

Health and Other Legislation Amendment Bill 2009

Explanatory Notes

Title of the Bill

Health and Other Legislation Amendment Bill 2009

Objectives of the Bill

The Health and Other Legislation Amendment Bill 2009 (the Bill) amends a number of health portfolio Acts as well as the *Police Powers and Responsibilities Act 2000*, and the *Workers' Compensation and Rehabilitation Act 2003*.

The main policy objectives of the amendments to the respective Acts are:

- *Health Quality and Complaints Commission Act 2006* to implement a recommendation of the Health Quality and Complaints Commission Select Committee's *Review of the Health Quality and Complaints Commission and the Health Quality and Complaints Commission Act 2006*, about requiring an impact assessment to be undertaken when the Health Quality and Complaints Commission (HQCC) develops standards
- *Health Services Act 1991* to enable confidential information under the Act to be released for the protection, safety or wellbeing of a child; and to assist the Director-General and Queensland Health's lawyers to effectively carry out their responsibilities
- *Medical Practitioners Registration Act 2001* to increase protection of the public by enhancing the Medical Board's ability to identify instances of serious misconduct by doctors
- *Physiotherapists Registration Act 2001* to assist in addressing the shortage of physiotherapists in Queensland
- *Police Powers and Responsibilities Act 2000* to enable enforcement of the new offence of smoking in a motor vehicle with a child under 16 years of age

- *Public Health Act 2005* to address a number of operational concerns identified following implementation of the Act in relation to the disclosure of health information held by Queensland Health for research purposes and to help prevent or minimise transmission of notifiable conditions
- the 13 Health Practitioner Registration Acts, the *Health Practitioners (Professional Standards) Act 1999* and the *Nursing Act 1992* to help the Health Practitioner Registration Boards and the Queensland Nursing Council perform their functions more effectively and efficiently
- *Tobacco and Other Smoking Products Act 1998* to protect children and the community from the harmful effects of environmental tobacco smoke
- *Workers' Compensation and Rehabilitation Act 2003* to help medical workforce resources be more effectively used, particularly in rural and remote areas.

Reasons for the Objectives

Amendment of Health Quality and Complaints Commission Act 2006

The Act allows the HQCC to make standards about the processes a health provider may adopt to comply with the provider's duty under the Act to implement reasonable processes to improve the quality of health services delivered by the provider. In November 2007, the Health Quality and Complaints Commission Select Committee report *Review of the Health Quality and Complaints Commission and the Health Quality and Complaints Commission Act 2006* recommended that the Act be amended to require the HQCC to undertake an impact assessment prior to developing standards. The Government subsequently endorsed this recommendation.

Amendment of Health Services Act 1991

The amendment to enable confidential information to be disclosed for the protection, safety or wellbeing of a child, follows a recommendation from the Commission for Children, Young People and Child Guardian that Part 7 of the *Health Services Act 1991* (HSA) be reviewed to enable disclosure in a broader range of circumstances. In addition, Coronial reports have been critical of health professionals who have not provided information in cases that have resulted in the death of a child.

Health service employees may be technically breaching their duty of confidentiality in s62A of the HSA by providing information to the Director-General (DG). The amendment clarifies the situation and enables information to be provided where it is relevant to the objects of the HSA in section 4.

Similarly, the amendment to enable confidential information to be disclosed to lawyers acting for the State is to clarify that information can be released to lawyers acting for the State, without breaching the duty of confidentiality in s62A of the HSA. The amendment is necessary following a recommendation from the Queensland Ombudsman.

Amendment of Medical Practitioners Registration Act 2001

There is currently no statutory obligation for a doctor to notify the Medical Board of Queensland (the Board) if the doctor is aware that another doctor has engaged in misconduct in the practice of the profession. A doctor's failure to report misconduct of a fellow doctor to the Board may prevent the Board from taking appropriate action to intervene to protect the public.

On 5 March 2009, Australian Health Ministers endorsed a model for mandatory reporting by health professionals for inclusion in legislation being developed as part of the implementation of the National Registration and Accreditation Scheme for Health Professions (NRAS). The NRAS is scheduled to be fully implemented on 1 July 2010 and will apply to the medical profession and nine other health professions.

Amendment of Public Health Act 2005

The practical application of the provisions introduced in 2005 has caused some confusion and clarity is required to overcome the problems of interpretation and interaction with provisions in the *Health Services Act 1991*. To enable the effective treatment of people with a notifiable condition, the amendments will also clarify the capacity of contact tracing officers to share information.

Amendment of Physiotherapists Registration Act 2001

In response to the national shortage of physiotherapists in Australia, the Australian Council of Physiotherapy Regulating Authorities (ACORPA) developed a model for limited registration to attract suitably qualified physiotherapists from overseas. Having regard to the key elements of this model, it is proposed that four new classes of special purpose registration be created to increase the scope for recruitment of overseas qualified physiotherapists to practise in Queensland.

Special purpose registration is a limited form of registration designed to extend the privileges and obligations of registration to persons undertaking a specified range of ‘special activities’. Special purpose registrants have the same privileges (for example, the right to use a restricted title or to undertake a restricted practice) and the same obligations (for example, a special purpose registrant is subject to the *Health Practitioners (Professional Standards) Act 1999*) as a general registrant. However, such privileges and obligations are limited to the scope of the special activity to which his or her registration relates.

Amendment of Tobacco and Other Smoking Products Act 1998

The primary focus of the amendments is to protect the community, and in particular the health of young children and babies, from the harmful affects of environmental tobacco smoke.

Environmental tobacco smoke is the complex mixture of chemicals and particles containing over 4,000 chemical compounds, including 60 known cancer-causing chemicals.

The death toll from tobacco smoking is still too high. More than 3,400 Queenslanders die each year as a result of their smoking. This is almost 10 times greater than the annual road toll. Smoking is also a burden on our healthcare system. Smoking-related hospital admissions in Queensland cost more than \$217 million per annum.

Involuntary exposure of children to environmental tobacco smoke in cars represents a significant health risk for young children. In Queensland there are 276,000 smokers with children under 16 years of age in the household. In addition, with New South Wales banning smoking in cars for children under the age of 16, it is desirable for consistency across the Tweed/Coolangatta region that Queensland has the same age limit as New South Wales.

There is strong community support for reducing exposure to environmental tobacco smoke in situations of involuntary crowding, such as outdoor pedestrian malls and public transport waiting points (eg. bus stops, taxi ranks and ferry wharves).

Amendment of Workers’ Compensation and Rehabilitation Act 2003

The Government made a 2004 election commitment to amend relevant legislation to allow for the full implementation of the nurse practitioner role.

Nurse practitioners will often be the first point of contact for patients with work related injuries who present at primary health care facilities and emergency departments for initial diagnosis and treatment. However, while nurse practitioners are able to provide the necessary health care for certain non-complex, work-related injuries; referral of these patients to a medical officer is often required for the sole purpose of obtaining a workers' compensation medical certificate.

The amendment to the *Workers' Compensation and Rehabilitation Act 2003* will enable nurse practitioners to issue a workers compensation medical certificate for minor injuries at patients' initial attendance. This will reduce the demands on the health workforce, by better utilising medical resources to improve health service delivery, particularly in rural and remote areas.

Achievement of the Objectives

The *Health Quality and Complaints Commission Act 2006* is to be amended to require the HQCC to prepare and publish, for comment, an impact assessment statement when making or amending standards under the Act.

The *Health Services Act 1991* is to be amended to allow confidential information to be disclosed to:

- a person where it is necessary for the protection, safety or wellbeing of a child;
- the Director-General where it achieves the objects of the *Health Services Act 1991*;
- lawyers acting for the State.

The *Medical Practitioners Registration Act 2001* is to be amended to require medical practitioners to give written notice to the Medical Board if they become aware, or reasonably suspect, that another medical practitioner has engaged in 'reportable misconduct'.

The types of conduct that will constitute 'reportable misconduct' will be consistent with the types of conduct that will be required to be reported by health professionals under the mandatory reporting model proposed under the NRAS (see page 3 of these Notes).

The *Public Health Act 2005* is to be amended to clarify provisions relating to the release of health information for research purposes and to enable contact tracing officers to provide information to a ‘relevant person’.

The *Physiotherapists Registration Act 2001* is to be amended to create a number of new classes of special purpose registration that will increase the scope for recruitment of overseas qualified physiotherapists to practise in Queensland. The new classes will enable overseas qualified physiotherapists to practise in Queensland:

- while they prepare for the written and clinical examination conducted by the Australian Physiotherapy Council (APC);
- while they prepare for the clinical examination conducted by the APC;
- in a specialty area where the physiotherapist has successfully completed a postgraduate specialty course in the clinical practice of physiotherapy at a Queensland university;
- under a working holiday visa (subclass 417) issued under the *Migration Act 1958* (Cth).

As a condition of their special purpose registration, overseas qualified registrants will be required to work under the supervision of another physiotherapist as detailed in the registrant’s supervised practice plan approved by the Physiotherapists Registration Board of Queensland.

However, overseas qualified physiotherapists will only be able to practice in Queensland as a special purpose registrant for a limited period of time. For example, a person granted registration to prepare for the written and clinical examination conducted by the APC, which would make them eligible for general registration in Queensland, may be granted special purpose registration for a maximum period of three years.

The *Tobacco and Other Smoking Products Act 1998* is to be amended to:

- ban smoking in cars with children under 16 years present;
- enable local governments to regulate smoking in outdoor pedestrian malls and at public transport waiting points;
- extend the meaning of ‘smoking product’ to include smoking related products, such as cigarette rollers, tubes and filters.

Miscellaneous amendments are made to the 13 Health Practitioner Registration Acts, the *Health Practitioners (Professional Standards) Act*

1999 and the *Nursing Act 1992* to address deficiencies and inconsistencies in those Acts and to help their objectives to be more effectively achieved.

The *Workers' Compensation and Rehabilitation Act 2003* is to be amended to enable nurse practitioners to issue workers' compensation medical certificates for minor injuries at patients' initial attendance.

Alternative Ways of Achieving Policy Objectives

Alternative ways of achieving the policy objectives were considered. However, each of the policy objectives can be achieved most effectively through legislation.

Estimated Cost for Government Implementation

Implementation costs associated with most of the amendments will be minor and will be sourced from existing operational budgets.

The costs of developing and implementing a statewide education campaign to ban smoking in cars with children is estimated to be \$200,000. These costs will be sourced from the existing budget of the Alcohol, Tobacco and Other Drug Branch of Queensland Health. Enforcement costs by the Queensland Police Service will be part of routine traffic monitoring by police officers.

Consistency with Fundamental Legislative Principles

A number of issues concerning justified breaches of Fundamental Legislative Principles (FLP) arise in the Bill.

Providing information for the protection, safety or wellbeing of a child

The proposed amendment to the duty of confidentiality in the *Health Services Act 1991* (HSA) raises the FLP of whether legislation has sufficient regard to individual rights and liberties [section 4(2) *Legislative Standards Act 1992*]. The amendment will authorise health professionals to disclose information for the purposes of the protection, safety or wellbeing of a child. The underlying rationale is that the protection and care needs of children take precedence over the protection of an individual's privacy.

Queensland Health's guidelines to Part 7 of the HSA will be updated and will require a health professional to note the reasons for the disclosure on the patient's file. Queensland Health medico-legal officers will be available

to provide advice and assistance. It is considered that the proposed amendments appropriately balance patient confidentiality with the protection needs of children.

Providing information for research purposes

The amendments to the research provisions in the *Public Health Act 2005* may raise an FLP, as they will be retrospective in operation [section 4(3)(g) *Legislative Standards Act 1992*].

However, as the amendments are clarifying the original intent of the legislation it is not expected that the retrospective application of these amendments will cause disadvantage. The amendments will clarify that:

- the chief executive is not required to consult with each individual before authorising the release of information for research;
- the research provisions are to work alongside, not over-ride, other provisions in the health portfolio legislation that enable information to be disclosed (e.g. HSA, *Private Health Facilities Act 1999* and other parts of the PHA).

The research provisions of the *Public Health Act 1992* require that a person must not use the information for a purpose inconsistent with the research for which the information is provided. Further, a person given health information held by the department under the research provisions must not disclose information in a way that identifies a person, unless with the written consent of the person to whom the information relates. These provisions provide sufficient safeguards to ensure patient confidentiality.

Nurse practitioners protocol

The proposed amendments to the *Workers Compensation and Rehabilitation Act 2003* require a nurse practitioner to issue a workers compensation medical certificate in accordance with a protocol. This may breach an FLP as it authorises the amendment of an Act by another Act [section 4(4)(c) *Legislative Standards Act 1992*], also known as a Henry VIII clause. The amendment enables an Act to be impliedly amended by executive action (via the protocol).

The protocol will function as a safeguard by guiding nurse practitioners in their new role and facilitating implementation of this initiative. It is proposed the protocol will set any desirable restrictions, policies and procedures for nurse practitioners to issue workers compensation medical certificates. For example, the protocol may set training requirements for nurse practitioners to complete prior to issuing certificates. A working

group, comprising key stakeholders including Q-COMP and Workcover Queensland, will develop the protocol.

The amendments are also consistent with the approach taken in the *Health (Drugs and Poisons) Regulation 1996* to give nurse practitioners prescribing rights, and the *Radiation Safety Regulation 1999* to enable nurse practitioners to request x-rays. Both Regulations require that nurse practitioners undertake these roles in accordance with a protocol.

Consultation

Community

The amendments to ban smoking in cars with children under the age of 16 were supported by 89% of the members of the public, who made submissions to the Queensland Health review of tobacco legislation in 2007. There was a high level of support from the community to give local government the power to ban smoking in pedestrian malls (78%) and at public transport waiting points (81%). A total of 588 submissions were received from members of the general public. This includes web-based and written feedback. The ban on smoking in cars was also supported by the Heart Foundation, the Cancer Council Queensland, Australian Medical Association (Queensland Branch) (AMAQ), Action on Smoking and Health Australia, and Sunshine Coast Tobacco Action Group.

The Commission for Children, Young People and Child Guardian has been consulted and supports the proposed tobacco amendments and the amendments to enable the disclosure of information for the protection, safety and wellbeing of a child.

The Health Quality and Complaints Commission was consulted on, and supports, the amendments to the *Health Quality and Complaints Commission Act 2006*.

The Office of the Health Practitioner Registration Boards and the Office of the Medical Board were consulted on, and support, the amendments to the 13 Health Practitioner Registration Acts and the *Health Practitioners (Professional Standards) Act 1999*.

The Physiotherapists Board of Queensland was consulted on, and supports the amendments to the *Physiotherapists Registration Act 2001* that create new classes of special purpose registration.

The Queensland Nursing Council was consulted on, and supports, the amendments to the *Nursing Act 1992*.

The Medical Board of Queensland, the AMAQ and all Specialist Colleges were consulted on the amendments to the *Medical Practitioners Registration Act 2001* regarding reporting of mandatory misconduct by doctors.

The Medical Board does not oppose the amendments but expressed concern the amendments could deter impaired doctors from seeking help from their treating doctor for fear of being reported, and may have an adverse impact on cooperative schemes such as the open disclosure process. The AMAQ supports mandatory reporting for the most serious misconduct but has expressed some reservations about models of mandatory reporting. The AMAQ is strongly supportive of a state model that is consistent with any mandatory reporting model adopted by the National Registration and Accreditation Scheme for Health Professions currently being developed.

The AMAQ is opposed to the expansion of the role of nurse practitioners, including the proposed amendment to enable nurse practitioners to issue workers compensation medical certificates. However, the proposed amendments give effect to a 2004 election commitment to remove any legislative impediments to enable nurse practitioners to function in stand-alone roles. The majority of stakeholders consulted strongly support the proposed amendments.

Government

The following Government Departments were consulted during the development of the Bill and were supportive of introduction:

- Department of Child Safety
- Department of Employment and Industrial Relations
- Department of Education, Training and the Arts
- Department of Justice and Attorney-General
- Department of Local Government, Sport and Recreation
- Department of the Premier and Cabinet
- Queensland Police Service
- Queensland Transport
- Queensland Treasury.

Notes on Provisions

Part 1 Preliminary

Clause 1 states that this Act may be cited as the Health and Other Legislation Amendment Act 2009.

Clause 2 provides that sections 163 and 165(2) are taken to have commenced on 16 January 2006. These provisions relate to the research provisions of the *Public Health Act 2005* and clarify that the provisions take effect (as intended) from the same date of the commencement of the original provisions (16 January 2006).

Parts 19 (other than sections 163 and 165(2) and 22 commence on assent, and the remainder of the Act commences on a day fixed by proclamation.

Part 2 Amendment of Chiropractors Registration Act 2001

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

Clause 4 amends section 64 to allow provisional general registration to be granted for up to 12 months instead of the existing maximum period of 6 months.

Clause 5 amends section 82 to clarify that it is a ground for cancellation of general registration if a registrant ceases to have, or does not have the qualifications, for general registration. The amendment also updates the existing ground for cancellation based on giving false information to the board, to ensure consistency with the new section 210.

Clause 6 amends section 96 to specify that a failure by the board to make a decision on an application to review conditions is taken to be a decision to confirm the conditions, instead of a decision to remove them.

Clause 7 amends section 97 to specify that a failure by the board to make a decision on a review of conditions agreed to between the board and the registrant is taken to be a decision to confirm the conditions, instead of a decision to remove them.

Clause 8 amends section 99 to remove references to a deemed decision under section 96 or section 97 to remove conditions.

Clause 9 amends section 113 to clarify that it is a ground for cancellation of special purpose registration if a registrant ceases to have, or does not have the qualifications, for special purpose registration. The amendment also updates the existing ground for cancellation based on giving false information to the board, to ensure consistency with new section 210.

Clause 10 replaces section 210 with a new section that contains various offences in relation to materially false information or documents.

Section 210(1) explains when information or a document is taken to be materially false.

Section 210(2) makes it an offence for a person to give the board information or a document that is materially false to the person's knowledge. Subsection (3) makes it an offence to contravene subsection (2) in connection with an application for registration by the person or someone else.

Section 210(4) applies to registrants and other persons who give information or a document to the board and become aware that the information or document was materially false when it was given or has since become false. Such persons are required to convey the relevant facts to the board as soon as reasonably practicable after they become aware of it.

Section 210(5) makes it an offence for a registrant to act or practise as a registrant, or continue to do so, if the registrant contravenes section 210(2), or was knowingly concerned in, or a party to a contravention of section 210(2), or fails to convey the relevant facts to the board as required under section 210(4)(a).

Section 210(6) clarifies the meaning of certain terms used in the section.

Part 3 **Amendment of Dental Practitioners Registration Act 2001**

Clause 11 specifies that this Part amends the *Dental Practitioners Registration Act 2001*.

Clause 12 amends section 64 to allow provisional general registration to be granted for up to 12 months instead of the existing maximum period of 6 months.

Clause 13 amends section 82 to clarify that it is a ground for cancellation of general registration if a registrant ceases to have, or does not have the qualifications, for general registration. The amendment also updates the existing ground for cancellation based on giving false information to the board, to ensure consistency with new section 232.

Clause 14 amends section 96 to specify that a failure by the board to make a decision on an application to review conditions is taken to be a decision to confirm the conditions, instead of a decision to remove them.

Clause 15 amends section 97 to specify that a failure by the board to make a decision on a review of conditions agreed to between the board and the registrant is taken to be a decision to confirm the conditions, instead of a decision to remove them.

Clause 16 amends section 99 to remove references to a deemed decision under section 96 or section 97 to remove conditions.

Clause 17 amends section 132 to clarify that it is a ground for cancellation of special purpose registration if a registrant ceases to have, or does not have the qualifications, for special purpose registration. The amendment also updates the existing ground for cancellation based on giving false information to the board, to ensure consistency with new section 232.

Clause 18 replaces section 232 with a new section, which contains various offences in relation to materially false information or documents. The offences are the same as in section 210 of the *Chiropractors Registration Act 2001* as outlined in the notes for clause 10 of the Bill.

Part 4 **Amendment of Dental Technicians and Dental Prosthetists Registration Act 2001**

Clause 19 specifies that this Part amends the *Dental Practitioners Registration Act 2001*.

Clause 20 amends section 64 to allow provisional general registration to be granted for up to 12 months instead of the existing maximum period of 6 months.

Clause 21 amends section 83 to clarify that it is a ground for cancellation of general registration if a registrant ceases to have, or does not have the qualifications, for general registration. The amendment also updates the existing ground for cancellation based on giving false information to the board, to ensure consistency with new section 214.

Clause 22 amends section 98 to specify that a failure by the board to make a decision on an application to review conditions is taken to be a decision to confirm the conditions, instead of a decision to remove them.

Clause 23 amends section 99 to specify that a failure by the board to make a decision on a review of conditions agreed to between the board and the registrant is taken to be a decision to confirm the conditions, instead of a decision to remove them.

Clause 24 amends section 101 to remove references to a deemed decision under section 98 or section 99 to remove conditions.

Clause 25 amends section 115 to clarify that it is a ground for cancellation of special purpose registration if a registrant ceases to have, or does not have the qualifications, for special purpose registration. The amendment also updates the existing ground for cancellation based on giving false information to the board, to ensure consistency with new section 214.

Clause 26 replaces section 214 with a new section, which contains various offences in relation to materially false information or documents. The offences are the same as in section 210 of the *Chiropractors Registration Act 2001* as outlined in the notes for clause 10 of the Bill.

Part 5 **Amendment of Health Practitioners (Professional Standards) Act 1999**

Clause 27 specifies that this Part amends the *Health Practitioners (Professional Standards) Act 1999*.

Clause 28 amends section 12(1) to allow a board to delegate its power to:

- make a decision to enter into an undertaking with a registrant, except in relation to disciplinary proceedings;
- order a registrant to attend a further health assessment.

The amendments to section 12(2) and (3) allow the above powers to be delegated to any of the existing category of persons mentioned in those provisions, or to a committee of a board established under the relevant health practitioner registration Act containing at least 1 member of the board.

Clause 29 inserts a new section 40A that allows the Minister to make urgent temporary appointments, for a period not more than 6 months, of persons as members of the professional panel of assessors. The grounds for urgency that must be satisfied are set out in section 40A(1)(a) and (b). Section 40A(3) clarifies that only individuals who are qualified under section 40(4) for appointment by the Governor in Council may be appointed by the Minister under section 40A.

Clause 30 amends section 42(4) to clarify that the provision is referring to the appointment of assessors by the Governor in Council under section 40(1)(b).

Clause 31 amends section 55 to allow notification of a decision to reject a complaint to be given as soon as practicable after making the decision, instead of the existing 14 days timeframe.

Clause 32 amends section 63 to clarify that a board may investigate a matter involving a registrant, whether or not the board has received a complaint about the matter.

Clause 33 amends section 134 so that the section applies when a board is conducting disciplinary proceedings in any form, whether by hearing or by written correspondence.

Clause 34 amends section 135 so that the section applies when a disciplinary committee is conducting disciplinary proceedings in any form, whether by hearing or by written correspondence.

Clause 35 amends section 164 to allow a board to make a decision whether a ground for disciplinary action exists, as soon as practicable after completion of a disciplinary hearing, instead of the existing 14 days timeframe.

Clause 36 amends section 168 to specify when decisions of a board or disciplinary committee take effect. This is consistent with the approach for Tribunal decisions under section 245.

Clause 37 amends section 205 to specify when decisions of a professional conduct review panel take effect. This is consistent with the approach for Tribunal decisions under section 245.

Clause 38 amends section 255 to enable costs orders made by the Tribunal to be filed in the District Court and enforced accordingly.

Clause 39 amends section 278 to clarify that, if a board has decided to enter into an undertaking under section 276(2), the undertaking takes effect on the date it is approved by the board.

Clause 40 amends section 306 to specify that a further health assessment conducted in response to a request under section 306(2) must be conducted at the registrant's expense.

Clause 41 amends section 377 to clarify that a board may decide not to continue an investigation if the board becomes aware it is investigating the wrong registrant.

Clause 42 amends section 392 to allow confidential information obtained under the Act to be disclosed to the Queensland Nursing Council and the Nursing Tribunal, if the disclosure is necessary to allow those bodies to perform their functions under the *Nursing Act 1992*.

Clause 43 inserts definitions of 'Nursing Tribunal' and 'Queensland Nursing Council'.

Part 6 **Amendment of Health Quality and Complaints Commission Act 2006**

Clause 44 specifies that this Part amends the *Health Quality and Complaints Commission Act 2006*.

Clause 45 omits section 22(5). The provision is no longer necessary as the consultation obligation about the making of standards is addressed under new section 22A inserted by clause 46.

Clause 46 inserts a new section 22A that specifies the process the Health Quality and Complaints Commission (the Commission) must adopt if it intends making or amending a standard under section 22(1), other than an amendment of a minor nature.

Under the new section, the Commission must prepare an impact assessment statement (IAS) about the standard or amended standard which must include the name and subject matter of the standard or amended standard as well as a brief statement of any benefits and costs to a provider or a health services user in the provider complying with the standard or amended standard. If the compliance costs are likely to be appreciable, the IAS must also quantify the benefits and the costs to the extent that this is practicable, compare the benefits with the costs and assess whether the benefits exceed the costs.

The Commission must publish on its website, for at least 14 days, a copy of the IAS together with a notice inviting comment on the IAS and stating how and when comment may be made.

In deciding whether to make or amend a standard, the Commission must have regard to the IAS and any comments made about it.

The Commission must not make or amend a standard until at least 30 days after the Commission first publishes a copy of the IAS and notice. However, the Minister may approve a lesser period on the basis that this will help protect the health and well being of users of the health service.

A failure to comply with the above requirements does not affect the validity of a standard or an amendment.

Part 7 **Amendment of Health Services Act 1991**

Clause 47 specifies that this Part amends the *Health Services Act 1991*.

Clause 48 inserts section 62IA, enabling confidential information to be disclosed by a designated person, if the disclosure is to a person for the protection, safety or wellbeing of a child. While it is always preferable to obtain the patient's consent, (under section 62C of the *Health Services Act 1991*), before the confidential information is disclosed, obtaining consent may not always be possible. The provision enables the designated person to provide the information where it is necessary for the protection, safety or wellbeing of a child, even in circumstances where a patient refuses to consent to the disclosure or it is not possible to obtain consent.

A scenario envisaged by this provision, could include a situation where a patient is injured and receives treatment from a health service. As the patient lapses in and out of consciousness, they mention they have a child that needs picking up from school. Section 62IA(a) would enable the designated person to disclose to the school that the parent had been injured, which would then enable appropriate arrangements to be made for the child.

A further scenario may include providing information to grandparents who share the care of a child in a situation where the parent has a mental illness and has been receiving treatment for their mental illness in a health service facility. Section 62IA(a) would enable the designated person to discuss with the grandparents certain information where there were factors involved in the person's mental illness that may require disclosure for the protection, safety or wellbeing of the child. For example, the new provision would make it clear that a designated person could discuss the parent's medication requirements, future appointment times and possible warning signs that would require further intervention or notification to the health service.

Section 62IA(b) is necessary to ensure that where a child is receiving a health service and is of sufficient age or maturity to make decisions about their health care, section 62IA(a) is not used to disclose information inappropriately. This provision clarifies that the confidential information being released in s62IA(a) relates to someone other than the child mentioned in paragraph s62IA(a).

However if a child presented to a health service facility and confidential information about this child (Child 1) needed to be disclosed for the protection, safety or wellbeing of a second child (Child 2) the information about Child 1 could be released, even if Child 1 refused to consent to the release of the information.

Clause 49 inserts a new section 62KA that enables information to be disclosed to the chief executive if the disclosure is for achieving the objects of section 4 of the *Health Services Act 1991*. The amendments overcome the current situation where a designated person is technically in breach of their duty of confidentiality if they provide information to the chief executive. As the chief executive is also a designated person and is bound by the duty of confidentiality in section 62A(1) of the *Health Services Act 1991*, section 62KA(2) enables the chief executive to disclose information if the disclosure is for a function of the chief executive under section 7 of the *Health Services Act 1991*.

The amendment will enable the chief executive to provide information where it is necessary for the performance of these functions. In addition, the existing provision in section 62Q of the *Health Services Act 1991* will enable information to be provided that is necessary or incidental to a disclosure made by the chief executive. This existing provision enables support staff to provide the information from the chief executive.

Clause 50 inserts section 62PA to clarify that the chief executive can disclose confidential information if it is to a lawyer in relation to a matter for which the lawyer is representing the State.

The circumstances may include release of information about a person:

- who is not a party to the litigation, but may be relevant to the matter in dispute, and advice is needed as to whether the information would be admissible evidence and should be relied upon in the litigation;
- where the information may relate to a different incident or illness, but a causal connection is suspected and advice is needed as to whether the information should be relied upon (i.e. a person sues QH for malpractice arising from a fracture, however the person's mental health records are assessed to determine whether they may be relevant to the matter).

To ensure the effective operation of this provision, it is anticipated that the chief executive will delegate this power to appropriately qualified people

such as medical records staff, Health Information Managers, Freedom of Information Officers.

Part 8 **Amendment of Medical Practitioners Registration Act 2001**

Clause 51 specifies that this Part amends the *Medical Practitioners Registration Act 2001*.

Clause 52 amends section 66 to allow provisional general registration to be granted for up to 12 months instead of the existing maximum period of 6 months.

Clause 53 amends section 84 to clarify that it is a ground for cancellation of general registration if a registrant ceases to have, or does not have the qualifications, for general registration.

Clause 54 amends section 92 to allow the board to ask the internship nominee for an internship report, or the supervisor for a supervised practice report, about a registrant's progress during the internship or program.

Clause 55 amends section 96 to provide that a failure by the board to make a decision, after reviewing an internship report or supervised practice report, is taken to be a decision to confirm the probationary conditions, instead of a decision to remove them.

Clause 56 amends section 97 to remove references to a deemed decision under section 96 to remove probationary conditions.

Clause 57 amends section 106 to specify that a failure by the board to make a decision on an application to review conditions is taken to be a decision to confirm the conditions, instead of a decision to remove them.

Clause 58 amends section 107 to specify that a failure by the board to make a decision on a review of conditions agreed to between the board and the registrant is taken to be a decision to confirm the conditions, instead of a decision to remove them.

Clause 59 amends section 109 to remove references to a deemed decision under section 106 or section 107 to remove conditions.

Clause 60 amends section 149 to clarify that it is a ground for cancellation of special purpose registration if a registrant ceases to have, or does not have the qualifications, for registration.

Clause 61 inserts a new part 4, division 2.

Section 166 requires a registrant to give written notice to the Medical Board if they become aware, or reasonably suspect, that another registrant has engaged in 'reportable misconduct' (as defined in section 166(4)).

Section 166(2) specifies the information that a notice must contain and notes that a failure to comply with the obligation to notify the Board will be a ground for disciplinary action against the registrant. A notice given will be regarded as a complaint under the *Health Practitioners (Professional Standards) Act 1999*. Therefore, notifying doctors will have the protections against legal liability and reprisals conferred under Division 4 of Part 12 of that Act.

Clause 62 amends section 173 to ensure that the protection against reprisals under the Act, also apply to registrants giving notice under section 166.

Clause 63 amends the definition of 'program' in section 178 to expand its meaning, when used in Part 5 of the Act, to include part of an intern training program or intern training secondment program.

Clause 64 amends section 182(3) to require an information notice to be given when the board decides to accredit only part of the program applied for.

Clause 65 inserts a provision in section 189 to require an information notice to be given when the board decides to renew only part of the accreditation applied for. The provision also gives the board the option of endorsing the existing accreditation certificate or cancelling the certificate and issuing a new certificate.

Clause 66 inserts a provision in section 195 to specify that, if the board cancels part of the accreditation for a program, it must issue another accreditation certificate for any part of the accreditation that is not cancelled.

Part 9 **Amendment of Medical Radiation Technologists Act 2001**

Clause 67 specifies that this Part amends the *Medical Radiation Registration Act 2001*.

Clause 68 amends section 68 to allow provisional general registration to be granted for up to 12 months instead of the existing maximum period of 6 months.

Clause 69 amends section 86 to clarify that it is a ground for cancellation of general registration if a registrant ceases to have, or does not have the qualifications, for general registration. The amendment also updates the existing ground for cancellation based on giving false information to the board, to ensure consistency with new section 226.

Clause 70 amends section 94 to allow the board to ask the supervisor for a supervised practice program report, about a registrant's progress during the program.

Clause 71 amends section 99 to provide that a failure by the board to make a decision is taken to be a decision to confirm the probationary conditions, instead of a decision to remove them.

Clause 72 amends section 101 to remove references to a deemed decision under section 99 to remove probationary conditions.

Clause 73 amends section 110 to specify that a failure by the board to make a decision on an application to review conditions is taken to be a decision to confirm the conditions, instead of a decision to remove them.

Clause 74 amends section 111 to specify that a failure by the board to make a decision on a review of conditions agreed to between the board and the registrant is taken to be a decision to confirm the conditions, instead of a decision to remove them.

Clause 75 amends section 113 to remove references to a deemed decision under section 110 or section 111 to remove conditions.

Clause 76 amends section 128 to clarify that it is a ground for cancellation of special purpose registration if a registrant ceases to have, or does not have the qualifications, for special purpose registration. The amendment also updates the existing ground for cancellation based on giving false information to the board, to ensure consistency with new section 226.

Clause 77 replaces section 226 with a new section that contains various offences in relation to materially false information or documents. The offences are the same as in section 210 of the *Chiropractors Registration Act 2001* as outlined in the notes for clause 10 of the Bill.

Part 10 Amendment of Nursing Act 1992

Clause 78 specifies that this Part amends the *Nursing Act 1992*.

Clause 79 amends section 4 to omit the definitions of ‘health practitioner registration act’ and ‘health professional’. Replacement definitions are relocated to section 4 by clause 81.

Clause 80 amends section 77B to relocate the definitions of ‘health practitioner registration act’ and ‘health professional’ to section 4.

Clause 81 amends section 96(3) to allow the chairperson of the Nursing Tribunal to give directions about discovery and inspection of documents for the purpose of proceedings before the Tribunal.

Clause 82 inserts a new Subdivision 1 in Division 2 of Part 7 (comprising new sections 127A-127D).

Section 127A allows an inspector, for conducting an investigation, to give a person a written notice to give information or to attend before the inspector to answer questions or produce a thing.

Section 127B(1) and (2) create offences in relation to a person’s failure to comply with a notice given under section 127A.

Section 127C specifies that, for section 127B, it is a reasonable excuse for an individual to fail to give stated information, answer a question or to produce a stated thing, if it might tend to incriminate them.

Section 127D sets out certain powers that an inspector has in relation to a thing produced to the inspector, under section 127A or otherwise. These powers include the power to inspect, photograph, make a copy of, take an extract from or keep the thing.

A new heading for Subdivision 2 is also inserted.

Clause 83 amends section 139 to insert a new subsection (2B) which provides an additional exception to the confidentiality obligation in section

139(2). The new provision allows protected documents or protected documents about a health professional to be disclosed to the health professional's board if necessary for the board to perform its functions.

Part 11 Amendment of Occupational Therapists Registration Act 2001

Clause 84 specifies that this Part amends the *Occupational Therapists Registration Act 2001*.

Clause 85 amends section 64 to allow provisional general registration to be granted for up to 12 months instead of the existing maximum period of 6 months.

Clause 86 amends section 82 to clarify that it is a ground for cancellation of general registration if a registrant ceases to have, or does not have the qualifications, for general registration.

Clause 87 amends section 96 to specify that a failure by the board to make a decision on an application to review conditions is taken to be a decision to confirm the conditions, instead of a decision to remove them.

Clause 88 amends section 97 to specify that a failure by the board to make a decision on a review of conditions agreed to between the board and the registrant is taken to be a decision to confirm the conditions, instead of a decision to remove them.

Clause 89 amends section 99 to remove references to a deemed decision under section 96 or section 97 to remove conditions.

Clause 90 amends section 113 to clarify that it is a ground for cancellation of special purpose registration if a registrant ceases to have, or does not have the qualifications, for special purpose registration. The amendment also updates the existing ground for cancellation based on giving false information to the board, to ensure consistency with new section 210.

Clause 91 replaces section 210 with a new section, which contains various offences in relation to materially false information or documents. The offences are the same as in section 210 of the *Chiropractors Registration Act 2001* as outlined in the notes for clause 10 of the Bill.

Part 12 **Amendment of Optometrists Registration Act 2001**

Clause 92 specifies that this Part amends the *Optometrists Registration Act 2001*.

Clause 93 amends section 64 to allow provisional general registration to be granted for up to 12 months instead of the existing maximum period of 6 months.

Clause 94 amends section 82 to clarify that it is a ground for cancellation of general registration if a registrant ceases to have, or does not have the qualifications, for general registration.

Clause 95 amends section 96 to specify that a failure by the board to make a decision on an application to review conditions is taken to be a decision to confirm the conditions, instead of a decision to remove them.

Clause 96 amends section 97 to specify that a failure by the board to make a decision on a review of conditions agreed to between the board and the registrant is taken to be a decision to confirm the conditions, instead of a decision to remove them.

Clause 97 amends section 99 to remove references to a deemed decision under section 96 or section 97 to remove conditions.

Clause 98 amends section 113 to clarify that it is a ground for cancellation of special purpose registration if a registrant ceases to have, or does not have the qualifications, for special purpose registration. The amendment also updates the existing ground for cancellation based on giving false information to the board, to ensure consistency with new section 207.

Clause 99 replaces section 207 with a new section that contains various offences in relation to materially false information or documents. The offences are the same as in section 210 of the *Chiropractors Registration Act 2001* as outlined in the notes for clause 10 of the Bill.

Part 13 **Amendment of Osteopaths Registration Act 2001**

Clause 100 specifies that this Part amends the *Osteopaths Registration Act 2001*.

Clause 101 amends section 64 to allow provisional general registration to be granted for up to 12 months instead of the existing maximum period of 6 months.

Clause 102 amends section 82 to clarify that it is a ground for cancellation of general registration if a registrant ceases to have, or does not have the qualifications, for general registration. The amendment also updates the existing ground for cancellation based on giving false information to the board, to ensure consistency with new section 210.

Clause 103 amends section 96 to specify that a failure by the board to make a decision on an application to review conditions is taken to be a decision to confirm the conditions, instead of a decision to remove them.

Clause 104 amends section 97 to specify that a failure by the board to make a decision on a review of conditions agreed to between the board and the registrant is taken to be a decision to confirm the conditions, instead of a decision to remove them.

Clause 105 amends section 99 to remove references to a deemed decision under section 96 or section 97 to remove conditions.

Clause 106 amends section 113 to clarify that it is a ground for cancellation of special purpose registration if a registrant ceases to have, or does not have the qualifications, for special purpose registration. The amendment also updates the existing ground for cancellation based on giving false information to the board, to ensure consistency with new section 210.

Clause 107 replaces section 210 with a new section that contains various offences in relation to materially false information or documents. The offences are the same as in section 210 of the *Chiropractors Registration Act 2001* as outlined in the notes for clause 10 of the Bill.

Part 14 **Amendment of Pharmacists Registration Act 2001**

Clause 108 specifies that this Part amends the *Pharmacists Registration Act 2001*.

Clause 109 amends section 68 to allow provisional general registration to be granted for up to 12 months instead of the existing maximum period of 6 months.

Clause 110 amends section 86 to clarify that it is a ground for cancellation of general registration if a registrant ceases to have, or does not have the qualifications for, general registration. The amendment also updates the existing ground for cancellation based on giving false information to the board, to ensure consistency with new section 212.

Clause 111 amends section 100 to specify that a failure by the board to make a decision on an application to review conditions is taken to be a decision to confirm the conditions, instead of a decision to remove them.

Clause 112 amends section 101 to specify that a failure by the board to make a decision on a review of conditions agreed to between the board and the registrant is taken to be a decision to confirm the conditions, instead of a decision to remove them.

Clause 113 amends section 103 to remove references to a deemed decision under section 100 or section 101 to remove conditions.

Clause 114 amends section 117 to clarify that it is a ground for cancellation of special purpose registration if a registrant ceases to have, or does not have the qualifications for, special purpose registration. The amendment also updates the existing ground for cancellation based on giving false information to the board, to ensure consistency with new section 212.

Clause 115 replaces section 212 with a new section that contains various offences in relation to materially false information or documents. The offences are the same as in section 210 of the *Chiropractors Registration Act 2001* as outlined in the notes for clause 10 of the Bill.

Part 15 **Amendment of Physiotherapists Registration Act 2001**

Clause 116 specifies that this Part amends the *Physiotherapists Registration Act 2001*.

Clause 117 amends section 64 to allow provisional general registration to be granted for up to 12 months instead of the existing maximum period of 6 months.

Clause 118 amends section 82 to clarify that it is a ground for cancellation of general registration if a registrant ceases to have, or does not have the qualifications, for general registration. The amendment also updates the existing ground for cancellation based on giving false information to the board, to ensure consistency with new section 210.

Clause 119 amends section 96 to specify that a failure by the board to make a decision on an application to review conditions is taken to be a decision to confirm the conditions, instead of a decision to remove them.

Clause 120 amends section 97 to specify that a failure by the board to make a decision on a review of conditions agreed to between the board and the registrant is taken to be a decision to confirm the conditions, instead of a decision to remove them.

Clause 121 amends section 99 to remove references to a deemed decision under section 96 or section 97 to remove conditions.

Clause 122 amends section 100 to include a new subsection (2) to set out four new purposes for which a person may obtain special purpose registration. Namely, to enable specified overseas qualified physiotherapists to practise under supervision approved by the board in order to:

- prepare for the written and clinical examination conducted by the Australian Physiotherapy Council (APC), which if successfully completed would make the physiotherapist eligible for general registration;
- prepare for the clinical examination conducted by the APC, which if successfully completed would make the physiotherapist eligible for general registration;

- to be able to work in their specialty area in Queensland, provided the physiotherapist has successfully completed a postgraduate specialty course in the clinical practice of physiotherapy at a Queensland university;
- to be able to work in Queensland under a working holiday visa (subclass 417) which has been issued under the *Migration Act 1958* (Cth).

Clause 123 replaces section 102, to set out the criteria that the board must consider when deciding whether an applicant is eligible for special purpose registration under section 100(1). That is, for the limited purpose of postgraduate study or training; teaching; research and/or giving clinical demonstrations in the profession.

Clause 124 inserts a new section 102A to set out the criteria that the board must consider deciding whether an applicant is eligible for special purpose registration under section 100(2)(a), (b), (c) or (d).

Clause 125 amends section 104, to set out the matters the board may take into account when considering whether an applicant is a suitable person to be a special purpose registrant under section 100(2)(a), (b), (c) or (d).

Clause 126 inserts new sections 106A, 106B and 106C.

Section 106A imposes standard conditions on the four new classes of special purpose registration under section 100(2).

Persons registered to undertake a special activity specified in section 100(2) must practise only in accordance with their supervised practice plan that was submitted with their application for the registration or as approved by the board under new section 106B.

In addition, this section specifies that registrants under:

- section 100(2)(a) must not continue to practice in the profession for more than 3 continuous years under the special purpose registration without obtaining general registration
- section 100(2)(b) must not continue to practice in the profession for more than 2 continuous years under the special purpose registration without obtaining general registration
- section 100(2)(c) must only practice the profession in the area of the profession to which the registration relates; and may only continue to practice in the profession for more than 3 continuous years under this category of special purpose registration

- section 100(2)(d) must not continue to practice in the profession, under their working holiday visa, in a particular place of work for more than 6 months.

Section 106B makes it a standard condition that a special purpose registrant under section 100(2) must obtain the approval of the Board, if the registrant intends to commence in a position that will require them to practise the profession under a supervised practice plan that is different to the plan under which they are currently practising the profession.

Section 106C provides that if a special purpose registrant is registered on the condition that they carry out their practice under supervision, then the Board may ask a registrant's supervisor to give information to the Board about the registrant's supervised practice.

Definitions for the terms *proposed supervisor* and *supervised practice plan* have been included in the dictionary. The term "proposed supervisor" is used in the definition of "supervised practice plan", which is defined to mean a plan prepared, in the approved form, by an applicant for special purpose registration in consultation with the applicant's proposed supervisor.

Clause 127 replaces section 107A to clarify that it is not possible to renew a person's special purpose registration under section 100(2)(d). In order to be eligible for this class of special purpose registration, a person must hold a current working holiday visa (subclass 417) granted under the *Migration Act 1958* (Cth). Such visas are only granted for a maximum period of twelve months. Consequently, it is not appropriate for the legislation to provide for the renewal of this class of special purpose registration.

Clause 128 amends section 109, to set out the matters the board must consider when deciding to renew, or refuse to renew, a person's special purpose registration under section 100(2)(a) or (b). Namely, that the board is satisfied that the registrant has made reasonable progress towards being qualified for general registration.

Clause 129 amends section 113 to clarify that it is a ground for cancellation of special purpose registration if a registrant ceases to have, or does not have the qualifications, for special purpose registration. The amendment also updates the existing ground for cancellation based on giving false information to the board, to ensure consistency with new section 210.

Clause 130 inserts a new section 209A to protect supervisors who, honestly and on reasonable grounds, give information about a special purpose

registrant to the Board. The section ensures that the supervisor is not liable civilly, criminally or under an administrative process for giving this information. The purpose of this provision is to ensure that supervisors provide full and frank reports and information about the special purpose registrants' supervised practice

Clause 131 replaces section 210 with a new section, which contains various offences in relation to materially false information or documents. The offences are the same as in section 210 of the *Chiropractors Registration Act 2001* as outlined in the notes for clause 10 of the Bill.

Clause 132 amends the division heading for part 10, division 2 as a consequence of the transitional arrangements to be inserted by clause 143.

Clause 133 inserts a new division 3, in part 10, comprising sections 238 and 239, which set out the transitional arrangements that are to come into effect upon the commencement of the amendments to the Act to create four new classes of special purpose registration.

Section 238 sets out the transitional arrangements in relation to persons who currently hold general registration on conditions to enable them to practise in order to prepare for the clinical examination conducted by the APC. Provided the person is eligible for special purpose registration under section 100(2)(b), upon commencement, the person will be taken to be a special purpose registrant under section 100(2)(b).

Section 234 sets out the transitional arrangements in relation to persons who have applied for general registration on conditions to enable them to practise in order to prepare for the clinical examination conducted by the APC. Provided the person is eligible for special purpose registration under section 100(2), upon commencement, the person's application will be taken to be an application for the class of special purpose registration under section 100(2) for which the person is eligible.

Clause 134 inserts definitions for the following terms into the dictionary in schedule 3 of the Act as a consequence of the amendments to the Part 3, Division 8 (Special purpose registrations): Australian Physiotherapy Council, proposed supervisor, supervised practice plan, university and working holiday visa.

Part 16 **Amendment of Podiatrists Registration Act 2001**

Clause 135 specifies that this Part amends the *Podiatrists Registration Act 2001*.

Clause 136 amends section 64 to allow provisional general registration to be granted for up to 12 months instead of the existing maximum period of 6 months.

Clause 137 amends section 82 to clarify that it is a ground for cancellation of general registration if a registrant ceases to have, or does not have the qualifications, for general registration.

Clause 138 amends section 96 to specify that a failure by the board to make a decision on an application to review conditions is taken to be a decision to confirm the conditions, instead of a decision to remove them.

Clause 139 amends section 97 to specify that a failure by the board to make a decision on a review of conditions agreed to between the board and the registrant is taken to be a decision to confirm the conditions, instead of a decision to remove them.

Clause 140 amends section 99 to remove references to a deemed decision under section 96 or section 97 to remove conditions.

Clause 141 amends section 113 to clarify that it is a ground for cancellation of special purpose registration if a registrant ceases to have, or does not have the qualifications, for special purpose registration. The amendment also updates the existing ground for cancellation based on giving false information to the board, to ensure consistency with new section 210.

Clause 142 replaces section 210 with a new section, which contains various offences in relation to materially false information or documents. The offences are the same as in section 210 of the *Chiropractors Registration Act 2001* as outlined in the notes for clause 10 of the Bill.

Part 17 **Amendment of Police Powers and Responsibilities Act 2000**

Clause 143 specifies that this Part amends the *Police Powers and Responsibilities Act 2000*.

Clause 144 amends section 42 to prescribe the offence of ‘smoking in a motor vehicle with a person under the age of 16 years’ as a reason for police to ask a person for their age. This information is important for deciding whether another person in the vehicle is contravening the offence provision.

This clause also provides protection for a passenger that refuses to give their date of birth from a proceeding under section 791 if the alleged offender is not proved to have contravened the prescribed offence. Section 791 of the *Police Powers and Responsibilities Act 2000* provides that a person commits an offence for contravening a requirement or direction given by a police officer.

Clause 145 amends section 60 to prescribe the offence of ‘smoking in a motor vehicle with a person under the age of 16 years’ as a reason for the ability for police to stop a motor vehicle. This power is required to enable police to enforce the offence.

Part 18 **Amendment of Psychologists Registration Act 2001**

Clause 146 specifies that this Part amends the *Psychologists Registration Act 2001*.

Clause 147 amends section 70 to allow provisional general registration to be granted for up to 12 months instead of the existing maximum period of 6 months.

Clause 148 amends section 88 to clarify that it is a ground for cancellation of general registration if a registrant ceases to have, or does not have the qualifications, for general registration. The amendment also updates the existing ground for cancellation based on giving false information to the board, to ensure consistency with new section 227.

Clause 149 amends section 96 to allow the board to ask the supervisor for a supervised practice program report, about a registrant's progress during the program.

Clause 150 amends section 100 to provide that a failure by the board to make a decision is taken to be a decision to confirm the probationary conditions, instead of a decision to remove them.

Clause 151 amends section 102 to remove references to a deemed decision under section 100 to remove probationary conditions.

Clause 152 amends section 111 to specify that a failure by the board to make a decision on an application to review conditions is taken to be a decision to confirm the conditions, instead of a decision to remove them.

Clause 153 amends section 112 to specify that a failure by the board to make a decision on a review of conditions agreed to between the board and the registrant is taken to be a decision to confirm the conditions, instead of a decision to remove them.

Clause 154 amends section 114 to remove references to a deemed decision under section 110 or section 111 to remove conditions.

Clause 155 amends section 129 to clarify that it is a ground for cancellation of special purpose registration if a registrant ceases to have, or does not have the qualifications, for special purpose registration. The amendment also updates the existing ground for cancellation based on giving false information to the board, to ensure consistency with new section 227.

Clause 156 replaces section 227 with a new section, which contains various offences in relation to materially false information or documents. The offences are the same as that in section 210 of the *Chiropractors Registration Act 2001* as outlined in the notes for clause 10 of the Bill.

Part 19 **Amendment of Public Health Act 2005**

Clause 157 states that this part amends the *Public Health Act 2005* (the Act).

Clause 158 corrects a typographical error. The cross-reference for the examples listed at the end of subsection 11(1)(b) should be to paragraph (viii) not (vi).

Clause 159 amends section 107, which sets out an exception to the duty of confidentiality under section 105 in relation to information obtained under the contact tracing provisions in chapter 3, part 3 of the Act.

Currently, section 107 enables information to be disclosed: (a) in the performance of functions under the Act; or (b) with the written consent of the person to whom the information relates; or (c) to the person to whom the information relates; or (d) in a form that could not identify any person.

The amendment will enable information to also be disclosed, with the verbal consent of the person to whom the information relates. This will address an operational discrepancy that has been identified since the introduction of the legislation. While a contact tracing officer can usually obtain verbal consent, it is not always possible for written consent to be obtained as required by section 107(b). This amendment will, for example, help address situations where a contact tracing officer identifies that an 'at risk' person is located in a rural or remote area of Queensland, or is travelling outside the State. Provided the verbal agreement of the person can be obtained, the contact tracing officer will be able to provide information to the person's nominated health care provider to ensure that they receive the necessary medical follow-up.

Clause 160 inserts a new section, s108A. This amendment has been proposed to support the functions of contact tracing officers. As currently outlined in section 89 of the Act, the principal function of a contact tracing officer is to help prevent or minimise the spread of notifiable conditions by identifying, and providing information to, persons who have, or may be at risk of contracting, a notifiable condition (eg so that they may undergo any necessary medical examination and/or treatment).

Section 108A sets out a new exception to the duty of confidentiality under section 105. Under this exception information may be provided to specified persons so that a person who has, or may have, contracted a notifiable condition can:

- be provided with information to prevent or minimise transmission of the notifiable condition; or
- seek medical examination or treatment.

Specified persons who may be provided with information to assist such persons include a health practitioner (eg doctor, social worker, psychologist, etc) involved in the treatment or care of the person; a health practitioner nominated by the person; the parents of a child, a person's legal guardian, or an entity in another jurisdiction responsible for preventing or controlling the spread of communicable diseases; or another entity prescribed under regulation. As provided for by section 36 of the *Acts Interpretation Act 1954*, the reference to 'entity' includes a person and an unincorporated body.

While the *Public Health Act 2005* uses the defined term 'notifiable condition', this is not the case in all jurisdictions. Consequently, when specifying which entities in other jurisdictions may be provided with information, it was determined that it would be more appropriate to reference the more commonly used term "communicable disease".

Clause 161 amends the heading for chapter 6, part 4, division 1, as a consequence of the amendments outlined below.

Clause 162 inserts a new section, 279A. This section states that chapter 6, part 4 only applies to health information held by the department (as defined in the dictionary) relating to an individual if the individual could be identified from the information. This will mean that a person who wishes to access "non-identifying" health information held by the department for research purposes will not have to apply for access to this information under part 4. This approach is consistent with disclosure arrangements within the Act and under other health portfolio legislation that enables 'confidential information' to be disclosed in a form that could not identify any person' (eg see sections 55, 79, 107, 177, 222 and 240 of the *Public Health Act*).

Clause 163 inserts a new section 280A. This section has been included to clarify the original policy intent concerning the application of chapter 6, part 4. Namely, that the research provisions should operate alongside, not over-ride, other legislative provisions that allow for health information held by Queensland Health to be disclosed.

The amendment will ensure that the original intent of the provisions is realised by clarifying that part 4 does not prevent health information held by the department also being disclosed under other relevant provision in the *Public Health Act 2005* (such as ss55, 79, 107 and 222), or another Act (such as Part 7 of the *Health Services Act 1991*).

Clause 164 amends section 282, which 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. This section has been amended as a consequence of the insertion of new section 279A, which clarifies that part 4 only applies to health information held by the department if the information relates to an individual who could be identified from the information. Consequently, the references to “information identifying a person” in this section are redundant

Clause 165 amends section 284, which 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.

Subsection 284(3) is to be amended in light of the new section 279A. As outlined above, this section has been inserted to clarify that the research provisions will only apply to health information held by the department if the information relates to an individual who could be identified from the information. Consequently, the reference to “information identifying a person” in subsection (3) is redundant.

Subsection 284(8) has been inserted to clarify that when considering an application, the chief executive is not required to consult with individuals to whom the information relates before granting access to the information for research purposes. Following the commencement of the Act, it was suggested that a decision to grant a researcher access to potentially identifying health information is subject to the requirements of natural justice. If this were the case, the chief executive would be required to notify each person to whom the information relates and give them an opportunity to respond. This would make the provision unworkable and would be contrary to the underlying policy objective of the legislation. Under subsection 284(2), the chief executive may only approve access to health information held by Queensland Health if 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.”

Part 20 **Amendment of Speech Pathologists Registration Act 2001**

Clause 166 specifies that this Part amends the *Speech Pathologists Registration Act 2001*.

Clause 167 amends section 64 to allow provisional general registration to be granted for up to 12 months instead of the existing maximum period of 6 months.

Clause 168 amends section 82 to clarify that it is a ground for cancellation of general registration if a registrant ceases to have, or does not have the qualifications, for general registration. The amendment also updates the existing ground for cancellation based on giving false information to the board, to ensure consistency with new section 207.

Clause 169 amends section 96 to specify that a failure by the board to make a decision on an application to review conditions is taken to be a decision to confirm the conditions, instead of a decision to remove them.

Clause 170 amends section 97 to specify that a failure by the board to make a decision on a review of conditions agreed to between the board and the registrant is taken to be a decision to confirm the conditions, instead of a decision to remove them.

Clause 171 amends section 99 to remove references to a deemed decision under section 96 or section 97 to remove conditions.

Clause 172 amends section 113 to clarify that it is a ground for cancellation of special purpose registration if a registrant ceases to have, or does not have the qualifications, for special purpose registration. The amendment also updates the existing ground for cancellation based on giving false information to the board, to ensure consistency with new section 207.

Clause 173 replaces section 207 with a new section, which contains various offences in relation to materially false information or documents. The offences are the same as in section 210 of the *Chiropractors Registration Act 2001* as outlined in the notes for clause 10 of the Bill.

Part 21 **Amendment of Tobacco and Other Smoking Products Act 1998**

Clause 174 states that this part amends the *Tobacco and Other Smoking Products Act 1998*.

Clause 175 amends the definition of ‘smoking product’ in section 25 to remove ‘cigarette papers’ and insert ‘smoking related product’. This clause also inserts a definition for ‘smoking related product’. The effect of this amendment is to capture products that are primarily used in the consumption of a tobacco product, herbal cigarette or loose smoking blend in the advertising, display and promotion provisions, and not just cigarette papers.

This clause will also ensure that products that share the same trademark or brand as a smoking product, but are not primarily used in the consumption of a tobacco product, herbal cigarette or loose smoking blend, can continue to be sold without breaching section 26L of the Act (supply of object or entitlement that promotes smoking product etc).

Smoking related products will be prescribed under regulation. These products are expected to include such things as: cigarette papers, filters, tubes, rolling machines, hand held machines for injecting tobacco into paper tubes, cigar and cigarette holders, cigar cutters and cigarette tips. Therefore, these items can continue to be sold, but will be captured by the display restrictions.

The definition of smoking related products is not expected to include such things as: lighters, lighter fluid, matches, pipe cleaners, gas containers for cigars and cigarettes, petroleum lighters, refill units for gas and petrol lighters, fuel for pyrophoric lighters, cigarette cases and butt bins. Therefore, items such as these which are not prescribed in the regulation can continue to be sold outside the display restrictions, for example, by supermarkets in grocery aisles.

Clause 176 amends section 26L to provide for the exemption of a product or object from the application of the section. This is necessary to except products for which the Bill would otherwise apply but do not relate directly to the promotion of a smoking product, trademark or brand of a smoking product, or the name or interests of a manufacturer or distributor of a smoking product. It would not be justifiable for the offence provision to

apply to companies manufacturing products not related to smoking products.

The clause clarifies that the section does not apply to an object if:

- the primary purpose of the object is not to promote a smoking product, a trademark or brand of a smoking product (or part of a trademark or brand of a smoking product), or the name or interests of a manufacturer or distributor of a smoking product; and
- the object was either:
 - lawfully available for supply in Queensland on or after 31 May 2002 and before 31 December 2005; or
 - substantially the same, and made by the same person, as an object that was lawfully available for supply in Queensland on or after 31 May 2002 and before 31 December 2005.

The effect of this amendment is to exempt objects or products that were lawfully available for supply (ie. to sell, give-away etc) after section 26L first commenced on 31 May 2002 (eg. lighter fluid with the trademark or brand of a smoking product on it), but before the products inadvertently became unlawful when amendments to the definition of ‘smoking product’ commenced on 31 December 2005.

The exemption approach is consistent with the policy adopted by the Commonwealth in the *Tobacco Advertising Prohibition Act 1992* (Cth) whereby persons may seek an exemption under that Act to continue to sell non-promotional items, such as cologne and watches, that have a tobacco product trademark.

Clause 177 inserts new section 26PB to state that Part 2B of the Act does not apply to a vehicle to which [the new] Part 2BA applies. This amendment is required to clarify that the prohibition of smoking in enclosed places still applies to vehicles such as boats, trains and aircraft.

Clause 178 amends section 26Q to remove the definition of ‘exempt vehicle’, which is no longer required in Part 2B of the Act. As a result of including a new offence relating to smoking in motor vehicles with a child present, some restructuring of the Act occurred. The offences relating to smoking in motor vehicles have been included in the new Part 2BA.

Clause 179 amends section 26R to omit subsection (2)(c) to remove the reference to ‘exempt vehicle’, which is related to the amendment to section 26Q and the insertion of new Part 2BA. This clause also renumbers

subsections (d) and (f) to reflect the removal of subsection (c) in this Bill and the removal of subsection (e) in 2004.

Clause 180 inserts a new Part 2BA – Smoke-free motor vehicles.

Part 2BA contains offences relating to motor vehicles that are either not covered, or no longer covered, in Part 2B (eg. offences relating to enclosed places, which include an aircraft, boat or train).

The new section 26VA provides definitions for the terms *motor vehicle*, *road* and *road-related area*.

The definition of motor vehicle excludes an aircraft, boat or train as these are covered under the definition of vehicle used for enclosed places (Part 2B). The definition of *road* refers to the definition in the *Transport Operations (Road Use Management) Act 1995*, schedule 4 and the definition of *road-related area* refers to the definition in the *Transport Operations (Road Use Management – Road Rules) Regulation 1999*, section 13. The definitions will ensure that areas such as a shoulder, traffic island or a nature strip adjacent to a road be captured. However, it is not intended that private residential driveways be captured.

New section 26VB provides for the offence of smoking in a vehicle being used for business persons if another person is in the vehicle and if the vehicle is on a road or road-related area. This offence was previously included under Part 2B.

New section 26VC provides for the offence of smoking in a vehicle if a person in the vehicle is under the age of 16 years and the vehicle is on a road or road-related area.

Section 26VD provides a defence for the new offence of smoking in a vehicle with a person under the age of 16 years present if the person charged with the offence can prove, at the time of the offence, that the person honestly and reasonably believed that no person in the vehicle was under 16 years of age.

Section 26VE provides for the efficient conduct of prosecutions for the offence of smoking in a motor vehicle with a person under the age of 16 years present. The clause provides that a statement by a police officer in relation to the offence is evidence of the elements of the offence, being that:

- a person in the motor vehicle was under the age of 16 years;
- the thing was a smoking product;

- the thing was a motor vehicle;
- the place was a road.

This clause also enables a defendant to challenge the following elements of the offence at the hearing of a charge, providing the defendant advises the prosecution in the approved form at least 14 days before the hearing date and signs the approved form:

- a person in the motor vehicle was under the age of 16 years;
- the thing was a smoking product.

To enable efficient prosecutions, the evidence of a police officer must be accepted as proof of the following matters:

- the person seen by the police officer in the motor vehicle was under 16 years of age;
- the thing being smoked by a person in the motor vehicle was a smoking product.

However, the court may accept the above evidence as proof only if:

- the court considers the belief to be reasonable;
- there is no evidence to the contrary.

These evidentiary provisions do not remove a Magistrate's discretion to accept or reject evidence from a police officer. Furthermore, procedural safeguards will ensure that if the court does not accept the evidence of the police officer, or if there is doubt about the evidence, the prosecution will need to prove each element beyond a reasonable doubt. Without these evidentiary provisions, the prosecution may need to obtain a birth certificate to prove the child was under 16 years of age, and potentially a laboratory analysis to prove that the cigarette was a smoking product, for each offence.

Clause 181 inserts new Division 4 into Part 2C to provide for the regulation by local government of smoking at public transport waiting points and outdoor pedestrian malls.

New section 26ZPA inserts definitions for *ferry service*, *local government*, *local government area*, *local law*, *outdoor pedestrian mall*, *public passenger service*, and *public passenger waiting point*.

New section 26ZPB provides authority for a local government to make a local law prohibiting smoking at all or part of a public transport waiting

point or an outdoor pedestrian mall. The local government may only do so if the public transport waiting point is not enclosed (which is defined in the Act) and if the waiting point is under the local government's control. This clause also restricts the maximum penalty a local government may provide for an offence against a local law made under this provision to 20 penalty points.

New section 26ZPC clarifies that, if a local government makes a law to prohibit smoking at an outdoor pedestrian mall and that outdoor pedestrian mall is prescribed in schedule 2 of the *Tobacco and Other Smoking Products Regulation 1998* under section 26ZJ(3)(b) as a mall to which section 26ZJ(1) does not apply, then the local law applies despite the *Tobacco and Other Smoking Products Regulation 1998*.

Currently, an outdoor pedestrian mall may be prescribed under section 26ZJ(3)(b) to exempt a person from the offence in section 26ZJ(1) of smoking within 4 metres of any part of an entrance to an enclosed place. This means that, for entrances to enclosed places located within a prescribed outdoor pedestrian mall, a person does not commit an offence of smoking within 4 metres of the entrance to the enclosed place. However, if a local government makes a local law to prohibit smoking at a prescribed outdoor pedestrian mall, then a conflict between state law and local government law would arise. This provision clarifies that, in these circumstances, the local law will prevail and smoking will be prohibited at the prescribed outdoor pedestrian mall, including within 4 metres of an entrance to an enclosed place within that mall.

New section 26ZPD provides that the chief executive of Queensland Health may, by written notice to a local government, request information about its administration and enforcement of a local law made under new section 26ZPB. This will enable Queensland Health to collate information about which local governments have decided to exercise their powers to regulate smoking in outdoor pedestrian malls and public transport waiting points, and to monitor the overall enforcement of the bans. The local government is required to comply with the request.

New section 26ZPE clarifies that where a proceeding for an offence is taken for a contravention of local law made by a local government under new section 26ZPB or if a court imposes a fine for a conviction for an offence against a local law made by a local government under new section 26ZPB, the fine must be paid to the local government that commenced the proceeding.

Clause 182 amends section 26ZPA to renumber it as section 26ZPF, to provide for the inclusion of new provisions before it.

Clause 183 amends the schedule (Dictionary) to omit the definition of *exempt vehicle* which is now redundant and insert a definition of *smoking related product*, which refers to the new definition in section 25.

Part 22 Amendment of Workers’ Compensation and Rehabilitation Act 2003

Clause 184 states that this part amends the *Workers’ Compensation and Rehabilitation Act 2003*.

Clause 185 amends section 132 to enable a nurse practitioner who attends a claimant to issue a workers’ compensation medical certificate if the injury is a minor injury and the nurse practitioner is acting in accordance with the workers’ compensation certificate protocol.

Clause 186 amends section 141 to provide the time periods from which compensation is payable where a claimant has a minor injury and has been attended by a nurse practitioner.

Clause 187 amends the Dictionary to include definitions for minor injury, nurse practitioner and workers’ compensation certificate protocol.

A nurse practitioner is defined to be a registered nurse under the *Nursing Act 1992* whose annual licence certificate is endorsed to show authorisation to practise as a nurse practitioner.

The workers’ compensation certificate protocol is a document stating the circumstances or conditions under which a nurse practitioner may issue a certificate under section 132 (1)(a). For example, the protocol may set training requirements for nurse practitioners to complete prior to issuing certificates. The protocol must be certified by the chief executive officer of the Authority and the chief executive of the Department of Health, and must be published by the department.