PRIVATE HEALTH FACILITIES BILL 1999

EXPLANATORY NOTES

GENERAL OUTLINE

Policy Objectives of the Bill

The main policy objective of this Bill is to establish a framework for protecting the health and wellbeing of persons receiving health services at private health facilities.

Private hospitals in Queensland have been regulated, by way of a licensing regime, under Part 3, Division 4 of the *Health Act 1937* for over 60 years. In the early 1990s, licensing was extended to apply to "day hospitals" as defined under the legislation.

The existing legislation is deficient in a number of areas, for example:

- the absence of criteria for decision-making (eg. for licence applications);
- the absence of a requirement to give reasons for decisions and time limits in which decisions must be made;
- the absence of appeal rights;
- the lack of a clear legislative basis for the making of standards;
- the lack of a clear legislative basis for issuing of "approvals" for licences;
- the imprecise definition of "day hospital" which does not provide certainty as to what types of health facilities are covered by that definition;
- inconsistency with the requirements of the *Integrated Planning Act 1997*; and
- outdated monitoring and enforcement powers.

Means of Achieving Objectives

The Bill will repeal the existing legislation regulating private health facilities and will establish a framework which will:

- enable standards to be made for the provision of health services at private health facilities;
- require persons proposing to operate private health facilities to first hold approvals;
- require persons to hold licences for the operation of private health facilities; and
- provide for compliance with the Bill to be monitored and enforced.

Types of private health facilities covered by the Bill

The Bill will continue to regulate "private hospitals" – ie facilities where patients are hospitalised overnight as part of their care and treatment. However, a key change to the current legislation is the new definition of "day hospital" (see clause 10). This definition was developed in recognition of the increasing complexity of the health services provided in day facilities and the inherent risks associated with many of these services. The purpose of the definition is to require day facilities which provide higher risk health services to be licensed to minimise the risk of harm to patients receiving services at these facilities.

The health services identified in this category are defined under the term "day hospital health services". The principal part of the definition relates to procedures performed by medical practitioners involving specified types of anaesthetic or sedation. "Simple sedation" (which is sedation which allows communication with the patient during the procedure and makes loss of consciousness of the patient unlikely) is excluded from the definition. This definition will cover a wide range of higher risk procedures for which licensing is warranted.

In addition, the definition covers procedures performed by, or at the direction of, a medical practitioner which involve a significant risk that the patient may, because of cardiac, respiratory or other complications, require resuscitation. However, procedures satisfying this test will only be covered

under the definition if they are prescribed by regulation. An example of a procedure that is expected to be prescribed is cardiac stress testing. The regulation-making power will also allow new types of higher risk procedures developed in the future to be covered by the legislation.

Standards

The Bill (clause 12) enables the chief health officer to make standards for the protection of the health and wellbeing of patients receiving health services at private health facilities.

The licensing regime established under the Bill requires licensees of private health facilities to comply with the relevant standards.

The Bill specifies the matters about which a standard can be made which include, for example:

- the daily care and safety of patients;
- equipment, fittings and furnishings at facilities;
- infection control;
- the types of health services required to support other services at a facility eg. intensive care services to support major surgical services; and
- minimum patient throughput for prescribed health services eg. the minimum number of open heart surgery cases a cardiac unit must perform annually to maintain the clinical skills of the unit's staff.

All of these matters impact on the quality of health services provided at private health facilities.

Licensing Requirements and Process

The Bill will make it an offence for a person to operate a private health facility unless the person holds a licence for the facility. In most cases, licensees will first have to obtain an 'approval-in-principle' for the licence (called an 'approval') before applying for a licence. (A person may also become a licensee on the transfer of a licence, or if the person is a personal representative of a deceased licensee's estate).

The purpose of the approval process is to enable persons proposing to operate a private health facility to find out, prior to proceeding with the design, construction and fit-out of the facility, whether they are likely to be granted a licence for the facility when it is operational.

It should also be noted that the Bill only deals with persons who *operate* private health facilities.

All building-related matters for private health facilities will be dealt with under the development approval processes under the *Integrated Planning Act 1997*. The Building Code of Australia will cover all physical requirements for the facility.

A person may only be granted an approval under the Bill if the chief health officer is satisfied that:

- the person is a suitable person to hold an approval; and
- the proposed health facility, and the health services to be provided at the facility, will comply with the relevant standards.

The term "proposed health facility" would include an existing building (whether or not a health facility) which is proposed to be used for the provision of health services under a licence.

The criteria for deciding whether a person is a suitable person to hold an approval include matters such as:

- whether the person has, or is able to obtain the services of other persons with, the skills, knowledge and experience to operate the proposed private health facility under a licence;
- whether the person held an approval or a licence under the legislation that was suspended or cancelled; and
- if the person has been convicted of an indictable offence or an offence against the legislation or repealed division—the nature of the offence and the circumstances of its commission.

Approval holders will be granted a licence once certain pre-requisites are met, for example:

- any conditions on which the approval was issued have been complied with;

- the facility meets the requirements under the Building Code of Australia that are in force at the time the licence application is decided; and
- the facility complies with the relevant standards made by the chief health officer.

Once an approval holder is granted a licence the person (the licensee) has a number of obligations in addition to complying with the relevant standards. For example, a licensee must:

- ensure the facility operates under a quality assurance program within a specified period of time;
- operate the facility in accordance with the licence (eg. only providing the type of services stated in the licence);
- ensure the building and all equipment, fittings and furnishings are kept in good repair and operational order;
- only make a prescribed alteration to the facility (eg. a change to the physical structure of the facility) with the approval of the chief health officer; and
- comply with any additional conditions imposed on the licence by the chief health officer.

Estimated Cost for Government Implementation

As the Bill will replace the existing licensing system for private health facilities under the *Health Act 1937*, the Bill will not have any significant financial impact. Queensland Health administers the current legislation at an approximate cost of $200,000 per annum.

Consistency with Fundamental Legislative Principles

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

Making of Standards for Private Health Facilities

Clause 12 authorises the chief health officer to make standards about the matters specified in that clause. Many of the standards will be of a complex nature and deal with technical and clinical issues (eg. specifications for anaesthetic equipment that must be available in operating theatres) and will draw upon recognised standards, guidelines or protocols published by bodies such as the Medical Colleges, the Standards Association of Australia and the National Health and Medical Research Council. Therefore, the standards will not be easily translated into a legislative format.

As the chief health officer rather than the Legislative Assembly has responsibility for the making of these standards, it may be contended that this provision does not have sufficient regard to the institution of the Parliament. However, the Bill specifies that a standard is of no effect unless the Minister notifies the making of the standard by gazette notice and that the gazette notice is subordinate legislation as defined by section 9 of the *Statutory Instruments Act 1992.*

As subordinate legislation, a gazette notice made under clause 12 of the Bill is subject to the requirements of section 49 of the *Statutory Instruments Act 1992,* which specifies that subordinate legislation must be tabled in the Legislative Assembly within 14 sitting days after it is notified in the gazette, in order for it to come into effect. The Legislative Assembly will therefore be aware of all standards made by the chief health officer under the Bill. If, for some reason, the Legislative Assembly objects to the substance of a standard, section 50 of the *Statutory Instruments Act 1992* could be utilised to disallow the gazette notice which notified the making of the standard. As a consequence of the notice being disallowed, the standard would cease to have any effect.

Power to obtain criminal history reports

Under clause 16 of the Bill, if the chief health officer, in investigating the suitability of a person to hold an approval or a licence, asks the commissioner of the police service for a written report on the person's criminal history, the commissioner must provide the report. This may be seen as adversely affecting an individual's privacy.

The provision of this information will assist the chief health officer to decide whether a person is suitable to be an approval holder or licensee. However, in relation to decisions made by the chief health officer in this regard, the Bill does not affect the operation of the *Criminal Law (Rehabilitation of Offenders) Act 1986*. Any information obtained under the provision by the chief health officer will be protected by the confidentiality obligations under clause 147 of the Bill. Provisions of this nature are common in licensing legislation where, for consumer protection purposes, the integrity of licensees must be ensured.

Powers of Entry

Under clause 93 an authorised person may, without consent or a warrant, enter a licensed private health facility at any time when the facility is open for business. The clause provides that a facility is open for business when health services are being provided at the facility.

A power of entry to licensed premises when the premises are open for business is consistent with other modern licensing legislation. In the case of private hospitals (where patients stay overnight), the power effectively allows entry at any time given that health services are provided to patients on a 24 hour basis in those facilities. The power to enter at any time when health services are being provided is necessary to ensure that the requirements of the Bill are being complied with and that the potential health risks to patients receiving health services are minimised.

The inappropriate exercise of these powers by an authorised person could infringe patients' right to privacy and adversely affect the health of patients (eg. entry of a room in which a patient is being examined by a medical practitioner or undergoing a surgical procedure). Therefore, a safeguard provision (clause 100) has been included in the Bill to provide that, when entering a place for monitoring or enforcing compliance with the Bill, an authorised person must not do anything that may adversely affect the health or physical privacy of a person.

Reversal of Onus of Proof

Clause 142 of the Bill effectively provides that an act or omission of a person's representative (relating to a proceeding for an offence under the Bill) is taken to have been done by the person, if the representative was acting within the scope of the representative's authority. The person will therefore be 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 143 of the Bill 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 that provision. This clause therefore presumes an executive officer of the corporation to be guilty until the officer can prove that the officer took all reasonable steps to ensure the corporation complied with the provision; or the officer was not in a position to influence the conduct of the corporation in relation to the offence.

These provisions effectively provide for the reversal of the onus of proof. However, given that the obligations imposed on licensees of private health facilities under the legislation are the primary way of protecting the health and wellbeing of patients at those facilities, it is appropriate that:

- licensees be required to oversee the conduct of their representatives and, in doing so, make reasonable efforts to ensure that their employees and agents comply with the requirements of the legislation;
- an executive officer, who is in a position to influence the conduct of a corporate licensee, be required to ensure that 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 able to ‘hide’ behind the corporation.

As such, the provisions are warranted to ensure that there is effective accountability at a corporate level.

Immunity from Civil Liability

Clause 146 specifies that the Minister, the chief executive, the chief health officer, an authorised person, or a person acting under the direction of an authorised person is not civilly liable for an act, or omission, made honestly and without negligence under the Bill.

It is not considered 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. As such, the clause prevents civil liability from being attached to the individual. However, in these circumstances the liability instead attaches to the State. The proposed immunity under this clause does not extend to an official who has been negligent, even though the official may have acted in good faith.

Consultation

Extensive consultation has been undertaken in relation to the Bill.

In 1994, Queensland Health distributed a Discussion Paper to key stakeholders seeking comment on issues relevant to the review of the current legislation.

In 1997, a Stakeholder Reference Group was consulted during the development of the policy framework for the Bill. This group comprised representatives of:

- Private Hospitals' Association of Queensland
- Australian Medical Association
- Australian Council on Healthcare Standards
- Health Care of Australia
- Medical Benefits Fund of Australia
- Medibank Private
- Queensland Health Benefits Association
- Australian Nursing Homes & Extended Care Association (Queensland)
- Health Rights Commission.

In late 1998 and early 1999 there was targeted consultation with key stakeholders in relation to the definition of "day hospital health service" in clause 10 of the Bill.

In May 1999, a consultation draft of the Bill was distributed to key stakeholders including the bodies represented on the Stakeholder Reference Group mentioned above as well as:

- All Medical Colleges
- Queensland Rural Doctors' Association
- Queensland Divisions of General Practice Association
- Plastic & Reconstructive Surgeons' Society of Queensland
- Australian College of Cosmetic Surgery.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 sets out the short title of the Act.

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

Clause 3 outlines the main object of the Act, which is to establish a framework for protecting the health and wellbeing of persons receiving health services at private health facilities. This clause also sets out how the main object is to be achieved.

Clause 4 clarifies the basic elements of the approval and licensing processes established under the Act.

Clause 5 specifies that all persons, including the State, are bound by the Act.

PART 2—INTERPRETATION

Clause 6 provides for a dictionary of certain terms used in the legislation to be included as a schedule to the Bill (Schedule 3).

Clauses 7 defines "health service".

Clause 8 defines a "private health facility" as a private hospital or a day hospital. A "facility" in this context could comprise a number of buildings, a single building or part of a building. For example, several floors in a building may be a private hospital while the remainder of the building may be part of a public hospital or used for purposes unrelated to the provision of health services.

Clause 9 defines "private hospital". It should be noted that a hospital operated by the State is not covered by the Bill.

Clause 10 defines "day hospital" and other terms used in the context of that definition. The rationale for this definition and its intended operation is explained in the General Outline section of these Notes. Paragraph (a) of the definition of "day hospital health service" defines procedures performed under certain forms of anaesthetic as being a "day hospital health service". The administration of anaesthetic or sedation is not of itself a procedure in this definition.

Clause 11 clarifies that a reference to an authority (an approval or a licence) holder, in the case of an authority issued jointly to more than 1 person, is a reference to each of the persons.

PART 3—STANDARDS

Clause 12 enables the chief health officer to make standards under the Act for the protection of the health and wellbeing of patients at private health facilities and specifies the matters about which standards may be made. This clause also provides that a standard is of no effect unless the Minister notifies the making of a standard by gazette notice. Although a standard is not itself subordinate legislation (as defined by section 9 of the *Statutory Instruments Act 1992*), the clause provides that the gazette notice which notifies the making of a standard is subordinate legislation.

PART 4—SUITABILITY OF PERSONS TO BE AUTHORITY HOLDERS

Clause 13 specifies the criteria that the chief health officer may consider when deciding whether a person is suitable to hold, or to continue to hold, an authority under the Act. The suitability criteria will apply to decisions by the chief health officer in relation to whether a ground exists under clause 80 to suspend or cancel an authority and to applications:

- for an approval under clause 19;
- to change an approval under clause 32;
- for a licence under clause 44;
- to renew a licence under clause 53;
- to change a licence under clause 58; and
- to transfer a licence under clause 70.

Clause 14 specifies that, in deciding whether an applicant or an authority holder is a suitable person to hold the authority, the chief health officer may have regard to the relevant criteria in clause 13 as they apply to an "associate". An "associate" means a person who is a business partner of, or a party to an arrangement with, the applicant or authority holder or, if the person is a corporation, of which the applicant or authority holder is a subsidiary. The rationale for this clause is that, if the associate controls, or has influence over, the operation of the private health facility, it is appropriate that the chief health officer is able to have regard to the suitability criteria as they apply to that person.

Clause 15 enables the chief health officer to investigate an applicant for an authority or an authority holder, or an associate, to help decide whether the applicant or authority holder is a suitable person to hold the authority.

Clause 16 provides that, if the chief health officer, in investigating a person under clause 15, asks the commissioner of the police service for a written report on the person's criminal history, the commissioner must give the report to the chief health officer. The purpose of this provision is explained in the General Outline section of these Notes.

PART 5—APPROVALS

Clause 17 sets out the requirements for an application for an approval.

Clause 18 enables the chief health officer to require an applicant for an approval to provide further information or documentation the chief health officer reasonably considers is needed to decide the application. If an applicant fails to comply with the requirement, the application is taken to have been withdrawn.

Clause 19 specifies that the chief health officer must consider an application for an approval and either grant or refuse the application. This clause also specifies the criteria in respect of which the chief health officer must be satisfied before an approval is granted and sets out the notification requirements in relation to decisions about applications.

Clause 20 enables the chief health officer to extend the time-frame for deciding an application for an approval because of the complexity of the issues that need to be considered in deciding the application and requires the chief health officer to notify the applicant of the extended time-frame.

Clause 21 specifies that, if the chief health officer fails to decide an application for an approval within the specified time-frames, the application is taken to have been refused.

Clause 22 provides that an approval must be in the approved form and sets out the particulars that must be stated in the approval.

Clause 23 provides that an approval must be issued on condition that the approval holder must give the chief health officer written notice of a "prescribed change" (as defined in the clause) within 21 days of the change. A change in the directorship of a corporate approval holder is an example of a matter that is expected to be prescribed under this provision.

This clause also enables the chief health officer to impose additional conditions on an approval if the chief health officer considers the conditions are necessary or desirable for:

- the proper operation of the proposed facility under a licence; or

- the health and wellbeing of patients who may receive health services at the proposed facility.

Clause 24 specifies that approvals remain in force for a term of not more than 2 years.

Clause 25 enables the chief health officer to extend an approval at the request of the approval holder for one or more periods of not more than 2 years. This clause also sets out the requirements for an application to extend an approval.

Clause 26 enables the chief health officer to require an approval holder who has applied for an extension of an approval to provide further information or documentation the chief health officer reasonably considers is needed to decide the application. If an approval holder fails to comply with the requirement, the request for an extension of the approval is taken to have been withdrawn.

Clause 27 specifies that the chief health officer must consider an application to extend an approval and either grant or refuse the application. This clause also specifies the criteria in respect of which the chief health officer must be satisfied before an extension may be granted and sets out the notification requirements in relation to decisions about applications.

Clause 28 specifies that if an approval holder applies for an extension of an approval, the approval remains in force until the end of the extended term (if the application is granted); or the day the application is withdrawn; or the day the information notice is given (if the application is refused).

Clause 29 enables the chief health officer to change the details specified in an approval or the conditions of an approval if the chief health officer considers the change is necessary or desirable for:

- the proper operation of the proposed facility under a licence; or
- the health and wellbeing of patients who may receive health services at the proposed facility.

This clause also sets out the process which must be followed by the chief health officer before making a change to an approval.

Clause 30 specifies that an approval holder may apply to the chief health officer to change the details specified in an approval or the conditions of an approval. This clause also sets out the requirements for an application to change an approval.

Clause 31 enables the chief health officer to require an approval holder who has applied to change an approval to provide further information or documentation the chief health officer reasonably considers is needed to decide the application. If an approval holder fails to comply with the requirement, the application is taken to have been withdrawn.

Clause 32 provides that the chief health officer may grant an application to change an approval only if the chief health officer is satisfied:

- the approval holder is a suitable person to continue to hold the approval; and
- the proposed facility and the provision of health services at the proposed facility, will comply with the relevant standards.

The approval holder's suitability would be relevant if, for example, a change was sought as to the types of health services to be provided under the approval. The chief health officer would need to consider matters such as the approval holder's skill, knowledge and experience in operating a facility providing those services.

The provision also specifies the notification requirements in relation to decisions about changes to approvals.

Clause 33 enables the chief health officer to extend the time-frame for deciding an application to change an approval because of the complexity of the issues that need to be considered in deciding the application and requires the chief health officer to notify the applicant of the extended time-frame.

Clause 34 provides that, if the chief health officer fails to decide an application to change an approval within the specified time-frames, the application is taken to have been refused.

Clause 35 makes it an offence for an approval holder to fail to return the approval to the chief health officer within 7 days after receiving a change notice or an information notice, unless the person has a reasonable excuse. This clause also specifies how the chief health officer must deal with an

approval upon its receipt.

Clause 36 provides that, if an approval is held by 2 or more individuals jointly, and 1 or more, but not all, of the individuals dies, the surviving individual or individuals are taken to hold the approval.

Clause 37 enables an approval holder to surrender an approval and specifies when the surrender takes effect. This clause also makes it offence for a person who held an approval to fail to return it to the chief health officer within 7 days after its surrender, unless the person has a reasonable excuse.

Clause 38 enables an approval holder to apply to the chief health officer to replace an approval that has been lost, stolen, destroyed or damaged and outlines the action the chief health officer must take upon receipt of an application.

Clause 39 makes it an offence for a person to operate a private health facility unless the person holds a licence.

Clause 40 deals with situations where a person operates a day hospital at the same place as a private hospital and the licence for the hospital states, at the request of the licensee, that this clause applies to the health services provided in operating the day hospital. The provision clarifies that in these circumstances the person does not operate the day hospital and, therefore, a separate licence is not required for the day hospital.

An example of a situation where this provision would apply is where a licensee of a private hospital leases part of the facility to a radiology practice to enable that practice to provide services to the hospital's patients involving the use of general anaesthetic.

Clause 41 provides that only an approval holder may apply for a licence.

Clause 42 sets out the requirements for an application for a licence.

Clause 43 enables the chief health officer to require an applicant for a licence to provide further information or documentation the chief health officer reasonably considers is needed to decide the application. If an applicant fails to comply with the requirement, the application is taken to have been withdrawn.

Clause 44 specifies that the chief health officer must consider an application for a licence and either grant or refuse the application. This clause also specifies that the chief health officer must grant the application if specific criteria are satisfied. The criteria include that the applicant is a suitable person to hold the licence. This is to enable the chief health officer to take into account any changes in the applicant's circumstances that may have occurred subsequent to the applicant being granted an approval for the licence.

The provision also sets out the notification requirements in relation to decisions about applications.

Clause 45 enables the chief health officer to extend the time-frame for deciding an application for a licence because of the complexity of the issues that need to be considered in deciding the application and requires the chief health officer to notify the applicant of the extended time-frame.

Clause 46 provides that, if the chief health officer fails to decide an application for a licence within the specified time-frames, the application is taken to have been refused.

Clause 47 provides that a licence must be in the approved form and sets out the particulars that must be stated in the licence.

Clause 48 specifies the standard conditions on which an approval must be issued. This clause also enables the chief health officer to impose additional conditions on a licence if the chief health officer considers the conditions are necessary or desirable for the proper operation of the facility and for the health and wellbeing of patients who may receive health services at the facility.

Clause 49 makes it an offence for a licensee to contravene a condition on which a licence is issued. This clause also clarifies that the penalty may be imposed whether or not the licence is cancelled or suspended because of the contravention.

Clause 50 specifies the term for which a licence remains in force.

Clause 51 enables the chief health officer to renew a licence on application by the licensee. This clause also sets out the requirements for an application to renew a licence.

Clause 52 enables the chief health officer to require a licensee who has applied for the renewal of a licence to provide further information or documentation the chief health officer reasonably considers is needed to decide the application. If the licensee fails to comply with the requirement, the application is taken to have been withdrawn.

Clause 53 specifies that the chief health officer must consider an application to renew a licence and either grant or refuse the application. This clause also specifies the criteria in respect of which the chief health officer must be satisfied before a renewal may be granted and sets out the notification requirements in relation to decisions about applications.

Clause 54 specifies that if a licensee applies for a renewal under clause 51, the licence remains in force until the end of the renewed term (if the application is granted), or the day the application is withdrawn, or the day the information notice is given (if the application is refused).

Clause 55 enables the chief health officer to change the details specified in a licence or the conditions of a licence if the chief health officer considers the change is necessary or desirable for:

- the proper operation of the facility under the licence; or
- the health and wellbeing of patients who are receiving, or may receive, health services at the facility.

This clause also sets out the process which must be followed by the chief health officer before making a change.

Clause 56 specifies that a licensee may apply to the chief health officer to change the details specified in a licence or the conditions of a licence. This clause also sets out the requirements for an application to change a licence.

Clause 57 enables the chief health officer to require a licensee who has applied to change a licence to provide further information or documentation the chief health officer reasonably considers is needed to decide the application. If the licensee fails to comply with the requirement, the application is taken to have been withdrawn.

Clause 58 sets out the criteria in respect of which the chief health officer must be satisfied before deciding to change a licence or grant an application to change a licence and sets out the notification requirements in relation to decisions about changes to a licence.

Clause 59 enables the chief health officer to extend the time-frame for deciding an application to change a licence because of the complexity of the issues that need to be considered in deciding the application and requires the chief health officer to notify the applicant of the extended time-frame.

Clause 60 provides that, if the chief health officer fails to decide an application to change a licence within the specified time-frames, the application is taken to have been refused.

Clause 61 makes it an offence for a licensee to fail to return the licence to the chief health officer within 7 days after receiving a change notice or an information notice, unless the person has a reasonable excuse. This clause also specifies how the chief health officer must deal with a licence upon its return.

Clause 62 defines the term "prescribed alteration" and specifies that the term does not mean a change to a facility for which a development permit under the *Integrated Planning Act 1997* is required. This is to ensure that there is no duplication between the approval processes under clauses 63-66 and the development approval processes under that Act.

Clause 63 sets out the requirements for an application for approval of a prescribed alteration.

Clause 64 enables the chief health officer to require a licensee who has applied for approval of a prescribed alteration to provide further information or documentation the chief health officer reasonably considers is needed to decide the application. If the licensee fails to comply with the requirement, the application is taken to have been withdrawn.

Clause 65 requires the chief health officer to consider the application for approval of a prescribed alteration and sets out the criteria in respect of which the chief health officer must be satisfied before deciding to grant the application. This clause also sets out the notification requirements and time-frames in relation to decisions about applications.

Clause 66 provides that, if the chief health officer fails to decide an application for approval of a prescribed alteration within the specified time-frames, the application is taken to have been refused.

Clause 67 specifies that a licensee may transfer the licence only if the chief health officer grants an application for the transfer.

Clause 68 provides that an application for the transfer of a licence may only be made by the proposed transferee and sets out the requirements for a transfer application.

Clause 69 enables the chief health officer to require an applicant for the transfer of a licence to provide further information or documentation the chief health officer reasonably considers is needed to decide the application. If the applicant fails to comply with the requirement, the application is taken to have been withdrawn.

Clause 70 requires the chief health officer to consider the application to transfer a licence and either grant or refuse the application. The chief health officer may grant the application only if satisfied that the proposed transferee is a suitable person to hold the licence.

This clause also sets out the notification requirements in relation to decisions about the transfer of a licence.

Clause 71 enables the chief health officer to extend the time-frame for deciding an application to transfer a licence because of the complexity of the issues that need to be considered in deciding the application and requires the chief health officer to notify the applicant of the extended time-frame.

Clause 72 provides that, if the chief health officer fails to decide an application to transfer a licence within the specified time-frames, the application is taken to have been refused.

Clause 73 makes it an offence for a licensee to fail to return the licence to the chief health officer within 7 days after receiving a transfer notice, unless the person has a reasonable excuse. This clause also specifies how the chief health officer must deal with a licence upon its return.

Clause 74 provides that an instrument or document that purports to encumber a licence is of no effect. This is to emphasise that a licence is in effect a personal right and is not “property” which can be encumbered.

Clause 75 provides that, if a licensee who is an individual dies, the personal representative of the licensee's estate is taken to be the licensee for 6 months from the date of the licensee's death or any longer period the chief health officer decides. The purpose of this clause is to enable the facility to continue operating under the licence until alternative arrangements are made by the personal representative.

The clause also specifies that the chief health officer may decide to extend the period only if the personal representative gives the chief health officer notice that a person intends to apply to transfer the licence and the chief health officer reasonably believes that it is appropriate to extend the period to enable the transfer application to be made and decided. The provision under which the personal representative is taken to be the licensee applies subject to any transfer, suspension, cancellation, surrender or expiry of the licence under the Act.

Clause 76 provides that, if a licence is held by 2 or more individuals jointly and 1 or more, but not all, of the individuals dies, the surviving individual or individuals are taken to hold the licence.

Clause 77 enables a licensee to surrender a licence and specifies when the surrender takes effect. This clause also makes it an offence for a person who held a licence to fail to return it to the chief health officer within 7 days after its surrender, unless the person has a reasonable excuse.

Clause 78 makes it an offence for a licensee to stop operating a private health facility, without a reasonable excuse, unless the licensee has surrendered the licence and the surrender has taken effect. The effect of this provision is that the chief health officer will be given at least 30 days notice of the intended closure of a facility. This will enable the chief health officer to be satisfied that appropriate arrangements have been made by the licensee to ensure the health and wellbeing of patients in the facility (eg. by their transfer to another facility).

Clause 79 enables a licensee to apply to the chief health officer to replace a licence that has been lost, stolen, destroyed or damaged and outlines the action the chief health officer must take upon receipt of an application.

PART 7—SUSPENSION AND CANCELLATION OF AUTHORITIES

Clause 80 sets out the grounds for suspending or cancelling an authority.

Clauses 81 provides that the chief health officer must give a show cause notice to an authority holder if the chief health officer believes a ground exists to suspend or cancel the authority. However, where the ground involves a contravention of the Act, the provision allows the chief health officer to give a compliance notice to the authority holder under clause 125(2) to rectify the matter to which the ground relates, rather than giving a show cause notice. If the authority holder fails, without a reasonable excuse, to comply with the compliance notice, the chief health officer must proceed to give a show cause notice. The provision also sets out the particulars that a show cause notice must contain and specifies that the authority holder may make written representations about the action the chief health officer proposes to take.

Clauses 82-84 outline the procedures to be followed after written representations (if any) are made by an authority holder to the chief health officer in response to a show cause notice. These clauses provide that, after considering such representations, the chief health officer:

- must notify the authority holder where no further action is to be taken; or
- where the chief health officer still believes there are grounds for suspending or cancelling the authority, may suspend or cancel the authority in accordance with the proposed action stated in the show cause notice and must immediately give an information notice about the decision to the approval holder.

Clause 85 sets out the grounds and procedures for the immediate suspension or cancellation of an authority.

Clause 86 provides that the chief health officer may cancel or reduce the remaining period of a suspension of an authority and must immediately give written notice of the decision to the authority holder.

PART 8—MONITORING, INVESTIGATION AND ENFORCEMENT

Clause 87 enables the chief health officer to appoint a person, other than a police officer, as an authorised person provided that the chief health officer considers the person has the necessary expertise or experience to be an authorised person.

Clause 88 specifies the functions of authorised persons and clarifies that an authorised person can utilise the powers given to the person under the Act or another Act. The clause also makes provision for the powers available to an authorised person to be limited under a condition of their appointment or by written notice given by the chief health officer.

Clause 89 specifies that an authorised person holds office on the conditions stated in their instrument of appointment, and that an authorised person may be appointed for a term or for the period during which the person holds another position (eg. a position as a public service employee or health service employee).

Clause 90 requires the chief health officer to provide each authorised person with an identity card containing a recent photograph of the person plus other relevant particulars.

Clause 91 sets out the circumstances under which an identity card issued to an authorised person must be returned to the chief health officer.

Clause 92 requires an authorised person to first produce or display the authorised person's identity card before exercising any powers under the Act. However, provision is also made for the authorised person to produce the card at the first reasonable opportunity where it is not immediately practical to do so.

Clause 93 confers on an authorised person a right to enter a place without the occupier’s consent or a warrant if it is:

- a public place and the entry is made when it is open to the public; or
- a licensed private health facility and the entry is made when the facility is open for business or otherwise open for entry.

The provision clarifies that the term "when the facility is open for business" includes when health services are being provided at the facility.

Clause 94 outlines the procedures an authorised person must follow when seeking consent to enter a place. This clause also provides that, should the issue arise in a proceeding whether the occupier consented to the entry, a court must find that consent was not given if an acknowledgment of consent is not produced in evidence and the lawfulness of the entry is not proved.

Clause 95 makes provision for an authorised person to apply to a Magistrate for a warrant to enter a place. Under this provision, a Magistrate may refuse to consider an application until an authorised person provides the Magistrate with the information the Magistrate requires.

Clause 96 sets out the conditions under which a Magistrate may issue a warrant and specifies the information that must be stated in a warrant.

Clause 97 makes provision for an authorised person to apply for a warrant by phone, fax, radio or another form of communication because of urgent or other special circumstances.

Clause 98 outlines the procedures that must be followed by an authorised person prior to entering a place under a warrant.

Clause 99 specifies what powers are available to an authorised person who has entered a place under clause 93 for the purposes of monitoring and enforcing compliance with the Act.

Clause 100 specifies that, when entering a place to exercise powers for monitoring or enforcing compliance with the Act, an authorised person must not do anything that may adversely affect the health or physical privacy of a person in the place. The rationale for this provision is outlined on page 7 of these Notes.

Clause 101 makes it an offence for a person to fail to help an authorised person under clause 99(3)(f), unless the person has a reasonable excuse.

Clause 102 makes it an offence for a person to fail to provide an authorised person with information asked for under clause 99(3)(g), unless the person has a reasonable excuse.

Clause 103 provides an authorised person with the power to seize a thing at a place entered, without consent or a warrant, if the authorised person reasonably believes that the thing is evidence of an offence against the Act.

Clause 104 provides an authorised person with the power to seize a thing at a place if:

- the authorised person obtained the necessary consent to enter the place; and the authorised person reasonably believes that the thing is evidence of an offence against the Act; and seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent; or
- the authorised person is authorised to enter the place under a warrant and the seizure is authorised by the warrant; or
- the authorised person reasonably believes another thing at the place is evidence of an offence against the Act and needs to be seized to secure evidence or to prevent repeat offences; or has just been used in committing an offence against the Act.

Clause 105 enables an authorised person to take the following action in relation to a thing which has been seized—that is, move the thing from the place where it was seized; leave the thing at the place of seizure but restrict access to it; or make any seized equipment inoperable.

Clause 106 makes it an offence for a person to interfere, or attempt to interfere, with those actions taken by an authorised person to restrict access to seized things or make seized equipment inoperable, without an authorised person's approval.

Clause 107 makes provision for an authorised person to require the person in control of a thing to be seized to take it to a stated reasonable place by a stated reasonable time; and if necessary, to remain in control of it at the stated place for a reasonable time. It is an offence for a person to fail to comply with a requirement or further requirement made under this clause unless the person has a reasonable excuse.

Clause 108 requires an authorised person to issue a receipt for any seized thing and to give the receipt to the person from whom the thing was seized. However, if for some reason this proves impractical, the authorised person must leave the receipt at the place of seizure in a conspicuous position and in a secure way.

Clause 109 sets out the circumstances under which a seized thing will be forfeited to the State, for example, if the owner cannot be found, after making reasonable inquiries, or if it cannot be returned to its owner, after making reasonable efforts.

Clause 110 makes provision for a court to order, on convicting a person for an offence against the Act, the forfeiture to the State of anything that has been seized.

Clause 111 enables the chief health officer to deal with a thing which has been forfeited to the State, as the chief health officer considers appropriate, including the destruction or disposal of the thing. However, the chief health officer must not deal with the thing in a way that could prejudice the outcome of a review or an appeal applied for or started under Part 9 of the Act.

Clause 112 specifies when an authorised person must return a seized thing to its owner, if the thing has not been forfeited.

Clause 113 provides for the owner of any seized thing to have access to it for inspection or copying (if a document) until it is forfeited or returned.

Clause 114 enables an authorised person, if an offence has or appears to have been committed against the Act, to require a person to state the person's name and residential address, and to produce evidence of the correctness of the stated name or address. When making such a requirement, the authorised person must warn the person it is an offence to fail to state the person’s name or address, unless they have a reasonable excuse.

Clause 115 makes it an offence to fail to comply with a request made under clause 114, unless the person has a reasonable excuse. However, a person does not commit an offence by not complying with such a request if it is not proven that the person committed an offence against the Act.

Clause 116 makes provision for an authorised person to:

- require a person to produce a document for their inspection which has been issued to the person under the Act, or is required to be kept by the person under the Act;
- require a person to certify that a copy of the document or an entry in a document is a true copy; and
- keep a document until such time as a copy of the document or an entry in a document is certified as a true copy.

Clause 117 makes if an offence for a person to fail to certify a document in accordance with a request made under clause 116, unless the person has a reasonable excuse.

Clause 118 makes it an offence for a person to fail to comply with a request under clause 116 to produce a document, unless the person has a reasonable excuse.

Clause 119 enables an authorised person to require a person, by written notice, to attend before the authorised person to provide information about an offence against the Act. It is an offence for a person to fail to comply with such a request, unless the person has a reasonable excuse.

Clause 120 requires an authorised person to give written notice if an authorised person, or a person acting under the direction or authority of an authorised person, damages property when exercising or purporting to exercise a power. The notice must set out the particulars of the damage and be given to the person who appears to be the owner of the property. However, if for some reason this proves impractical, the authorised person must leave the notice in a conspicuous position and in a secure way.

Clause 121 makes provision for a person to be compensated by the State, where the person has incurred loss or expense because of the exercise or purported exercise of a power by an authorised person under the following subdivisions of Division 2 of Part 8:

- Subdivision 1—Powers to enter places
- Subdivision 3—Powers after entry
- Subdivision 4—Power to seize evidence

Clause 122 makes it an offence for a person to state anything to an authorised person that the person knows is false or misleading in a material particular.

Clause 123 makes it an offence to give an authorised person a document containing information that the person knows is false or misleading in a material particular.

Clause 124 makes it an offence to obstruct an authorised person in the exercise of a power or pretend to be an authorised person, unless the person has a reasonable excuse.

Clause 125 enables the chief health officer to issue a compliance notice to an authority holder if the chief health officer or an authorised person reasonably believes that:

- a person is contravening a provision of the Act or has contravened a provision of the Act in circumstances that made it likely that the contravention would continue or be repeated;
- the matter is reasonably capable of being rectified and it is appropriate to give the authority holder an opportunity to rectify the matter; and
- a show cause notice under clause 81 has not been given in relation to the matter.

This clause also specifies the particulars that a compliance notice must contain and makes it an offence for a person to fail to comply with a compliance notice, unless the person has a reasonable excuse.

PART 9—REVIEWS AND APPEALS

Clause 126 specifies that an appeal against an original decision must, in the first instance, be by way of an application for internal review.

Clause 127 specifies that persons who are given, or entitled to be given, an information notice for an original decision (see Schedule 1) and who are dissatisfied with the decision, may apply for the decision to be reviewed by the chief health officer.

Clause 128 sets out the process and time-frames for the lodgement of an application for the review of an original decision made by the chief health officer.

Clause 129 enables the chief health officer to make a further decision in relation to a matter under review to confirm the original decision, amend the original decision or substitute another decision for the original decision. This provision also places an obligation on the chief health officer to abide by the processes and time-frames for the notification of the chief health officer's decision in relation to an application for the review of a decision.

Clause 130 makes provision for the District Court to stay the operation of an original decision, if an application has been lodged for the review of this decision.

Clause 131 enables a person to appeal to the District Court where the person is dissatisfied with the decision made by the chief health officer in relation to the review of an original decision.

Clause 132 specifies that an appeal may be made to the District Court at Brisbane or nearest the place where the person resides or carries on business.

Clause 133 sets out the notification requirements and time-frames for an appeal to the District Court.

Clause 134 makes provision for the District Court to stay the operation of a decision made by the chief health officer under clause 129, where an appeal has been made to the Court regarding this decision.

Clause 135 specifies the powers that the District Court has in deciding an appeal and provides that an appeal is by way of rehearing.

Clause 136 sets out what actions the District Court may take in deciding an appeal.

PART 10—LEGAL PROCEEDINGS

Clause 137 specifies that Division 1 of Part 10 applies to a proceeding under the Act.

Clauses 138 to 140 specify those matters which do not have to be proved in a proceeding under the Act, or which are considered to be evidence of those matters.

Clause 141 provides for offences under the Act to be dealt with as summary offences and specifies the period within which proceedings for an offence can be commenced.

Clause 142 specifies that an action or omission of a person's representative, in relation to an offence against the Act, is taken to have been done by the person, if the representative was acting within the scope of the representative's authority. However, the person can utilise the defence provided for under this provision and prove that they could not, by the exercise of reasonable diligence, have prevented the act or omission. The rationale for this provision is discussed in the General Outline section of these Notes.

Clause 143 places an obligation on the executive officers of a corporation to ensure that the corporation complies with the legislation. As such, this provision creates an offence on the part of each executive officer in situations where the corporation has committed an offence against this Act. However, it is a defence for an executive officer to prove that he or she exercised reasonable diligence to ensure the corporation complied with the provision; or were not in a position to influence the conduct of the corporation in relation to the offence. The rationale for this provision is discussed in the General Outline section of these Notes.

PART 11—MISCELLANEOUS

Clause 144 makes it an offence for a licensee of a private health facility to fail to give reports to the chief health officer as required by this clause. The purposes of the reports are to:

- monitor the quality of health services provided at private health facilities;

- enable the State to give information to the Commonwealth or another State, or an entity of the Commonwealth or another State, under an agreement prescribed under a regulation for clause 147(4); and
- monitor the general state of health of the public having regard to the types and numbers of health services provided at the facilities.

The provision also specifies the requirements as to the form, content and timing of the reports.

Clause 145 makes it an offence for a licensee to give a report containing information that the licensee knows to be false or misleading in a material particular.

Clause 146 specifies that those persons who have a role in the administration of the Act are not civilly liable for an act done, or omission made, honestly and without negligence under the Act. Such liability attaches to the State.

Clause 147 makes it an offence for persons (specified in subclause (1)) to disclose information which the person has obtained in the course of the person's functions under the Act or the repealed division, unless the disclosure is expressly authorised under this provision. Information protected under this provision is information that could damage the commercial activities of the person to whom the information relates; personal health information; and information contained in criminal history reports obtained under clause 16.

Subclause (4) specifies the circumstances under which the above information may be disclosed. Examples of the agreements that it is envisaged will be prescribed under sub-clause (4)(c) include the Australian Health Care Agreement and the National Health Information Agreement. Confidentiality obligations extend to recipients of protected information under those agreements and to persons to whom disclosure is authorised by the Minister on public interest grounds under subclause (6).

To ensure that a degree of public accountability applies to any disclosures authorised by the Minister, subclause (9) requires the chief executive to include a statement about such authorisations by the Minister in the department's annual report under the *Financial and Administration Audit Act 1977.*

Clause 148 authorises the chief health officer to delegate the chief health officer's powers under the Act to an appropriately qualified employee of the department, with the exception of the power to make standards under Part 3 and the internal review powers under Division 1 of Part 9.

Clause 149 enables the chief health officer to establish advisory committees to advise the chief health officer on any matter regarding the administration of the Act. For example, the chief health officer may need to obtain expert technical advice to assist the chief health officer in making a standard under clause 12(2)(h) about equipment required for the provision of particular types of health services provided at private health facilities.

Clause 150 authorises the chief health officer to approve forms for use under the Act and specifies various requirements that may be contained in approved forms.

Clause 151 provides that the Governor in Council may make regulations under the Act.

PART 12—SAVING AND TRANSITIONAL PROVISIONS

Clause 152 defines certain terms used in Part 12.

Clause 153 specifies that references to Division 4 of Part 3 of the *Health Act 1937* (the repealed division) in an Act or document may, if the context permits, be taken as a reference to the *Private Health Facilities Act 1999*.

Clause 154 sets out the transitional arrangements applying to "consents" given administratively by the chief health officer prior to the commencement of the Act. Under this clause, persons holding such consents are taken to be approval holders under the Act and such consents are taken to be approvals under the Act. Therefore, a person holding a consent has no need to apply for an approval under the Act.

The provision also specifies the conditions applying to approvals that come into existence as above and provides that such approvals expire 1 year after the commencement of the Act (but may be extended by the chief health officer under clause 25).

Clause 155 provides that an existing licence to erect a private health facility issued under the repealed division expires on the commencement of the Act. Licences to erect involve a process whereby plans for a proposed facility are assessed against building related requirements in the current legislation. This type of licence is to be abolished as they have no equivalent under the Act. As all building-related requirements for private health facilities will be incorporated into the Building Code of Australia, the processes currently dealt by licences to erect will be dealt with as part of the development approval processes under the *Integrated Planning Act 1997*.

Clause 156 provides that an existing licence to use a private health facility issued under the repealed division is taken to be a licence under the Act and that the holder of a licence to use is taken to be a licensee under the Act. The clause also sets out the standard conditions that apply to such licences. These conditions are in effect the same as would apply to a new licence issued under Part 6 of the Act.

Clause 157 provides that an application for a licence to use under the repealed division, or an application for the renewal or transfer of such a licence, is taken to be an equivalent application in relation to licences under the Act. This is to save existing applicants from having to re-apply under the Act.

This clause also provides that an application for a licence to erect under the repealed division, or an application for the renewal or transfer of such a licence, are taken to have been withdrawn. The rationale for this provision is the same as applies to clause 155.

Clause 158 provides for the continuation of show cause proceedings commenced under the repealed division for the suspension or cancellation of a licence to use.

Clause 159 provides for the continuation of the suspension of a licence to use under the repealed division.

Clause 160 provides for the commencement or continuation of proceedings for an offence against the repealed division, as if the Act had not been commenced.

Clause 161 is a transitional provision applying to persons who operated a day hospital immediately before the commencement of the Act and did not have a licence to use under the repealed division, but are required to hold a licence for the facility under the Act. The provision specifies that clause 39 of the Bill (the offence provision prohibiting the operation of a private health facility without a licence) does not apply to the operation of the day hospital by the abovementioned persons until 6 months after the Act commences.

The purpose of the provision is to allow those persons to continue to operate a day hospital during the 6 month period (provided the same health services are provided as were provided immediately before the Act commences) without contravening the Act. During this period those persons would need to obtain an approval and a licence for the facility.

Clauses 162-163 are transitional provisions applying to persons who, immediately before the commencement of the Act, operated a day hospital in the same place as a private hospital, under the private hospital's licence. Clause 162(2) clarifies that a separate licence is not required for day hospitals in this category. This provision will apply for 1 year after the Act commences or until the private hospital's licence is endorsed with a statement that clause 40 applies to the operation of the day hospital, whichever is the earlier. This is to ensure that all private hospital licences in force under the Act will indicate which, if any, day hospitals are operated under the private hospital's licence by virtue of the provisions of clause 40.

PART 13—OTHER ACTS AMENDED

Clause 164 provides that Schedule 2 amends the Acts mentioned in it.

SCHEDULE 1

Schedule 1 lists those decisions made under the Act for which information notices must be given and which therefore may be subject to internal review or appeal.

SCHEDULE 2

Schedule 2 provides for consequential amendments to be made to certain Acts mainly to omit references to the *Health Act 1937* and to insert new definitions of private hospital and private health facility.

SCHEDULE 3

Schedule 3 defines certain terms used in the Act.