, details of the successful completion of any approved course by a dental prosthetist. This provision is redundant given the board’s present obligations, under section 197 of the Act, with regard to what matters need to be recorded in the register. Accordingly, section 242 is to be omitted.

Section 243 specifies the practise restrictions for the performance of dental technical work and the provision of dental prosthetic services. The restriction on the provision of dental prosthetic services has been incorporated into the Bill (see Clause 27, section 124A(1) discussed above). The restriction on the performance of dental technical work is to be removed from the Act. As this Bill currently has otherwise dealt with these restrictions, section 243 is to be omitted.

Similar to section 243, section 244 imposes restrictions on the performance of dental technical work and restricts the provision of partial dentures by dental prosthetists. As both of these matters have been addressed in the Bill, section 244 is to be omitted.

Clause 36 amends Schedule 4 of the Act by inserting definitions of ‘artificial denture’, ‘dental prosthetic service’, ‘dentist’ and ‘healthy mouth’.

PART 5—AMENDMENT OF HEALTH ACT 1937

Clauses 37 - 40 amend the *Health Act 1937* by empowering the Chief Executive of Health, rather than the Governor in Council, to appoint an officer under section 27. Consequential amendments are also made to the definition of ‘officer’ in section 5 of the Act, and to a reference to officers appointed under section 27 which is contained in section 27B.

PART 6—AMENDMENT OF HEALTH PRACTITIONERS (PROFESSIONAL STANDARDS) ACT 1999

Clause 41 specifies that this part amends the *Health Practitioners (Professional Standards) Act 1999*.

Clause 42 inserts a new section 13A into division 3 of Part 2 of the Act. Section 13A will define certain terms used in that division by reference to the meaning given to those terms under the *Dental Practitioners Registration Act 2001*.

Clause 43 amends section 18 of the Act to specify that a professional conduct review panel established to hear a disciplinary matter relating to a dental auxiliary registrant, must consist of 2 members who are dental auxiliaries in the same category as the dental auxiliary appearing before the hearing. For example, a person may be registered in the categories of dental hygiene as well as dental therapy. If the disciplinary proceedings relate to an act or omission that occurred when the person was performing the normal functions of a dental hygienist, the two members of the professional panel of assessors who are to sit on the panel must be dental auxiliaries in the category of dental hygiene.

This is a corollary to section 18(1) of the Act as it applies to registrants who are registered in more than one profession as a respondent in a disciplinary matter.-

Clause 44 amends section 39 of the Act by providing for a dental auxiliary professional panel of assessors.

Clause 45 amends section 245 of the Act to specify that a decision of the Health Practitioners Tribunal is to take effect when it is delivered by the Tribunal, or as otherwise ordered. However, the clause specifies an alternate timeframe for the decision to take effect if the registrant to whom a decision relates, or their representative, is not present when the Tribunal gives the decision.

Clause 46 similarly amends the Act in the case of suspended decision.

Clause 47 makes a consequential amendment to section 383 of the Act, consistent with the amendment to section 85 of the *Health Rights Commission Act 1991*.

Clause 48 amends the Dictionary of the Act to remove the reference to 'school' dental therapist and replace it with the term 'dental therapist' in line with the policy objective of removing the employment restriction on dental therapists to the public sector.

PART 7—AMENDMENT OF HEALTH RIGHTS COMMISSION ACT 1991

Clause 49 specifies that this part amends the *Health Rights Commission Act 1991*.

Clause 50 amends section 79 of the Act to clarify the Health Rights Commissioner's power to decide not to take action on a health service complaint that has been conciliated. For example, the Commissioner may decide to take no further action on a health service complaint where no agreement was reached in conciliation or where the Commissioner ended conciliation.

Clause 51 amends section 85 of the Act to clarify that the Health Rights Commissioner may refer a public interest issue to a registration board, or another entity in the case of a non-registered provider. The objective of the clause is to enable the referral of a public interest issue before, during or at the end of conciliation.

The clause also clarifies that conciliation of the health service complaint is suspended pending the outcome of the referral to the board or other entity. However, conciliation may continue in the circumstances specified.

Clause 52 amends section 92 of the Act to clarify that a conciliator may discuss information gained during conciliation with another conciliator or the Health Rights Commissioner.

Clause 53 inserts a new section 127A to clarify that the Health Rights Commissioner may decide to conciliate a health service complaint that has been investigated.

PART 8—AMENDMENT OF HEALTH SERVICES ACT 1991

Clause 54 specifies that this part amends the *Health Services Act 1991*.

Clause 55 amends section 10, which sets out the membership requirements for District Health Councils. The amendment provides for councils to consist of not more than 10 members appointed by Governor in Council.

Clause 56 amends section 14, which sets out the circumstances in which a member of a council is taken to have vacated office. The amendment clarifies that if a member resigns from office, the resignation must be made by way of a signed notice given to the Minister.

Clause 57 inserts new sections 14A and 14B. Section 14A specifies when a notice of resignation tendered to the Minister by a member of a

council takes effect. Section 14B clarifies that a vacancy in the membership of a council does not affect the performance of a council's functions or the exercise of its powers.

Clause 58 amends the heading of part 9.

Clause 59 inserts a new division 4 in part 9, comprised of new section 81. Section 81 removes any doubt that the performance of a function or the exercise of a power was valid, should the membership of a council have been less than the minimum number required under section 10 at the time the function was carried out or the power exercised.

PART 9—AMENDMENT OF NURSING ACT 1992

Clause 60 specifies that this part amends the *Nursing Act 1992*.

Clause 61 amends section 4 by omitting the definition for the terms 'code of conduct' and 'committee' and inserting definitions for the following terms: approved code of practice, convicted, corresponding law, criminal history, disciplinary action, disciplinary matter, disciplinary proceedings, entity acting on behalf of user, foreign regulatory authority, ground for disciplinary action, interstate regulatory authority, Nursing Tribunal and tribunal.

Clause 62 amends section 7, which outlines the functions of the Queensland Nursing Council (QNC). Amendments to section 7 are necessary as a consequence of the amendments made to the Act about the grounds for disciplinary action and the Council's ability to provide information to other nursing regulatory authorities.

Clause 63 amends section 10, which sets out the head of power in the Act to make by-laws. Amendments to section 10 are necessary as a consequence of the amendments made to the Act about the grounds for disciplinary action and the change of title for the Professional Conduct Committee to the Nursing Tribunal. It should be noted that clause 61 provides for the term 'tribunal' to be defined as meaning the Nursing Tribunal and clause 77 provides for the Professional Conduct Committee to continue in existence under the new title of Nursing Tribunal.

Clauses 64 and 65 amend sections 43 and 47 respectively, to accord with current drafting practice.

Clause 66 inserts new subsections (3A), (3B), (3C) and (3D) in section 54 to enable the QNC to have regard to a person's criminal history when deciding whether a person is competent and fit to practise as either a registered nurse or enrolled nurse. The QNC will be able to ask for, and be provided with, a written report about an applicant's criminal history by the commissioner of the police service. The *Criminal Law (Rehabilitation of Offenders) Act 1986* will not apply to the asking for, or giving of this report. The term 'criminal history' is defined for the purposes of the Act so that information about, and consideration of, a person's criminal history will encompass all convictions and charges, regardless of when they may have occurred (see clause 61).

Clause 67 inserts new subsections (2) and (3) in section 55, which sets out the application requirements for registration or enrolment as a nurse. Subsection (2) enables the QNC to require the disclosure of a person's criminal history as part of the application process. Subsection (3) specifies that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure.

Clause 68 inserts new provisions in section 64, which provides for the temporary registration of appropriately qualified interstate or overseas nurses (eg to enable a person to undertake post graduate study in nursing). A new criterion has been inserted in subsection 64(1)(c) to enable the QNC to have regard to a person's criminal history when deciding whether the person is a suitable person to be temporarily registered (see clause 69). Subsection (1A) enables the QNC to require the disclosure of a person's criminal history. Subsection (1B) specifies that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure.

Clause 69 inserts a new section 64A, which sets out the matters the QNC may have regard to when deciding a person is a suitable person to be temporarily registered as a nurse - including the person's criminal history. This section also enables the QNC to ask for, and be provided with, a written report about a person's criminal history by the commissioner of the police service. The *Criminal Law (Rehabilitation of Offenders) Act 1986* will not apply to the asking for, or giving of this report.

Clause 70 amends section 65 to replace references to the Professional Conduct Committee (and committee) with tribunal.

Clause 71 amends section 66, which enables the QNC to require an applicant for registration or enrolment to be referred to the Health Assessment Advisory Panel for assessment and to impose conditions on the person's registration or enrolment if recommended by the Panel. New subsections (2A) and (7) require the QNC to give the Health Rights

Commissioner written notice of the following: a referral to the Panel; any recommendation made by the Panel; and the action to be taken by the QNC in response to the recommendation.

Clause 71 also inserts a new subsection (2B), which enables the QNC, if considered relevant, to disclose an applicant's criminal history to the panel. For example, an applicant may have a series of charges and convictions that indicate a pattern of behaviour that affects the applicant's ability to practise nursing safely and competently. The *Criminal Law (Rehabilitation of Offenders) Act 1986* will not apply to the disclosure.

Clause 72 inserts new subsection (3A) in section 67 to require the QNC to notify the Health Rights Commissioner, in writing, where the council has utilised its powers to immediately suspend the registration or enrolment of a nurse.

Clause 72 also amends section 67 as a consequence of the changes made to the Act about the grounds for disciplinary action.

Clause 73 inserts a new subsection (3) in section 68, which sets out the means by which the executive officer of the QNC can immediately suspend the registration or enrolment of a nurse. Under this subsection, the executive officer must give the nurse and the Health Rights Commissioner written notice of the suspension (including the reasons for the suspension), if the executive officer suspends the nurse's registration or enrolment.

Clause 74 amends subsection (1) and replaces subsection (4) in section 77 to enable the QNC to have regard to a person's criminal history when deciding whether the person is a suitable person to be authorised to practise midwifery or authorised to practise nursing.

In relation to the authorisations that may be granted under section 77, it should be noted that access to a person's criminal history will only be required in relation to a person seeking authorisation as a midwife under section 77(1) or a person seeking authorisation to practise nursing under section 77(4) who is not a registered nurse. Authorisations granted under section 77(2) to practise mental health nursing, and section 77(3) to practise an area of nursing, are only granted to persons who are also registered nurses.

Clause 75 inserts a new section 77A which sets out matters the QNC may have regard to when deciding a person is a suitable person to be authorised to practise midwifery or nursing. This section also enables the QNC to ask the applicant for details of their criminal history and to be provided with a written report about an applicant's criminal history by the commissioner of the police service. Subsection (5) specifies that the

Criminal Law (Rehabilitation of Offenders) Act 1986 will not apply to the disclosure.

Clause 76 amends the division heading for part 5, division 1 to replace the reference to the Professional Conduct Committee with Nursing Tribunal.

Clause 77 replaces section 84. The new section 84 provides for the Professional Conduct Committee to continue in existence under the title of Nursing Tribunal.

Clause 78 amends section 85, which sets out the functions of the Professional Conduct Committee. The amendments are necessary as a consequence of the amendments made to the Act about the grounds for disciplinary action and to replace references to the Professional Conduct Committee (and committee) with tribunal.

Clause 79 replaces the heading for part 5, division 2.

Clause 80 omits sections 99 and 100, that provide for the making of a code of conduct by the QNC and for action to be taken against a nurse who contravenes the code of conduct. The grounds for disciplinary action under the Nursing Act are considered to be too narrow when compared with the grounds applicable to other registered health practitioners in Queensland and nurses in other jurisdictions. In order to achieve greater consistency, the basis upon which disciplinary action may be taken has been revised. The grounds for disciplinary action have been expanded to not only take account of behaviour that may constitute unsatisfactory professional conduct but an impairment (such as substance abuse or dependence) which may affect the ability of a nurse or midwife to practise nursing.

Clause 81 inserts new sections 101A, 101B and 101C. Section 101A enables the QNC to develop, or adopt another entity's, code of practice to provide guidance to nurses, midwives and other persons authorised to practise nursing as to appropriate professional conduct or nursing practice. This provision also specifies that before making, amending or adopting a code the council 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. The provision is cast in a broad way to enable the QNC 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 nursing practice. It would be possible for the

council to issue a number of codes of practice using the powers under this provision.

Section 101B requires any approved code to be available for public inspection and also imposes duties on the council to ensure that nurses, midwives and other persons authorised to practise nursing are notified of the approval of the code and any changes to the code.

Section 101C clarifies that a code of practice approved under this part is admissible as evidence in disciplinary proceedings brought against a nurse, midwife or other person authorised to practise nursing under the Act.

Clause 82 replaces the heading for part 5, division 3 to reflect the changes made to the Act about the grounds for disciplinary action.

Clause 83 omits section 102 and replaces it with new sections 102 to 102AC. As a consequence of the changes made to the Act about the grounds for disciplinary action, it has also been necessary to amend those provisions of the Act about the making of complaints. The amendments provide for complaints to be made about conduct or practice or another matter that appears to provide grounds for disciplinary action or a matter for which a complaint could be made under section 57 of the *Health Rights Commission Act 1991*. Currently, complaints may only be made by aggrieved persons about the conduct of a nurse.

The new section 102 specifies that any entity may make a complaint regarding a nurse, midwife or a person authorised to practise nursing. 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.

Section 102AA specifies that a complaint may be made to the QNC about the conduct, practice or another matter that appears to provide a ground for disciplinary action (see clause 90 which inserts new section 104A). This includes, for example, unsatisfactory professional conduct and impairment (as defined in section 104A), non-compliance with the Nursing Act or a conviction for an indictable offence. This section also specifies that a complaint may be made about a matter provided for under section 57 of the *Health Rights Commission Act 1991*. The grounds for complaint to the council and the commission will effectively be the same.

Section 102AB requires that a complaint be made in writing and contain the particulars of the allegation.

Section 102AC requires a complainant to give their name, address and other identifying information required by the QNC. However, the QNC

may accept a complaint that does not meet these requirements, if the council considers it is in the public interest to do so. Under these circumstances the QNC must notify, in writing, the person who is the subject of the complaint, of its reasons for accepting the complaint.

Clauses 84 to 89 amend sections 102A, 102C, 102D, 103, 103A and 104 as a consequence of the amendments made to the Act about the grounds for disciplinary action and to replace the references to the Professional Conduct Committee (and committee) with tribunal.

Clause 84 also amends subsections 102A(3) and (4) as a result of the amendments made to the Act about who may make a complaint.

Clause 90 inserts a new division 3A in part 5 comprised of new section 104A. This section specifies each of the grounds for taking disciplinary action against a nurse, midwife or other person authorised to practise nursing. It should be noted that only one ground needs to be met for disciplinary action to be taken, but proceedings may be taken on the basis of more than one ground. The grounds for disciplinary action include:

- unsatisfactory professional conduct, which is defined in section 104A, to include professional conduct that is of a lesser standard than that which might reasonably be expected by the public or professional peers. This new definition broadens the circumstances under which disciplinary action may be taken. 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.
- if a nurse, midwife or person authorised to practise nursing is impaired, the impairment is taken to be a ground for disciplinary action against the registrant. It is not necessary for the 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 person’s professional conduct.
- contravention of a provision of the Nursing Act, including a failure to comply with conditions imposed on a person’s registration, enrolment or authorisation.
- where a person does not meet, or no longer meets, the requirements to be a nurse, midwife or other person authorised to practise nursing.

- where a nurse, midwife or person authorised to practise nursing has been convicted of an indictable offence.

Clause 91 replaces the heading for part 5, division 4.

Clause 92 amends section 116 to reflect the changes made to the Act about the grounds for disciplinary action. In addition, this clause replaces subsection 116(4) to enable the Nursing Tribunal to make an order for costs it considers appropriate to a maximum amount equivalent to 135 penalty units (ie approximately \$10,000).

Clause 93 amends section 118A as a consequence of the change of title of the Professional Conduct Committee to Nursing Tribunal and to include a reference to section 85(5) of the *Health Rights Commission Act 1991*.

Clause 94 inserts a new division 6 in part 5 comprised of new section 121A. This section makes it an offence for a person to aid, abet, counsel, procure or induce (including by threats or promises) a nurse, midwife or person authorised to practise nursing to engage in conduct which could result in them being disciplined under the Nursing Act. This offence is targeted at nurses, midwives and persons authorised to practise nursing as well as other persons who may be in a position to influence, interfere or compromise the professional independence or clinical activities of a nurse, midwife or other person. Having regard to the potential for the behaviour targeted by this provision to seriously compromise public health and safety, this offence is punishable by a maximum penalty of 1000 penalty units.

Clause 95 amends section 129, which sets out the entry and search powers of inspectors to collect evidence in relation to matters considered to be offences against the Act, as a consequence of the changes made to the Act about the grounds for disciplinary action.

Clauses 96 to 98 amend sections 133 and 136 and the heading of part 7, division 3 to reflect the changes made to the Act about the grounds for disciplinary action.

Clauses 99 to 101 amend sections 137 to 139 to replace the references to the Professional Conduct Committee (the committee) with the Nursing Tribunal (the tribunal).

Clause 99 also replaces subsection 137(10) to enable the District Court to order costs on appeals, as considered appropriate.

In addition, clause 101 inserts a new subsection (2A) in section 139. This provision creates an exception to the duty of confidentiality to enable information to be provided to a foreign regulatory authority (which is

defined in clause 61), if the information is necessary for the authority to perform its functions. This would include, for example, where the QNC has information that a nurse's health or competency interferes with his or her ability to carry out the functions of a nurse.

Clause 102 inserts new sections 140A to 140C. Section 140A requires a nurse, midwife or person authorised to practise nursing who has been convicted of an indictable offence or an offence against a corresponding law (as defined in clause 61) to give the council notice of the details of the conviction within a specified period. By virtue of section 36 of the *Acts Interpretation Act 1954*, this provision also requires notification of convictions of offences in other jurisdictions, which would be indictable offences in Queensland.

Section 140B requires a nurse, midwife or person authorised to practise nursing who is a party to certain proceedings in court to notify the council of the judgement in relation to those proceedings or any settlement of the proceedings (or part of the proceedings) within a specified period. So far as proceedings in a Queensland Court are concerned, the provision needs to be read in conjunction with the *Uniform Civil Procedure Rules 1999* which specify when proceedings start.

Section 140C requires a nurse, midwife or person authorised to practise nursing who is subject to disciplinary or other action under a corresponding law to notify the council of the details within the specified timeframe.

Clause 103 inserts a new division 4 in part 9 comprised of section 154 to specify that the renaming of the Professional Conduct Committee as the Nursing Tribunal does not affect anything done by or in relation to the committee before the name change was given effect.

PART 10—AMENDMENT OF OPTOMETRISTS REGISTRATION ACT 2001

Clause 104 specifies that this part amends the *Optometrists Registration Act 2001*.

Clause 105 inserts a new division 1A in part 4 to establish the restricted practice of prescribing an optical appliance. The objective of this clause is to protect health consumers by making it an offence for a person who is not a registered medical practitioner or optometrist to prescribe an optical

appliance. A maximum penalty of 1000 penalty units applies for a contravention of this restriction.

The clause also defines the term ‘optical appliance’ for the purposes of this provision.

Clause 106 replaces the existing heading to part 10 of the Act to reflect the nature of the amendments to that part, that is, the omission of the savings provisions (see clause 107 below).

Clause 107 amends the Act by omitting part 10, division 3, consistent with the objective of removing the broad restriction on the practice of optometry.

PART 11—AMENDMENT OF PHYSIOTHERAPISTS REGISTRATION ACT 2001

Clause 108 specifies that this part amends the *Physiotherapists Registration Act 2001*.

Clause 109 replaces the existing heading to part 10 of the Act to reflect the nature of the amendments to that part, that is, the omission of the savings provisions (see clause 110 below).

Clause 110 amends the Act by omitting part 10, division 3, consistent with the objective of removing the broad restriction on the practice of physiotherapy.

PART 12—AMENDMENT OF PODIATRISTS REGISTRATION ACT 2001

Clause 111 specifies that this part amends the *Podiatrists Registration Act 2001*.

Clause 112 replaces the existing heading to part 10 of the Act to reflect the nature of the amendments to that part, that is, the omission of the savings provisions (see clause 113 below).

Clause 113 amends the Act by omitting part 10, division 3, consistent with the objective of removing the broad restriction on the practice of podiatry.

PART 13—AMENDMENT OF ACT AND REGULATIONS

Clause 114 provides for the amendment of the Act and Regulations mentioned in the schedule. The clause also clarifies the powers of the Governor in Council to further amend the Regulation or repeal it.

SCHEDULE

The amendments to the *Nursing Act 1992* listed in the schedule replace the references to the Professional Conduct Committee (the committee) with the Nursing Tribunal (the tribunal).

The amendments to *Dental Practitioners Registration Regulation 2001* amends the Regulation by omitting the provisions which restrict the employment of dental therapists to the public sector, and which restrict dentists from employing more than one dental hygienist at the same time without the approval of the Dental Board of Queensland.

The amendments to the *Dental Technicians and Dental Prosthetists Registration Regulation 2001* updates the section references to the head of power for the prescription of approved dental prosthetics course and approved oral pathology course.