

HEALTH LEGISLATION AMENDMENT BILL 2004

EXPLANATORY NOTES

Title of the Bill

Health Legislation Amendment Bill 2004

Objectives of the Bill

The main policy objectives of the Bill are to:

- amend the *Health Services Act 1991* in relation to the duty of confidentiality to :
 - identify more clearly to whom the duty applies;
 - provide for variations to the existing exceptions to the duty;
 - provide for three new exceptions to the duty;
 - clarify the duty and exceptions that apply to former officers and employees;
 - incorporate investigation and enforcement provisions; and
 - improve the general wording of the section;
- amend the *Mental Health Act 2000* to address operational matters concerning the operation of the Mental Health Court, the operation of the Mental Health Review Tribunal and the treatment of interstate mental health patients;
- amend the *Nursing Act 1992* to:
 - implement the recommendations of the National Competition Policy (NCP) review of nursing and midwifery practice restrictions, including creating offences for unauthorised use of a nursing or midwifery title, falsely 'holding out' to be a nurse or midwife, practising nursing without appropriate registration, enrolment or authorisation and assisting a woman during childbirth without appropriate authorisation; and

- implement the outcomes of a review of the *Nursing By-law 1993*, including updating the course accreditation provisions in the Act;
- amend the *Pharmacists Registration Act 2001* to give effect to NCP reviews of pharmacy ownership and restricted core practices in health practitioner registration Acts; and
- amend various Acts to make minor operational changes, update cross references and make consequential amendments to reflect those made in the Bill.

Achievement of the Objectives

Amendment of Health Services Act 1991

The Bill replaces section 63 of the *Health Services Act 1991* with provisions that clarify the duty of confidentiality and the exceptions to the duty. These amendments resulted from a significant review of the operation of the section.

The amendments to section 63:

- clarify to whom the duty of confidentiality applies;
- amend existing exceptions to the duty of confidentiality to:
 - provide for a child or young person who has sufficient maturity to consent to the disclosure of their own information;
 - allow a parent to consent to disclosure of information where a child or young person is not mature enough to make that decision;
 - allow ‘designated persons’ such as switchboard operators, to give general information, for example, that a person’s condition is ‘stable’;
 - allow a health professional to disclose information to a person with ‘sufficient personal interest’ such as a family member or close friend;
 - permit disclosure of information required for the care or treatment of a person;
- add new exceptions to the duty of confidentiality to permit disclosure where:
 - there is a serious risk to life, health or safety of a person;

- the disclosure is to an inspector undertaking an investigation or enforcement function under part 7A (Investigation and Enforcement);
- the disclosure is for activities necessary or incidental to other exceptions; and
- include provisions for the appointment of officers with powers to investigate alleged breaches of section 63.

Amendment of Mental Health Act 2000

The amendments to the *Mental Health Act 2000* address minor operational matters and correct cross references. Specifically, the amendments:

- ensure the appropriate authorities are notified when a person with active criminal charges is returned from a mental health facility to a corrective services facility;
- increase the timeframe within which the Mental Health Review Tribunal is required to provide a written statement of reasons for a decision to 21 days and increase the timeframe within which a patient may make an appeal to 60 days;
- enable an observer to attend a Tribunal hearing for the purpose of training or performance review of Tribunal members;
- increase the period that the Tribunal may adjourn a hearing from 28 to 60 days, where this is for the purpose of obtaining an examination of a patient;
- clarify the Tribunal must give its reasons for taking or not taking into account material submitted by a non-party separate from its decision on a patient review;
- clarify that people such as volunteers and contractors working in the Tribunal are also subject to confidentiality requirements; and
- clarify the commencement of statutory timeframes for involuntary treatment of interstate mental health patients apprehended and taken to a Queensland Health service.

Amendment of Nursing Act 1992

The Bill amends the *Nursing Act 1992* to implement the outcomes of the National Competition Policy review of practice restrictions for nursing and midwifery. The restrictions introduced by the Bill are consistent with the other Queensland health practitioner registration Acts.

The amendments to the *Nursing Act 1992*:

- provide a clear title restriction on the terms ‘registered nurse’, ‘enrolled nurse’ and ‘midwife’ and related titles;
- replace the existing offences of holding out to be a registered or enrolled nurse or midwife with separate offence provisions for nursing and midwifery;
- retain a statutory restriction on nursing practice, with exemptions for non-nursing staff under the supervision of a nurse, other health professionals providing services within their professional training and expertise, emergencies, or persons acting for no fee or reward;
- retain a statutory restriction on caring for a woman in childbirth, with amendments to define the term ‘childbirth’ for the purposes of the restriction, and exemptions to ensure a woman in childbirth has access to other appropriate professional health care and the ability to choose to have voluntary help from other persons;
- incorporate the provisions from the *Nursing By-law 1992*, concerning accreditation of nursing and midwifery courses by the Queensland Nursing Council;
- replace the by-law making power with a regulation making power in accordance with contemporary drafting practice; and
- insert minor administrative provisions for example, to enable additional particulars to be recorded in the register.

Amendment of Pharmacists Registration Act 2001

The Bill amends the Act to address issues concerning pharmacy ownership and restrictions on the practice of pharmacy arising from two NCP reviews. Pharmacy ownership issues were examined as part of the National Review of Pharmacy while practice restrictions were examined under the Review of Restricted Core Practices in health practitioner registration Acts.

The amendments replace the existing provisions regarding pharmacy ownership and remove the current broad practice definition and practice offence used to prevent persons other than pharmacists from practising pharmacy.

The new provisions regarding pharmacy ownership:

- restrict ownership of a pharmacy business to:
 - registrants (ie. registered pharmacists);

- corporations whose shareholders and directors are all registrants, or a combination of registrants and specified relatives of the registrants;
- friendly societies that, at the commencement of the provisions, operate a pharmacy business in Queensland or another State, or are an amalgamation of two or more such friendly societies;
- Mater Misericordiae Health Services Brisbane Limited (the Mater Private Hospital).
- prohibit registrants from owning, or being a shareholder in, or director of, a corporation that owns more than five pharmacy businesses, or being a shareholder in, or director of, more than five corporations that own pharmacy businesses;
- prohibit corporations from owning more than five pharmacy businesses;
- prohibit friendly societies or the Mater Private Hospital from owning more than six pharmacy businesses;
- require that friendly societies that own a pharmacy business and demutualise (ie change into a company whose dominant purpose is to yield a return to shareholders) must not own the business for more than six months after the day of demutualisation;
- allow a former spouse of a registrant to continue to own, or continue to be a shareholder in, or a director of, a corporation that owns a pharmacy business for a specified period;
- clarify that the trustee of a bankrupt registrant owner of a pharmacy business, or the liquidator of a corporation that owns a pharmacy business, do not infringe the ownership restrictions merely because of their positions;
- update various other provisions in the Act.

Amendments in Schedule

Minor amendments are made to various Acts in the Schedule to the Bill. The amendments:

- repeal the *Drug Standard Adopting Act 1976*;
- consequentially amend the *Private Health Facilities Act 1999*, *Transplantation and Anatomy Act 1979*, *Child Protection Act 1999*, *Child Safety Legislation Amendment Act (No.2) 2004*, *Health Act 1937*, *Mental Health Act 2000*, *Penalties and Sentences Act 1992*, and

Radiation Safety Act 1999 to reflect the amendments to the *Health Services Act 1991* in the Bill;

- provide cross-referencing of new offence provisions in the *Chiropractors Registration Act 2001*, *Dental Practitioners Registration Act 2001*, *Dental Technicians and Dental Prosthetists Act 2001*, and *Optometrists Registration Act 2001*;
- clarify administrative arrangements for issuing pest control licences and amend a minor cross reference in the *Pest Management Act 2001*;
- consequentially amend the *Corrective Services Act 2000*, *Health Act 1937* and the *Health Practitioners (Professional Standards) Act 1999* to reflect amendments previously made in other Acts;
- amend minor cross references in the *Mental Health Act 2000* and the *Health Services Act 1991*; and
- update references to health practitioner registration Acts in the *Liquor Act 1992* and the *Transport Operations (Road Use Management) Act 1995*;

Alternative Ways of Achieving Policy Objectives

Alternative ways of achieving the policy objects were considered. However, each of the policy objectives dealt with in the Bill is required to be effected by legislation.

The amendments to the *Health Services Act 1991* are the culmination of a significant review of the duty of confidentiality and represent the only effective way of protecting patient confidentiality while facilitating the operational requirements of managing a health service.

The amendments to the *Nursing Act 1992* and the *Pharmacists Registration Act 2001* represent the most appropriate options identified through National Competition Policy reviews. These reviews included Public Benefit Tests and the outcomes represent the most effective means of achieving the State's obligations under the National Competition Policy.

The amendments to the *Mental Health Act 2000* are to facilitate minor operational changes identified by the Director of Mental Health, the Mental Health Court and the Mental Health Review Tribunal, that can only be facilitated by legislative amendment.

The remaining amendments are substantially consequential amendments required to facilitate other legislative provisions.

Estimated Cost for Government Implementation

There will be no additional costs arising from the proposed amendments.

Consistency with Fundamental Legislative Principles

The Bill is consistent with Fundamental Legislative Principles.

Consultation***Amendments to the Health Services Act 1991***

Queensland Health released a public discussion paper on the proposed amendments to section 63 (Confidentiality) in February 2003. Ninety-nine submissions were received from interested community groups, advocacy organisations, government agencies and individuals.

Queensland Health conducted a series of targeted meetings through the latter half of 2003 with key stakeholders including with the Queensland Police Service, the Queensland Ambulance Service, and the Multi Faith Health Care Council.

In August and September 2004 a consultation draft of the amending provisions were circulated to key government agencies. A further meeting with the Multi Faith Health Care Council was held in October 2004 to advise of the proposed amendments.

Amendment of Mental Health Act 2000

The President of the Mental Health Review Tribunal contributed to the development of the proposals for amendment and was provided with a consultation draft of the provisions in September 2004. A meeting was held with the President to discuss the provisions in September 2004.

Amendments to the Nursing Act 1992

The National Competition Policy review and Public Benefit Test were notified in *The Courier Mail* and major regional newspapers on 4 March 2000. Submissions were received and a discussion paper entitled *Nursing Act 1992: National Competition Policy review of nursing and midwifery practice restrictions*, which further refined the possible regulatory options, was released for public consultation in November 2001.

A consultation draft of the amendments introducing title and practice restrictions was sent to key stakeholders, including the Queensland Nursing Council (QNC), the Queensland Nurses Union (QNU) and the Australian College of Midwives Inc., in July 2004 for comment. Queensland Health

officers met separately with the QNC and the QNU in September 2004 to discuss issues raised by those bodies and provide a further consultation draft for comment.

A consultation draft of the amendments incorporating the accreditation provisions from the *Nursing By-law 1993* into the Act was sent to the QNC and QNU for comment. Further meetings were held with the QNC to discuss issues raised in their response.

Amendment of Pharmacists Registration Act 2001

In April 2004, a Draft Legislative Proposal concerning pharmacy ownership issues was provided to key stakeholders for comment. The stakeholders included the:

- Pharmacy Guild of Australia (Queensland Branch)
- Pharmacists Society of Australia
- Pharmacists Board of Queensland
- Queensland Friendly Society Pharmacies Association
- Pharmacists Division of the Association of Professional Engineers, Scientists and Managers
- Mater Private Hospital, South Brisbane.

Key stakeholders were consulted about pharmacy practice restrictions as part of the National Competition Policy review of restricted core practices in health practitioner registration Acts.

Other Acts

Consultation was undertaken with the various agencies responsible for the Acts to be consequentially amended.

NOTES ON PROVISIONS

PART 1 - PRELIMINARY

Clause 1 provides the short title of the Bill.

Clause 2 provides for the commencement of the provisions of the Bill, being a date to be fixed by proclamation.

PART 2 - AMENDMENT OF *HEALTH SERVICES ACT 1991*

Clause 3 specifies that this part amends the *Health Services Act 1991*.

Clause 4 amends section 2 of the *Health Services Act 1991* to insert new key terms, which are to be defined in the new part 7 (Confidentiality) of the Act.

Clause 5 replaces cross references in section 57 (Duty of confidentiality of officials), subsection (4)(b), to replace the reference to section 63(2)(j) with reference to section 62F.

Clause 6 inserts the new parts 7 and 7A. The new provisions deal with confidentiality in public sector health services and are in accordance with the results of a long term review undertaken of the section.

Part 7 - Confidentiality

Division 1 - Interpretation and application

Section 60 provides definitions for the part. The following definitions will apply:

- “**designated person**” will include the persons within the Department who may have access to confidential information during the course of their duties. Such persons include health service employees, public service employees, health professionals, temporary administration staff and volunteers. The definition is not intended to capture employees of other agencies that may be providing a health service such as a physiotherapist employed by the Department of Education to provide physiotherapy services to children with physical disabilities in school facilities.

Volunteers that are captured by the definition are those that provide services on behalf of the department. The definition is not intended to capture volunteers engaged by or providing services on behalf of other organisations.

- **“former designated person”** will include a person who was, but is no longer, a designated person;
- **“guardian”** is to be defined to ensure legal guardians such as the chief executive of Child Safety are captured;
- **“health practitioner registration Act”** will mean any one of the health practitioner Acts;
- **“health professional”** will include any person registered under a health practitioner registration Act, any person registered, enrolled or authorised under the *Nursing Act 1992* and any other person who provides a health service, for example an audiologist, dietitian or a social worker;
- **“public sector health service facility”** is to be defined to mean a facility at which a public sector health service is usually delivered by or for the Department of Health. It is not intended that the definition capture facilities where other types of health services that could be considered public sector health services are delivered, for example a Department of Education school facility in which nursing services are provided by the Department of Education for children with special needs.

Section 61 provides the definition of “parent” for the part as the child’s mother, father or someone else having or exercising parental responsibility for the child. A person standing in the place of a parent of a child on a temporary basis is not a parent of the child. For an Aboriginal or Torres Strait Islander child, a parent includes a person who, under Aboriginal tradition or Island custom, is regarded as a parent of the child

Division 2 - Confidentiality

Section 62A sets out the duty of confidentiality, prohibiting the disclosure of confidential information. This duty prohibits the disclosure of any information by a designated person to another person if the information would enable a person who is receiving, or has received, a public sector health service to be identified. To remove doubt, “another person”

specifically includes another designated person or a former designated person. The duty of confidentiality extends to information about a person who is deceased. Contravention of the duty carries a maximum penalty of 50 penalty units.

Section 62B provides an exception to the duty of confidentiality where the disclosure is required or permitted by an Act or another law.

Section 62C provides exceptions to the duty of confidentiality where disclosure is made with appropriate consent specified in the subsections.

Section 62C, paragraph (a) provides an exception to the duty of confidentiality where the disclosure is made with the consent of the adult person to whom the information relates.

Section 62C, paragraphs (b) and (c) provide exceptions to the duty of confidentiality only for health professionals where the person to whom the information relates is a child. The information may be disclosed with the consent of the child where the child is of sufficient age and mental and emotional maturity to understand the nature of consent. Where the child is not of sufficient maturity, the information may be disclosed with the consent of the parent. Paragraph (d) provides paramountcy to the best interests of the child, enabling the health professional to disclose or withhold information in the best interests of the child.

Section 62D provides exceptions to the duty of confidentiality to enable information about a person to be disclosed in general terms or more specifically in accordance with the subsections.

Subsection 62D(1) paragraph (a) provides an exception to the duty of confidentiality where the disclosure is about the condition of the patient and is communicated in general terms; for example, a media staff member at a hospital discloses that a patient's condition is "satisfactory."

Subsection 62D(1) paragraph (b) provides an exception where information is communicated to a person who has a "sufficient personal interest" in the health and welfare of the person about whom the information relates. A person with sufficient personal interest may include a spouse, child or parent. Subsection 62D(2) clarifies when a person can have sufficient personal interest in the health and welfare of a deceased person.

Subsection 62D(3) provides that information cannot be disclosed if the person to whom the information relates specifically requests that information not be disclosed generally or to a certain person.

Section 62E provides an exception to the duty of confidentiality where the disclosure is in order to provide for care or treatment of the person to

whom the information relates. The disclosure can only be made either by a designated person (for instance an receptionist) to a designated person who is a health professional (for instance a doctor), or by a designated person who is a health professional to any other person (for example by a doctor to a Queensland Ambulance officer or by a registered nurse to a home carer for a disabled person). This amendment reflects contemporary health care practices.

Section 62F provides an exception to the duty of confidentiality where the disclosure is by a designated person and the chief executive believes on reasonable grounds that the disclosure is in the public interest and has authorised the disclosure in writing. The provision requires non identifying details of the public interest disclosure to be included in the department's annual report. The provision specifically provides that the chief executive cannot delegate the power to make a public interest determination. This is a redraft of an existing exception to make it consistent with the redrafted part.

Section 62G provides an exception to the duty of confidentiality where disclosure is to another designated person for managing a funding arrangement or for data collection and public health monitoring. A disclosure under this section can only be made with the written authority of the chief executive. The exception will, for example, allow departmental officers to access patient records to investigate emergent public health risks, for example public concerns over a 'cancer cluster'.

Section 62H provides an exception to the duty of confidentiality where the disclosure is to either another designated person, or an entity prescribed under a regulation for the section, and the disclosure is for evaluating, managing, monitoring or planning health services. This is a redraft of an existing exception to make it consistent with the redrafted part

Section 62I provides an exception to the duty of confidentiality to permit disclosure where the disclosure is necessary to prevent serious risk to the life, health or safety of a person or to public safety. To ensure that information is only disclosed in appropriate circumstances, the chief executive must authorise the disclosure, which must be limited to that information required to avert the risk. For example, staff at the Poisons Information Centre may receive a call from a person they believe has attempted suicide. The Poisons Information staff may, with the approval of the chief executive, give information to a Queensland Ambulance Officer to assist in saving the person.

Section 62J provides an exception to the duty of confidentiality to permit disclosure of confidential information by a designated person to an

inspector appointed under part 7A (Investigation and Enforcement) for the purposes of investigating a possible breach of the duty of confidentiality.

Section 62K provides an exception to the duty of confidentiality to enable information to be disclosed to an official appointed under part 6 (Administration) to enable the official to perform his/her functions under that part. This is a redraft of an existing exception to make it consistent with the redrafted part.

Section 62L provides an exception to the duty of confidentiality to enable the disclosure of information to the Queensland Nursing Council or a board established under a health practitioner registration Act, for the purposes of making or giving information about a complaint about, or assisting an investigation into an enrolled, authorised or registered (as the case may be) person. This is a redraft of an existing exception to make it consistent with the redrafted part.

Section 62M provides an exception to the duty of confidentiality to enable disclosure of information by a designated person to a quality assurance committee approved under section 31(1). This is a redraft of an existing exception to make it consistent with the redrafted part.

Section 62N provides an exception to the duty of confidentiality to enable disclosure of information by a designated person, under an agreement with the Commonwealth or a Commonwealth entity, another State or another State's entity, or with another Queensland State entity, where the chief executive has considered the disclosure to be in the public interest. The provision requires that any information received under this provision must not be given to anyone else unless permitted under the agreement or by written approval from the chief executive. This is a redraft of an existing exception to make it consistent with the redrafted part.

Section 62O provides an exception to the duty of confidentiality to enable disclosure to the Australian Red Cross Society for the purpose of tracing infected blood, blood products, tissue or the recipients or donors of the infected blood, blood products or tissue. This provision expands an existing provision.

Section 62P provides an exception to the duty of confidentiality where the disclosure is to a person who requires the information to perform a function, other than preparing an annual report, under the *Coroners Act 2003*. This is a redraft of an existing exception to make it consistent with the redrafted part.

Section 62Q provides an exception to the duty of confidentiality where the disclosure is necessary or incidental to a disclosure of information

otherwise permitted by this part. This exception will enable more effective management of administrative and operational functions. For example, it would permit the disclosure of information to support staff who make appointments.

Section 62R specifies which exceptions to the duty of confidentiality may be applied by persons who are former designated persons. Information may be disclosed by a former designated person if the disclosure is under sections 62B, 62C(a), 62F, 62J, 62L or 62Q. It is not appropriate for former designated persons to be able to disclose information in all circumstances in which current designated persons may be able to disclose information.

Part 7A - Investigation and Enforcement

Division 1 – Inspectors

Section 63 provides that an inspector has the function of monitoring and enforcing compliance with part 7 (Confidentiality).

Section 63A enables the chief executive to appoint as an inspector, a public sector officer employed in the department, a health services employee or a person prescribed in a regulation. The chief executive must be satisfied the person has the necessary expertise or experience to be an inspector.

Section 63B specifies that an inspector holds office on the conditions stated in their instrument of appointment or a signed notice given to the inspector by the chief executive. The powers of an inspector may be limited by the instrument of appointment or the signed notice.

Section 63C requires the chief executive to provide each inspector with an identity card containing a recent photograph of the person and other specified particulars.

Section 63D 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, if it is not immediately practical to do so.

Section 63E specifies that an inspector ceases to hold office if:

- the term for which the inspector has been appointed ends;

- the person ceases to hold office under another condition of office; or
- the inspector resigns under section 63F.

Section 63F provides that an inspector may resign by notice to the chief executive.

Section 63G makes it an offence if a person who ceases to be an inspector does not return their identity card to the chief executive within 21 days after the cessation, unless they have a reasonable excuse.

Division 2 – Powers of inspectors

Subdivision 1 – Entry of places

Section 63H confers on an inspector power to enter a place with the occupier's consent, with a warrant or without the occupier's consent if the place is a public place and entry is made when it is open to the public. The provision provides the authority to enter the place to obtain the occupier's consent.

Subdivision 2 – Procedure for entry

Section 63I outlines the procedures an inspector must follow when seeking consent to enter a place. This clause also provides that, should the issue arise in a proceeding, whether the occupier consented to the entry and an acknowledgement of consent is not produced in evidence, the onus of proof to prove the entry was lawful lies with the person relying on the lawfulness of the entry.

Section 63J makes provision for an inspector to apply to a magistrate for a warrant to enter a place. Under this provision, a magistrate may refuse to consider an application until an inspector provides the magistrate with the information the magistrate requires.

Section 63K sets out the grounds that a magistrate must be satisfied of before issuing a warrant and specifies the information that must be stated in the warrant.

Section 63L makes provision for an inspector to apply for a warrant by phone, fax, radio or another form of communication because of urgent or

other special circumstances. The provision also provides for the magistrate to give a copy of the warrant to the inspector by sending a copy by fax or email after the original warrant is issued.

Section 63M provides that a warrant is not invalidated by a defect in the warrant unless the defect affects the substance of the warrant in a material particular.

Section 63N outlines the procedures that must be followed by an inspector prior to entering a place under a warrant.

Subdivision 3 – Powers after entry

Section 63O specifies what powers are available to an inspector who has entered a place under section 63H for the purposes of monitoring and enforcing compliance with part 7 (Confidentiality). An inspector may search the premises; inspect, measure, test or photograph any part of the premises or thing at the premises; take a thing or a sample of a thing; take an extract from or copy a document; take onto the premises any resources reasonably required for exercising a power under the division; and require the occupier to provide assistance or information.

Section 63P makes it an offence for a person to fail to help an inspector if requested under section 63O(3)(f), unless the person has a reasonable excuse.

Section 63Q makes it an offence for a person to fail to provide an inspector with information requested under section 63O(3)(g), unless the person has a reasonable excuse.

Subdivision 4 – Power to seize evidence

Section 63R provides an inspector with the power to seize a thing at a place entered, without consent or a warrant, if the inspector reasonably believes that the thing is evidence of an offence.

Section 63S provides an inspector with the power to seize a thing at a place if the inspector:

- obtained the necessary consent or warrant to enter the place; and the inspector reasonably believes that the thing is evidence of an offence against the Act; and seizure of the thing is consistent with the purpose

of entry as told to the occupier when asking for the occupier's consent; or

- enters the place with a warrant and seizes evidence for which the warrant was issued; or
- reasonably believes another thing at the place is evidence of an offence against the Act and needs to be seized to secure evidence or to prevent repeat offences; or has just been used in committing an offence against the Act.

Section 63T enables an inspector to take action in relation to a thing which has been seized by either moving the thing from the place where it was seized or leaving the thing at the place of seizure but restricting access to it.

Section 63U makes it an offence for a person to tamper, or attempt to tamper, with a thing or with those actions taken by an inspector to restrict access to seized things without an inspector's consent.

Section 63V makes provision for an inspector to require the person in control of a 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 the stated place for a reasonable time. It is an offence for a person to fail to comply with a requirement or further requirement made under this clause unless the person has a reasonable excuse.

This provision also provides that the cost of complying with a requirement or further requirement made by an inspector to the person in control of a thing to be seized, is to be borne by the person of whom the requirement is made. However, if a compensation order is made under section 63ZF for loss or expense incurred because of the exercise of power, the person of whom the requirement is made will not bear the costs of complying with the requirement.

Section 63W specifies that an inspector who has required a person under section 63V to take a thing to a place may require the person to return the thing to its original place. It is an offence for a person not to comply with the requirement to return the thing to its original place.

This clause also provides that the cost of complying with a requirement under this clause must be borne by the person of whom the requirement is made. However, if a compensation order is made under section 63ZF for loss or expense incurred because of the exercise of power, the person of whom the requirement is made will not bear the costs of complying with the requirement.

Section 63X requires an inspector to issue a receipt for a seized thing to the person from whom the thing was seized. However, if this proves impractical, the inspector must leave the receipt at the place of seizure in a conspicuous position and in a secure way.

Section 63Y sets out the circumstances in which a seized thing will be forfeited to the State, for example if the owner cannot be found after making reasonable inquiries, or if it cannot be returned to its owner, after making reasonable efforts.

Section 63Z specifies when an inspector must return a seized thing to its owner, if the thing has not been forfeited.

Section 63ZA provides for the owner of any seized thing to have access to it for inspection or copying (if a document) until it is forfeited or returned.

Subdivision 5 – Power to obtain information

Section 63ZB enables an inspector, if an offence has or appears to have been committed against part 7 (Confidentiality), to require the person to state the person's name and residential address, and to produce evidence of the correctness of the stated name or address. When making such a requirement, the inspector must warn the person it is an offence to fail to state the person's name or address, unless the person has a reasonable excuse.

Section 63ZC makes it an offence to fail to comply with a request made under section 63ZB, unless the person has a reasonable excuse. However, a person does not commit an offence against this clause by not complying with such a request if it is not proved that the person committed the offence against the Act that was suspected by the inspector.

Section 63ZD enables an inspector to require a person to give information to the inspector about an offence against the Act. It is an offence for a person to fail to comply with such a request, unless the person has a reasonable excuse. It is a reasonable excuse for an individual to not comply with the request to give information on the basis that complying might tend to incriminate the person.

Division 3 – General enforcement matters

Section 63ZE requires an inspector to give notice if property is damaged by an inspector when exercising or purporting to exercise a power, or by a person acting under the direction or authority of an inspector. 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. However, if for some reason this proves impractical, the inspector must leave the notice in a conspicuous position and in a secure way.

Section 63ZF makes provision for a person to be compensated where the person has incurred loss or expense because of the exercise or purported exercise of a power by an inspector under the following subdivisions of division 2 of part 7A (Investigation and Enforcement):

- Subdivision 1 – Entry of places
- Subdivision 3 – Powers after entry
- Subdivision 4 – Power to seize evidence

Section 63ZG makes it an offence for a person to state anything to an inspector that the person knows is false or misleading in a material particular.

Section 63ZH makes it an offence to give an inspector a document containing information that the person knows is false or misleading in a material particular.

Section 63ZI makes it an offence to obstruct an inspector in the exercise of a power, unless the person has a reasonable excuse.

Section 63ZJ makes it an offence to impersonate an inspector.

Clause 7 removes sections 63 and 63A of the Act which previously dealt with the duty of confidentiality, and which have now been replaced with parts 7 (Confidentiality) and 7A (Investigation and Enforcement), as outlined above.

PART 3 - AMENDMENT OF *MENTAL HEALTH ACT 2000*

Clause 8 specifies that this part amends the *Mental Health Act 2000*.

Clause 9 inserts section 90A to prescribe to whom information about return of a patient to custody must be given.

Clause 10 amends section 174 to increase the timeframe within which the Mental Health Review Tribunal is required to give a person reasons for a decision, from seven to 21 days after receiving the person's request and to increase the timeframe within which an appeal against a Mental Health Review Tribunal decision may be made from 28 to 60 days.

Clause 11 amends section 184 to deem the warrant or other document authorising the apprehension of a person who is absent from an interstate mental health service, to be the involuntary treatment order for the person, from when the person is received at an authorised mental health service.

Clause 12 amends section 192 to increase the timeframe within which the Mental Health Review Tribunal is required to give a person reasons for a decision, from seven to 21 days after receiving the person's request and to increase the timeframe within which an appeal against a Mental Health Review Tribunal decision may be made from 28 to 60 days.

Clause 13 amends section 198 to increase the timeframe within which the Mental Health Review Tribunal is required to give a person reasons for a decision, from seven to 21 days after receiving the person's request and to increase the timeframe within which an appeal against a Mental Health Review Tribunal decision may be made from 28 to 60 days.

Clause 14 provides a consequential amendment to section 204 to cross reference a new provision, section 288A as inserted by clause 19.

Clause 15 amends section 205 to increase the timeframe within which the Mental Health Review Tribunal is required to give a person reasons for a decision, from seven to 21 days after receiving the person's request and to increase the timeframe within which an appeal against a Mental Health Review Tribunal decision may be made from 28 to 60 days.

Clause 16 amends section 213 to increase the timeframe within which the Mental Health Review Tribunal is required to give a person reasons for a decision, from seven to 21 days after receiving the person's request and to increase the timeframe within which an appeal against a Mental Health Review Tribunal decision may be made from 28 to 60 days.

Clause 17 amends section 226 to increase the timeframe within which the Mental Health Review Tribunal is required to give a person reasons for a decision, from seven to 21 days after receiving the person's request.

Clause 18 amends section 234 to increase the timeframe within which the Mental Health Review Tribunal is required to give a person reasons for a

decision, from seven to 21 days after receiving the person's request and to increase the timeframe within which an appeal against a Mental Health Review Tribunal decision may be made from 28 to 60 days.

Clause 19 inserts new sections 288A and 288B concerning forensic orders.

Section 288A provides that where a forensic order is already in force for a patient and another forensic order is made, the new forensic order applies to the existing one to the extent of any inconsistency.

Section 288B provides authority for the Mental Health Court, when making a forensic order, to approve under the order that the patient move out of Queensland. Such an approval may only be given if the Court is satisfied that the appropriate arrangements exist for the patient's care or treatment at the place where the patient is to move.

Clause 20 amends section 289 to provide that, under the forensic order for a patient, the Mental Health Tribunal may make one or more of the decisions set out under the subsection.

Clause 21 amends section 321 to increase the time in which an appeal may be lodged to 60 days.

Clause 22 amends section 458 to enable the Mental Health Court to include in a confidentiality order the reasons for taking or not taking into account material submitted under section 464.

Clause 23 inserts section 460A to permit observers to attend Mental Health Review Tribunal hearings with the approval of the President and the consent of the subject of the review. The President may not approve the attendance of an observer at a hearing for a young person.

Clause 24 replaces section 463 to enable the Mental Health Review Tribunal to adjourn a hearing for more than 28 days but not more than 60 days if the adjournment is for the purpose of obtaining an examination and the President has approved the period of the adjournment.

Clause 25 replaces section 465 to specify that, after making a decision on a proceeding, the Tribunal must give reasons for taking or not taking into account material submitted under section 464 to the parties to the proceeding if the parties request it, and also to the person who submitted the material, if the person requests the reasons. Subsection 3 provides that a confidentiality order under section 458 displaces the obligation to provide reasons to the person about whom the proceedings relate, or the patient.

Clause 26 amends section 528 to impose the duty of confidentiality on other persons providing services to the Tribunal, such as volunteers.

PART 4 - AMENDMENT OF *NURSING ACT 1992*

Clause 27 specifies that this part amends the *Nursing Act 1992*.

Clause 28 amends section 4 of the Act to update definitions for the Act.

Clause 29 amends section 10 to omit the by-law making head of power and provides that the matters in respect of which a by-law could be made are matters for which a regulation may be made under section 148.

Clause 30 consequentially amends section 16 to reference the regulation making power under section 148.

Clause 31 inserts a new section 16B, which provides that the Queensland Nursing Council must keep minutes of its meetings.

Clause 32 amends section 48(3)(a) of the Act to specify particulars which must be recorded in the Register of Registered Nurses.

Clause 33 amends section 49(3)(a) of the Act to specify particulars which must be recorded in the Roll of Enrolled Nurses.

Clause 34 amends section 53(2) of the Act to specify particulars on the register or roll which are not to be available for inspection or copying.

Clause 35 amends section 62 to provide that a registered nurse or enrolled nurse whose certificate of registration or enrolment is lost or destroyed must give the council written notice of the loss or destruction of the certificate, unless the nurse has a reasonable excuse.

Clause 36 amends section 72 to provide the process for application for restoration of accreditation.

Clause 37 consequentially amends section 74 to reference the regulation making power under section 148.

Clause 38 amends the heading of part 3, division 5.

Clause 39 inserts a new part 3A, with the following provisions:

Part 3A - Restrictions and holding out

Section 77B provides definitions of terms used in the part including:

- “**childbirth**” will mean the process of labour and delivery beginning with uterine contractions and ending with the expulsion of the placenta and membranes from the woman giving birth;
- “**profession**” (for part 3A) will mean the nursing profession as practised by a registered nurse or enrolled nurse respectively or the midwifery profession as practised by a midwife;
- “**professional service**” (for part 3A) will mean, for the nursing profession as practised by a registered nurse or enrolled nurse or the profession of midwifery, the service ordinarily provided by a registered nurse, enrolled nurse or midwife, respectively;
- “**recognised person**” (for part 3A) for a profession, will, for the professions of registered nursing, enrolled nursing or midwifery, mean a registered nurse, enrolled nurse or midwife, respectively. For example, an enrolled nurse would not be a “recognised person” for the profession as practised by a registered nurse, but would be for the profession as practised by an enrolled nurse.

Section 77C makes it an offence for a person who is not a recognised person in a profession to take or use a restricted title for the profession. This is a key offence provision. The objective of this section is to protect health consumers by enabling them to distinguish between (competent and safe) registrants and other persons who are not registered or enrolled under this Act.

It is necessary to extend this protection beyond a person claiming to be registered under the Act (which is addressed by section 77D, discussed below), as health consumers will associate certain titles, names, initials etc (either directly or indirectly) with registrants. This extra protection is particularly warranted as health service providers may not hold themselves out as being *registrants*, but are more likely to use other names, descriptions, etc. in advertising or other means of communicating their services to health consumers.

Subsection 77C(1) restricts the taking or use of a restricted title, to registrants (‘restricted title’ is defined in subsection 77C(10)). The concept of a person taking or using a title is generally understood to mean the person adopts or uses a descriptive or distinctive name or designation, especially where the name or designation belongs to a person by right of attaining some office, qualification, status or authorisation. The subsection provides examples of persons taking or using a restricted title. It should be noted that it is possible for a corporation to take or use a restricted title, however a corporation can only lawfully take or use a restricted title if it

comes within the exemption provided in subsection 77C(2). A person may also be held to be taking or using a restricted title if the person stated—“*I am a registered nurse/enrolled nurse/midwife*”.

Subsection 77C(2) allows persons, who are not registrants, to use a restricted title in limited circumstances. This provision allows a business that employs, or otherwise engages, registrants to provide nursing or midwifery services to use a restricted title in its business name (clause 28(2) of the Bill amends section 4 of the Act to broadly define ‘business name’ as a name or style under which a business is carried on).

Subsection 77C(3) allows students or trainees to use the restricted title in limited circumstances, and its corollary, subsection 77C(5) applies to another person using the restricted title in relation to a student or trainee.

Subsection 77C(4) is a corollary to subsection 77(1) and applies, for example, to an owner or manager of a business in relation to his or her employees or staff.

Subsection 77C(6) prohibits a person misleading health consumers into believing the person is authorised or qualified to practice nursing or midwifery by using a nursing related title (defined in subsection 77(10)). This provision is intended to address circumstances where a person claims to have a legal authority to practise nursing or midwifery, for example, by claiming to be “licensed” or “approved” to practise nursing or midwifery, but the person does not use a restricted title. (It should be noted that section 77D only deals with circumstances where a person claims to be registered, enrolled or authorised under this Act. A person may claim to be a nurse or midwife without necessarily claiming to be registered under this Act). The nature of the offence means that it effectively only applies to individuals.

Subsection 77C(7) allows students or trainees to use the nursing related title in limited circumstances, and its corollary, subsection 77C(9) applies to another person using the restricted title in relation to a student or trainee.

Subsection 77C(8) is a corollary to subsection 77C(6) and applies, for example, to an owner or manager of a business in relation to his or her employees or staff.

Subsection 77C(10) defines “nursing related title” and “restricted title” for the purposes of this section.

Having regard to the objects of the Act and the potential for the behaviour targeted by this provision to seriously compromise public health and safety, the offences under subsections 77C(1) & (4) are punishable by a maximum

penalty of 1000 penalty units. The penalty under subsection (6) is 500 penalty units.

Section 77D makes it an offence for a person who is not registered, enrolled or authorised to:

- claim or hold out to be, or to be eligible to be, registered, enrolled or authorised under this Act; or
- allow himself or herself to be held out as being, or eligible to be registered, enrolled or authorised under this Act.

Having regard to the objects of the Act and 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.

Section 77E makes it an offence for a person to hold out another person as being registered, enrolled or authorised under the Act, if that person knows or ought reasonably to know that the other person is not registered, enrolled or authorised under the Act. For example, the owner of a nursing employment agency must not hold out that an individual client of the agency is a registered nurse, if the owner knows the client is not registered under the Act. Having regard to the objects of the Act and 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.

Section 77F makes it an offence for a person whose registration or enrolment is subject to a condition, or is provisional or limited, to:

- claim or hold out to be registered or enrolled other than as subject to the condition or limit, or provisionally; or
- allow himself or herself to be held out as being registered or enrolled other than as subject to the condition or limit, or provisionally.

Section 77G makes it an offence for a person whose authorisation under this Act is subject to a condition to:

- claim or hold out to be authorised other than as subject to the condition; or
- allow himself or herself to be held out as being authorised other than as subject to the condition.

Section 77H restricts who may practise nursing. This section acts as a companion to sections 77C-G and is intended to provide additional protection for consumers against the provision of professional nursing care by unqualified persons. No attempt is made to define the scope of

“nursing” practice, which overlaps with numerous other legitimate professional and non-professional activities. Rather, the broad restriction is subject to a number of exemptions.

Subsection 77H(1) prohibits a person who is not registered, enrolled or authorised from practising nursing. It is important to read this provision in conjunction with the exemptions in subsections (2) and (3).

Subsection 77H(2) provides that subsection (1) does not apply to caring for a woman in childbirth, which is subject to a separate restriction under section 77I.

Subsection 77H(3) exempts the following persons from the prohibition against practising nursing -

Paragraph (a) – a health professional (defined in section 77B) carrying out, in the practise of the person’s profession, an activity that would ordinarily be carried out in the practise of the person’s profession. This paragraph covers registered health professionals, for example, a doctor dressing a wound;

Paragraph (b) – a person engaged in providing a health service and carrying out an activity that is within the person’s professional training and expertise. This paragraph covers other health practitioners, including non-registered practitioners such as dieticians and massage therapists;

Paragraphs (c) – a person, for example, a nursing assistant, who is practising under the supervision of a registered nurse;

Paragraph (d) – a person who is undertaking an accredited nursing course and is acting under the supervision of a registered nurse. This covers nursing students undergoing practical training;

Paragraph (e) – a person undertaking, under the supervision of a relevant health professional, training for a qualification for registration as a health professional and carrying out an activity which would ordinarily be carried out in the practise of the relevant profession, for example, a medical student recording a patient’s blood pressure;

Paragraph (f) – a person who is undertaking, under the supervision of a midwife, a midwifery course accredited by the council and carrying out an activity that would ordinarily be carried out by a midwife. This covers midwifery students undergoing practical training;

Paragraph (g) - a person giving help in an emergency. This paragraph ensures that persons are not dissuaded from providing emergency assistance for fear of committing an offence;

Paragraph (h) – a person carrying out an activity for which no fee or reward is expected or received. This paragraph ensures that persons are not dissuaded from providing not-for-reward assistance for fear of committing an offence, for example, a parent nursing a sick child at home.

Subsection (4) clarifies that a person may “practise nursing” by carrying out a single nursing activity on a single occasion or only a limited number of occasions.

Section 77I restricts who may care for a woman in childbirth. This section acts as a companion to sections 77C-G and is intended to provide additional protection for women in childbirth against the provision of professional midwifery care by unqualified persons. The restriction is limited to the period of “childbirth”, as defined in section 77B. No attempt is made to define the scope of “care”, which overlaps with numerous other legitimate professional and non-professional activities. Rather, the broad restriction is subject to a number of exemptions to ensure the woman has access to other appropriate care.

Subsection 77I(1) prohibits a person who is not authorised to practise midwifery from caring for a woman in childbirth. It is important to read this provision in conjunction with exemptions in subsection (2) and the definition of childbirth in section 77B.

Subsection 77I(2) exempts the following persons from the prohibition against caring for a woman in childbirth -

Paragraph (a) – a health professional (defined in section 77B) carrying out, in the practise of the person’s profession, an activity that would ordinarily be carried out in the practise of the person’s profession. This paragraph ensures that other registered health professionals are not prevented from carrying out their profession, for example, a doctor dressing a wound or a nurse taking the woman’s blood pressure;

Paragraph (b) – a person acting under the supervision of a midwife or medical practitioner. For example, a person assisting a woman in the early stages of labour in accordance with telephone advice from a midwife;

Paragraph (c) – a person undertaking, under the supervision of a medical practitioner or midwife, a midwifery course accredited by the council;

Paragraph (d) – a person undertaking, under the supervision of a registered nurse, a nursing course accredited by the council and carrying

out an activity that would ordinarily be carried out in the practise of the relevant nursing profession;

Paragraph (e) – a person undertaking, under the supervision of a relevant health professional, training for a qualification for registration as a health professional and carrying out an activity which would ordinarily be carried out in the practise of the relevant profession, for example, a medical student;

Paragraph (f) – a person giving help in an emergency. This paragraph ensures that persons are not dissuaded from providing emergency assistance for fear of committing an offence;

Paragraph (g) – a person carrying out an activity for which no fee or reward is expected or received. This paragraph ensures that persons are not dissuaded from providing not-for-reward assistance for fear of committing an offence. For example, a person caring for a woman after the onset of contractions but before the woman is attended to by a midwife or doctor. This paragraph also ensures that if a woman chooses to give birth without the assistance of an authorised midwife or medical practitioner, a person (for example a family member or close friend) may provide assistance to the woman without fear of committing an offence as long as the assistance is not for fee or reward.

Clause 40 replaces part 4 with the following provisions:

Part 4 Accreditation of nursing courses

Division 1 - Preliminary

Section 78 – Defines the terms ‘application fee’, ‘assessment body’ and ‘information notice’ for the purposes of this part.

Division 2 - Accreditation of nursing course

Section 79 states the process for applying to the council for accreditation of a nursing course. The definition of ‘nursing course’ in section 4 of the Act includes courses designed to educate persons in midwifery. The

application must be in the approved form and be accompanied by the prescribed fee and any other documents identified in the approved form. The information in the application must, if the approved form requires, be verified by a statutory declaration.

Section 80 states the process for late applications for accreditation of a nursing course. The application must be accompanied by a prescribed late fee. The council must refuse to consider a late application if there is insufficient time to adequately consider the application before the proposed commencement date of the course. If the council refuses to consider the application under this subsection, the council must refund the application fee and the late fee.

Section 81 sets the criteria for applications. The council may only grant the application if it is satisfied the standards of education offered by the nursing course are sufficient to enable persons undertaking the nursing course to gain the skills and knowledge necessary to competently and safely practise in the area of nursing to which the nursing course relates. The matter to which the council may have regard in deciding the application for course accreditation are listed, including the advice and recommendations of a body recognised by the council as competent to assess standards of nursing education.

Section 82 protects members of a body mentioned in section 81(2) from liability for disclosing information contained in the advice or recommendation. This section is intended to ensure that the body can give full and frank advice, without fear of a civil, criminal or administrative action being brought in respect of the advice.

Section 83 allows the council to require the applicant to give further information the council reasonably considers is required to decide the application. The period within which the council stipulates the information must be provided must be longer than the prescribed period. If the applicant does not supply the required information, the applicant is deemed to have withdrawn the application.

Section 83A provides that the council must consider an application for course accreditation and decide to accredit, or refuse to accredit, the nursing course. If the council decides to accredit the course, it must issue an accreditation certificate for the course to the applicant. If the council decides to refuse to accredit the course, it must give the applicant an information notice about the decision.

Section 83B provides that if the council fails to decide the application within the period prescribed under a regulation, the council is taken to have decided to refuse to accredit the nursing course.

Section 83C provides that the period of accreditation for a nursing course is the period stated in the accreditation period. The period must not be more than five years.

Section 83D deems accreditation to be given on the condition that the holder of the accreditation certificate –

- allows an inspector (appointed under the Act) to enter a place to examine the holder's operation for the nursing course at the place; and
- complies with all reasonable requests by the inspector to inspect documents for the purposes of establishing whether the nursing course is being conducted in accordance with the accreditation.

This provision will allow the council to gather sufficient information to decide whether there are grounds for cancellation of accreditation for the course. It should be noted that under section 83Q(1)(a), refusal to comply with this condition is itself grounds for cancellation of accreditation.

Section 83E allows the council to place conditions on accreditation of a nursing course. The objective of this provision is to ensure that the course provider has satisfied other relevant legal or administrative requirements before commencing the course. For example, if the council requires accreditation under another Act before the course commences, but it is a condition of accreditation under the other Act that the course be accredited by the council, the council may accredit the course subject to the condition that the course not be commenced until accreditation under that other Act is obtained.

Section 83F sets down the form requirements for the accreditation certificate for a nursing course.

Division 3 – Variation of accreditation of a nursing course

Section 83G provides that applications for approval of a variation of an accredited nursing course must be in the approved form and be accompanied by the prescribed fee and any other documents identified in the approved form. An application may not be made within the prescribed period before expiry of the accreditation or if an application for renewal of

accreditation for the course is outstanding or if a show cause notice issued under section 83R is outstanding.

Section 83H allows the council to require the applicant to give further information the council reasonably considers is required to decide the application. The period within which the council stipulates the information must be provided must be reasonable. If the applicant does not supply the required information, the applicant is deemed to have withdrawn the application.

Section 83I provides that the council must consider the application and approve, or refuse to approve, the variation to the accredited nursing course. The council may take into account those matters to which the council may consider in deciding whether to accredit a course in the first instance. Subsection (3) provides that the council must refuse to approve the proposed variation if the council reasonably considers –

- the variation is of such magnitude that it would, in fact, result in a new course; or
- the proposed variation does not, in fact, amount to a variation.

If the council decides to approve the variation, it must notify the applicant. If the council decides to refuse to approve the variation, it must give the applicant an information notice about the decision. The approval takes effect from the day the holder of the accreditation certificate receives the notice.

Section 83J provides that if the council fails to decide the application within the period prescribed under a regulation, the council is taken to have decided to refuse to approve the variation to the accredited nursing course.

Section 83K provides that if the council refuses to approve a variation of an accredited nursing course under section 83I(3) or is deemed to have refused to approve the variation under section 83J, the council must refund the fee for the application.

Division 4 – Renewal of accreditation

Section 83L provides that applications for renewal of accreditation for an accredited nursing course must be in the approved form and be accompanied by the prescribed fee and any other documents identified in the approved form. To ensure the council has sufficient time to adequately consider the application, the application must be made before the

prescribed day. The information must, if the approved form requires it, be verified by a statutory declaration. (It should be noted that if a course to which an application relates differs from the accredited course to such an extent that it cannot reasonably be said to be the same course, the course to which the application relates is, by definition, a new course. As a new course is not capable of 'renewal', a purported application under this section in respect of a new course will be void. Application for accreditation of a new course may be made under division 2 – Accreditation of nursing course.)

Section 83M allows the council to require the applicant to give further information the council reasonably considers is required to decide the application. The period within which the council stipulates the information must be provided must be longer than the prescribed period. If the applicant does not supply the required information, the applicant is deemed to have withdrawn the application.

Section 83N deems accreditation for a course to continue in force if an application for renewal of accreditation has been lodged and remains outstanding. The section does not apply if accreditation has been earlier cancelled.

Section 83O provides that the council must consider the application and renew, or refuse to renew, the accreditation. The council may take into account those matters which the council may consider in deciding whether to accredit a course in the first instance. If the council decides to refuse to approve the variation, it must give the applicant an information notice about the decision. If the council decides to renew the accreditation, it must endorse the existing accreditation certificate or issue a new certificate.

Section 83P provides that if the council fails to decide the application within the period prescribed under a regulation, the council is taken to have decided to refuse to renew the accreditation of the nursing course.

Division 5 Cancellation of accreditation

Section 83Q provides that accreditation for a nursing course may be cancelled on the grounds that the holder of the accreditation has breached a condition of the accreditation or it is no longer appropriate for the course to be accredited. For forming a belief that a ground exists, the council may have regard to the matters which the council may consider in deciding to accredit the course in the first instance. The course may not be cancelled on

the ground that the course is being conducted at variance with the accreditation if approval for the relevant variation was refused by council under section 83I(3)(b).

Section 83R provides that before taking action to cancel accreditation for the course, the council must give the holder of the accreditation certificate a “show cause” notice. The notice must state the grounds for the proposed cancellation and the factual and circumstantial basis for the grounds. The notice must also invite the holder to show within a stated period (not less than the prescribed period) why the council should not cancel the accreditation.

Section 83S provides that the holder of the accreditation may make written submissions about the show cause notice within the stated period. The council must consider the written submissions.

Section 83T provides that if the council, after considering the submissions about the show cause notice, no longer believes the ground exists for cancellation, the council must take no further action about the notice and notify the holder to that effect.

Section 83U provides that if the council, after considering the submissions about the show cause notice, still believes the ground exists for cancellation and believes cancellation is warranted, the council may decide to cancel the accreditation for the course. The council must give the holder notice of its decision, which takes effect when the notice is given, or at such later date as specified in the notice.

Section 83V provides that if the council cancels accreditation for a course and gives notice to the holder of the accreditation certificate, the holder must return the certificate within 14 days after receiving the notice, unless the holder has a reasonable excuse.

Division 6 – Offences relating to accreditation

Section 83W makes it an offence for a person to advertise that the person is willing or able to provide an accredited nursing course, unless the course is accredited under this part. It is also an offence for a person, in relation to a non-accredited or recognised nursing course, to cause persons to be enrolled in the course, collect or accept fees for enrolment in the course or invite persons to enrol in the course. The term ‘recognised nursing course’ is defined for the purposes of this section.

Division 7 – General provisions about accreditation

Section 83X provides that the holder of an accreditation certificate may surrender the certificate by notice to the council. The surrender takes effect on the day of the notice, or such later date as is specified in the notice. The holder must return the certificate within 14 days after the surrender takes effect, unless the holder has a reasonable excuse.

Section 83Y allows the holder of the accreditation certificate for a nursing course to apply for replacement of a lost, stolen, destroyed or damaged certificate. The council may grant the application if it is satisfied the replacement certificate is required and issue a new certificate on payment of the prescribed fee. If the council refuses the application, it must give the holder notice of its decision.

Clause 41 consequentially amends section 107 to reflect that allowances that may be paid are to be listed in a regulation made pursuant to section 148.

Clause 42 amends section 137 to extend the list of decisions of the council which may be appealed to the District Court to include decisions to refuse to accredit, renew accreditation for, or cancel accreditation, a nursing course under part 4.

Clause 43 omits sections 141 and 142, which are replaced in the Act by the new part 3A (Restrictions and holding out).

Clause 44 inserts into the Act a new part 9, division 5:

Division 5 – Provisions for the Health Legislation Amendment Act 2004.

Section 155 provides transitional arrangements for nursing courses accredited under the Act and applications for accreditation of nursing courses lodged under the Act.

PART 5 - AMENDMENT OF PHARMACISTS REGISTRATION ACT 2001

Clause 45 provides that this part amends the *Pharmacists Registration Act 2001*.

Clause 46 inserts part 4, division 6A (Ownership of pharmacy business), sections 139A to 139H.

Division 6A – Ownership of pharmacy business

Section 139A defines terms for division 6A:

Section 139B makes it an offence for a person to own (including having a proprietary interest in) a pharmacy business unless the person is:

- a registrant;
- a corporation whose shareholders and directors are all registrants, or a combination of registrants and specified relatives of the registrants;
- a friendly society that, at the commencement of the section, operates a pharmacy business in Queensland or another State, or is an amalgamation of two or more such friendly societies;
- Mater Misericordiae Health Services Brisbane Limited.

Section 139C allows a registrant whose registration is suspended or cancelled to continue to own, or be a director or shareholder of a corporation that owns, a pharmacy business for one or more periods of 3 months. Subsection (5) makes it offence for the registrant to fail to comply with the conditions set out in that provision.

Section 139D permits a person who is a director or shareholder of a corporation that owns a pharmacy business because of being the spouse of a registrant, upon ceasing to be the registrant's spouse, to continue to be a director or shareholder of the corporation for 1 year after the person stops being the registrant's spouse, or for such longer period decided by the board.

Section 139E specifies that the executor, administrator or trustee of the estate of a deceased registrant who owned a pharmacy business, may continue to operate the pharmacy business for 1 year after the registrant's death, or for such longer period decided by the board. This ensures that

executors, administrators and trustees are not liable for an offence merely for carrying out their functions.

Section 139F specifies that, if a friendly society that owns a pharmacy business demutualises under the Corporations Act, the friendly society may continue to own the pharmacy business for 6 months after the day of the demutualisation. This means that, if the friendly society continued to own a pharmacy business for more than 6 months it would commit an offence against section 139B.

Section 139G clarifies that the trustee for a bankrupt registrant who owns a pharmacy business, or a liquidator of a corporation that owns a pharmacy business, is not liable for an offence against section 139B merely for owning a pharmacy business in carrying out the functions of trustee or liquidator.

Section 139H makes it an offence for:

- a registrant to own, or be a shareholder in, or director of, a corporation that owns, more than five pharmacy businesses, or be a shareholder in, or director of, more than five corporations that own pharmacy businesses;
- a corporation to own more than five pharmacy businesses;
- a friendly society or the Mater Private Hospital to own more than six pharmacy businesses.

Clause 47 amends section 141 to incorporate the new definition of “pharmacy business” inserted in Schedule 4.

Clause 48 omits part 10 (Repeal, transitional and savings provisions), division 3 (Savings provisions) of the Act.

Clause 49 amends Schedule 4 to insert definitions of terms used in division 6A (Ownership of pharmacy business).

PART 6 - AMENDMENT OR REPEAL OF OTHER LEGISLATION

Clause 50 provides that the schedule amends the legislation mentioned in it.

Clause 51 repeals the *Drugs Standard Adopting Act 1976*. In 2003, the Commonwealth and New Zealand Governments entered into a treaty to establish a joint scheme for the regulation of therapeutic products. Under the Commonwealth's external affairs power, new Commonwealth legislation is to be created by 1 July 2005 that will apply to all drugs and other therapeutic products sold by any person, including unincorporated bodies. The *Drugs Standard Adopting Act 1976* will therefore become redundant.

SCHEDULE - OTHER AMENDMENTS

CHILD PROTECTION ACT 1999

Item 1 consequentially amends the title of section 194 of the Act by replacing "health service employees" with "a health services designated person".

Item 2 consequentially amends subsection 194 (1) to replace "health service employee" with "a health services designated person".

Item 3 consequentially amends subsection 194(3) to replace "health service employee" and definition with "health services designated person". "Health services designated person" is to be defined to mean a designated person defined in the *Health Services Act 1991*, section 60. It also consequentially amends subsection 194(3) to replace the definition of "confidential information" with the definition of "confidential information" in the *Health Services Act 1991*, section 62A(1).

CHILD SAFETY LEGISLATION AMENDMENT ACT (NO.2) 2004

Item 1 consequentially amends section 24, which inserts section 159O into the *Child Protection Act 1999*, to replace in the title to section 159O, "health service employee" with "a health services designated person" in accordance with the amendments to the *Health Services Act 1991* in the Bill.

Item 2 consequentially amends section 24, which inserts section 159O into the *Child Protection Act 1999*, to replace references in subsection 159O(1) to "health service employee" with "health services designated person" in accordance with the amendments to the *Health Services Act 1991* in the Bill.

Item 3 consequentially amends section 24, which inserts section 159O into the *Child Protection Act 1999*, to replace the definitions of “confidential information” and “health service employee” in subsection 159O(4) to definitions of “confidential information” and “health services designated person” consistent with section 60 of the *Health Services Act 1991*, part 7(Confidentiality).

Item 4 consequentially amends section 24, which inserts section 159R into the *Child Protection Act 1999*, to replace the reference to “section 63” in the example in section 159R with “section 62A(1)” in accordance with the amendments to the *Health Services Act 1991* in the Bill.

Item 5 consequentially amends section 46, which inserts section 31EA into the *Commission for Children and Young People and Child Guardian Act 2000*, to replace reference to “section 63” in the example in subsection section 31EA(2), with “section 62A(1)” in accordance with the amendments to the *Health Services Act 1991* in the Bill.

CHIROPRACTORS REGISTRATION ACT 2001

Item 1 consequentially amends section 131 to include a conviction of an offence against recently enacted section 120A as a conviction for which an order under section 131 may be made.

Item 2 consequentially amends the title of section 201 to include reference to the health records of persons convicted of an offence against recently enacted section 120A.

Item 3 consequentially amends section 201 to enable the Chiropractors Registration Board to request the health records from a person convicted of an offence against recently enacted section 120A.

Item 4 amends the heading for part 10, division 2.

Item 5 inserts part 10, division 3 – Transitional provision for the Health Legislation Act 2004. The new transitional provision, section 237, provides that sections 131 and 201 do not apply retrospectively to a person’s conviction for an offence under section 120A.

CORRECTIVE SERVICES ACT 2000

Item 1 replaces section 53(8) in the Act to provide that if a prisoner is transferred to an authorised mental health service and becomes a classified patient under the *Mental Health Act 2000*, the patient is taken to be in the custody of the administrator of the patient’s treating health service.

Item 2 amends the Schedule 3 definition of “prisoner” by removing the words “being detained in an authorised mental health service” to remove

doubt that a classified patient who is undertaking limited community treatment and therefore not necessarily physically being detained in an authorised mental health service, may still be a “prisoner” for the purposes of the Act.

DENTAL PRACTITIONERS REGISTRATION ACT 2001

Item 1 consequentially amends section 153 to include a conviction of an offence against recently enacted section 139A as a conviction for which an order under section 153 may be made.

Item 2 consequentially amends the title of section 223 to include reference to the health records of persons convicted of an offence against recently enacted section 139A.

Item 3 consequentially amends section 223 to enable the Dental Board to request the health records from a person convicted of an offence against recently enacted section 139A.

Item 4 inserts part 10, division 5 – Transitional provision for the Health Legislation Act 2004. The new transitional provision, section 269, provides that sections 153 and 223 do not apply retrospectively to a person’s conviction for an offence under section 139A.

DENTAL TECHNICIANS AND DENTAL PROSTHETISTS REGISTRATION ACT 2001

Item 1 consequentially amends section 135 to include a conviction of an offence against recently enacted section 124A as a conviction for which an order under section 135 may be made.

Item 2 consequentially amends the title of section 205 to include reference to the health records of persons convicted of an offence against recently enacted section 124A.

Item 3 consequentially amends section 205 to enable the Dental Technicians and Dental Prosthetists Registration Board to request the health records from a person convicted of an offence against recently enacted section 124A.

Item 4 inserts part 10, division 3 – Transitional provision for the Health Legislation Act 2004. The new transitional provision, section 240, provides that sections 135 and 205 do not apply retrospectively to a person’s conviction for an offence under section 124A.

HEALTH ACT 1937

Item 1 consequentially amends section 100E to reference the new part 7 (Confidentiality) of the *Health Services Act 1991* inserted by the Bill.

Item 2 consequentially amends section 100FO to reference the new part 7 (Confidentiality) of the *Health Services Act 1991* inserted by the Bill.

Item 3 repeals section 102 of the Act. Once the Commonwealth legislation establishing the regulatory scheme for drugs and therapeutic products, made under the Commonwealth's external affairs power, commences, section 102 will be redundant. (See amendments in *Clause 50*)

HEALTH PRACTITIONERS (PROFESSIONAL STANDARDS) ACT 1999

Item 1 amends the definition in section 224 of "special witness" by raising the age to 16 in accordance with recent amendments to the *Evidence Act 1977*.

HEALTH SERVICES ACT 1991

Item 1 amends the definition of Australian Health Care Agreement in section 2 to reflect the new agreement signed on 31 August 2003.

LIQUOR ACT 1992

Item 1 amends section 12 by removing references to the repealed *Pharmacy Act 1976*.

Item 2 amends section 12 by inserting a definition of "pharmacist" that refers to the *Pharmacists Registration Act 2001*.

MENTAL HEALTH ACT 2000

Item 1 consequentially amends references to "chief executive of families" in a number of sections throughout the Act, to reflect the change in administrative arrangements. The reference will be replaced with "chief executive for young people".

Item 2 amends section 190 by adding a footnote to refer to the Mental Health Review Tribunal's authority to order an examination for a person the subject of proceedings, under section 457 of the Act.

Item 3 amends section 216 to refer to proceedings that have been discontinued under section 214 or 215 of the Act.

Item 4 corrects a cross reference to refer to section 342.

Item 5 consequentially amends section 530 to refer to the new part 7 (Confidentiality) of the *Health Services Act 1991* inserted by the Bill.

Item 6 amends the Schedule 2 definition of "chief executive for families" by replacing the term with "chief executive for young people" to reflect the changes in administrative arrangements.

OPTOMETRISTS REGISTRATION ACT 2001

Item 1 consequentially amends section 131 to include a conviction of an offence against recently enacted section 120A as a conviction for which an order under section 131 may be made.

Item 2 consequentially amends the title of section 201 to include reference to the health records of persons convicted of an offence against recently enacted section 120A.

Item 3 consequentially amends section 201 to enable the Optometrists Registration Board to request the health records from a person convicted of an offence against recently enacted section 120A.

Item 4 inserts part 10, division 2 – Transitional provision for the Health Legislation Act 2004. The new transitional provision, section 233, provides that sections 131 and 201 do not apply retrospectively to a person's conviction for an offence under section 120A.

PENALTIES AND SENTENCES ACT 1992

Item 1 consequentially amends section 176 to refer to the new part 7 (Confidentiality) of the *Health Services Act 1991* inserted by the Bill.

PEST MANAGEMENT ACT 2001

Item 1 amends section 26(1)(c) to cross reference amended provisions in the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*.

Item 2 removes section 26(4) which provides the definition of “registered chemical product”, which is no longer required as “agricultural chemical product” is referenced in section 26(1) paragraph (c) of the Act, as amended by the Bill.

Item 3 replaces section 136 to correct a minor administrative anomaly that arose when the transitional provisions in the Act commenced. The provisions would have required a significant number of licences to be returned for re-issuance at the same time, causing disruption to pest control businesses and an administrative burden on the department.

Subsection 136(1) clarifies that the section applies to technicians who do not have timber pests control qualifications and have had a licence issued under the repealed Act which has since been renewed under the new Act.

Subsection 136(2) declares that starting on the determining day (being 20 September 2005), the renewed licence is taken not to authorise timber pests control activities and subsection 136(3) requires the licence to be returned to the chief executive within 7 days after the determining day, unless the holder has a reasonable excuse. The chief executive is required to issue a new licence under subsection 136(5).

Subsection 136(4) provides that subsection (3) does not apply if the renewed licence states that authority to undertake pest control activities does not include control of timber pests after 20 September 2005. It has been Queensland Health's practice to renew licences for technicians who do not have timber pest control qualifications and who had previously had licences under the repealed Act, with a statement that timber pest control activities can only be undertaken until 20 September 2005. All licences issued under the repealed Act were annual licences and consequently have all been renewed.

PRIVATE HEALTH FACILITIES ACT 1999

The Bill amends the duty of confidentiality in the Act to enable information to be disclosed for reasons related to monitoring, analysing or evaluating public health and for evaluating, managing, monitoring or planning health services. The exceptions are drafted to mirror similar exceptions in part 7 (Confidentiality) of the *Health Services Act 1991* as amended by the Bill, to ensure officers undertaking monitoring, analysing or evaluating of public health, or evaluating, managing, monitoring or planning of health services have consistent information from both public and private health services.

Item 1 inserts a new exception in section 144 to permit disclosure for the purpose of monitoring, analysing or evaluating public health. The exception is consistent with the corresponding exception in the *Health Services Act 1991*, section 62G as inserted by the Bill.

Item 2 amends section 147 to permit disclosure of confidential information if the disclosure is required or permitted by an Act or another law, consistent with current drafting practices.

Item 3 inserts a new exception in section 147 to permit the disclosure of information to a person authorised in writing by the chief executive or to an entity prescribed under a regulation, for the purpose of evaluating, managing, monitoring or planning health services. The exception is consistent with the corresponding exception in the *Health Services Act 1991*, section 62H as inserted by the Bill.

Item 4 amends subsection 147(6) to replace "minister" with "chief executive" in the exception to permit disclosure where the disclosure is determined to be in the public interest. This is consistent with the corresponding exception in the *Health Services Act 1991*, section 62F.

Item 5 consequentially amends subsections 14(8) and(9) to replace "minister" with "chief executive" to give effect to the amendment to subsection 14(6).

Item 6 inserts a new paragraph (c) into section 148(2) to provide that the chief executive cannot delegate the power in section 147(6).

RADIATION SAFETY ACT 1999

Item 1 consequentially amends section 209 to cross reference section 62A, *Health Services Act 1991* as inserted by the Bill.

TRANSPLANTATION AND ANATOMY ACT 1979

Item 1 consequentially amends the Act to insert a new section 23A which will apply if a deceased's organs or tissue are approved for transplantation under sections 22 or 23. The section will enable a deceased's next of kin to consent to the disclosure of the deceased's health information for the purpose of the transplantation. The section will also permit disclosure of information about the contact details of the next of kin for the purposes of contacting the next of kin to obtain consent to disclose the deceased's information. Definitions for the section are provided.

TRANSPORT OPERATIONS (ROAD USE MANAGEMENT) ACT 1995

Item 1 consequentially amends section 142 to cross reference relevant health practitioner registration Acts.

Item 2 consequentially amends Schedule 4 of the Act to cross reference the *Medical Practitioners Registration Act 2001*.