

Public Health Bill 2005

Explanatory Notes

Title of the Bill

Public Health Bill 2005

Objectives of the Bill

The primary objective of the Bill is to protect and promote the health of the Queensland public by providing the basic safeguards necessary to protect public health through cooperation between the State Government, local governments, health care providers and the community.

The Bill is the result of an extensive review of the current public health provisions in the *Health Act 1937*. Among other matters, the review focused on:

- removing regulatory requirements that are outdated or duplicate requirements in other legislation
- modernising the approach to traditional public health concerns, such as the means available to deal with “nuisances” that present a public health risk
- addressing issues that have emerged more recently, such as public concern about infection control in health facilities and public health emergencies
- ensuring that public health legislation which affects local government is consistent with current policy on the relationship between the State and local government
- ensuring that public health legislation has sufficient regard for fundamental legislative principles, which among other matters requires the legislation to achieve an appropriate balance between the need to protect the health of the public and the need to safeguard the rights of individuals
- ensuring that public health legislation accords with modern drafting practices.

Achievement of the Objectives

The Bill will replace the public health provisions in the *Health Act 1937* and will establish a framework which:

- provides powers to prevent, control and reduce risks to public health
- provides for the identification of, and mechanisms to prevent or minimise adverse health impacts from, notifiable conditions
- imposes obligations on persons and particular health care facilities involved in the provision of declared health services to minimise infection risks
- provides for action to be taken to minimise the spread of contagious conditions in schools and child care services
- provides for doctors and registered nurses to notify appropriate authorities of child abuse and neglect
- enables authorised doctors to hold children, who have been harmed or are at risk of harm, at a health service facility under specified circumstances
- provides for the collection and management of health information necessary for monitoring specific public health issues
- establishes mechanisms for health information held by the department to be accessed for research
- enables inquiries into serious public health matters
- provides for rapid responses to public health emergencies
- provides for monitoring and enforcing activities to ensure compliance with the Bill.

Preventing, controlling and reducing risks to public health

The Bill introduces a new term, ‘public health risk’, to deal with particular types of environmental health risks such as breeding grounds for mosquitoes, vermin infestations, and hazardous water or waste. State and local governments will work together to reduce, control or prevent these risks to public health.

The powers in the Bill provide authority to issue public health orders to require the recipient of the order to take action to reduce, control or prevent a public health risk. The Bill also provides complementary powers to

enable authorised persons to inspect and take appropriate action to enforce compliance with public health orders.

The Bill provides for the establishment of a register for an environmental health event to monitor and analyse any health effects resulting from the event and to help in the prevention, minimisation or treatment of the health effects.

Notifiable conditions

Certain medical conditions are of particular significance to public health, due to the fact that they are highly contagious, life threatening or an indicator of an environmental health risk. The aim of the Bill is to protect persons from these conditions through mechanisms that provide an appropriate balance between public health and the right of individuals to liberty and privacy.

In accordance with this object, the Bill allows information about persons who have, or are suspected of having, a notifiable condition to be provided to enable monitoring and analysis of incidences of notifiable conditions; study the efficacy of treatment; increase public awareness; identify outbreaks to enable steps to minimise public health risks; and help in the planning of services and strategies to prevent or minimise transmission of notifiable conditions.

The Bill also enables the chief executive to appoint appropriately qualified contact tracing officers to assist in the identification and provision of information to persons who have, or may have, been exposed to a notifiable condition.

In addition, the Bill will enable action to be taken to manage a person with a controlled notifiable condition who poses a risk to the health of the public because of his/her condition or behaviour. For example, if necessary, the chief executive may detain a person at a public sector health service for a maximum period of 24 hours or apply to a magistrate for an order that provides for the examination of a person to ascertain whether the person has a controlled notifiable condition.

Minimising infection risks in health service facilities

The Bill imposes a general obligation on persons involved in the provision of a declared health service to take reasonable precautions and care to minimise the risk of infection to other persons. This obligation will be imposed on owners of a health care facility, those persons responsible for the operation of a health care facility, individual health care providers and

support staff (eg staff who provide laundry and other domestic services at a health care facility).

The Bill also requires certain health care facilities to develop and implement an infection control management plan (ICMP). An ICMP must identify the potential infection risks, detail the measures to be taken to prevent or minimise the risks, provide how the implementation of the ICMP is to be monitored and reviewed, and provide for staff training about the ICMP.

Child health

There are two aspects to child health dealt with in the Bill - powers in relation to contagious conditions and powers in relation to child abuse and neglect.

The Bill enables the chief executive (health) and persons in charge of schools and child care services to issue directions about the attendance of a child at school or child care, if the child is suspected of having a contagious condition. Similar provisions also apply in relation to children at risk of contracting a contagious condition because they have not been vaccinated for the condition. The Bill also enables the chief executive (health) to issue directions, or the Minister to order the temporary closure of a school or child care service, to minimise an outbreak of a contagious condition.

The Bill carries forward changes recommended in the Crime and Misconduct Commission's Report on the abuse of children in foster care by providing that all registered nurses and doctors must report reasonable suspicions of harm to a child to the chief executive of child safety. The provisions establish the framework for providing the notifications.

In addition, appropriately qualified doctors (designated medical officers) are empowered under the Bill to order that a child who has been (or is at risk of being) harmed and is likely to leave (or be taken from) the facility and be harmed if immediate action is not taken, be held at a health service facility for up to four days for examination and treatment.

Health information management

The Bill continues to provide for the collection of data for the establishment and maintenance of the Perinatal Statistics Collection, the Queensland Cancer Register and the Pap Smear Register.

Research

The Bill establishes mechanisms for providing health information held by the department for approved research. The Bill enables researchers to apply to the chief executive of health for access to health information held by the department. The provisions prescribe the application criteria and processes and provide confidentiality requirements that must be adhered to by successful applicants. The chief executive must keep a register of approved applications for health information held by the department and must give access to the register to anyone who requests access.

Public health Inquiries

The Bill provides for the Minister to establish a panel of inquiry in relation to matters the Minister considers to be serious public health matters. The role of a panel of inquiry is to inquire into and report on the circumstances and probable causes of the serious public health matter. The Minister must table a copy of the panel's report in the Legislative Assembly within 14 sitting days after receiving the report. However, if the panel gives the Minister a separate report of issues the panel considers should not be made public, the Minister need not table the separate report in the Legislative Assembly.

Public health emergencies

The Bill enables the Minister to declare a public health emergency and sets out the emergency powers that may be used to minimise or control the emergency (eg. powers to request assistance and information, enter property and take necessary action, or detain a person). The Minister may declare an emergency by written order, if the Minister is satisfied it is necessary to exercise the powers under this chapter to prevent or minimise serious adverse effects on human health from a public health emergency. A declaration will only have effect for a maximum period of seven days, unless the duration of the declaration is extended by a regulation.

Monitoring and enforcing

The Bill establishes a framework for monitoring and enforcing compliance with the requirements in the Bill. The Bill enables the appointment of authorised persons who are provided with the necessary authority for ensuring public health is protected through compliance with matters such as public health orders.

Alternative Ways of Achieving Policy Objectives

Ensuring risks to public health are prevented, controlled or minimised involves balancing the rights of individuals and the needs of the broader community. Where feasible, the types of matters dealt with under the Bill would be addressed through public information and awareness, negotiations with individuals (e.g. to reduce a public health risk) and relevant protocols and policies. However there will be circumstances where these approaches will not be sufficient and legislative authority will be required. The Bill provides the framework for such legislative powers to be exercised.

Estimated Cost for Government Implementation

There will be no significant on-going additional costs to government arising from the proposed Bill. The costs associated with responding to a public health emergency or establishing a public health inquiry will need to be addressed at that time.

Consistency with Fundamental Legislative Principles

Notwithstanding the safeguards in the Bill, the Bill raises a number of fundamental legislative principle issues. By its nature, public health legislation often involves balancing the need to protect the health of the public against the rights of individuals.

The Bill contains a number of provisions which affect people's rights and liberties, for example provisions dealing with contact tracing, detention of persons with certain infectious conditions, inquiry powers and emergency powers. The consensus (as indicated by two rounds of consultation on policy underpinning the Bill) is that these provisions are justified in order to protect public health.

The Bill also includes safeguards to minimise the impact of these provisions on individual rights and liberties. These safeguards are a significant improvement upon those provided in the *Health Act 1937*.

Powers of entry

A number of provisions through the Bill provide powers of entry to premises for authorised persons. These powers are provided for averting or controlling public health risks and in some circumstances provide for entry without a warrant or consent of the occupier. These provisions breach the fundamental legislative principle in section 4(3)(e) of the *Legislative Standards Act 1992* (LS Act) that provides that legislation should not

confer powers to enter premises without a warrant issued by a judge or other judicial officer.

However, each of the provisions conferring such authority is justified on public interest grounds and is also supported by a number of safeguards to minimise interference with individual rights and liberties.

Specifically, the following provisions provide powers of entry.

Clause 41 – Power of authorised persons to enter place for prevention and control programs

This provision enables an authorised person to enter a place under a prevention and control program for designated pests (eg mosquitoes, vermin) or to search for breeding grounds or sites that harbour these pests. This power is necessary to prevent the spread of pests that cause disease in humans and pose a significant threat to public health.

The chief executive (health) may authorise a prevention and control program only if satisfied there is an outbreak (or potential outbreak) of a disease capable of transmission to humans by designated pests (eg dengue fever), or a plague or infestation of designated pests, in an area. Obtaining warrants is not practical in these circumstances and would inhibit the ability of authorised persons to effectively control outbreaks of pests in a timely manner.

The Bill provides for public notification of such programs (cl.38). The authority to enter places without consent or warrant does not extend to dwellings or places to which access is restricted (eg a closed verandah). Access to dwellings and restricted places may only be made with the consent of the occupier. Authority to enter other places is limited to entry at a ‘reasonable time’ of the day or night. Clause 46 of the Bill requires an authorised person to advise the occupier of the steps taken at the place, or to be taken under the prevention and control program.

The powers following entry under an approved prevention and control program are limited to those necessary for carrying out the program. There is no power to gather evidence of offences.

Clauses 385, 386, 387, 388, 389—Power to enter places

These provisions provide power to enter a place for a variety of reasons, including to ascertain if there is a public health risk, to check compliance with and take steps under a public health order, and to carry out an approved inspection program.

In conjunction with clauses 392 and 393, the provisions all provide that an authorised officer may enter a place without a warrant or the consent of the occupier if a reasonable attempt to locate the occupier to gain consent is made and the occupier cannot be found. If the occupier is located and refuses consent, the authorised officer is not permitted to enter the place. Authorised officers who enter a place without consent because the occupier cannot be located, must leave a notice in a conspicuous and secure way stating the date, time and purpose of the entry.

These powers of entry do not extend to permitting entry to a building or other structure. Entry to a building or other structure is only permitted with the consent of the occupier, an enforcement order or a warrant.

The authorised person must take all reasonable steps to ensure the entry causes as little inconvenience and does as little damage as practicable in the circumstances.

In addition, for entry to take steps if a public health order has not been complied with (cl.387), the occupier and owner of the place to be entered must be given reasonable notice in writing of the intention to enter and take the steps required under the public health order.

Authorised inspection programs must be approved by the chief executive of health or the chief executive officer of a local government. Public notices of each program are also required (cl.428).

Clause 390 – Power to enter health care facility

For the purposes of monitoring and enforcing compliance with chapter 4 of the Bill (Infection control for health care facilities), an authorised person is permitted to enter a health care facility without consent or warrant if the facility is open for business or otherwise open for entry.

However, the authorised person must advise the person in charge of the health care facility about the authorised person's intention to enter the facility at least 24 hours before entry.

It is necessary for the effective monitoring of the legislation for an authorised person to be able to enter a health care facility, without consent or warrant, in order to establish that the health care facility is complying with the requirements of chapter 4 (eg to establish the facility has an infection control management plan in place).

As an additional safeguard, an authorised person may not enter a part of the health care facility if a person is undergoing a procedure conducted by a health practitioner, or consulting a health practitioner, at the facility.

'Shield' provisions

The Bill establishes a number of registers and other collections of health information related to health issues of particular public concern. The confidentiality of this information is of utmost importance to ensure that sensitive health information is protected.

Consequently provisions in the Bill provide that some of information may only be disclosed and used for very limited purposes related to public health. Included in these confidentiality provisions are preclusions on accessing or using the information for civil or criminal court proceedings. These "shield" provisions are arguably inconsistent with the principles of natural justice as they deny individuals the use of information that may be relevant to judicial action (LS Act s.4 (3)b)).

Clause 57 – Use of environmental health event register

The provision enables the Minister to declare by gazette notice that particular information in an environmental health event register is protected information. Protected information is not admissible in any proceeding except proceedings under the Bill or a coronial investigation, and a person cannot be compelled to produce the protected information, or give evidence relating to the protected information, in any proceeding, other than a proceeding under the Bill.

An environmental health event register is established under the Bill to help monitor any health effects and provide information that may help in the prevention or treatment of any health effects resulting from an environmental health event that has been or may be a serious risk to human health. The information contained in the register may include sensitive information about individuals' health status and treatment. Inclusion of an individual's health information on a register is voluntary, therefore to ensure the participation of people who have been affected by environmental health events, it is essential that individuals are confident in the security of particularly sensitive information.

The chief executive may provide information from the register to the coroner or a police officer assisting the coroner, if the coroner is investigating a death and the information will assist in the investigation. The coroner (or police officer) must not use the information for any other purpose.

Clause 292 – Use of health information held by the department

Under the Bill, health information held by the department can be given to researchers who apply under the Bill and meet certain criteria. Under this

clause, the Minister may declare by gazette notice that particular health information given to a researcher is protected information. As above, protected information is not admissible in any proceedings except proceedings under the Bill and a person cannot be compelled to produce the protected information, or give evidence relating to the protected information, in any proceeding, other than a proceeding under the Bill.

There are particular sensitivities relating to personal health information and the need to maintain community confidence in public health services. There may be occasion where the public interest is best served by ensuring this sensitive information is not disclosed except for the particular research for which disclosure has been approved.

Both shield provisions above are tempered by the need for the Minister to reasonably believe that the declaration is in the public interest and by the ability for protected information to be admitted or produced with the consent of the person to whom the information relates.

Clauses 87 and 111 – Use of notifiable conditions register, contact information and business contact information

The Bill requires doctors, persons in charge of hospitals and directors of pathology laboratories (as the case may be) to notify the chief executive if an examination indicates that a person has or had a notifiable condition, or a provisional diagnosis of a notifiable condition. The provision of such information enables the department to take action to minimise the spread of serious contagious conditions with minimal infringement of personal liberties and privacy.

The purpose of the Notifiable Conditions Register (NOCS Register) is to record all the notifications about notifiable conditions made to the chief executive. Consequently the register contains sensitive personal information about individuals with serious conditions. Perceived or actual misuse or disclosure of information contained in the register may undermine the integrity of the notifying process and result in doctors refusing to report notifiable conditions, or patients considering not seeking medical diagnosis or treatment. The flow-on effects of such omissions would involve unacceptable risk to the public health.

The Bill also requires individuals and business to give information to contact tracing officers when required, to enable the contact tracing officer to trace the movement of a person with a contagious condition. The purpose of this requirement is to ensure the safety of people who may have come into contact with a person suffering a contagious condition.

Clauses 87 and 111 provide that no information contained in the register or provided to a contact tracing officer may be admissible in any proceeding other than those specified under the relevant clauses and that no person can be compelled to produce the information or to give evidence relating to the information in any proceeding other than one under the Act.

The chief executive may provide information from the register to the coroner or a police officer assisting the coroner, if the coroner is investigating a death and the information will assist in the investigation. The coroner (or police officer) must not use the information for any other purpose. Information may also be provided to a State entity for the purpose of investigating and prosecuting a serious offence, if there is an agreement between the chief executive (health) and the entity made under clause 84(1)(b).

An exception to the provisions enables information to be disclosed in a proceeding with the consent of the person to whom the information relates.

Self-incrimination no defence

The public interest in protecting against serious public health risks is best served by ensuring the full and frank disclosure of information pertinent to containing and investigating public health risks.

The fundamental legislative principle in section 4(3)(f) of the LS Act provides that legislation should provide appropriate protection against self-incrimination. However, excluding the disclosure of information for such reasons may jeopardise the tracing of a contagious condition and place the health of the public at risk. It may also inhibit the effectiveness of formal inquiries into causes of and action taken in relation to serious public health matters.

Clauses 100 and 102 – Failure to give contact information/business contact information

These two provisions provide that where an individual is required to give a contact tracing officer information the person is not excused from providing the information on the grounds that complying with the requirement might tend to incriminate the person. This is to ensure that a thorough investigation of the risk to public health can be undertaken. It is necessary for the contact tracing officer to be able to identify any person who may be at risk of contracting or spreading the contagious condition.

While clauses 100 and 102 removes self-incrimination as a reasonable excuse for a person to fail to give contact information or business contact information, these clauses clarify how information given by an individual

(primary evidence), or any information or thing obtained as a direct or indirect result of evidence is also not admissible (ie derived evidence), may be used in proceedings. That is, primary and derived evidence is not admissible in a civil or criminal proceeding, other than:

- criminal proceedings about the falsity or misleading nature of the primary evidence;
- proceedings for obtaining a controlled notifiable conditions order under chapter 3 part 5.

Queensland Health adopts a staged process to dealing with individuals with serious medical conditions who are a risk to the community (eg, *Protocol for the Management of HIV Positive People Whose Behaviour May Constitute a Public Health Risk*). This staged approach involves –

- Counselling, education and support;
- Intensive management and supervision by Queensland Health;
- Restriction of movement and/or activities (as provided for under the Bill);
- Detention (as provided for under the Bill).

There may be occasions where the particular circumstances cannot be adequately dealt with through these processes, and the matter needs to be referred to another party. For example an investigation may be warranted with a view to a prosecution under s.317 of the Criminal Code (*Acts intended to cause grievous bodily harm and other malicious acts*). It would not be in the public interest for this type of referral to be effectively prohibited. For this reason the Bill allows derived evidence to be used in criminal proceedings for a controlled notifiable condition.

As an additional safeguard, clause 105 places strict confidentiality requirements on information acquired as part of contact tracing. There are very limited exceptions to this duty. In the above situations, the information could only be disclosed if the chief executive authorises the disclosure to protect the health and welfare of another person or the chief executive believes it is in the public interest to authorise the disclosure (see clauses 108 and 109), or with the written consent of the person to whom the information relates (clause 107).

Clause 308 – Offences by witness

The Minister may establish a panel to inquire into the circumstances and probable causes of a serious public health matter. The inquiry panel may require a person to provide information as a witness to the inquiry. A person asked to provide information must comply and self-incrimination is

not an excuse for non-compliance. Traditionally, removing the privilege against self-incrimination should only be contemplated when it is more important to know the facts leading to a significant public health risk than to prosecute any offences related to the matter. If information can be withheld from the inquiry, the causes of a public health matter may not be properly identified and preventative measures could not be implemented for possible future occurrences.

While clause 308(3) removes self-incrimination as a reasonable excuse for a person to fail to answer a question or produce a document (or thing), subclause 308(4) provides that specified evidence (ie primary evidence and derived evidence) given by a witness is not admissible in a civil or criminal proceeding. Further, any information or thing obtained as a direct or indirect result of evidence is also not admissible. Subclause 308(5) also clarifies that primary or derived evidence is not prevented from being admitted in evidence in criminal proceedings about the falsity or misleading nature of the primary evidence.

Clause 346 – Failure to comply with requirement

Clause 346 removes self-incrimination as a reasonable excuse for a person to fail to comply with a emergency officer's requirement during a declared public health emergency. This is addressed under the heading "Emergency Powers", below.

Clause 419 – Failure to produce document

Under the powers to monitor and enforce the public health requirements in the Bill, authorised persons may require the production of documents. Clause 419(2) states that it is not a reasonable excuse for a person not to comply with a requirement to produce a document if complying with the requirement might incriminate the person.

An authorised person's power to require a person to produce a document or make a document available for inspection is limited to documents issued to, or required to be kept by, the person under the Bill (eg an Infection Control Management Plan). Given the limited extent of this provision and the importance of such documents in achieving the objectives of the legislation, it is reasonable to require a person to comply with the requirement even if to do so might tend to incriminate the person.

Detention of person with controlled notifiable condition

In controlling the spread of a serious contagious condition that poses an unacceptable risk to public health, it may be necessary to detain a person with a controlled notifiable condition to ensure that the person does not pass the condition on to others in the community.

Such a requirement impinges upon the rights and liberties of an individual and breaches the fundamental legislative principle in s.4(3)(a) of the LS Act.

Clause 113 – Chief executive may order detention

The Bill enables the chief executive of health to order the detention of a person at a public sector health service if the person has presented to a public sector health service and the chief executive reasonably suspects:

- that the person has a controlled notifiable condition; and
- that the person's condition or the person's condition and likely behaviour constitutes an immediate risk to public health.

This power applies only in respect of controlled notifiable conditions. A condition can only be prescribed as a controlled notifiable condition if it is of significance to public health and is likely to result in serious or long term deleterious consequences for infected persons (eg SARS). A condition may also be declared by the Minister during a public health emergency, however such declarations expire after 28 days.

To minimise the impact upon individuals, the chief executive must be satisfied that the person has been counselled, or reasonable attempts have been made to counsel the person about the condition and its possible effects on the person and the community generally. The order must also be fully explained in writing and the detention can only be for a maximum period of 24 hours.

A single person with a serious contagious condition who is refusing to cooperate with authorised persons may pose a serious risk to public health by spreading the contagion through contact with other individuals. Therefore such detention powers are justified to ensure the condition is not spread further.

Holding a child at risk of harm

The results of the implementation of the Crime and Misconduct Commission's report into abuse of children in foster care has included a recognition across all relevant government agencies that the best interests and welfare of a child must be of paramount concern and outweigh any other considerations of parental rights or civil liberties.

Health services may be the first to encounter a child who has been or is at risk of being harmed and are therefore in a position to provide appropriate measures to protect the child in the first instance until the Department of Child Safety can intervene. Measures to protect a child from abuse and

neglect often involve breaching fundamental legislative principles such as removing rights and liberties of individuals under an administrative power (s.4(3)(a) LS Act) or excluding principles of natural justice (s.4(3)(b) LS Act). Ultimately, the safety of a child at risk of abuse or neglect must be ensured.

Clause 197 – Designated medical officer may make care and treatment order for child

This provision enables a designated medical officer (DMO) to order that a child, who has been or is at risk of being harmed, be held at a health service facility for an initial period of 48 hours with a possible extension of another 48 hours if agreed to by a second DMO. Under the order, the child may be medically assessed and treated for any harm that has been caused, without a parent's consent.

There are significant safeguards around the power to ensure it is only used in exceptional circumstances to protect a child from abuse and neglect. These safeguards include that:

- the DMO may only order a child be held if the DMO becomes aware or reasonably suspects that the child has been harmed or is at risk of harm and is likely to be taken from the facility and suffer harm if immediate action is not taken;
- the DMO must notify the Department of Child Safety (DChS) (to enable DChS to undertake appropriate child protection investigations) and the person in charge of the facility where the child is held;
- the DMO must advise the parents that their child is being held under a care and treatment order unless this may jeopardise an investigation into a criminal offence or expose the child to harm;
- only treatment reasonable in the circumstances may be provided;
- the order cannot be extended beyond 96 hours; and
- the parents may request that a doctor of their choosing examine the child.

The impact on the rights of parents is justified given the potential risk to the child if an order is not put in place.

Offences of representatives, licensees and corporations

To ensure responsible people and entities fulfil their obligations under the Bill, three provisions deem a person, licensee or executive officers of a corporation to have committed an offence if their representative, person in charge or corporation have committed an offence. These provisions are

inconsistent with the principles of natural justice (s.4(3)(b) LS Act) and may be seen as reversing the onus of proof in criminal proceedings (s.4(3)(d) LS Act) and therefore breach fundamental legislative principles.

Clause 184 – Licensee must ensure person in charge complies with part 2

This provision requires that a licensee of a child care service must ensure that the person in charge of the child care service complies with the provisions pertaining to contagious conditions affecting children. If the person in charge of the facility commits an offence under the provisions, the licensee is also deemed to have committed the offence of not ensuring that the person in charge complies with the provisions. The licensee will receive the same penalty that the person in charge will receive for an offence under the Bill.

The provisions pertaining to contagious conditions affecting children have the objective of ensuring that contagious conditions are not spread through schools and child care services. This clause is justified as it reinforces that the licensee is ultimately responsible for the operation of the child care service and must give the requirements under the Bill due regard to protect the health of clients.

It is a defence for the licensee to demonstrate that the licensee exercised reasonable diligence to ensure the person in charge complied with the provisions.

Clauses 447 and 448 – Representatives and corporations

Clause 447 provides that an act or omission by a person's representative, relating to an offence against the Bill, is taken to have been done by the person, if the representative was acting within the scope of the representative's authority. In these circumstances, the person will have been taken to have committed the relevant offence unless the person can prove that the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

Clause 448 provides that, if a corporation is convicted of an offence against the legislation, each executive officer of the corporation is taken to have committed the offence of failing to ensure that the corporation complies with the relevant provision. The effect of this clause is to presume an executive officer of a corporation to be guilty unless the executive officer can prove that he or she took all reasonable steps to ensure the corporation complied with the provision, or that he or she was not in a position to influence the conduct of the corporation in relation to the offence.

While these provisions effectively provide for the reversal of the onus of proof, it is important to note that the offences provided for under the legislation deal with major public health issues. Having regard to the objective of the legislation, it is appropriate that:

- a person be required to oversee the conduct of his or her representatives and, in doing so, make reasonable efforts to ensure that his or her employees or agents comply with the requirements of the legislation;
- an executive officer who is in a position to influence the conduct of a corporation be required to ensure the corporation complies with the legislation; and
- an executive officer who is responsible for a contravention of the legislation, be accountable for his or her actions and not be able to 'hide' behind the corporation.

The provisions are therefore warranted to ensure that there is effective accountability at a corporate level.

Protections from liability

It is not appropriate that an individual be made personally liable as a consequence of that individual carrying out his or her responsibilities under the Bill in good faith. Therefore a number of clauses provide that a person complying with their responsibilities under the Bill cannot be held liable, civilly or criminally for certain acts. There is an apparent breach of fundamental legislative principles (LS Act, s.4(3)(h)) in these provisions, but the breach is justified to ensure the cooperation of individuals and the effective enforcement of the legislation.

Clause 179 – Protection for persons acting under part 2

This clause provides that a person acting honestly who gives information or does something under the part (dealing with controlling contagious conditions in schools and child care services) such as directing a parent to remove a child from a school, is not liable, civilly, criminally or under an administrative process. The protection extends to actions for defamation and breach of confidentiality and also provides that a person cannot be held to have breached any code of professional ethics or departed from accepted standards of professional conduct.

To ensure the effective control of the spread of contagious conditions through schools and child care services, it is essential that school principals and persons in charge of child care services as the case may be, are not inhibited in enforcing the Bill through fear of civil or criminal liability.

Without the cooperation of these individuals, public health is put at risk. The protection does not extend to a person who is not acting honestly or for actions taken outside the scope of the Bill. In such circumstances an aggrieved person may still pursue civil or criminal recompense.

Clauses 195 – Protection from liability for giving information to professional

Clause 195 provides protection from liability, civilly, criminally or under an administrative process for a person who, acting honestly, provides information about suspected child abuse to a doctor or a registered nurse. The protection includes specific protection from actions for defamation and breach of confidentiality or privacy.

Identification and appropriate reporting of child abuse and neglect relies on the people who know about the abuse, reporting it to the appropriate authorities. In many instances, particularly involving complex family relationships, a person may feel more comfortable discussing concerns of child abuse with their or the child's doctor or (in rural, remote or Indigenous communities particularly) the community nurse. It is essential to the processes for protecting children, that such persons are not inhibited from reporting child abuse out of fear of prosecution or retribution. This also applies, for example to a health care worker who raises concerns about child abuse or neglect with a doctor. The provision is therefore defensible on the grounds that if a person could be sued for defamation or breach of confidence, it is unlikely that notifications would be made to doctors or registered nurses, and consequently the child protection objectives of the provisions would be frustrated.

These clauses are consistent with the approach taken in the *Child Protection Act 1999* in relation to people who notify the Department of Child Safety about a suspected case of child abuse or neglect.

Clause 457 – Protecting prescribed persons from liability

Clause 457 specifies that the Minister, the chief executive, an authorised person, a contract tracing officer, a designated medical officer, a person acting under the direction of an authorised person or another officer mentioned in the Bill who is required to act by the Bill, is not civilly liable for an act, or omission, made honestly and without negligence under the Bill.

As it is not appropriate that an individual be made personally liable as a consequence of that individual carrying out his or her responsibilities under the legislation in good faith the clause prevents civil liability from being attached to the individual. If the prescribed person is the chief executive

officer of a local government, an authorised person appointed by a local government, or a person acting under the direction of an authorised person, the liability instead attaches to the local government. If the prescribed person is the Minister or the chief executive, the liability attaches to the State. The immunity under this clause does not extend to a prescribed person who has been negligent, even though the person may have acted in good faith.

Clauses 75, 218, 236 and 265 – Protection where further information is required

These clauses afford protection to a person who provides further information in response to a request from the chief executive. Under the Bill, a person may be required to provide further information about the notice they had given for a cancer notification, the notifiable conditions register, the perinatal statistics collection, or the Pap smear register. The person who gives the further information is deemed not to have breached any duties of confidentiality and cannot be held to have breached any code of professional ethics or departed from accepted standards of conduct. This protection enables accurate and complete information to be collected by the chief executive.

Emergency powers

The Bill provides powers for the Minister to declare a public health emergency or an emergency notifiable condition as a controlled notifiable condition, to minimise or prevent serious adverse effects on human health. The declaration must be published in the gazette and in newspapers, radio or television in the affected areas and lasts for seven days unless ended sooner by the Minister or extended by regulation.

The Bill provides that emergency officers and may be appointed to manage and control declared public health emergencies. Emergency powers are provided for the emergency officers to perform the duties necessary to manage and control the emergency.

Emergency officers are provided with the following powers:

- clause 343 – powers to enter places to save a human life, prevent or minimise serious adverse effects on human health or to do anything else to relieve suffering or distress;
- clause 345 – general powers necessary to respond to the declared emergency. These include the power to require a person to: go to or stay in a place; not enter or not remain in a place; answer questions and provide information; regulate their movement into, out of or

around the emergency area. They also allow emergency officers to take action in relation to animals, substances, property or things;

- clause 347 – authority to search, inspect, take a thing, copy a document and require assistance from a person after entering a place to respond to a declared public health emergency.

Clause 346 removes self-incrimination as a reasonable excuse for a person to fail to comply with a requirement to act pursuant to clause 345. However, information gathered may not be used against the person. Subclause 346(3) provides that specified evidence (ie primary evidence and derived evidence) given by a person in response to a requirement is not admissible in a civil or criminal proceeding. Further, any information or thing obtained as a direct or indirect result of evidence is also not admissible. Subclause 346(4) also clarifies that primary or derived evidence is not prevented from being admitted in evidence in criminal proceedings about the falsity or misleading nature of the primary evidence.

In addition to these powers, emergency officers (medical) also have authority to order the detention of a person who has a serious disease or illness and whose likely behaviour constitutes an immediate risk to public health (cl. 349).

If a person is detained under these provisions, the emergency officer (medical) must request the person be medically examined to help decide if the person has the serious disease or illness and whether the person is an immediate risk to public health. Force may not be used to examine or treat a person under the emergency powers.

These powers breach fundamental legislative principles. However, emergency declarations will only be made in exceptional circumstances and the powers are provided to prevent or minimise public health risks that may result in serious illness or death. These provisions would only be used where there are no legislative alternatives that provide the responsiveness needed to protect lives. In addition, the declaration will only last for a specified limited time.

Setting of standards for manufacture, use, etc. of paint

Clause 60 makes it an offence to manufacture, sell, supply or use paint other than in compliance with the standard. “Standard” is defined to mean the part of the *Standard for the Uniform Scheduling of Drugs and Poisons* (SUSDP) dealing with paint, prescribed under a regulation. This is arguably an inappropriate delegation of legislative power (LS Act s4(4)(a)). However, the SUSDP is compiled by the Australian Health Ministers’ Advisory Council and the relevant part of the SUSDP must be prescribed in

regulation (a disallowable instrument) before this clause has effect. Accordingly, while the delegation is potentially a technical breach of the fundamental legislative principles, it is made at an appropriate level and is subject to Parliamentary scrutiny.

Consultation

Significant government and community consultation has been undertaken through the development of the Bill. Consultation has included the public release of the Discussion Paper, *Review of the Health Act 1937: New Population Health Legislation for Queensland*, in October 1995 and the *Draft Policy Paper; Review of the Health Act 1937 (Public Health)*, in February 1998.

A consultation draft of the *Public Health Bill 2005* was released for public comment from October to December 2004.

As part of the consultation process for the Bill:

- some 150 non-government stakeholders, State government agencies and local governments, were invited to comment on the appropriateness and workability of the Bill ;
- forums were held with local government in Brisbane, Cairns, Townsville and Rockhampton;
- presentations on the Bill were made upon the request of key stakeholders such as the Australian Institute of Environmental Health (AIEH) and the Infection Control Practitioners Association (Qld);
- notices were placed in the metropolitan and regional newspapers (eg Courier-Mail, Daily Mercury, Koori Mail) regarding the public release of the consultation draft of the Bill for comment;
- a copy of the consultation draft of the Bill was placed on Queensland Health's website;
- meetings were held with key stakeholders to discuss matters raised in their submissions on the consultation draft of the Bill.

Notes On Provisions

Chapter 1 Preliminary

Part 1 Introduction

Clause 1 specifies the short title of the Bill.

Clause 2 provides for the Bill to commence on a date to be fixed by proclamation.

Clause 3 specifies that the Bill binds all persons including the State. However, the State is not bound by chapter 2, part 3 and sections 386, 394 and 395 in relation to local government public health risks. The effect of this is that local government cannot issue public health orders or seek warrants against the State. (Refer also to the explanatory note for clause 61). Clause 3 also provides that the Commonwealth or a State is not liable to be prosecuted for an offence.

Clauses 4 and 5 outline the relationship between the Bill and civil liabilities or remedies. The effect of these provisions is that a breach of an obligation under the Bill (eg under clause 23) would not expose a person to liability under a civil action for breach of statutory duty. However, another civil right or remedy (eg based on negligence) would not be affected or limited by the Bill.

Clause 5 also provides that compliance with the Bill does not necessarily show that a civil obligation, which exists apart from the Bill, has been satisfied or has not been breached.

Part 2 Object

Clause 6 identifies the object of the Bill.

Clause 7 outlines how the object is to be achieved.

Part 3 Interpretation

Clause 8 provides that the dictionary in schedule 2 defines particular words used in this Bill.

Clause 9 states that notes in the text of the Bill are part of the Bill.

Chapter 2 Environmental Health

Part 1 Public health risks

Clause 10 and 11 define terms for the purposes of chapter 2, including “public health risk”, “local government public health risk” and “State public health risk”.

The definition for public health risks outlines those activities, animals, substances or things that are to be a public health risk for the purposes of the Bill and also provides for other public health risks to be prescribed by regulation.

Local government public health risks and State public health risks are subsets of public health risks. The distinction is made to enable responsibility for the administration and enforcement of specified public health risks to be allocated to either the State or local governments (see clauses 12 to 18).

Part 2 Roles of the State and Local Governments for Public Health Risks

Clause 12 details the matters under chapter 2 for which only the State has administration and enforcement responsibility.

Clause 13 details the matters under chapter 2 for which only local governments have administration and enforcement responsibility.

Clause 14 enables the chief executive (on behalf of the State) and the chief executive officer (on behalf of a local government) to enter into a collaborative arrangement whereby the State may assist local government in relation to a local government public health risk, or the local government may assist the State in relation to a State public health risk.

Clause 15 provides that the chief executive may administer and enforce the Bill for a matter in a local government's area, if the chief executive is reasonably of the opinion that there is a significant risk to public health; the local government has failed to act under the Bill in relation to a public health risk; and it is necessary to take action under the Bill to remove or reduce the risk to public health, or prevent it from recurring. When forming an opinion about the significance of the risk to public health, the chief executive must have regard to the potential consequences for the health of individuals and the number of persons likely to be exposed to the risk.

For example, the chief executive may reasonably be of the opinion that a risk to public health is significant if only a few individuals are affected but with severe consequences for those individuals. Conversely, the chief executive may reasonably be of the opinion that a risk to public health is significant if a larger number of people are likely to be affected although the consequences for individuals are relatively minor.

The reasonable costs and expenses incurred by the chief executive as a result of the chief executive acting under this clause are a debt payable by the local government to the State, and may be recovered accordingly. In addition, clause 15 clarifies that the executive may perform functions and powers to deal with the matter in the local government's area, including appointing authorised persons.

This power is not intended to be used in respect of minor risks to public health, such as to resolve individual grievances about local government decisions regarding administration and enforcement of the Bill for localised public health risks. Rather, it is intended to enable the State to act to protect public health from public health risks that have major implications for the health of individuals or impact on a large number of individuals.

Clause 16 provides that before exercising the power under clause 15, the chief executive must first consult with the chief executive officer of the local government and give the chief executive officer a reasonable opportunity to take the action necessary to reduce the risk to public health.

Clause 17 allows the chief executive to require information from a local government about the local government's administration and enforcement of the Bill for a matter for which local government has responsibility. This will allow, for example, the chief executive to assess whether there has been a failure of local government to administer and enforce the Bill, and assess what action is necessary to prevent, control or reduce the risk to public health.

Clause 18 specifies that, if a regulation is made under clause 11 about a public health risk, the regulation must also allocate responsibility for administration and enforcement of the public health risk to either the State or local governments.

Clause 19 provides that local laws made under the *Local Government Act 1993* about public health risks are not invalid by reason of inconsistency with the Bill, as may arise due to section 31 of the *Local Government Act 1993*. This is to provide certainty that local laws (eg about waste collection or overgrown allotments) will remain in effect despite the enactment of the 'public health risk' provisions.

However, regulations made under clause 61 about public health risks may contain offences for non-compliance with prescribed requirements. Accordingly, subclause 19(3) provides that section 31 of the *Local Government Act 1993* continues to operate to invalidate a local law which is inconsistent with a regulation made under clause 61 about a public health risk, to the extent of the inconsistency. For example, a regulation made about water quality standards for swimming pools, will override inconsistent similar standards in local laws. This will enable a consistent State-wide approach to be enacted for a given public health risk, where desirable.

Clause 20 states that the Bill is to be administered and enforced using the powers provided in the Bill and not the *Local Government Act 1993*. This provision has been incorporated to provide clarity about what powers should be utilised by local government to enforce the Bill, as there are equivalent powers provided for under the *Local Government Act* for enforcement of "local government laws" (which would include the Public Health Bill).

Part 3 Public Health Orders

Clauses 21 to 23 provide for an authorised person (State or local government) to give a person a public health order requiring them to take action to remove or reduce a risk to public health, or prevent the risk from recurring.

Clause 21 sets out what may be required by a public health order, subject to the following limitations:

- the requirements specified in the order must be reasonably necessary to remove or reduce the risk to public health from the public health risk, or prevent it from recurring;
- the requirements specified in the order must be appropriate in the circumstances having regard to the nature and seriousness of the risk to public health;
- the period for compliance with the order must be reasonable having regard to the risk to public health from the public health risk.

The requirements of a public health order must be proportionate to the risk to public health it seeks to address

Clause 22 directs an authorised person to consult with the department responsible for the administration of the *Exotic Diseases in Animals Act 1981* or the *Stock Act 1915* before giving a public health order in relation to an animal the authorised person suspects has, or may have, a disease regulated under those Acts.

Clause 23 empowers an authorised person, who reasonably believes a person is responsible for a public health risk, to give the person a public health order for the risk. The order, among other matters must state:

- the steps the recipient must take to remove, reduce or prevent the re occurrence of the risk to the public health (including any action the recipient must stop doing);
- the period for taking the steps or stopping the action;
- the consequences of not complying with the order, including the enforcement measures available to an authorised person under the Bill (eg clauses 387 and 388).

It is an offence not to comply with a public health order, unless the recipient of the order has a reasonable excuse.

Clauses 24 to 32 set out matters in relation to the making and execution of an enforcement order made by a magistrate in response to the failure a recipient's non-compliance with a public health order.

Clause 24 allows an issuing authority (the State or a local government) to apply to a magistrate for an enforcement order if the recipient of a public health order has failed to comply with the order.

Clause 25 states that the person to whom an enforcement order application relates is to be given prior notice of the hearing to decide the application. However, if the person does not attend at the specified time and place, the application may be decided in their absence.

Clause 26 states the matters about which a magistrate must be satisfied before making an enforcement order. Importantly, the magistrate must be satisfied that the public health order was appropriate in the circumstances having regard to the nature and seriousness of the risk to public health from the public health risk at the time the order was given.

Clause 27 provides that a magistrate, when making an enforcement order, may order that the recipient of an enforcement order must take the specified steps to remove or reduce the risk to public health from the public health risk, or prevent the risk from recurring within a specified time and, failing compliance with these requirements, the issuing authority may take the action specified in the order. Alternatively, the magistrate may order that the issuing authority take the steps to remove or reduce the risk to public health from the public health risk, or prevent the risk from recurring.

The clause also sets out the matters to be stated in the order, including:

- the times and intervals for entry;
- that the issuing authority may use reasonable help and force that is necessary in the circumstances to take the steps authorised under the order;
- who is to pay the costs incurred by the issuing authority under the order.

Clause 28 makes it an offence not to comply with an enforcement order.

Clause 29 states that a magistrate may hear an application for an enforcement order and a proceeding for contravention of a public health order at the same hearing.

Clause 30 provides that before entering a place under an enforcement order, a reasonable attempt must be made to locate an occupier of the place, give the occupier a copy of the order, explain that the order authorises entry

to the place and give a person an opportunity to allow the authorised person to enter without the use of force.

Clause 31 and 32 provide for an issuing authority to recover an amount payable under an enforcement order as a debt due. Similar to the cost recovery mechanisms under the *Local Government Act 1993*, clause 31 specifies that an amount payable to a local government bears interest as if it were an overdue rate, and clause 32 allows a local government to request the registrar of titles to register a charge over land for an amount payable under an enforcement order.

Clauses 33 and 34 outline the processes whereby a person who has complied with a public health order can apply to a magistrates court for an order that a third party pay all or part of the costs of complying with the order. The third party to whom the application for a cost recovery order relates must be given notice of the hearing to decide the application. However, if the person fails to attend, the application may be decided in the person's absence.

Clause 35 lists the matters about which the magistrate must be satisfied before making a cost recover order against a third party. Of principal importance is that the magistrate must be satisfied the third party is responsible for all or part of the public health risk to which the original public health order related.

Part 4 Authorised prevention and control programs

Clause 36 empowers the chief executive to authorise a program for the prevention and control of designated pests, which are defined as meaning mosquitoes, rats, mice and other animals prescribed under a regulation.

To declare a prevention and control program, the chief executive must be satisfied there is, or is likely to be, an outbreak of a disease capable of transmission to humans by designated pests, or a plague or infestation of designated pests. This would include, for example, an outbreak of dengue fever, or an infestation of dengue fever carrying mosquitos. However, before authorising a program, the chief executive must consult with the local government for the area to which the program relates.

Clause 37 and 38 require the chief executive to publish the authorisation for a prevention and control program, including the reasons for the program,

the area to which the program relates, and the measures to be taken under the program. However, as time may be of the essence, failure to publish does not invalidate the authorisation.

Clause 39 provides that the chief executive may authorise the State, local governments, or both the State and local governments to undertake the program. The program may only be undertaken by authorised persons appointed for this part.

Clause 40 clarifies that for undertaking a prevention and control program, an authorised person may only use the powers under this part and may not exercise the powers under chapter 9. It should be noted, however, that an authorised person conducting a prevention and control program who is also appointed for chapter 2, part 3 may give a person a public health order if the order is for the prevention and control of the designated pests to which the program relates. For example, following entry under a prevention and control program for mosquitos, an authorised person may give a public health order requiring the recipient to empty a stagnant pool to prevent mosquitos from breeding in the pool.

Clause 41 empowers an authorised person undertaking a prevention and control program to enter a place at any reasonable time. The clause clarifies that an authorised person may not enter a dwelling without the occupier's consent. However, an authorised person may enter the following, which are stated not to form part of a dwelling:

- a carport, other than a carport to which access is restricted;
- the area of a verandah or deck, to which access is not restricted and no provision is made to restrict access;
- the area underneath a dwelling to which access is not restricted or no provision is made to restrict access; or
- any other external parts of the dwelling, including, for example, the dwelling's gutters.

Clause 42 provides that if the occupier is present at a place an authorised person has entered under a prevention and control program, the authorised person must produce identification and inform the occupier about the program.

Clause 43 sets out the powers available to an authorised person following entry to a place under a prevention and control program. These powers are limited to those necessary to achieve the objective of the program.

Clause 44 makes it an offence for a person to fail to comply with an authorised person's reasonable request for help under clause 43, unless the person has a reasonable excuse.

Clause 45 makes it an offence for a person to interfere with steps taken by an authorised person under a prevention and control, unless the person has a reasonable excuse.

Clause 46 requires an authorised person to give an occupier of a place notice of the authorised person's entry to a place under a prevention and control program, the purpose of the program, the steps taken under the program and that it is an offence to interfere with the steps taken.

Part 5 Environmental health events

Clauses 47 to 52 sets out the circumstances under which the chief executive may establish and maintain an environmental health event register, if the chief executive considers an environmental health event has or may have significant direct or indirect adverse effects on human health.

An environmental health event is defined as meaning an event involving human exposure to a substance or other thing that is known to have, or is reasonably suspected of having, a significant adverse effect on human health (clause 47).

As detailed in clause 49, a register may be established to:

- help monitor and analyse any adverse effects on human health resulting from an environmental health event; and
- to provide information that may help in the prevention, minimisation or treatment of any adverse effects on human health resulting from the event or similar future events.

The chief must not establish a register until the chief executive has obtained and considered the views of a human research ethics committee (clause 48). However, as soon as practicable after establishing a register for an environmental health event, the chief executive must notify the register's establishment in the gazette (clause 51) and invite those persons, who may have been affected by the environmental health event to which the register relates, to have the person's details included in the register (clause 52). Participation in the register is voluntary.

Clauses 53 to 57 set out requirements regarding the use and disclosure of information in an environmental health event register.

Clause 54 prohibits the use of information gathered for an environmental health event register for a purpose that is inconsistent with the purposes of the register. It is an offence to fail to comply with this requirement.

Clause 55 makes it an offence for a person to disclose information obtained as a result of the person performing a function under this part, unless the disclosure is expressly authorised under the clause, for example, if:

- the information is disclosed in the performance of functions under the Bill;
- the information is disclosed to the person to whom it relates;
- the information is disclosed in a form that does not identify any person (eg aggregate data);
- the disclosure is authorised under an Act or another law.

Clause 56 sets out the circumstances under which information contained in an environmental health event register may be provided to the coroner, or to a police officer helping the coroner to investigate the death of a person.

Clause 57 enables the Minister to declare, by gazette notice, that information contained in an environmental health event register is protected information, if the Minister reasonably believes it is in the public interest to do so. Such a declaration means that:

- the information cannot be accessed under any order, whether of a judicial or administrative nature, other than an order for the purpose of this Bill;
- the information is not admissible in any proceeding, other than a proceeding under this Bill; and
- a person cannot be compelled to produce the information, or to give evidence relating to the information, in any proceeding, other than a proceeding under this Bill.

However, these restrictions do not apply if the information is admitted, produced or given with the consent of the person to whom the information relates. Also, these restrictions do not apply to information provided under clause 56 in relation to a coronial investigation of a death.

Part 6 Lead

Clause 58 prohibits the use of lead in building works, if the lead is easily accessible to children. It should be noted that lead used in contravention of this clause is also a public health risk (see clause 11(1)(b)(vii)). Under chapter 2, part 3 of the Bill, a public health order may be issued to remove or reduce the risk to public health from the public health risk, or prevent the risk from recurring.

Clause 59 prohibits the use of lead in things used to collect potable water (i.e. water that is intended to be, or is likely to be, used for human consumption).

Part 7 Paint

Clause 60 prohibits the manufacture, sale, supply or use of paint other than in compliance with the provisions of the *Standard for the Uniform Scheduling of Drugs and Poisons* prescribed under regulation.

Part 8 Regulations about public health risks

Clause 61 provides for regulations to be made about public health risks. The regulation must state whether the regulation is to be administered and enforced by the State or local governments (see clauses 12 to 18 about the roles of the State and local government). A regulation made under this head of power will not bind the State except to the extent prescribed under the regulation.

Chapter 3 Notifiable Conditions

Part 1 Definitions, purpose of chapter and guiding principles

Clauses 62 to 64 define terms for the purposes of chapter 3 including, for example, notifiable condition and controlled notifiable condition.

A medical condition may be prescribed under regulation as a notifiable condition if the Minister is satisfied the condition is a significant risk to public health (clause 64).

While some notifiable conditions can be identified as a result of a clinical examination by a doctor, other conditions can only be confirmed on the basis of a pathological examination. Accordingly, the Bill (clause 62) provides for a regulation to prescribe those notifiable conditions that may be classified as a clinical diagnosis notifiable condition (i.e. a notifiable condition for which a diagnosis can be made on the basis of clinical evidence, including clinical history, signs and symptoms) or a pathological diagnosis notifiable condition (i.e. a notifiable condition for which a diagnosis can be made on the basis of a pathological examination of a specimen of human origin).

As the identification of new and emerging infectious medical conditions is critical to the provision of an effective public health response, the Bill also provides for the following notifiable conditions to be prescribed under regulation:

- provisional diagnosis notifiable conditions - that is, a notifiable condition, for which a provisional diagnosis can be made on the basis of clinical evidence, including clinical history, signs and symptoms. This would include, for example, the identification of conditions for which there are no recognised pathology tests such as ciguatera poisoning;
- pathology request notifiable conditions - that is, a notifiable condition for which a pathology laboratory will be required to make a notification upon receipt of a request for a pathology examination of a specimen of human origin. This would include, for example, notification of requests for SARS tests during the 2003 outbreak that facilitated coordination of an appropriate response, including rationalisation of testing.

In addition, the Bill provides for certain notifiable conditions to be classified as controlled notifiable conditions. Under clause 63, a medical condition may be prescribed under regulation as a controlled notifiable condition if the Minister is satisfied that the condition may have a substantial impact on public health; the ordinary conduct of a person with the condition is likely to result in the transmission of the condition to someone else; and the transmission of the condition will result in, or is likely to result in, long term or serious deleterious consequences for the health of another person.

Clause 65 sets out the purpose of chapter 3, which is to protect persons from notifiable conditions through mechanisms that provide an appropriate balance between the health of the public and the right of individuals to liberty and privacy.

Clause 66 sets out principles to guide the administration and enforcement of chapter 3.

Part 2 Notifiable conditions register

Clause 67 requires the chief executive to establish and maintain a Notifiable Conditions Register (the register), comprised of information obtained about persons who have, or are suspected of having, a notifiable condition.

It should be noted that clause 465 provides for information obtained about notifiable conditions under the *Health Act 1937* to be incorporated into the register.

Clause 68 sets out the purpose of the register, for example, to enable monitoring and analysis of incidences of notifiable conditions; study the efficacy of treatment; increase public awareness; identify outbreaks so that action may be taken; and help in the planning of services and strategies to prevent or minimise transmission of notifiable conditions.

Clause 69 clarifies that a requirement to make a notification under part 2 about a notifiable condition applies in relation to deceased persons (eg where a pathology examination from an autopsy indicates the person was suffering from a notifiable condition).

Clause 70 imposes a statutory obligation on doctors to make a notification to the chief executive if they suspect a person has or had a clinical

diagnosis notifiable condition or a provisional diagnosis notifiable condition.

Clause 71 imposes a statutory obligation on persons in charge of a hospital to make a notification about a person if it is suspected the person has or had a clinical diagnosis notifiable condition or a provisional diagnosis notifiable condition.

Clause 72 and 73 imposes a statutory obligation on directors of pathology laboratories to make a notification to the chief executive about a pathological diagnosis notifiable condition or a request for a pathological examination of a specimen of human origin for a pathology request notifiable condition.

Clause 74 specifies that an anonymity code may be used when making a notification under clauses 70 to 73. However, under clause 75 the chief executive may require the full name of, and other identifying information about, a person (eg where such information is necessary to prevent or minimise the spread of a notifiable condition).

Clause 75 enables the chief executive to obtain further information in relation to a notification made under clauses 70 to 73 to ensure the accuracy, completeness or integrity of the register; or to prevent or minimise the spread of a notifiable condition. A person who provides information in response to a request from the chief executive is deemed not to have breached any duties of confidentiality or privacy and is not liable for disciplinary action for giving the information.

It is an offence for a person to fail to comply with a mandatory notification requirement under clauses 70 to 73, or to fail to provide further information requested under clause 75.

Clauses 76 to 88 set out requirements regarding the use and disclosure of information in the notifiable conditions register.

Clause 77 makes it an offence for a person to disclose information obtained as a result of the person performing a function under part 2, unless the disclosure is expressly authorised under clauses 78 to 85, for example, if:

- the information is disclosed in the performance of functions under the Bill;
- the information is disclosed to the person to whom it relates;
- the disclosure is authorised under an Act or another law; or
- the disclosure of the information is authorised by the chief executive to identify the potential source of an outbreak of a notifiable condition.

Section 62A of the *Health Services Act 1991* is specifically excluded from operating in relation to confidential information defined in clause 76.

The duty of confidentiality under clause 77 applies to information obtained about notifiable conditions under part 2 and the *Health Act 1937*.

Clause 86 sets out the circumstances under which information from the register may be provided to the coroner, or to a police officer helping the coroner to investigate the death of a person.

Clause 87 imposes limitations on the use of information from the register by specifying that:

- the information cannot be accessed under any order, whether of a judicial or administrative nature, other than an order for the purpose of this Bill;
- the information is not admissible in any proceeding, other than a proceeding under this Bill;
- a person cannot be compelled to produce the information, or to give evidence relating to the information, in any proceeding, other than a proceeding under this Bill.

However, these restrictions do not apply if the information is admitted, produced or given with the consent of the person to whom the information relates. Nor do these restrictions apply to information provided under clause 86 in relation to a coronial investigation of a death or under clause 88 in relation to an investigation of a serious offence.

Clause 88 enables information from the register to be released to an entity of the State to investigate a serious offence, if the chief executive and entity have entered into an agreement under clause 84. Serious offence is defined to mean an offence under section 90 of the *Prostitution Act 1999* or section 317 of the Criminal Code.

Section 90 of the Prostitution Act creates an offence if a person works as a prostitute at a brothel during any period in which the person knows that he or she is infective with a sexually transmissible disease. The person is taken to have known that he or she was infective unless the person proves that he or she had been attending regular medical examinations or tests and the person believed on reasonable grounds that he or she was not infective with a sexually transmissible disease.

Section 317 of the Criminal Code specifies that a person is guilty of a crime, and is liable to imprisonment for life if the person intentionally in

any way unlawfully wounds, does grievous bodily harm, or transmits a serious disease to, any person.

Part 3 Contact tracing

Clauses 89 to 97 outline the functions and conditions under which a person may be appointed and hold office as a contact tracing officer. The principal function of a contact tracing officer is to help prevent or minimise the spread of a notifiable condition by identifying, and providing information to, persons who have, or may be at risk of contracting, a notifiable condition.

The chief executive (health) may appoint a public service officer or employee, a health service employee, a person employed by a local government or a person prescribed under a regulation as a contact tracing officer. However, the chief executive may only appoint a person as a contact tracing officer if the chief executive is satisfied that the person is qualified for appointment because the person has the necessary expertise or experience and the person has the competencies, if any, prescribed under a regulation.

Furthermore, if the chief executive intends to appoint a person employed by a local government as a contact tracing officer, the chief executive must obtain the agreement of the executive officer of the local government that employs the person. The instrument appointing the person must state the notifiable conditions to which the appointment applies.

Under clause 99, a contact tracing officer may ask a person the officer reasonably suspects has a notifiable condition, or has been in contact with a person who has, or may have, a notifiable condition for the following information:

- the person's name and residential address or another address where the person may be contacted;
- the name, address, whereabouts and telephone number of any other person who may have transmitted the notifiable condition to the person or to whom the person may have transmitted the notifiable condition;

- information about the circumstances in which the person may have been exposed to the notifiable condition or may have exposed another person to the notifiable condition.

Under clause 101, a contract tracing officer may ask the owner or the person in charge of a business for the following information if the officer reasonably suspects that a person may have contracted a notifiable condition while receiving or providing goods or services from or to a business:

- the owner's or person's name and residential address or another address where the owner or person may be contacted;
- the name, address, whereabouts and telephone number of any person who received or provided goods or services from or to the business within a stated period;
- information about the circumstances in which a person who received or provided goods or services from or to the business may have been exposed to the notifiable condition or may have exposed another person to the notifiable condition.

Business is defined for the purposes of clause 101 to mean any organisation whether or not the organisation operates to make a profit.

Under clause 99 and 101 a contact tracing officer may, in the first instance, ask for the contact information or business contact information, and, as may be necessary, evidence of the correctness of the information. If a person fails to provide the information, the contact tracing officer may give the person a written notice stating, among other matters:

- the information is needed to attempt to prevent or minimise the spread of the notifiable condition;
- the information must be given to the contact tracing officer within a stated time;
- it is an offence to fail to give the information, unless the person has a reasonable excuse.

A person must not say anything to a contact tracing officer that is false or misleading.

When exercising a power under part 3, a contact tracing officer must produce identification (eg by displaying an identify card issued to the officer by the chief executive). However, if it is not practicable to do so, the contact tracing officer must produce the identity card for the person's inspection at the first reasonable opportunity (clause 94).

It is an offence to fail to comply with an information requirement under clause 99 or 101, unless a person has a reasonable excuse (clauses 100 and 102). In order to ensure the provision of information that is necessary to prevent or minimise the transmission of a notifiable condition, it is not a reasonable excuse for a person to fail to give the information on the grounds that it may tend to incriminate the person. However, clause 100 and 102 clarify how contact information or business contact information given by an individual (primary evidence), or any information or thing obtained as a direct or indirect result of evidence is also not admissible (ie derived evidence), may be used in proceedings. That is, primary and derived evidence is not admissible in a civil or criminal proceeding, other than:

- criminal proceedings about the falsity or misleading nature of the primary evidence;
- proceedings for obtaining a controlled notifiable conditions order under chapter 3 part 5.

However derived evidence may be used in criminal proceedings about a controlled notifiable condition (eg a breach of clause 143 or section 317 of the Criminal Code).

In order to assist a contact tracing office to effectively carry out their functions, clause 103 enables a contact tracing officer to inspect health information held by the department where it is reasonably suspected that a person has a notifiable condition and the officer has been unable to locate and question the person despite reasonable attempts to do so. The information that may be accessed by a contact tracing officer is limited to:

- a person's name and residential address or another address where the person may be contacted;
- the name and address, whereabouts and telephone number of any other person who may have transmitted the notifiable condition to the person or to whom the person may have transmitted the notifiable condition;
- information about the circumstances in which a person may have been exposed to a notifiable condition or may have exposed others to the notifiable condition.

Clauses 104 to 111 set out requirements regarding the use and disclosure of information obtained under the contact tracing provisions in part 3.

Clause 105 makes it an offence for a person to disclose information obtained as a result of the person performing a function under part 3, unless

the disclosure is expressly authorised under clauses 106 to 110, for example, if:

- the information is disclosed in the performance of functions under the Bill;
- the information is disclosed to the person to whom it relates;
- the disclosure is authorised under an Act or another law;
- the disclosure of the information is authorised by the chief executive to enable a person to protect the health of that person or another person.

Section 62A of the *Health Services Act 1991* is specifically excluded from operating in relation to confidential information defined in clause 104.

The duty of confidentiality under clause 105 applies to information obtained under part 3 and similar information obtained under the *Health Act 1937*.

Clause 111 imposes limitations on the use of information from the register by specifying that:

- the information cannot be accessed under any order, whether of a judicial or administrative nature, other than an order for the purpose of this Bill;
- the information is not admissible in any proceeding, other than a proceeding under this Bill or a proceeding mentioned in clause 100 or 102;
- a person can not be compelled to produce the information, or to give evidence relating to the information, in any proceeding, other than a proceeding under this Bill.

However, these restrictions do not apply if the information is admitted, produced or given with the consent of the person to whom the information relates.

Part 4 Orders by chief executive about controlled notifiable conditions

Clauses 112 to 115 set out matters in relation to an order made by the chief executive (health) for the detention of a person at a public sector health service for a maximum period of 24 hours (i.e. a chief executive's order).

Clause 113 specifies that the chief executive may order the detention of a person if the chief executive:

- reasonably suspects that a person who has presented to a public sector health service has, or may have a controlled notifiable condition; and
- reasonably suspects the person's condition or the person's condition and likely behavior, constitutes an immediate risk to public health; and
- is satisfied the person has been counselled, or reasonable attempts have been made to counsel the person, about the condition and its possible effect on the person's health and on public health.

The order must be in writing and commences from the time it is given to the person the subject of the order (clause 113 and 115). It is an offence, carrying a maximum penalty of 200 penalty units, to fail to comply with an order made by the chief executive under clause 113.

Clause 114 provides for the enforcement of a chief executive's order by the person in charge of the public sector health service where the person is to be detained. The person in charge must give the person a copy of the order and explain, in general terms, the purpose and effect of the order, including that it is an offence not to comply with the order. The person in charge may use the help and force that is reasonable in the circumstances.

A chief executive's order ends 24 hours from the time it is given to the person the subject of the order, unless the chief executive orders the earlier release of the person or when a magistrate's order is made in relation to the person the subject of the order under part 5 (clause 115).

Part 5 Orders by magistrate about controlled notifiable conditions

Part 5 sets out matters in relation to an application for, and the making, duration and enforcement of, controlled notifiable conditions orders (ie an initial examination order, a behavioural order or a detention order).

Clause 116 sets out how the chief executive may apply to a magistrate for a controlled notifiable condition order, including that an application must be sworn and provide information about:

- the controlled notifiable condition the person has or is suspected of having;

- the grounds on which it is made;
- the nature of the order sought;
- if a person is to be detained under the order, the proposed arrangements for the person's detention and care.

Clause 117 sets out the circumstances under which a magistrate may decide an application for a controlled notifiable condition order in the absence of the person for whom the order is sought. However, the clause clarifies that another person may represent the person.

As soon as practicable after making a controlled notifiable condition order, an authorised person executing the order must give the person the subject of the order, a copy of the order; explain the terms and effect of the order to the person including that it is an offence not to comply with the order; and inform the person about the right of appeal against the order and how to appeal (clauses 120, 127 and 131).

Where an initial examination order or a detention order is made for a person, the person must also be given an opportunity to voluntarily accompany the authorised person to the place where the person is to be examined and/or treated (clauses 120 and 131). The doctor undertaking the examination or treatment must, if practicable, provide the person with an explanation about the examination or treatment. In addition, the person must be provided with an opportunity to submit to the examination or treatment voluntarily (clauses 123 and 133). However, if a person does not submit voluntarily, the doctor may undertake the examination or treatment using the force that is reasonable in the circumstances.

Clauses 118 to 124 outline matters in relation to initial examination orders.

Under clause 118, a magistrate may make an initial examination order for a person if the magistrate is satisfied:

- the person has, or is likely to have, a controlled notifiable condition;
and
- that if the person has the condition, that the person's condition and/or likely behaviour may constitute an immediate risk to public health;
and
- it is necessary for the person to undergo a medical examination to ascertain whether the person has the condition; and
- the person has been counselled, or reasonable attempts have been made to counsel the person, about the condition and its possible effect on the person's health and on public health.

Clause 119 outlines that an initial examination order may provide for the person the subject of the order to:

- be taken to and detained at the place stated in the order;
- undergo the medical examination stated in the order to ascertain whether the person has the controlled notifiable condition stated in the application;
- be detained in isolation for part or all of the period of detention;
- be detained for a maximum period of 72 hours or a longer period if the magistrate is satisfied that because of the nature of the controlled notifiable condition a longer period is required to ascertain whether the person has the condition.

Clause 121 specifies that a person detained under an initial examination order must remain in the place of detention, for the time stated in the order and undergo the medical examination stated in the order. It is an offence, carrying a maximum penalty of 400 penalty units, to breach the requirements of clause 121.

Clause 122 establishes when the period of detention starts for a person under an initial examination order. However, clause 124 provides that a person detained under such an order is to be released if the chief executive is satisfied the reason for the order no longer exists.

Clauses 125 to 128 outline matters in relation to behavioural orders.

Under clause 125, a magistrate may make a behavioural order for a person if the magistrate is satisfied:

- the person has a controlled notifiable condition; and
- that if the person has the condition, that the person's condition and/or likely behaviour may constitute an immediate risk to public health; and
- the person has been counselled, or reasonable attempts have been made to counsel the person, about the condition and its possible effect on the person's health and on public health; and
- the person has been counselled, or reasonable attempts have been made to counsel the person, about the condition and its possible effect on the person's health and public health.

Clause 126 outlines that a behavioural order may provide for the person the subject of the order to: undergo counselling by a stated person or persons; refrain from stated conduct; refrain from visiting stated places; or submit to

supervision and monitoring of another person (i.e. a particular person or a person nominated by the chief executive).

Clauses 129 to 133 outline matters in relation to detention orders.

Under clause 129 a magistrate may make a detention order for a person if the magistrate is satisfied:

- the person has a controlled notifiable condition; and
- that if the person has the condition, that the person's condition and/or likely behaviour may constitute an immediate risk to public health; and
- the person needs to be detained at a stated place for a stated period to avoid the person's condition or the person's condition and likely behaviour constituting a risk to public health; and
- the person has been counselled, or reasonable attempts have been made to counsel the person, about the condition and its possible effect on the person's health and on public health.

Clause 130 outlines that a detention order may provide for the person the subject of the order to:

- be taken to and detained at the place stated in the order;
- undergo the medical examination or treatment stated in the order by a doctor nominated by the chief executive;
- be detained in isolation for part or all of the period of detention;
- be detained for a maximum period of 28 days.

Clause 132 specifies that a person detained under a detention order must remain in the place of detention, for the time stated in the order and undergo the medical examination and/or treatment stated in the order. It is an offence, carrying a maximum penalty of 400 penalty units, to breach the requirements of clause 132.

The chief executive may apply to a magistrate for an order to extend a behavioural or detention order, or to vary or revoke an initial examination, behavioural or detention order (clauses 134 and 135). The application for extension must be made before the expiration of a controlled notifiable condition order and may only be extended once. In the case of a detention order an extension cannot be for more than 28 days.

When considering an application for variation or revocation, the magistrate may have regard to any contravention of an initial examination or behavioural or detention order.

Clauses 136 to 139 provide for an application to be made to a magistrate for an apprehension warrant if a person who is subject to an initial examination order or detention order absconds while under the order. An application for a warrant may be made in urgent circumstances or other special circumstances by electronic communication or other means.

Clause 139 states that a warrant is not invalidated by a defect in the warrant or the process unless the defect affects the substance of the warrant in a material particular.

If the magistrate is satisfied that the warrant is necessary, under clause 137, the warrant may authorise any authorised person to:

- enter or re-enter any place if there is a reasonable belief the person is at the place; and
- search the places to find the person; and
- remain in the places for as long as the authorised person considers is reasonably necessary to find the person; and
- take the person to the place where the person is to be detained under an initial examination order or a detention order.

The clause also provides authority for an authorised person to use the help and force reasonable in the circumstances to exercise powers under the warrant.

Clauses 140 and 141 prescribe the procedures that must be followed by an authorised person before entering a place under either an order or a warrant. Such procedures include identifying him or herself, providing the occupier with a reasonable opportunity to provide entry without using force and giving the person a copy of the order or warrant as the case may be. However, the procedures need not be complied with if the authorised person believes on reasonable grounds that immediate entry is required to ensure effective execution of the order or warrant.

Clause 142 provides that the chief executive or a person to whom an application for a controlled notifiable condition order relates, may appeal to the District Court against a decision on an application for a controlled notifiable conditions order or a variation or extension of a controlled notifiable conditions order.

Part 6 Reckless spread of controlled notifiable conditions

Clause 143 makes it an offence for a person to recklessly put another person at risk of contracting a controlled notifiable condition, unless the other person knew that the person had the condition and voluntarily accepted the risk of contracting the condition. The maximum penalty that may be imposed for this offence is 200 penalty units or 18 months imprisonment.

The clause also makes it an offence to recklessly transmit a controlled notifiable condition to another person, unless the other person knew that the person had the condition and voluntarily accepted the risk of contracting the condition. The maximum penalty that may be imposed for this offence is 400 penalty units or 2 years imprisonment.

It should be noted that the deliberate transmission of, or exposure of another person to, a serious transmissible infection is provided for under section 317 of the Criminal Code.

Part 7 Proceedings

Clause 144 specifies that proceedings provided for under chapter 3 may be heard in private, if the court considers an open hearing would be unfair to a person or contrary to the public interest. Should a proceeding be heard in camera, the clause also makes it an offence for a person to make or publish a report about the proceedings other than as provided for by the clause (eg where a report is authorised by the court concerned).

Part 8 Other matters about controlled notifiable condition orders

Clause 145 enables information to be provided to a person who is required to enforce a chief executive's order under clause 113 or a controlled notifiable condition order. Information may be provided under this section

to protect the safety of the person the subject of an order and the safety of the person enforcing the order.

Clause 146 makes it an offence for a person to obstruct a person exercising a power under chapter 3 (eg enforcing a controlled notifiable condition order).

Chapter 4 Infection Control For Health Care Facilities

Part 1 Preliminary

Clauses 147 to 149 define terms used in chapter 4, including ‘ICMP’, ‘declared health service’ and ‘health care facility’.

An ICMP, or infection control management plan, is a documented plan to prevent or minimise the risk of infection to persons receiving declared health services at the facility, persons employed or engaged at the facility, and other persons at risk of infection at the facility (clauses 152 and 155).

Declared health service means a service that is intended to maintain, improve, or restore a person’s health, and involves the performance of an invasive procedure or an activity that exposes a person to blood or other bodily fluid.

The term ‘health care facility’ has been defined for the purposes of chapter 4 having regard to the need to specify who is required to have an infection control management plan. Where the provision of a declared health service is the principal function of a facility (eg public sector hospital, dental clinic, ambulance service) the facility will be required to have an ICMP. However, if the provision of a declared health service is not the principal function of a facility (eg the first aid room in a school or workplace) the facility will not be required to have an ICMP, but the persons involved in the provision of the declared health service will be subject to the general obligation to minimise the risk of infections to other persons.

Clause 150 clarifies that chapter 4 will not apply to: private health facilities licensed under the *Private Health Facilities Act 1999*; an area within a

health care facility used for food services; or an aged care service conducted by an approved provider under the *Aged Care Act 1997* (Cwth). It is not necessary for chapter 4 to apply to these facilities, as the regulatory regimes for these facilities impose infection control requirements that are comparable to those under the chapter.

In addition, clause 150 specifies that the *Workplace Health and Safety Act 1995* or *Environmental Protection Act 1994* will prevail, to the extent that there is a conflict between either of these Acts and chapter 4.

Part 2 Obligations to minimise infection risks for declared health services

Clause 151 imposes a statutory obligation on persons involved in the provision of declared health services to take reasonable precautions and care to minimise the risk of infection to other persons. The obligation applies, for example, to owners of a health care facility, those persons responsible for the operation of a health care facility, individual health care providers and support staff.

The clause also clarifies that this obligation is in addition to the obligations imposed on owners and/or operators of health care facilities under clauses 153 and 154 about the development, implementation and review of an infection control management plan (ICMP); the training of employees and other persons about the ICMP; and the provision of adequate resources to give effect to, and implement, the ICMP. Clause 153 sets out how these obligations must be met by a person who is the owner of a health care facility, but not the person who has day-to-day responsibility for the operation and control of the health care facility (the operator). Clause 154 sets out how these obligations must be met by a person who is both owner and operator of a health care facility.

Part 3 Infection Control Management Plans

Clauses 152 to 156 set out requirements for the development, implementation, monitoring and review of an infection control management plan (ICMP).

Clause 155 sets out the minimum requirements for an ICMP, including:

- the matters to be addressed by the plan, which may be prescribed under regulation; and
- that the plan must be written in such a way as to be easily understood by persons required to use the plan; and
- that the plan must be readily accessible to persons required to use the plan; and
- that the plan must be signed and dated by the operator of the facility (including each time the plan is reviewed).

Clause 156 sets out when an operator of a health care facility must develop and implement an ICMP. In addition, clause 155 specifies that if after developing an ICMP, the operator of a health care facility intends to provide a declared health service, which is not identified in the plan, the operator must review and amend the plan. Such action must be taken before the declared health service is provided in order to ensure that any necessary infection control measures have been implemented.

Part 4 Reporting contraventions of chapter 4 to other entities

Clause 157 enables the chief executive to respond to a contravention of an obligation under chapter 4 and refer a matter regarding such a failure to a relevant entity - for example, the Health Rights Commission, the Queensland Nursing Council, a health practitioner registration board or another entity able to deal with the matter under another Act. An authorised person may use the powers under chapter 9 to investigate a matter in relation to chapter 4.

Chapter 5 Child health

Part 1 Definitions

Clauses 158 to 160 define terms for the purposes of chapter 5, including child, harm, parent, person in charge and prescribed period.

Part 2 Contagious conditions

Clause 161 imposes a statutory obligation on parents not to send their children to school or child care if they know, or ought reasonably to know, their child has a contagious condition or the parent has been directed under chapter 5, part 2 to remove and not to send their child to the school or service for a prescribed period.

Clause 162 imposes a statutory obligation on a teacher or child care worker to advise the person in charge if they suspect a child attending the teacher's school or carer's child care service may have a contagious condition.

Clause 163 enables a person in charge of a school or child care service to advise a child's parent if they reasonably suspect that a child attending the school or service may have a contagious condition and other children attending the school or service may be at risk of contracting the condition.

Clause 164 enables a person in charge of a school or child care service to direct a child's parent to remove and not send their child to the school or service for a prescribed period. The direction can only be made if the child continues to attend the school or service, or the parent tells the person in charge that the child will continue to attend the school or service and the person in charge has:

- advised at least one of the child's parents about their suspicion that the child has a contagious condition (see clause 163); and
- reasonably suspects that there continues to be a risk that other children may contract the contagious condition because of the child's continued attendance at the school or service; and
- the person in charge has consulted a doctor or another person authorised by the chief executive (health).

Clause 165 enables a person in charge of a school or child care service to advise a child's parent if they reasonably suspect that a child attending the school or service who has not been vaccinated for a contagious condition (i.e. a vaccine preventable condition) may be at risk of contracting the condition because another child attending the school or service has the condition.

Clause 166 enables a person in charge of a school or child care service to direct a child's parent to remove and not send the child to the school or service for a prescribed period. The direction can only be made if the person in charge has:

- advised at least one of the child's parents about their suspicion that the child is at risk of contracting a contagious condition (see clause 165); and
- reasonably suspects that the child will be at risk of contracting the contagious condition because of the child's continued attendance at the school or service; and
- consulted a doctor or another person authorised by the chief executive (health).

Clauses 167 and 168 set out the circumstances under which the chief executive may arrange for a doctor to examine children attending a school or child care service to decide whether the children have, or may have, a contagious condition. An examination of a child may not be undertaken without the consent of a parent of the child.

Clause 167 specifies that before an examination may take place, the chief executive must consult with the person in charge of the school or service and give the person in charge a notice about the date, time, reasons and who will be conducting the examination as well as the children, or class of children, to be examined.

In addition, under clause 168, the chief executive must advise at least one of a child's parents:

- of the date, time, reasons and who will be conducting the examination;
- that the parent's consent is required for the examination to be carried out;
- that the parent may be present during the examination;
- that the parent may elect to have a doctor of their own choice certify whether or not the child has, or may have, the condition.

The chief executive must also advise the parent that they may be directed to remove and not send their child to school or child care service, if:

- the parent fails to have their child examined either by a doctor of their choice or the doctor nominated by the chief executive; or
- the examination of their child reveals the child has, or may have, the condition.

Clause 169 sets out the circumstances under which the chief executive may direct a person in charge of a school or child care service to direct a parent that they must remove and not send their child to school or a child care service.

Clause 170 requires a person in charge of a school or child care service to provide specified information to a parent to whom a direction has been given about their child's attendance at the school or service under clauses 164, 166 or 169. This information must include the suspected contagious condition that led to the direction, the prescribed period during which the child must not attend the school or service (clause 160), and the circumstances under which a child may be readmitted to the school or service (clause 171).

Clause 171 sets out the circumstances under which a child may be readmitted to a school or child care service before the prescribed period for the contagious condition ends - for example, if a certificate signed by a doctor is produced to the person in charge stating that the child does not have the condition or that the prescribed period for the condition has ended.

Under this clause, if a child is not attending school or child care as a result of a direction from the chief executive to the person in charge of a school or child care service, the person in charge must not readmit the child unless directed to do so by the chief executive.

Clause 172 enables the chief executive to obtain specified information from the person in charge of a school or child care service, to the extent that it is available to the person in charge. The information that may be required is limited to that which is necessary for the chief executive to act under chapter 5, part 2 (eg as envisaged by clauses 164, 166, 167 and 169). The information must be provided despite the confidentiality requirements of an Act or another law (including, for example, the *Child Care Act 2002*, section 87 and the *Education (General Provisions) Act 1989*, section 25).

Clause 173 enables health information held by the health department to be given to the chief executive, a person in charge of a school or child care service, or another person involved in the administration of part 2.

However, such information may only be given to the extent that it is necessary for the administration of part 2. The information may be provided despite the confidentiality requirements of an Act or another law (including, for example, section 62A of the *Health Services Act 1991*).

Clause 173 also provides that the chief executive must provide information about whether a child has been vaccinated for a vaccine preventable condition if the chief executive is satisfied that:

- a child attending the school or service has, or is suspected of having, a contagious condition that is a vaccine preventable condition; and
- another child attending the school or service may be at risk of contracting the condition because of contact with the first child; and
- the information about the second child is necessary to enable the person in charge to act under clauses 165 and 166.

Clause 175 make it an offence for a person to disclose information obtained as a result of the person performing a function under part 2, unless the disclosure is expressly authorised under clauses 176 to 178, for example:

- the information is disclosed in the performance of functions under the Bill;
- the information is disclosed to enable a person to help prevent or minimise the transmission of a contagious condition;
- with the written consent of the person about whom the information relates; or
- the disclosure is authorised under an Act or another law.

Section 62A of the *Health Services Act 1991* is specifically excluded from operating in relation to confidential information defined in clause 174.

Clause 179 provides a protection from liability (civilly, criminally or under an administrative process) for a person who, acting honestly, gives information or does something under part 2 (eg directing a parent to remove and not send their child to school). The protection includes specific protection from actions for defamation and breach of confidentiality or privacy.

Clause 180 enables the chief executive (health) to give directions to a person in charge of a school or child care service about the ways to minimise the risk of contracting the condition at the school or service by children and staff, if the chief executive is satisfied there is an outbreak of a contagious condition at the school or service. Before issuing a written direction, the chief executive must consult with the person in charge of the

school or service and the relevant chief executive of the department responsible for either the education sector or the child care sector.

Clause 181 enables the Minister for Health to issue a written notice to a person in charge of a school or child care service to temporarily close the school or service for a period of not more than 1 month. However, the Minister may only issue such a notice if the Minister:

- is satisfied that in order to effectively control an outbreak of a contagious condition at a school or child care service, the school or service must be temporarily closed; and
- has consulted with the relevant Minister responsible for either the education sector or the child care sector.

Clauses 182 allows a person ordered by the Minister to close a school or child care service to appeal the Minister's decision to the Magistrates Court. If the person is dissatisfied with the magistrate's decision, then the person may appeal to the District Court but only on question of law (clause 183).

Clause 184 specifies that the licensee of a child care service must ensure that the person in charge of the child care service complies with the requirements under chapter 5, part 2.

Part 3 Child abuse and neglect

Clause 185 sets out principles to guide the administration of, and decisions made under chapter 5, part 3. The principles are consistent with the child protection framework in the *Child Protection Act 1999* and are intended to ensure the welfare and best interests of a child.

The principles specify that the views of a child are to be considered, and the child is to be informed of all matters and decisions affecting him or her in a manner appropriate to the child's age and level of comprehension. However, the principles recognise that other aspects of a child's life need to be taken into account when making decisions under the part. For example, this may include recognising that the role of the family in a child's care is important and that decisions made in relation to a child should take into consideration the family's views.

Clause 186 clarifies how part 3 operates in relation to the *Child Protection Act 1999*. The powers and requirements under part 3 are intended to

complement the child protection framework in the Child Protection Act. Consequently, if orders have been made for a child under the *Child Protection Act 1999* and under part 3, the order under the Child Protection Act will prevail to the extent of any inconsistency. This recognises that the Department of Child Safety has primary responsibility for child protection.

Clause 186 also signposts that the provisions which protect the identity of, and provide civil and criminal immunity for, notifiers in the *Child Protection Act 1999* apply to professionals who are required to report to the chief executive (child safety), reasonable suspicions of child harm.

Clause 187 sets out the circumstances under which a person in charge of the health service facility at which a child is held under a care and treatment order, has temporary custody of the child. As a consequence, the person in charge has rights and responsibilities in relation to the child's day to day care.

Clause 188 provides that a person in charge of a health service facility may appoint a doctor as a designated medical officer, if the doctor has the experience or expertise such as the expertise to identify and interpret signs of harm in children.

Clause 189 clarifies that if the person in charge of the facility is a doctor, he or she is deemed to be a designated medical officer.

Clause 190 states that a designated medical officer has the powers given under part 3, but that these powers may be limited by the officer's instrument of appointment.

Clauses 191 to 196 replicate the amendments made to the *Health Act 1937* by the *Child Safety Legislation Amendment Act (No.2) 2004*.

Clause 191 requires a professional (a doctor or registered nurse as defined in clause 158) to give a notice to the chief executive of the Department of Child Safety immediately upon becoming aware or forming a reasonable suspicion that a child has been, is being, or is likely to be harmed. In order to form a reasonable suspicion about the harm or likely harm to a child, clause 191(4) recognises that a nurse or doctor may need to seek further information (eg by conferring with colleagues or other health professionals, or checking the child's files).

It should be noted, however, that the obligation under this clause does not apply if the nurse or doctor is aware that a mandatory report has already been made under clause 191 about the harm or likely harm. For example, if a registered nurse in a children's ward of a hospital was aware that the

admitting doctor had given a notice to the chief executive (child safety) the registered nurse would not also have to notify.

Clause 192 states that should the professional's initial notice under clause 191 be made orally (eg via the phone), a written notice must be made within 7 days of the original notice. The follow-up notice is to include the same details required in the first notice, and must be made regardless of whether the professional's opinion about the harm has changed.

Clause 193 specifies that it is an offence for a professional, who forms a reasonable suspicion about the harm or risk of harm to a child, to fail to report under clause 191 or 192.

Clause 194 enables the chief executive (child safety) to request further information that is needed to properly assess the harm or likely harm to a child. The information must be provided unless the professional has a reasonable excuse. However, a professional cannot be prosecuted for a breach of the clause, unless the chief executive (child safety), when making the request, informs the professional that it is an offence to fail to comply with a request for further information.

Clause 195 provides protection from liability to any person who provides information to a professional about harm to a child. This indemnity extends to proceedings for defamation and to breaches of confidentiality. The provisions are intended to protect persons such as a relative of the child who provides information to a professional, or a professional who discusses the harm to the child with another professional. As detailed above, clause 186 clarifies that the protections under sections 22 and 186 of the *Child Protection Act 1999* apply to a professional who provides information to the chief executive (child safety) under part 3.

Clause 196 provides that the identity of persons who give information to a professional about harm or likely harm to a child, is protected. This provision has been modelled on section 186 of the *Child Protection Act 1999*.

Clauses 197 to 204 set out the circumstances under which a designated medical officer may order that a child who has been, or is at risk of being harmed may be held at a health service facility for up to four days for assessment and treatment.

Clause 197 enables a designated medical officer to order that a child be held at a health service facility for a period not exceeding 48 hours, if the designated medical officer reasonably suspects that the child has been harmed, or is at risk of harm, and the child is likely to be taken from the facility and suffer harm if immediate action is not taken. If a care and

treatment order is made for a child, the designated medical officer must immediately make a written record of the order (e.g. in the child's medical record) and must explain the purpose and effect of the order to the child in accordance with clause 461 and with the principles for part 3.

Clauses 198 and 199 require the designated medical officer to, as soon as practicable, provide written notices to the person in charge of the facility and the chief executive of child safety of the order. The notice must include information about the child's identifying information, the harm that has been or is likely to be caused, the parents' contact information and details of any reports made to the chief executive of child safety under clause 191.

Clause 200 requires the designated medical officer to notify the parents of a child for whom an order has been made, as soon as practicable, about the order. The designated medical officer must, if requested, give a copy of the care and treatment order to a child's parent and must advise the parent that they may elect to have the child examined by a doctor of the parent's choosing. However, a designated medical officer need not comply with the requirements under clause 200 if so doing may jeopardise an investigation into a criminal offence or expose the child to harm.

Clause 201 enables a designated medical officer to extend a care and treatment order for a further period not exceeding 48 hours (to make a total order of not more than 96 hours). The designated medical officer may only extend the order if the officer consults with another designated medical officer who agrees that the order should be extended. The designated medical officer seeking an extension of a care and treatment order, must make a written record that includes the contact details of the designated medical officer who was consulted about the extension and the reasons for the extension.

The designated medical officer who considers an extension is necessary need not be the same designated medical officer who made the order under clause 197. As the child may have been moved, or the designated medical officer who first made the order may no longer be the attending doctor, it would be impractical to provide that only the initial officer may consider an extension.

Clauses 202 and 203 provide that the designated medical officer who extends a care and treatment order must notify the person in charge of the facility and the chief executive (child safety) of the extension. The notice must include the reasons for the extension and the contact details of the concurring designated medical officer to enable verification if required.

Clause 204 provides that the designated medical officer who extends a care and treatment order must advise the child's parents about the extension, including the reasons for the extension and the time the order expires. However, the designated medical officer need not comply with the requirement to notify the parents if so doing may jeopardise an investigation into a criminal offence or expose the child to harm.

Clause 205 specifies that a designated medical office may authorise another person to assist the officer to enforce a care and treatment order (eg a security officer or another health professional). However the clause only permits the use of force that is reasonable in the circumstances, to hold or transfer the child.

Clause 206 clarifies that a care and treatment order starts when the order is made and ends either 48 hours (or 96 hours if an extension has been made) from the time the order is made or if the designated medical officer releases the child earlier because the designated medical officer is satisfied the reasons for the order no longer exist. This may occur where, for example, an order is made because of a reasonable suspicion of harm based on physical evidence that is later proven to have been caused by non-child protection related causes (eg bruising caused by leukaemia).

If the designated medical officer releases the child early, the officer must make a written record of the early release, which specifies the reasons for and time of the release and into whose care the child was released.

Clause 207 provides that a further care and treatment order may not be made for the same event or circumstances that led to the initial order. This is to prevent consecutive orders from being issued. It is intended that 96 hours would be sufficient time to enable the Department of Child Safety to decide whether to act under the *Child Protection Act 1999*. However this does not prevent a further order being issued for a different event or circumstances, for example, the child presents at a hospital at a later time with a further injury.

Clause 208 provides that should the chief executive (child safety) require further information in relation to a child held under an order, the chief executive may request that information from the designated medical officer, either orally or in writing. The designated medical officer must provide the information requested. However, a designated medical officer cannot be prosecuted for a breach of the clause, unless the chief executive (child safety), when making the request, informs the designated medical officer that it is an offence to fail to comply with a request for further information. A person who provides information in response to a request from the chief executive (child safety) is deemed not to have breached any

duties of confidentiality or privacy and cannot be held to have breached any code of professional ethics or departed from accepted standards of professional conduct.

Clause 209 authorises that a child, who is held under a care and treatment order, may be medically examined or treated at the facility or at another facility to which the child is transferred. Parental consent is not required for the examination or treatment and is deemed to have been given for the purposes of deciding any liability. However the authority to examine or treat a child is subject to the principles listed in clause 185 as well as the rights the child has in relation to the examination or treatment contained in the Charter of Rights for a Child in Care (*Child Protection Act 1999*, schedule 1.) Furthermore, clause 209 specifies that only the examination or treatment reasonable in the circumstances may be carried out.

Clause 210 provides that a designated medical officer may request information from another doctor that is relevant to the health of the child who is being held under an order. A doctor who provides information to a designated medical officer in response to a request is deemed not to have breached any duties of confidentiality or privacy and cannot be held to have breached any code of professional ethics or departed from accepted standards of professional conduct.

Clause 211 authorises a designated medical officer to transfer a child held under a care and treatment order to another health service facility if it is necessary to provide the child with appropriate medical examination or treatment. For example, a small community facility may not have the equipment or specialty units required to undertake necessary medical examinations. The provision clarifies that the care and treatment order continues to apply to the child while the child is at the other facility.

If a child is transferred, the designated medical officer must advise the person in charge of the other facility of the transfer, in addition to notifying the chief executive (child safety) and the child's parents of the transfer. However, the designated medical officer need not give notice to the parents if so doing may jeopardise an investigation into a criminal offence or expose the child to harm.

Clause 212 provides that a parent may choose to have their child examined by a doctor of their choice. If a parent so chooses, the designated medical officer must advise the doctor chosen by the parents of the examination and treatment undertaken for the child, and must allow the child to be examined by the doctor at the facility.

Clause 213 lists the offences that apply if a care and treatment order has been made for a child, including that it is an offence to:

- obstruct a designated medical officer or another person involved in holding the child under a care and treatment order;
- remove the child from the facility or during the transfer of the child between facilities; or
- keep a child that has been removed from a facility or during a transfer between facilities.

A maximum penalty of 200 penalty units or 18 months imprisonment applies if the clause is breached. The severity of the penalty reflects the importance of protecting a child from identified harm.

Chapter 6 Health information management

Part 1 Perinatal statistics

Clause 214 defines terms used in part 1, including baby, baby born alive, baby not born alive, delivery, designated person and midwife.

Clause 215 requires the chief executive to establish and maintain a Perinatal Statistics Collection (the collection), comprised of information about the delivery of babies obtained under part 1. Clause 487 also provides for information obtained about the delivery of a babies under the *Health Act 1937* to be incorporated into the register.

Clause 216 sets out the purpose of the register, for example, to collect perinatal data to assist in monitoring and analysing obstetric and perinatal patterns, to monitor perinatal mortality rates, to facilitate research into perinatal care, to monitor congenital abnormalities and to assist in planning of obstetric and perinatal health services;

Clause 217 imposes a statutory obligation on specified persons to notify the chief executive about the delivery of a baby (eg the doctor or midwife who attended the delivery).

Clause 218 enables the chief executive to obtain further information in relation to a notification made under clause 217 to ensure the accuracy, completeness or integrity of the register. A person who provides information in response to a request from the chief executive is deemed not to have breached any duties of confidentiality or privacy and cannot be held to have breached any code of professional ethics or departed from accepted standards of professional conduct.

It is an offence to breach a requirement under either clause 217 or 218.

Clauses 219 to 228 set out requirements regarding the disclosure of information in the perinatal statistics collection.

Clause 220 makes it an offence for a person to disclose information obtained as a result of the person performing a function under part 1, unless the disclosure is expressly authorised under clauses 221 to 228, for example if:

- the information is disclosed in the performance of functions under the Bill;
- the information is disclosed in a form that does not identify any person (eg aggregate data); or
- the disclosure is authorised under an Act or another law.

Section 62A of the *Health Services Act 1991* is specifically excluded from operating in relation to information confidential information defined in clause 219.

The duty of confidentiality under clause 220 applies to information obtained about the delivery of a baby under part 1 and the *Health Act 1937*.

Part 2 Cancer notifications

Clause 229 defines terms used in part 2 including, for example, cancer, notification about cancer, residential care facility.

Clause 230 requires the chief executive to establish and maintain a Queensland Cancer Register (the register), comprised of information obtained under this part. Clause 474 also provides for information obtained under the cancer notification requirements of the *Health Act 1937*, to be incorporated into the register.

Clause 231 sets out the purpose of the register, for example, to collect data to assist in monitoring and analysing the outcomes and patterns of cancer, to monitor cancer mortality, increase public awareness of cancer and to assist in the planning of services and strategies for the prevention and management of cancer.

Clause 232 enables the chief executive to enter into an agreement with another person to maintain the register on behalf of the chief executive (the contractor) and imposes a duty on the chief executive to ensure the contractor complies with the terms of the agreement. If the chief executive enters into an agreement under this clause, the name of the contractor must be prescribed under regulation. It should be noted that existing arrangements whereby the Queensland Cancer Fund has been engaged as the contractor responsible for the maintenance of the register will continue (see clause 476).

Clause 233 clarifies that a requirement to make a cancer notification under part 2 applies in relation to deceased persons (eg where a pathology examination from an autopsy indicates the person was suffering from cancer).

Clause 234 imposes a statutory obligation on directors of pathology laboratories, persons in charge of a hospital or a residential care facility to notify the chief executive about persons suffering from cancer.

Clause 235 enables the chief executive to require a notification required under clause 234 to be given to the contractor instead of the chief executive. The chief executive is required to monitor compliance with this clause.

Clause 236 enables the chief executive, or the contractor on behalf of the chief executive, to obtain further information in relation to a notification made under clause 234 to ensure the accuracy, completeness or integrity of the register. A person who provides information in response to a request from the chief executive is deemed not to have breached any duties of confidentiality or privacy and cannot be held to have breached any code of professional ethics or departed from accepted standards of professional conduct.

It is an offence to breach the requirements of clause 234, 235 or 236.

Clauses 237 to 250 set out requirements regarding the disclosure of information in the Queensland cancer register.

Clause 238 makes it an offence for a person to disclose information obtained as a result of the person performing a function under part 2, unless

the disclosure is expressly authorised under clauses 239 to 247, for example, if:

- the information is disclosed in the performance of functions under the Bill;
- the information is disclosed in a form that does not identify any person (eg aggregate data);
- the disclosure is authorised under an Act or another law.

Section 62A of the *Health Services Act 1991* is specifically excluded from operating in relation to information confidential information defined in clause 237.

Clause 248 makes it an offence for the contractor, or an employee of the contractor, to disclose information obtained in relation to the cancer register, unless the disclosure is expressly authorised under clause 249, for example, if:

- the information is disclosed in a form that could not identify a person
- the information is disclosed to the chief executive in response to a written request from the chief executive.

The duty of confidentiality under clauses 238 and 248 applies to information obtained about persons with cancer notified under part 2 and the *Health Act 1937*.

Clause 250 enables the chief executive to arrange for the transfer of information in the Cancer Register for inclusion in the Pap Smear Register. Such a transfer of information is necessary to ensure that the Pap Smear Register is kept up to date in respect to notifications of cancer in order to ensure notices under chapter 6, part 3 are not sent inappropriately to women who may have recently been diagnosed with cancer or sent to the address of a woman who may have recently died of cancer.

Part 3 Pap smear register

Clause 251 defines terms used in part 3 including, for example, clinical information, identifying information and registered screening history.

Clinical information is also defined under clause 251 to mean information about a woman appearing in the register as part of her registered screening

history, including the dates and results of the Pap smear tests and histology tests for the woman, and other information prescribed under a regulation.

Identifying information is defined under clause 251 to mean information about a woman appearing in the register as part of her registered screening history, including the women's full name or names, date of birth; address for correspondence; and other information prescribed under a regulation.

Registered screening history, for a woman, means her identifying and clinical information, as appearing in the register.

Clause 252 states that the part does not apply to a procedure if the woman's usual place of residence is outside of Queensland.

Clause 253 requires the chief executive to establish and maintain the Pap Smear Register (the register) to record identifying and clinical information about women.

Clause 254 sets out the purpose of the register, for example, to provide a mechanism for assisting women to determine when they need a Pap smear or a retest, to provide information to treating physicians to assist in management of Pap smear results, to assist in quality assurance in pathology laboratories that process Pap smear tests, to monitor changes in disease trends, to study the effectiveness of screening and treatment programs, and to increase public awareness and participation.

Clause 255 provides for a women's clinical and identifying information to be included in the register, unless the woman asks to have her information removed from the register or her identifying information changed.

Clauses 256 to 259 outline the duties of persons involved in obtaining and testing Pap smears and histological samples.

Clause 256 states that a provider must be satisfied, on reasonable grounds that a woman has been informed about:

- the existence and purposes of the register;
- the identifying and clinical information about the woman that may be recorded in the register; and
- that a woman may elect not to have her information automatically included in the register.

If a woman tells the provider that she does not want her information to be automatically included in the register, under clause 257, the provider must make a notation about the woman's wishes and ensure that each request made by the provider for a Pap smear test or histology test includes a

notation that the woman's information must not be given to the chief executive.

Under clause 258, if a provider's records indicate that a woman has previously elected not to have her information automatically included in the register then the provider must ask the woman whether she wants to reconsider her decision. If a woman decides she wants her information to be included in the register, the provider must make a notation of this decision and provide the women's information to the chief executive. If a woman decides that she still does not want her information to be automatically included in the register, the provider must ensure that each request for a Pap smear or histology test includes a notation that the woman's information must not be given to the chief executive.

Clause 259 sets out the circumstances under which the director of a pathology laboratory receiving a request to test a Pap smear or histological sample taken from a woman must give her information to the chief executive. However, where the request for the test includes a notation that the woman's information must not be given to the chief executive, the director must not give the information to the chief executive.

Clauses 260 to 265 set out the duties of the chief executive in relation to the Pap Smear Register.

Clause 260 states that if the chief executive receives clinical and identifying information under this part for a woman who has no registered screening history, the chief executive must ensure the information is included in the register. The chief executive must also send the woman a notice stating:

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

Clause 261 enables the chief executive to send reminder notices to women, for example, where a woman's registered screening history indicates she may be overdue for her next Pap smear, or where it is necessary to repeat a Pap smear because the previous Pap smear is unsatisfactory and cannot be assessed.

Clause 262 enables the chief executive to send a notice about an abnormal Pap smear to a woman's health practitioner or another health practitioner, as may be appropriate, to facilitate the woman receiving appropriate medical investigation and intervention.

Clause 263 requires the chief executive to remove a woman's registered screening history from the register if a woman requests this in writing, within 6 weeks of receiving such a request. The six week period is to allow the woman time to reconsider her decision. In circumstances where a woman indicates that her information was included in the register in error the chief executive must remove the information from the register as soon as is practicable after receiving her request.

The chief executive is obliged under clause 264 to change a woman's identifying information as soon as is practicable after receiving a request from her advising that she considers the information is incorrect.

Clause 265 enables the chief executive to obtain further information from specified persons about a woman's registered screening history or clinical management to ensure the accuracy, completeness or integrity of the register. The chief executive must issue a written notice that specifies what information is to be provided, the time period within which the information is to be provided and that it is an offence to fail to comply with the notice. A person who provides information in response to a request from the chief executive is deemed not to have breached any duties of confidentiality or privacy and cannot be held to have breached any code of professional ethics or departed from accepted standards of professional conduct.

Clauses 266 to 276 set out matters in relation to the confidentiality of, and authorities for a person to access, a woman's registered screening history.

Clause 266 makes it an offence for a person to disclose information obtained as a result of the person performing a function under part 3, unless the disclosure is expressly authorised under a disclosure section in part 3, for example:

- in response to a written request from a woman for her registered screening history to give the woman a copy of her history;
- if the woman gives her written consent for the disclosure;
- the disclosure is made in a form which the person reasonably believes does not identify any woman; or
- if the disclosure is authorised under an Act or other law.

Disclosure sections under part 3 are defined as including clauses 262, 265, 272, 273, 277, 278)

Clause 272 permits the chief executive to give a woman's registered screening history to a health practitioner if the chief executive is satisfied on reasonable grounds that the woman is a patient of the practitioner and that the information is needed, for example, to make a decision about the woman's clinical management.

Clause 273 permits the director of a pathology laboratory to nominate a person or persons employed at the laboratory to whom a woman's registered screening history may be given for the laboratory.

In addition, the clause sets out the circumstances under which the chief executive may give a pathology laboratory a woman's registered screening history. In giving this information, the chief executive must ensure that the laboratory concerned is either:

- interpreting the results of a pap smear test or histology test for the woman and requires the information in order to make recommendations about clinical management for the woman; or
- the pathology laboratory has tested a Pap smear or histological sample for the woman and the director or nominated person is assessing the performance of the laboratory for quality assurance purposes.

The chief executive may not disclose a woman's address under either clause 272 or 273. Nor may the chief executive disclose information identifying a health practitioner or a pathology laboratory without the written consent of the health practitioner or the director of the pathology laboratory.

Clause 274 specifies that it is an offence for any person to seek or to obtain information from the Pap Smear Register, the chief executive or another person involved in keeping of the register unless they are authorised to do so under part 3.

Clause 275 sets out the obligations of health practitioners, directors and nominated persons of pathology laboratories to keep registered screening histories confidential when they access information under sections 272 and 273. However, the clause does permit a health practitioner to disclose a woman's registered screening history to the woman or another health practitioner (eg to discuss the woman's history for the clinical management of the woman). Similarly, a director of a pathology laboratory or a nominated person at a laboratory may disclose a woman's registered screening history to specified persons (including the woman) if the director

is satisfied that it is necessary to do so (eg to the medical practitioner who is involved in the clinical management of the woman).

Clause 276 imposes a statutory obligation on the chief executive to establish processes to monitor health practitioners' and pathology laboratories' access to information held on the Pap Smear Register and their compliance with their duties of confidentiality under part 3.

Clause 277 enables the chief executive to enter into an agreement with a contractor for the purpose of sending out letters welcoming women to the Pap Smear Register, reminder notices and recall letters to women. Accordingly, the chief executive may disclose confidential information to the contractor to the extent that it is necessary for the contractor to perform the functions under the agreement (ie a woman's name and address). The contractor is, however, prohibited from disclosing the information to another person or to use the information other than to send out the notices in accordance with the agreement.

Clause 278 permits the chief executive to arrange for the transfer of confidential information from the Pap Smear Register to the Cancer Register. The provision clarifies that a person performing such a transfer does not commit an offence against the duty of confidentiality for the Pap Smear Register. The intent of this provision is to permit the transfer of information about diagnosed occurrences of cervical cancer from the Pap Smear Register to the Cancer Register to maximise the completeness of the information in the Cancer Register.

Clause 279 enables the chief executive to designate (via gazette notice) certain persons who perform procedures to obtain Pap smears as health practitioners for part 3. For example, in remote areas where there is limited access to medical practitioners, enrolled nurses and Aboriginal health workers may also perform Pap smears.

Part 4 Research

Clause 280 defines terms used in chapter 6 part 4. Significantly, research is defined for the purposes of part 4 to mean systematic investigation for adding to knowledge about human health and well-being, including a biomedical study, a clinical and applied study, an epidemiological study, an evaluation and planning study or a monitoring and surveillance study.

Clause 281 clarifies that the chief executive may give health information held by the department under chapter 6, part 4 despite any confidentiality

provision under the Bill or another law that deals with confidentiality (eg section 62A of the *Health Services Act 1991*). Health information held by the department is defined in the dictionary to be information about a person who has received or is receiving a public sector health service in Queensland, or information about a person's health, or the provision of a health service to the person, obtained by the department under this Act or another Act.

Clause 282 sets out the application process whereby a person may apply to the chief executive for health information held by the department for research being conducted by the person or by an entity of which the person is a member.

Clause 283 enables the chief executive to ask for further information to support an application under clause 282. If an applicant fails to comply with a notice for further information, the applicant is taken to have withdrawn their application.

Clause 284 requires the chief executive to consider an application for health information held by the department as soon as practicable and provide the applicant with a written notice setting out the chief executive's decision. In deciding an application, the chief executive must be satisfied that the provision of health information held by the department is in the public interest, having regard to the opportunities the research will provide for increased knowledge and improved health outcomes and the privacy of individuals who supply health information to health providers. In addition, if an applicant asks for information identifying a person, the chief executive may grant the application only if satisfied the identification of the person is necessary for the relevant research.

The chief executive must provide an applicant with a written notice outlining his or her decision about an application. This notice must also include the reasons for any conditions imposed by the chief executive under clause 285.

Clause 285 sets out the minimum requirements for the chief executive's written notice to an approved applicant for health information held by the department, including:

- the name of the person or entity conducting the research;
- the names of all persons who may be given the information for the research;
- a description of the research, including the purpose and methodology of the research;

- the type of information to be given and if the information is to be given at intervals, details of the intervals;
- any conditions under which the application was granted;
- the period for which the application has been granted.

It is an offence under clause 285(2) to fail to comply with a condition, unless the applicant has a reasonable excuse.

Clause 286 requires an approved applicant to notify the chief executive of any changes to the names of the persons listed in an approved application. It is an offence to fail to comply with this requirement, which must be made as soon as practicable after the change has occurred.

Clause 287 specifies that the chief executive may rescind a decision to provide health information held by the department to an approved applicant, if the applicant has contravened part 4, for example by failing to comply with a condition imposed under clause 285.

Clause 288 requires the chief executive to establish a publicly accessible register of approved applicants, to be known as the Research Register, which details:

- the type of information to be given for the research;
- a description of the research;
- the name of the person or entity conducting the research;
- the period for which the application has been granted.

The chief executive must allow a person to access the register but can charge a reasonable fee for copying the register (clause 289).

Clause 290 specifies that a person given information under part 4 must not use the information for a purpose inconsistent with the research for which the information was provided. It is an offence to fail to comply with this requirement.

Clause 291 makes it an offence for a person to disclose information given to a person under part 4, unless the disclosure is expressly authorised under the clause. For example, if the disclosure is:

- to a person named in a notice under section 284(4) or 286 as a person who may be given the information for the research; or
- made with the written consent of the person to whom the information relates; or

- made in a form the person reasonably believes does not identify any person.

Clause 292 enables the Minister to declare, by gazette notice, that health information given to a person under part 4, division 2 for research is protected information, if the Minister reasonably believes it is in the public interest to do so. Such a declaration means that:

- the information cannot be accessed under any order, whether of a judicial or administrative nature, other than an order for the purpose of this Bill;
- the information is not admissible in any proceeding, other than a proceeding under this Bill;
- a person can not be compelled to produce the information, or to give evidence relating to the information, in any proceeding, other than a proceeding under this Bill.

However, these restrictions do not apply if the information is admitted, produced or given with the consent of the person to whom the information relates.

Chapter 7 Public health inquiries

Clause 293 defines terms for the purposes of chapter 7, including “chairperson”, “panel” and “witness requirement notice”.

Clause 294 enables the Minister to establish a panel of inquiry to inquire into a matter the Minister considers is a serious public health matter. A serious public health matter may include a major outbreak of an infectious disease. The clause also clarifies that the Minister may establish a panel of inquiry regardless of whether a panel of inquiry has previously considered the matter.

Clause 295 establishes the role of the panel and requires a written report to be provided to the Minister about the panel’s findings. The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report. If the panel gives the Minister a separate report of issues the panel considers should not be made public, the Minister need not table the separate report in the Legislative Assembly.

Clause 296 establishes the conditions of appointment for a member of a panel of inquiry.

Clause 297 provides that the chief executive must consult with the chairperson of the panel to arrange for the provision of services, and financial matters relevant, to the panel.

Clause 298 establishes the procedure for the conduct of an inquiry, for example the panel of inquiry must observe natural justice and act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues.

Clause 299 provides that the chairperson of the panel of inquiry must give at least 14 days notice of the time and place of the inquiry to any person the chairperson reasonably believes should appear at the inquiry.

Clause 300 provides that the inquiry must be held in public unless the panel is satisfied that it is proper to hold the panel in private given the circumstances of a case.

Clause 301 gives specified persons (eg members of the panel, lawyers and witnesses) involved in the panel of inquiry immunities and protections as if they were involved in a Supreme Court proceeding.

Clause 302 requires that a panel of inquiry must keep a record of its proceedings.

Clause 303 requires that the panel of inquiry must give anyone directly concerned the opportunity of making a defence to all claims made against the person.

Clause 304 provides that the panel of inquiry may act in certain ways and that a member of the panel may administer an oath to a person appearing as a witness before the inquiry.

Clause 305 establishes that a person who is to appear as a witness before the panel is to be given certain notice to attend. The witness is entitled to witness fees.

Clause 306 provides for the inspection, copying, photographing or taking of extracts from documents or other things presented to the panel of inquiry.

Clause 307 outlines how the panel of inquiry may start or continue, unless a court or tribunal with the necessary jurisdiction orders otherwise.

Clause 308 establishes a number of offences for non-compliance by witnesses. Self-incrimination is not a reasonable excuse for refusing to give evidence. While clause 308(3) removes self-incrimination as a reasonable

excuse for a person to fail to answer a question or produce a document (or thing), subclause 308(4) provides that specified evidence (ie primary evidence and derived evidence) given by a witness is not admissible in a civil or criminal proceeding. Further, any information or thing obtained as a direct or indirect result of evidence is also not admissible. Subclause 308(5) also clarifies that primary or derived evidence is not prevented from being admitted in evidence in criminal proceedings about the falsity or misleading nature of the primary evidence.

Clause 309 specifies that it is an offence for a person to state anything to a panel of inquiry that the person knows is false or misleading in a material particular.

Clause 310 makes it an offence for a person to give the panel of inquiry, a document containing information the person knows is false or misleading in a material particular. However there is an exception where the person giving the document tells the panel to the best of their ability how the document is false or misleading, and, if the person has, or can reasonably get the correct information, gives the correct information to the panel.

Clause 311 sets out when the conduct of a person is taken to be contempt of the panel of inquiry.

Clause 312 provides that, subject to clause 308, if the panel of inquiry considers material before it discloses an offence, it may report the offence and make available relevant material in the panel's possession to the relevant authorities.

Clause 313 specifies that a panel of inquiry is not affected by a change in membership, except if it consists of 1 member. If a panel is comprised of 1 member, the panel would need to be re-established under clause 294.

Chapter 8 – Public health emergencies

Part 1 Preliminary

Clause 314 states that the purpose of chapter 8 is to declare and respond to public health emergencies, and emergency notifiable conditions happening during a declared public health emergency.

Clause 315 defines terms for chapter 8 including, for example, emergency notifiable condition and public health emergency. 'Emergency notifiable condition' is defined as an infectious medical condition that is not prescribed as a controlled notifiable condition.

Public health emergency is defined as meaning an event or a series of events that has contributed to, or may contribute to, serious adverse effects on health of persons in Queensland. The effect of this definition is to limit the circumstances for which an emergency can be declared and therefore the circumstances in which the powers under this chapter may be exercised.

Clause 316 provides that this Bill does not interfere with emergency provisions under other Acts, and vice versa.

Clause 317 specifically provides that this Bill does not limit the *Disaster Management Act 2003* or the chemical, biological and radiological emergency provisions of the *Public Safety Preservation Act 1986*.

Clause 318 provides that the powers under this chapter are in addition to and do not limit powers under this Bill or another Act.

Part 2 Declaring a public health emergency

Clause 319 allows the Minister to declare a public health emergency by signed written order. To ensure the emergency powers under chapter 8 may only be used for appropriate purposes, the Minister may only declare a public health emergency if the Minister is satisfied it is necessary to exercise the powers under this chapter to prevent or minimise the serious adverse effects on human health from a public health emergency. The Minister must also, if practicable, consult with the chief executive and chief health officer before declaring a public health emergency.

Clause 320 details what a public health emergency order must state, including the nature of the public health emergency, the area to which the order relates, the duration of the order, and any conditions relating to the conduct of the declared public health emergency.

Clause 321 provides that the Minister must, as soon as practicable, publish and publicise a public health emergency order.

Clause 322 sets out matters in relation to the commencement and duration of a declared public health emergency. A declared public health emergency starts from the time the Minister makes a declaration under clause 319 and

ends 7 days after it is declared, unless the Minister sooner ends it, or a regulation under clause 323 extends the declared emergency. The initial regulation may extend the declared emergency by up to 14 days. However, subsequent regulations may only extend the declared emergency by up to 7 days.

Clause 324 states the Minister must end a declared emergency if the Minister is satisfied it is no longer necessary to exercise powers under chapter 8 to respond to the public health emergency. This action will cause the expiry of a regulation extending the declared emergency.

Clause 325 requires the Minister to publish and publicise the end of the declared emergency.

Clause 326 allows the Minister to amend a public health emergency order and requires the Minister to publish and publicise the amendment in the same way as the original order.

Part 3 Emergency notifiable conditions

Clauses 327 to 331 set out the circumstances under which the Minister may declare an emergency notifiable condition to be a controlled notifiable condition (i.e. a controlled notifiable conditions declaration).

By clause 329 if the Minister makes a controlled notifiable condition declaration under clause 327, the declaration must be published by gazette notice and include information about:

- the general nature of the emergency notifiable condition including, for example, signs and symptoms that may be associated with the condition; and
- the period for which the emergency notifiable condition is declared to be a controlled notifiable condition.

A controlled notifiable conditions declaration takes effect from the time it is declared by the Minister under clause 327 and may have effect for a maximum period of 28 days (clause 330).

During this period, mechanisms provided for under chapter 3 to protect the public from notifiable conditions may be used to respond to a public health emergency involving an emergency infection condition. Clause 328 also clarifies that the duration of a controlled notifiable conditions declaration

continues to have effect, even if the declared public health emergency ends at an earlier time.

Clause 331 allows the Minister to amend a controlled notifiable conditions declaration. The Minister must publish and publicise the amendment in the same way as the original declaration.

Part 4 Role of chief executive

Clause 332 charges the chief executive with responsibility for overall management and control of the response to a declared public health emergency. The chief executive is empowered to give directions about the circumstances in which the emergency powers under this chapter may be used.

Clause 332 deems the chief executive to be an emergency officer (general) or, if the chief executive is a doctor, an emergency officer (medical).

Part 5 Appointment of emergency officers

Clauses 333 to 337 enable the chief executive to appoint appropriately qualified persons as emergency officers. To avoid delay in responding to an emergency, appointments may be made before an emergency is declared.

However, as provided for by clause 339, an emergency officer may only exercise the powers under this chapter for responding to a declared public health emergency. In addition, under clause 337, the chief executive may appoint an emergency officer subject to conditions specified in the officer's instrument of appointment.

Clause 338 requires the chief executive to give to a person appointed as an emergency officer a copy of the person's appointment.

Clause 339 clarifies what powers may be exercised by an emergency officer (general) and an emergency officer (medical) for a declared public health emergency, subject to the direction of the chief executive.

Clause 340 requires the chief executive to provide each emergency officer with an identity card. It is an offence for an emergency officer to fail to

return the emergency officer's identity card within 21 days of ceasing to be an emergency officer (clause 341).

Clause 342 provides that an emergency officer must, if practicable, identify himself or herself to a person in relation to whom the emergency officer exercises a power.

Part 6 Powers of emergency officers

Clause 343 allows an emergency officer to enter a place for responding to a public health emergency if the emergency officer reasonably believes it is urgent to enter the place to save human life, prevent or minimise serious adverse effects on human health or relieve suffering or distress. Reasonable force may be used.

Clause 344 states the procedure for entry under clause 343. However, an emergency officer need not comply with the stated procedure if the emergency officer believes on reasonable grounds that immediate entry is required to effectively respond to the declared emergency.

Clause 345 specifies the powers available to respond to the declared emergency. These include the power to require a person to; go to or stay in a place; not enter or not remain in a place; answer questions and provide information; regulate their movement into, out of or around the emergency area. They also allow emergency officers to take action in relation to animals, substances, property or things. These powers may only be used if they are *necessary* to respond to the emergency. Sub-clause 345(2) provides that the power to demolish structures or destroy animals can only be exercised with the approval of the chief executive.

Clause 346 makes it an offence not to comply with a requirement or direction made by an emergency officer under clause 345(10(a)—(h) and (4), unless the person has a reasonable excuse. In order to ensure the provision of information necessary to respond to the declared emergency, subclause (2) states it is not an excuse for non-compliance with a request that complying with the requirement may tend to incriminate the person. This breaches the fundamental common law right to silence. Accordingly, subclause (3) states that the information may not be used in proceedings against the person (other than in a proceeding in which the falsity or misleading nature of the information provided is relevant).

Clause 347 provides an emergency officer with a range of general powers following entry to a place to respond to a declared public health emergency.

These include powers to search the place, inspect, take photographs and samples, and require reasonable help to exercise the emergency officer's powers.

Clause 348 makes it an offence for a person not to give reasonable help to an emergency officer when requested under clauses 345(1)(q) or 347(2)(f) unless the person has a reasonable excuse.

Part 7 Extra powers of emergency officers (medical)

Clause 349 allows an emergency officer (medical) to order the detention of a person. This power may be exercised only if the detention is necessary to respond to the public health emergency and the officer reasonably suspects the person has or may have a serious disease or illness which, either of itself or in conjunction with the person's likely behaviour, constitutes an immediate risk to public health.

The emergency officer (medical) must make a written order for the detention of a person, which sets out specified information such as a description of the serious disease or illness the person has or may have and the place where the person is to be detained.

Clause 350 states that a detention order ends 96 hours after it was given or at an earlier time stated in the order.

Clause 351 provides that a detention order may be enforced by an emergency officer (medical) or person nominated by the emergency officer (medical), with reasonable help and force. The emergency officer (medical) or nominated person must give the person to be detained a copy of the order or, if this is not practicable, explain the purpose and effect of the order. It is an offence, carrying a maximum penalty of 200 penalty units, to fail to comply with a detention order.

Clause 352 allows an emergency officer (medical) to establish an isolation area to accommodate persons detained under a detention order. The emergency officer (medical) may take the action necessary to respond to the declared public health emergency (eg by taking control of a building).

Clause 353 provides that a person who is subject to a detention order must be given an opportunity to voluntarily comply with the order.

Clause 354 requires the emergency officer (medical) to request the detained person be medically examined, unless a medical examination would yield

no useful information in the circumstances (for example, there is no recognised diagnostic procedure). The emergency officer (medical) must explain the reasons for the examination and tell the person that the person may refuse the examination. The person must also be given the opportunity to be examined by a doctor of their own choosing.

Clause 355 specifies that a person must be released from detention if the person is no longer an immediate risk to public health, in the opinion of the emergency officer (medical), or joint opinion of a doctor chosen by the person and the emergency officer (medical).

Clause 356 allows the chief executive or an emergency officer (medical) to apply to a magistrate to extend a detention order. An application may only be made if an emergency officer (medical) is satisfied that continued detention is necessary, having regard to the criteria for detention under clause 349. The detained person must be given a copy of the application. To minimise the risk of transmission of the condition the detained person is suspected of having, the detained person may not attend the hearing. However, the detained person may nominate a representative to appear on his or her behalf.

Clause 357 allows the magistrate to hear the application and to extend, or refuse to extend, the detention order. The magistrate may extend the detention order only if satisfied it is reasonably necessary to effectively respond to the public health emergency. The detention order is deemed to continue until the magistrate decides the application.

Clause 358 provides that the chief executive or an emergency officer (medical) may appeal to the District Court against the refusal of a magistrate to extend the detention order. The detention order is deemed to continue until the District Court decides the application.

Clause 359 clarifies that clauses 360 to 362 apply only in relation to a person who is detained under this part.

Clause 360 states the obligations of an emergency officer (medical) in relation to a person detained under clause 349. The emergency officer (medical) must, as soon as is practicable:

- inform the person about the person's right to apply to a magistrate for an order ending the person's detention, the person's right to consult a lawyer, and the duration of the detention order;
- inform the person's next of kin about the person's detention;
- give the detained person an opportunity to contact persons with whom the detained person wishes to communicate.

Clause 361 allows a detained person's lawyer, or other nominated person, to apply to a magistrate for an order ending the person's detention. The magistrate may order an end to the detention only if satisfied the person's continued detention is not reasonably necessary to effectively respond to the declared public health emergency. The detained person is not entitled to attend the hearing for the application.

Clause 362 provides for the chief executive, an emergency officer (medical) or a person detained under clause 349 to appeal to the District Court against a decision of the magistrate on an application for an order to end the person's detention. The detention order is deemed to continue until the District Court decides the application.

Part 8 General enforcement matters

Clause 363 makes it an offence to make false or misleading statements to an emergency officer.

Clause 364 makes it an offence to give an emergency officer a document, which contains false or misleading information, unless the person tells the emergency officer about the misleading information and, where possible, gives the correct information.

Clause 365 makes it an offence for a person to obstruct an emergency officer, unless the person has a reasonable excuse.

Part 9 Compensation

Clause 366 provides an entitlement to compensation for loss or damage suffered because of an exercise, or purported exercise, of an emergency power.

Clause 367 provides that compensation is not payable to the extent that the person is otherwise insured for the loss or damage, or the person contributed to the loss or damage. Nor is compensation payable for loss or damage that would have occurred irrespective of the exercise of the emergency powers.

Clause 368 states that a person may apply to the chief executive for compensation within 90 days of suffering the loss or damage. However, the chief executive is provided with the discretion to accept late applications.

Clause 369 provides for the chief executive to give an applicant for compensation a written notice requiring further information within a specified period to decide the application. If the application does not provide the further information within the period specified in the notice, the application is deemed to lapse.

Clause 370 provides that the chief executive must consider an application that meets the requirements of this part.

Clause 371 requires the chief executive to give an applicant a written notice about the chief executive's decision, including reasons for the decision.

Clause 372 provides a right of appeal to a Magistrates Court against the chief executive's decision about compensation.

Clause 373 establishes in which Magistrates Court an appeal can be started and when the notice of appeal under the *Uniform Civil Procedure Rules 1999* must be filed. The court may, at any time, extend the time for filing the notice of appeal.

Clause 374 states that in hearing the appeal, the court is not bound by the rules of evidence.

Clause 375 states that an appeal against a Magistrates Court decision may be made to the District court, but only on a question of law.

Chapter 9 – Monitoring And Enforcement

Part 1 Authorised persons

Clause 376 provides that an authorised person has the powers given under the Bill. In exercising his or her powers, an authorised person is subject to the directions of the relevant administering executive (i.e. chief executive of health or, for a local government, the chief executive officer).

Clause 377 empowers the chief executive or, for a local government, the chief executive officer (together referred to as 'administering executives')

to appoint authorised persons. To allow smaller local governments to “share” an authorised person, provision is made for the chief executive officers of two or more local governments to appoint the same person.

An authorised person may be appointed for the Bill generally or for specific provisions, or to administer and enforce the Bill only in respect of particular public health risks.

Clause 378 states the administering executive may appoint a person, as an authorised person only if satisfied the person is appropriately qualified. Provision is made to prescribe specific competencies in regulation.

Clause 379 provides that the administering executive may limit the powers of an authorised person.

Clause 380 requires the administering executive to issue an identity card to each authorised person. An authorised person must produce or display the authorised person’s identity card if exercising a power in relation to a person. However, if it is not practicable in the circumstances to do so before exercising the power, the identification must be produced as soon as is practicable (clause 381).

Clause 382 states the ways in which an authorised person may cease to hold office. The methods detailed are not exhaustive.

Clause 383 states an authorised person may resign by written notice to the administering executive.

Clause 384 requires an authorised person to return the authorised person’s identity card within 21 days of ceasing to be an authorised person.

Part 2 Powers of authorised persons

Clause 385 states how an authorised person may enter a place, including entry under clauses 386 to 390. Importantly, subclause (3) prohibits entry to a dwelling without the occupier’s consent, an enforcement order or warrant.

Clause 386 empowers an authorised person to enter a place to ascertain if there is a public health risk at a place. The authorised person may enter the place only if the authorised person reasonably believes there may be a public health risk at a place, for example, following a credible complaint by an occupier of an adjacent property. Entry to any building or structure,

whether or not it is a dwelling, is prohibited. This power is subject to procedural requirements (see explanatory note for clause 392).

Clause 387 empowers an authorised person to enter a place at reasonable times to check compliance with a public health order. Entry to any building or structure, whether or not it is a dwelling, is prohibited. This power is subject to procedural requirements (see explanatory note for clause 392).

Clause 388 empowers a local government or the chief executive, by its employees or agents, to enter a place to take the steps required under a public health order, which the recipient of the order has failed to take. Entry to any building or structure, whether or not it is a dwelling, is prohibited. This power is subject to procedural requirements (see explanatory note for clause 393).

Clause 389 provides a power of entry for authorised persons undertaking approved inspection programs (see explanatory notes for clauses 427 to 429). Entry to any building or structure, whether or not it is a dwelling, is prohibited. This power is subject to procedural requirements (see explanatory note for clause 392).

Clause 390 provides a power of entry to health care facilities. The power is required to check compliance with obligations about infection control under chapter 4 (Infection control for health care facilities). The authorised person must give the person in charge of the health care facility 24 hours notice of the entry. This power does not allow entry to a part of the facility where a person resides, or where a person is undergoing a health procedure or is consulting a health practitioner.

Clause 391 details the procedure for entry with consent under clause 385(1)(a). The authorised person must explain the purpose of entry and that the occupier may refuse consent. The authorised person may ask the occupier to sign a written acknowledgement of the occupier's consent, although this is not a mandatory requirement – the authorised person may choose not to seek the signed acknowledgement. However, in a proceeding against the occupier, if the signed acknowledgement is not produced, the person relying on the lawfulness of the entry must prove the occupier gave consent to enter.

Clause 392 details the procedure for entry under clauses 386 (Power to enter place to ascertain if public health risk), 387 (Power to enter place to check compliance with public health order) or 389 (Power to enter place under approved inspection program). Before entering a place under any of these clauses, the authorised person must first make a reasonable attempt to locate an occupier and obtain the occupier's consent to entry (in

accordance with the procedure in clause 391). If the authorised person locates the occupier and the occupier refuses consent, the authorised person must not enter the place. If the authorised person is unable to locate the occupier after making a reasonable attempt to do so, the authorised person may enter the place. Following entry under clauses 386, 387 or 389, the authorised person must leave a notice stating the date, time and purpose of entry.

An authorised person entering a place under clauses 386, 387 or 389 must cause as little inconvenience and do as little damage as is practicable in the circumstances.

Clause 393 details the procedure for entry under clause 388 (Power to enter place to take steps if public health order not complied with). The issuing authority must give the occupier reasonable notice of the entry to take the steps required under the public health order. The notice must be in writing. Before entering a place under any of these clauses, the authorised person must first make reasonable attempt to locate an occupier and obtain the occupier's consent to entry (in accordance with the procedure in clause 391). If the occupier does not consent, the clause clarifies that the authorised person may only enter the place under an enforcement order or a warrant. If the authorised person is unable to locate the occupier after making a reasonable attempt to do so, the authorised person may enter the place. Following entry under clause 388, the authorised person must leave a notice stating the date, time and purpose of entry.

An authorised person entering a place under clause 388 must cause as little inconvenience and do as little damage as is practicable in the circumstances.

Clause 394 allows an authorised person to apply to a magistrate for a warrant for a place.

Clause 395 allows a magistrate to issue a warrant for a place if satisfied there are reasonable grounds for suspecting there is or will be at the place evidence of an offence against the Bill, or there is a public health risk at the place. The matters to be stated in the warrant are listed, including that a stated authorised person may use necessary and reasonable help and force to enter the place and exercise the authorised person's powers under chapter 9.

If the warrant is for a public health risk –

- the warrant must state whether the authorised person may exercise the powers under chapter 9, part 2, division 6. That is, whether the authorised person can take the steps necessary to reduce the risk to public health from the public health risk at the place (see explanatory notes for clause 405). This allows for expedient action where necessary to control a serious and immediate risk to public health, for example where a public health order would not result in the necessary steps being taken;
- the warrant must also state who is to pay the costs of taking the steps to reduce the risk to public health from the public health risk;
- the warrant may state that an authorised person can re-enter the place to check compliance with a public health order issued following the initial entry under the warrant. If a warrant authorises re-entry, the warrant expires 7 days after the expiration of the period stated in the public health order for completing the steps stated in the order.

Clause 396 provides for application for a warrant by electronic means in urgent or special circumstances.

Clause 397 provides that a warrant is not invalidated by a non-significant defect.

Clause 398 details the procedure for entry under a warrant. The authorised person must attempt to locate the occupier, identify him or herself, give the occupier a copy of the warrant and give the person an opportunity to allow the authorised person immediate entry without using force. However, the authorised person does not need to comply with this procedure if immediate entry is required to effectively execute the warrant.

Clause 399 states the general powers of an authorised person after entering a place. These include the powers of search and inspection, the power to take samples for analysis or testing. They also include the power to require a person to give the authorised person reasonable help in exercising the authorised person's powers, and to require a person to answer questions.

Clause 400 makes it an offence for a person not to give an authorised person reasonable help when required to do so by the authorised person, unless the person has a reasonable excuse.

Clause 401 makes it an offence for a person not to answer an authorised person's question, unless the person has a reasonable excuse. It is a reasonable excuse that answering the question might tend to incriminate the person.

Clause 402 empowers authorised persons to direct a person in charge of a motor vehicle to stop the vehicle or move it to a convenient place to allow the authorised person to exercise the authorised person's powers under chapter 9. It is an offence for a person to fail to comply with the authorised person's requirement, without a reasonable excuse.

Clause 403 and 404 detail when an authorised person may seize a thing as evidence of an offence against the Bill.

Clause 405 empowers an authorised person who has entered a place under a warrant (for a public health risk) which states the power under this division may be exercised, to take the steps necessary in the circumstances to remove or reduce the risk to public health from the public health risk, or prevent it from recurring.

An authorised person exercising a power under this clause must cause as little inconvenience and do as little damage as is practicable in the circumstances.

Clause 406 provides that the local government or chief executive (the 'issuing authority') may recover the reasonable costs and expenses incurred in exercising the powers under clause 388 (Power to enter place to take steps if public health order not complied with) or 405 (Power to reduce public health risk under a warrant) as a debt payable to the issuing authority. If the issuing authority is a local government, the amount is recoverable, and bears interest, as if it were an overdue rate.

Clause 407 allows a local government to request the registrar of titles to register a charge over land for an amount payable under clause 406. This reflects a similar cost recovery mechanism under the *Local Government Act 1993*.

Clauses 408 to 415 govern how evidence and public health risks seized under the Bill are to be dealt with.

Clause 416 empowers an authorised person to require a person's name and residential address. The power may be exercised only if the authorised person finds the person committing an offence against the Bill or reasonably suspects the person has just committed an offence against the Bill or is responsible for a public health risk.

Clause 417 makes it an offence for a person to fail to comply with a requirement under clause 416. However, if the person is found by a court not to have committed the offence or not to have been responsible for the public health risk, as the case may be, the person is deemed not to have committed an offence under this clause.

Clause 418 empowers an authorised person to require a person to make available or produce or certify a copy of a document issued to a person under the Bill or required to be kept by the person under this Bill. This would include for example, an infection control management plan under chapter 4.

Clause 419 makes it an offence for a person to fail to comply with a requirement to make available or produce a document under clause 418, unless the person has a reasonable excuse. It is expressly stated not to be a reasonable excuse that complying with the requirement might intend to incriminate the person.

Clause 420 makes it an offence for a person to fail to comply with a requirement to certify a copy of a document under clause 418, unless the person has a reasonable excuse.

Part 3 General enforcement matters

Clause 421 requires an authorised person to give notice of damage caused in the exercise of the authorised person's powers (or a person acting under the authorised person's direction) to the person who appears to own the property.

Clause 422 allows a person who incurs loss or expense because of the exercise or purported exercise of a power under chapter 9, part 2 or chapter 2, part 4 (Authorised prevention and control programs) to claim compensation from the State or local government, as the case may be. Compensation may be claimed in a court of competent jurisdiction.

Clause 423 makes it an offence for a person to state anything to an authorised person, which is false or misleading in a material particular.

Clause 424 makes it an offence to give an authorised person a document, which contains false or misleading information, unless the person tells the authorised person about the misleading information and, where possible, gives the correct information.

Clause 425 makes it an offence to obstruct an authorised person in the exercise of a power, unless the person has a reasonable excuse.

Clause 426 makes it an offence to pretend to be an authorised person.

Part 4 Approved inspection programs

Clause 427 allows the chief executive, or for a local government, the chief executive officer to approve a program under which authorised persons may enter places to monitor compliance with a regulation made under clause 61 (Regulations about public health risks). This power is modelled on similar powers in the *Local Government Act 1993*. The chief executive may approve programs for a regulation only if the State has responsibility for the administration and enforcement of the regulation. Similarly, the chief executive officer of a local government may only approve a program if the local government has responsibility for the administration and enforcement of the regulation (for the allocation of responsibility for administering and enforcing regulations under clause 61, see explanatory notes for clauses 12 to 20 and clause 61). The matters to be stated in the approval are listed in the clause.

The power to enter a place under a program is provided under clause 389. The procedure for entry is provided under clause 392. (See explanatory notes for both clauses, above.)

Clause 428 requires the chief executive or chief executive officer to publish and publicise notice of the approved inspection program. The matters to be stated in the notice are listed.

Clause 429 requires the chief executive or chief executive officer, as the case may be, to provide a copy of the program to a person upon request.

Part 5 Analysis of things

Clauses 430 to 433 outline the conditions under which a person may be appointed and hold office as a “State analyst”.

Clause 434 allows the chief executive to approve a laboratory for this part.

Clause 435 provides that an authorised person must give a thing taken for analysis under this Bill to a State analyst for analysis. The State analyst must either analyse the thing or cause or give the thing to an approved laboratory for analysis. The State analyst must complete or obtain a certificate of analysis and give it to the authorised person. A certificate of analysis must indicate the method of analysis used (clause 436).

Chapter 10 Legal proceedings

Part 1 Application

Clause 437 establishes that chapter 10 applies to a proceeding under this Bill.

Part 2 Evidence

Clause 438 sets out the appointments and authorities that must be presumed, unless a party to the proceeding requires proof by reasonable notice.

Clause 439 states that a signature purporting to be the signature of the chief executive, a chief executive officer, an authorised person, a contact tracing officer, an emergency officer or a designated medical officer is evidence of the signature it purports to be.

Clause 440 provides guidance about evidentiary matters.

Part 3 Proceedings

Clause 441 establishes the time limits for commencing proceedings.

Clause 442 states that in any proceeding for an offence against the Bill involving false or misleading information, or a false or misleading document, it is enough for a charge to state that the information or document was, without specifying which, 'false or misleading'.

Clause 443 provides for the recovery of costs of investigation of an offence against the Bill, without limiting the court's powers under the *Penalties and Sentences Act 1992* or another law.

Clause 444 establishes the jurisdiction for orders about costs under clause 443.

Clause 445 provides for forfeiture to the State of anything used to commit the offence or anything else the subject of the offence, and the circumstances in which such an order may be made without limiting the court's powers under the *Penalties and Sentences Act 1992* or another law.

Clause 446 sets out how a thing can be dealt with if it is forfeited.

Clause 447 establishes responsibility for acts or omissions by representatives under the representative's actual or apparent authority. The terms "representative" and "state of mind" are defined for the purposes of the clause.

Clause 448 establishes that executive officers of a corporation must ensure the corporation complies with the Bill and sets out penalties and evidentiary provisions.

Clause 449 requires that a fine imposed for an offence in a proceeding taken by the State or local government must be paid the local government.

Part 4 Appeals

Clause 450 allows the owner of a thing that has been forfeited to appeal the forfeiture.

Clause 451 establishes in which Magistrates Court an appeal can be started and when the notice of appeal under the *Uniform Civil Procedure Rules 1999* must be filed. The court may, at any time, extend the time for filing the notice of appeal.

Clause 452 states that in hearing the appeal, the court is not bound by the rules of evidence.

Clause 453 states that an appeal against a Magistrates Court decision may be made to the District Court, but only on a question of law.

Chapter 11 Miscellaneous

Part 1 Annual report on public health issues

Clause 454 provides for an annual report on public health issues to be given to the Minister.

Part 2 Other provisions

Clause 455 establishes that there is to be a manager of public health services for the State and that the holder of the position must be a doctor.

Clause 456 allows the chief executive to delegate the chief executive's powers under the Bill.

Clause 457 specifies that a prescribed person is not civilly liable for an act or omission, made honestly and without negligence, under this Bill. The meaning of prescribed person is defined in clause 457(3).

It is not considered appropriate for an individual to be made personally liable as a consequence of carrying out his or her responsibilities under the legislation, in good faith and without negligence. As such, clause 457(1) prevents civil liability from being attached to an individual. Instead, clause 457(2) establishes that the State or a local government is responsible for the liability.

Clause 458 provides for certain persons under the Bill to be public officials for the *Police Powers and Responsibilities Act 2000*. Under section 14 of the Police Powers and Responsibilities Act, upon a request being made by a public official, a police officer may assist a public official to carry out his or her functions under the Bill (eg to execute a controlled notifiable condition order or an apprehension warrant under chapter 3). Before the police officer can help a public official, the public official must explain to the police officer the powers the public official has under the Bill.

The police officer has, while helping a public official, the same powers and protections under the Bill as the public official. In addition, section 14 of

the Police Powers and Responsibilities Act clarifies that a police officer may exercise the powers of a public official even though the public official may be absent, if the police officer is satisfied that it is reasonably necessary in the circumstances.

Clause 459 provides for the approval of forms for use under the Bill.

Clause 460 provides that if a document is required or permitted under this Bill to be given to a person, the document may be given to the person by facsimile transmission and is taken to have been given on the day the document is transmitted.

Clause 461 outlines the general obligations if a person is authorised or required to explain the terms and effects of an order or something else under the Bill, to a child or a child's parents. The person need only comply with the provision to the extent that is reasonably practicable in the circumstances. If after reasonable inquiries, the whereabouts of the parents cannot be ascertained or they cannot be contacted, it is not reasonably practicable to comply.

So far as compliance relates to telling the child about a matter, a person need only comply with the provision to the extent that the person reasonably considers is appropriate in the circumstances having regard to the child's age or ability to understand the matter.

If a person is required under the provision to give the child's parents a copy of a document or information in writing, the person must also give the child the information in writing if the person considers it is appropriate in the circumstances having regard to the child's age or ability to understand the information.

Part 3 Regulations

Clause 462 provides that the Governor in Council may make regulations under the Bill. These regulations may impose a penalty and set fees payable.

Chapter 12 Savings and transitional

Clauses 463 to 492 provide for the continuation of certain notices, agreements and orders made under the *Health Act 1937* and the *Health Regulation 1996* to continue under the relevant provisions of the Bill.

Clause 463 provides for the continuation of the manager of public health services under the former Act (i.e. *Health Act 1937*) as the manager of public health services under clause 455 of the Bill.

Clause 464 requires notice to be given about a notifiable condition under the Bill if the person who was required to give notice under the former Act had not given notice before the commencement day.

Clause 465 allows the chief executive to include information in the Notifiable Conditions Register that was obtained from notices given under the former Act.

Clause 466 provides for the continuation of certain orders made in relation to a person with a notifiable disease under the former Act.

Clause 467 provides for the continuation of orders to cleanse and disinfect premises made under the former Act.

Clause 468 allows for the continuation of an order closing a school under the former Act.

Clause 469 provides that if a professional was required to give notice of harm under the former Act and did not give the notice before the commencement day, specified provisions within chapter 5 part 3 of the Bill will apply.

Clause 470 provides that an order under section 76L of the former Act continues in force as an order under clause 197 of the Bill.

Clause 471 provides that a notice under section 79 of the former Act continues in force as a public health order.

Clause 472 provides that a notice under section 94(3) of the former Act continues in force as a public health order.

Clause 473 states that clause 234(1) of the Bill applies to an examination carried out before the commencement day if the appropriate return relating to the examination was not given under section 100C(2) of the former Act.

Clause 474 states that the chief executive may include in the Queensland Cancer Register the contents of the old cancer register and any follow-up

information held by the chief executive that had not been included in the old cancer register.

Clause 475 states that if a person who had not complied with a requirement under section 100C(1) of the former Act to give a return to the chief executive, section 100C(1) continues to apply to that person in relation to the return.

Clause 476 provides that an agreement with a person under section 100DA of the former Act remains in force under clause 232 of the Bill with any necessary changes as if it were an agreement to keep the Queensland Cancer Register.

Clause 477 provides that a further information requirement may be made under clause 236 of the Bill in relation to a return given under section 100C of the former Act.

Clause 478 provides that if a person had not complied with a notice given to the person under section 100DC of the former Act, the notice is taken to have been given under clause 236.

Clause 479 provides that the chief executive may include the contents of the old Pap smear register in the Pap Smear Register under clause 253 of the Bill.

Clause 480 provides that clause 259(2) and (3) of the Bill apply if the director of a pathology laboratory, who was required to give information under section 100FJ of the former Act, had not given the information to the chief executive.

Clause 481 provides that the chief executive must send a woman a notice under clause 260 of the Bill if the chief executive had received information mentioned in the former Act, section 100FK(1), but had not sent the woman a notice.

Clause 482 requires the chief executive to remove the woman's screening history or change her identifying information, if the woman had made the request under section 100FM of the former Act.

Clause 483 requires the chief executive to change a woman's identifying information if the woman had made a request under section 100FN of the former Act.

Clause 484 requires a person to give the woman a copy of her screening history, if the woman had requested the copy under section 100FP(2) of the former Act.

Clause 485 requires an agreement to continue in force under clause 277 of the Bill where an agreement to send out notices had been made with a person under section 100FV of the former Act. The agreement will continue in force with any necessary changes as it were an agreement to send out the notices under clause 277 of the Bill.

Clause 486 provides that a person is taken to be a designated health practitioner under clause 279 of the Bill if they were a person designated as a health practitioner under section 100FX of the former Act.

Clause 487 provides that the chief executive may include, in the Perinatal Statistics Collection, information from a return given under section 100H of the former Act.

Clause 488 provides that clause 217 applies to a delivery that happened before the commencement day if a return relating to the delivery was not given under section 100H of the former Act.

Clause 489 provides that information that may be required under clause 218 includes information relating to a delivery that happened before the commencement date.

Clause 490 provides that a notice to comply under section 129H of the former Act continues in force as a public health order under the Bill.

Clause 491 states that the chief executive is taken to have granted an application by the person under chapter 6, part 4, division 2, to be given health information held by the department if the person was authorised to conduct scientific research and studies under section 154M of the former Act. This approval will end 2 years after the commencement date.

Clause 492 provides that proceedings for an offence against a repealed provision may be started or continued, and a repealed provision necessary or convenient to be used in relation to the proceedings continues to apply despite commencement of the Bill.

Clause 493 provides that a reference in an Act or other document may, if the context permits, be taken to be a reference to the Bill.

Chapter 13 consequential and other amendments

Clause 494 clarifies that Schedule 1 of the Bill sets out the consequential amendments necessitated by this Bill.

Schedule 1 Consequential Amendments

This schedule causes amendments to be made to the following Acts:

Aboriginal Communities (Justice and Land Matters) Act 1984

Ambulance Service Act 1991

Child Protection Act 1999

Commission for Children and Young People and Child Guardian Act 2000

Commonwealth Powers (Family Law – Children) Act 1990

Community Services (Torres Strait) Act 1984

Coroners Act 2003

Corrective Services Act 2000

Evidence Act 1977

Food Act 1981

Food Production (Safety Act) 2000

Gurulumundi Secure Landfill Agreement Act 1982

Health Act 1937

Health Services Act 1991

Liquor Act 1992

Medical Practitioners Registration Act 2001

Metropolitan Water Supply and Sewerage Act 1999

Plumbing and Drainage Act 2002

Police Powers and Responsibilities Act 2000

Private Health Facilities Act 1999

Public Safety Preservation Act 1986

Queensland Institute of Medical Research Act 1945

Radiation Safety Act 1999

Residential Services (Accreditation) Act 2002

Transplantation and Anatomy Act 1979

As a result of the amendments to the *Health Act 1937*, the remaining provisions of that Act will only deal with drugs and poisons issues.

Schedule 2 dictionary

This Schedule sets out a number of definitions for words and phrases used in the Bill. These definitions determine the meaning that is to be attributed to certain words or phrases whenever they are used in the Bill or regulations.