# HEALTH LEGISLATION AMENDMENT BILL 2001

## EXPLANATORY NOTES

### GENERAL OUTLINE

### Policy Objectives of the Bill

The Bill makes amendments to the following Health portfolio Acts:

- *Food Act 1981*
- *Health Act 1937*
- *Health Practitioners (Professional Standards) Act 1999*
- Health Practitioner Registration Acts [1]
- *Mental Health Act 2000*
- *Private Health Facilities Act 1999*
- *Queensland Institute of Medical Research Act 1945*
- *Transplantation and Anatomy Act 1979*

The main policy objectives of the Bill are to:

- amend the *Food Act 1981* to reflect the 'core' provisions (Annex A) of the National Model Food Bill by inserting new definitions, offences, defences and emergency powers.

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1 *Chiropractors Registration Act 2001; Dental Practitioners Registration Act 2001; Dental Technicians and Dental Prosthetists Registration Act 2001; Medical Practitioners Registration Act 2001; Medical Radiation Technologists Registration Act 2001; Occupational Therapists Registration Act 2001; Optometrists Registration Act 2001; Osteopaths Registration Act 2001; Pharmacists Registration Act 2001; Physiotherapists Registration Act 2001; Podiatrists Registration Act 2001; Psychologists Registration Act 2001;* and *Speech Pathologists Registration Act 2001*

- amend the *Health Act 1937* to:

  (a) insert a new set of monitoring, investigation and enforcement provisions for Part 4 of the Act relating to drugs and poisons to overcome inadequacies in the current provisions and to ensure conformity with modern legislative drafting practices;

  (b) remove any doubt that certain authorities cancelled under the *Poisons Regulation 1973* were not revived by the repeal of that Regulation and the introduction of the *Health (Drugs and Poisons) Regulation 1996*; and

  (c) make minor variations to the notification requirements imposed on the chief executive under section 18A of the Act.

- amend the *Health Practitioners (Professional Standards) Act 1999* to:

  (a) enable a health assessment committee to require a registrant who is suspected of impairment to undergo an external assessment; and

  (b) clarify the powers of the Health Practitioners Tribunal and the registration status of suspended registrants.

- amend the Health Practitioner Registration Acts to:

  (a) provide registration boards with the capacity to access information about an applicant's full criminal history; and

  (b) clarify when an application for registration is deemed to be made to the boards.

- amend the *Medical Practitioners Registration Act 2001* to:

  (a) facilitate a nationally agreed scheme for the assessment of overseas-trained specialists applying for registration to practise in 'area of need' positions; and

  (b) change the scope of immunity for medical practitioners providing information to the police about crimes to cover information about all 'indictable offences', as was originally intended.

- amend the *Mental Health Act 2000* to rectify issues that have been identified during implementation planning. The amendments:

  (a) provide a Justice of the Peace (Magistrates Court) with the same powers as Justices of the Peace (Qualified) under the involuntary assessment provisions in the Act;

(b) clarify the strict test for release of forensic patients by the Mental Health Review Tribunal (MHRT) or Mental Health Court (MHC);

(c) ensure that when a decision is made to grant limited community treatment for a forensic patient, consideration is given to whether it should be conditional on the person not contacting certain people, including a victim of crime;

(d) enable a non-contact order to be made by the MHRT on revoking a forensic order, or by the MHC on deciding not to make a forensic order for a person found of unsound mind or permanently unfit for trial;

(e) clarify what information may be submitted to the MHC by a non-party, such as a victim of crime;

(f) provide for the MHRT to approve electroconvulsive therapy for voluntary patients who do not have the capacity to give consent;

(g) enable experienced mental health workers to be appointed as 'health practitioners', who may take a person for whom assessment documents are in force to an authorised mental health service for assessment, and take involuntary patients to a mental health service for treatment in certain circumstances;

(h) correct the inconsistencies in the scheme of notifications of decisions and actions;

(i) provide the Director of Mental Health with greater flexibility to determine how information regarding the use of seclusion and mechanical restraint is to be reported;

(j) reflect the original intention of the legislation that an employee of a private facility which is an authorised mental health service may be appointed as an authorised mental health practitioner; and

(k) resolve unintended consequences of the transitional arrangements and minor technical errors, such as spelling and grammar.

- amend the *Private Health Facilities Act 1999* to:

(a) provide a mechanism by which the chief health officer will be made aware of the occurrence of certain events which may adversely affect the suitability of a person to continue to hold an approval or licence for a private health facility; and

(b) update a definition and correct minor errors.

- amend the *Queensland Institute of Medical Research Act 1945* to:

  (a) restructure the Council of the Queensland Institute of Medical Research (QIMR) to reflect contemporary research and management needs;

  (b) enable the Council to decide on the use of gifts and bequests if the donor or testator has not given any direction; and

  (c) make other minor amendments to update provisions and repeal redundant provisions.

- amend the *Transplantation and Anatomy Act 1979* to:

  (a) prevent non-consensual retention and use of tissues and organs after death;

  (b) clarify that the Act binds all persons, including the State; and

  (c) permit cost recovery for the retrieval, evaluation, processing, storage and distribution of donated tissues.

## Means of Achieving Objectives

### *Amendment of Food Act 1981*

The *Food Act 1981* is the main mechanism for regulation and monitoring of food produced or sold in Queensland, with a focus on food safety and food quality requirements. The *Food Production (Safety) Act 2000* focuses on the production of primary produce (including red and white meat) and provides further regulation of food safety matters.

In 1998, the national Review of Food Regulation (the Blair Review) recommended that government reduce the regulatory burden on the food sector by improving the clarity, certainty and efficiency of regulatory arrangements, while still protecting public health and safety. The Commonwealth, State and Territory Governments signed the Intergovernmental Agreement (IGA) on Food Regulation in November 2000. The IGA includes the National Model Food Bill, which contains 'core' provisions (Annex A) which State and Territory governments have agreed to adopt in legislation. The IGA enables State and Territory governments to decide which of the 'non-core' (Annex B) provisions will be adopted.

The *Food Act 1981* is similar to the National Model Food Bill in significant respects, and this Bill amends the Act to include provisions consistent with the Annex A provisions, in accordance with the IGA.

Later amendments to the *Food Act 1981* will be proposed once the provisions in Annex B (eg. regarding licensing and registration) of the National Model Food Bill have been fully considered.

Annex A of the Model Food Bill has four main components—definitions, offences, defences and emergency powers. In order for the *Food Act 1981* to be consistent with the Model Food Bill, this Bill amends the Food Act to:

- add new objects of the Food Act, including ensuring that food for sale is safe and suitable for human consumption, and preventing misleading conduct relating to the sale of food;
- replace, insert and omit meanings and definitions into Part 1 ('Preliminary') and the new Dictionary, and amend terminology throughout the Act to reflect these amendments;
- replace Part 2 of the Act ('Offences in Connection with the Sale and Preparation of Food') with Part 2 ('Offences Relating to Food'). The incorporation of the new offences provides consistency throughout jurisdictions. Although the wording is different from the current offence provisions, the intent of the offences is similar. The new Part 2 also includes defences for breaches of the new offence provisions. As a consequence, the Bill amends an existing provision which is inconsistent with the new defences;
- insert Part 3 ('Emergency Powers') and remove sections 20 and 25, which deal with matters addressed by the new emergency powers. The new 'emergency powers' will also provide greater consistency amongst jurisdictions, particularly in relation to national food recalls, and therefore greater protection of public health; and
- amend various provisions to ensure that the Act is in keeping with Queensland's food safety regulatory system.

The framework for food safety, which supports these legislative requirements, is the Food Standards Code, which is developed by the Australia New Zealand Food Authority (ANZFA). The Code is nationally recognised as the authority on food standards issues and is currently

adopted by all jurisdictions and contains standards relating to food composition, labelling, advertising and food safety matters.

The Code has two volumes—the 'old' Code (Volume 1) and the 'new' Code (Volume 2). A transitional standard has been included in the Code, which states that, in general, food businesses can produce food in compliance with either volume, but not a combination of both volumes. This will provide food businesses with necessary time to change processing systems and their food packaging and labels to conform to Volume 2, before the expected repeal of Volume 1 in December 2002.

The Bill increases public protection from food-borne illnesses by requiring that all food given away by food businesses, or other businesses (eg. food given to individuals as part of a sales promotion) is safe.

The penalties provided in the Bill for serious offences reflect the potential impacts of unsafe or unsuitable food on public health and on Queensland's national and international reputation as a producer of safe, quality food.

### *Amendment of Health Act 1937*

*Monitoring, Investigation and Enforcement*

The monitoring, investigation and enforcement provisions in the *Health Act 1937* have not been substantially reviewed or updated since the Act commenced. The current provisions limit Queensland Health's ability to effectively undertake monitoring, investigation and enforcement activities, particularly in relation the provisions of the Act and its subordinate legislation dealing with drugs and poisons, and do not conform with modern legislative drafting practice.

The Bill repeals Part 4, Division 10 of the Act and inserts a new Part 4A which contains a comprehensive set of monitoring, investigation and enforcement provisions which deals with matters such as the appointment of inspectors and State analysts, powers of entry, search and seizure, and the analysis of samples. The new Part also deals with evidentiary matters and legal proceedings.

The new provisions will not apply to the public health related provisions in the Act or the provisions of Part 4 dealing with pest control operators because appropriate monitoring, investigation and enforcement provisions will be included in separate new legislation being drafted in relation to those matters.

The Bill also makes a number of minor amendments to the Act to:

- prevent duplication or inconsistency between the new provisions being inserted and the existing provisions of the Act; and
- correct an error in section 18A and omit the requirement under that provision that the chief executive notify the Medical Board of Queensland of various matters affecting medical practitioners.

*As-of-right Authorities*

The Bill confirms that, as of 1 January 1997, the as-of-right authorities cancelled under the *Poisons Regulation 1973* remain cancelled despite the repeal of that Regulation and the promulgation of the *Health (Drugs and Poisons) Regulation 1996*.

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

*Impaired Practitioners*

Under the *Health Practitioners (Professional Standards) Act 1999*, a health assessment committee conducts a health assessment of a registrant who is suspected of impairment with the object of determining the nature and extent of any impairment.

The Bill inserts provisions to provide the capacity for the committee to require a registrant to undergo a separate external assessment of any impairment by an appropriately qualified person, to assist in the committee's overall health assessment of the registrant. For example, the committee will be able to require a registrant to undergo a specialist neuropsychiatric examination or an assessment of fitness to work.

The external assessment report will be considered by the committee to assist in its findings and recommended actions. The costs of the external assessment and report are to be met by the relevant registration board.

*Decisions of the Health Practitioners Tribunal*

The *Health Practitioners (Professional Standards) Act 1999* gives the health practitioner registration boards and the Health Practitioners Tribunal powers to suspend a person's registration. The Act states that a suspended registrant is taken *not to be registered* for the duration of the suspension. It was always intended that the Act apply to a suspended registrant, who is not able to hold himself or herself out to be registered. For example, section 241, which refers to tribunal decisions about a "registrant who is registered at the time of the decision", was always intended to apply to a suspended registrant.

The Bill ensures that actions under the Act (eg complaints and disciplinary action) can be taken against a suspended registrant and validates decisions already made by the Tribunal in relation to suspended registrants.

The Bill also gives additional powers to the Tribunal in relation to former registrants.

***Amendment of Health Practitioner Registration Acts***

Occupational registration is widely regarded as a highly effective means of providing protection to the public, addressing inadequate consumer information and ensuring that practitioners uphold professional standards.

The Health Practitioner Registration Acts (the Acts) specify that a person is eligible to be registered if the person is appropriately qualified and fit to practise the profession. In deciding whether a person is fit to practise the profession, a board may have regard to a range of issues that are relevant to an applicant's ability to competently and safely practise the profession.

The Bill will enable the boards to access information about an applicant's full criminal history when assessing an application for registration. For example, the approved application form for registration may require an applicant to indicate whether they have been convicted of, or charged with, an offence that may affect their ability to practise the profession. The boards will be empowered to request information about an applicant's criminal history, which is ordinarily limited by the operation of the *Criminal Law (Rehabilitation of Offenders) Act 1986*. The information will be able to be disclosed to the boards as a result of the amendments to the Acts. Furthermore, the term 'criminal history' will be defined to mean:

- every conviction of the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act; and
- every charge made against the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act.

In effect, this will mean that for the purposes of the Acts, information about, and consideration of, a person's criminal history will encompass all convictions and charges, regardless of when they may have occurred. The boards' capacity to consider a person's full criminal history is consistent with the objectives of the health practitioner legislation to protect the public. Many registered health practitioners have professional relationships

with vulnerable patients, who may be susceptible to physical abuse, mental abuse or unjustifiable fees and claims. Once the provisions of this Bill are enacted, registered health practitioners will be subject to the same level of scrutiny that currently applies to teachers, persons working with children and young people, and persons associated with the conduct of retirement villages.

In having regard to an applicant's criminal history, the board must have particular regard to the following: any conviction for an indictable offence; any conviction for an offence against the repealed registration Act, the current registration Act, the *Health Practitioners (Professional Standards) Act 1999* or a corresponding law; or any conviction for an offence relating to the practise of the profession (eg. an offence against the *Health Act 1937*).

It should be noted that a provision in each of the Acts 'cross-applies' relevant provisions from part 3, division 2 for the purpose of applications for special purpose registration. As a consequence of the amendments in this Bill to the procedural requirements for applications for general registration, the boards will be able to require an applicant for special purpose registration to disclose their criminal history. The Acts enable the board to take this information into account when deciding whether the applicant is a suitable person to be a special purpose registrant (or fit to practise the profession, for medical practitioners).

### *Amendment of Medical Practitioners Registration Act 2001*

*Area of Need*

The Commonwealth Government, in consultation with the medical profession, has recently developed a national scheme for the assessment of overseas-trained specialists seeking registration to practise in an area of need (ie. an area where there are insufficient medical practitioners to meet the needs of people living in the area). The scheme is a response to national concerns about the need to improve the current assessment processes.

The *Medical Practitioners Registration Act 2001*, which has yet to be proclaimed into force, enables the Medical Board of Queensland (the board) to register overseas trained practitioners to practise in an area of need if the board considers the applicant's qualifications and experience are suitable to practise in the area.

Under the proposed national scheme, the board will consider applications for area of need registration having regard to the recommendations of the relevant Specialist College and, once registered, registrants will be subject to periodic assessment by the relevant Specialist College.

The scheme envisages that the board will have the capacity to change the conditions of registration if the results of a College's assessment indicate this is necessary for the registrant to practise safely and competently. However, the *Medical Practitioners Registration Act 2001* does not authorise the board to change conditions during the registration period.

The Bill overcomes this difficulty by inserting provisions in the Act which allow the board to change the conditions on special purpose registrants during the registration period (eg. following a periodic assessment by the relevant Specialist College). The Bill also provides for a show cause process to give registrants an opportunity to respond to the proposed changes to conditions. Registrants will also have appeal rights in relation to board decisions to change the conditions.

A further obstacle to the implementation of the scheme exists in that the Act allows area of need specialists to be granted special purpose registration but not specialist registration. Without specialist registration, these practitioners would be disadvantaged. For example, specialist registration is required for appointment to public sector specialist positions and for specialist recognition under the *Health Insurance Act 1973,* to enable payment of Medicare benefits at the higher specialist rates.

The Bill overcomes this problem by providing that area of need specialists who have special purpose registration are deemed to also have specialist registration. Such deemed registration will be subject to the same conditions as the registrant's special purpose registration.

*Protection for registrants providing information about indictable offences to police officers*

Section 176 of the Act currently confers immunity on a registered medical practitioner who in his or her professional capacity, honestly and reasonably gives information about a suspected crime to the police. The reference to 'crime' in this section does not give effect to the original policy intention that the scope of the immunity should cover the provision of information about all indictable offences. The Bill gives effect to the original policy intention by replacing 'crime' with the broader concept of 'indictable offence', which includes crimes and misdemeanours.

***Amendment of Mental Health Act 2000***

The *Mental Health Act 2000* is a large and complex piece of legislation that will completely replace the current *Mental Health Act 1974.* The Bill corrects or amends a number of difficulties that have been identified. The amendments are intended to ensure consistency across the legislative scheme, to clarify the original policy intention or to correct drafting errors.

*Test for release of forensic patients and patients with criminal offences*

The reasons for decision in an appeal against a decision of the Mental Health Review Tribunal (*R v Maloney* [2000] QCA 355) suggested that the drafting of section 204 of the *Mental Health Act 2000* may be interpreted in the future as making it easier than under the current *Mental Health Act 1974* for a forensic patient found of unsound mind to be released into the community.

Under the new Mental Health Act, the Mental Health Review Tribunal is the only body empowered to authorise the release of a patient under a forensic order following a finding of unsoundness of mind in relation to criminal charges. A strict test limits the circumstances where the Tribunal can revoke a forensic order or authorise limited community treatment. However the reasons for decision in *Maloney* suggested that under the new Act if, for example, the Tribunal was unsure whether the patient represented a risk, the test might not be satisfied. Under these circumstances the Tribunal could revoke the forensic order for the patient.

The Bill overcomes this uncertainty and reinforces the policy intention to provide strict safeguards to ensure decisions balance the security and treatment needs of the patient with the safety of the community, and retain the emphasis on consideration of community safety.

The explanatory note to clause 204 of the *Mental Health Bill 2000* confirms the policy intention. It states:

> *The clause provides that the tribunal must not revoke a forensic order or place a forensic patient on limited community treatment if the patient represents an unacceptable risk to his or her safety or the safety of a member of the public on account of the patient's mental illness or intellectual disability.*

To ensure consistency throughout the legislative scheme, the Bill amends similar tests in relation to the release of patients with criminal charges.

*Non-contact provisions*

Under the Act, only the MHC and MHRT are empowered to order or approve limited community treatment for a forensic patient. An order or approval may be made subject to the reasonable conditions the MHC or MHRT considers appropriate. The Bill amends these provisions to place a clear requirement on the MHC or MHRT to consider whether, as a condition of limited community treatment, the forensic patient must not have contact with a stated person, such as a victim of crime.

The amendments also enable a non-contact order to be made by the MHRT on revoking a forensic order, or by the MHC on deciding not to make a forensic order for a person found of unsound mind/permanently unfit for trial where the person was charged with a serious personal offence. The MHRT or MHC must be satisfied the order is appropriate following consideration of the views of interested persons (ie. the person the subject of the order, the victim, any relevant associate or relative of the victim), the viability of the order, the person's criminal history and any other order relating to the interested persons (eg. an order under the Family Law Act).

A breach of a non-contact order is to be heard by a Magistrates Court, which is empowered to either impose a penalty or vary the order. An interested person is also able to apply for a variation or revocation of the order.

*Information submitted to the MHC by a non-party*

Section 284 of the Act provides for a non-party (eg. a victim of crime) to submit material to the MHC that is relevant to a decision, but is not otherwise before the MHC. The provision is intended to apply to any decision of the MHC, for example, a decision about the mental state of an alleged offender, whether to make a forensic order, or whether to approve limited community treatment.

The Bill amends the example following section 284 of the Act to clarify that the relevant decisions of the MHC are not restricted to a decision about the alleged offender's mental state.

*Justices of the peace*

Under Chapter 2, Part 3, Division 2 of the *Mental Health Act 2000* a Magistrate or Justice of the Peace (Qualified) is empowered to issue an order authorising a person's involuntary examination by a mental health professional. However, the Act does not currently empower a Justice of the Peace (Magistrates Court) to make a justices examination order. A Justice

of the Peace (Magistrates Court) generally has powers additional to those of a Justice of the Peace (Qualified).

The Bill amends the Mental Health Act to empower both a Justice of the Peace (Qualified) and Justice of the Peace (Magistrates Court) to make a "justices examination order". An order can be made on application from any person, and the Magistrate or Justice of the Peace must have a reasonable belief that the person should be examined involuntarily on the basis that the person has a mental illness and the order is necessary for the examination to occur.

*Electroconvulsive therapy*

The Act currently provides that a voluntary patient must give informed consent (as defined under the Act) to electroconvulsive therapy (ECT) while a psychiatrist must apply to the Mental Health Review Tribunal for approval to give ECT to an involuntary patient.

An unintended consequence of the Act is that it would not be possible to give ECT to a person who does not have capacity to consent to ECT, but who is not an involuntary patient, even if the person is not objecting to the treatment. For example, a person who has a dual diagnosis of intellectual disability and mental illness, but who does not meet the criteria for involuntary treatment, could not be given ECT.

The Bill includes amendments, which will enable the Tribunal to give approval for both voluntary and involuntary patients to be given ECT, if the patient does not have the capacity to give informed consent. However, the amendments do not render it possible for ECT to be given to a voluntary patient where the person has the capacity to consent, and objects to the treatment.

*Appointment of health practitioners*

Health practitioners are empowered under the *Mental Health Act 2000* to take a person for whom assessment documents have been made, or to return an involuntary patient, to an authorised mental health service without the person's consent.

A 'health practitioner' is defined under the Act as a doctor, registered nurse, occupational therapist or psychologist or a social worker engaged in providing health services. To enable other health professionals with relevant skills to perform the role of health practitioner, the Act also provides for another person with the training or qualifications in mental health prescribed under a regulation.

The Bill expands the definition of 'health practitioner' to enable appointment of members of other professional groups, who have the necessary skills to perform the role of health practitioner. This may include social work associates, indigenous health workers and enrolled nurses. However, it is not appropriate to prescribe particular training or qualifications, as they are not consistent within the professions, nor will all members of these professions have the necessary skills to perform the role of health practitioner.

The amendments will enable the administrator of an authorised mental health service to make an individual appointment of a person with the necessary training, qualifications and expertise, having regard to clinical mental health service provision. Consistent with the administrator's power to appoint authorised doctors, and as a safeguard to ensure appropriate appointments, the amendments include a requirement to keep a register of administrator-appointed health practitioners.

***Amendment of Private Health Facilities Act 1999***

The principal amendment to the Act involves the insertion of a provision requiring persons holding an approval or licence for a private health facility to notify the chief health officer within 21 days after becoming aware of the occurrence of certain events that may adversely affect the person's suitability to continue to hold the approval or licence. The notification obligation will apply to events such as bankruptcy, winding-up/liquidation, conviction of an indictable offence and suspension or cancellation of an approval or licence held by the person under a corresponding law in another jurisdiction.

Other minor amendments are also included in the Bill to correct minor errors and inconsistencies in the Act.

***Amendment of Queensland Institute of Medical Research Act 1945***

The principal amendment to the Act restructures the Council of the QIMR to meet contemporary research needs and community expectations about medical research. The Act currently provides for a Council consisting of 15 members, including the chief health officer, the chairperson of the QIMR Trust, and nominees of universities, hospitals and medical practitioner organisations. With the growth of health and biotechnology research organisations in Queensland, and more universities offering training in medicine and other health disciplines, it is not possible

for all relevant organisations to nominate persons for appointment to the Council.

The Bill restructures the Council as an 11 member body appointed by Governor in Council. The new Council structure retains the chief health officer, the chairperson of the QIMR Trust, a lawyer, and two persons with knowledge and expertise in financial management, business or public administration as members. Two members nominated by the National Health and Medical Research Council are also retained, with a new requirement that at least one of the members must have expertise in health research. The remaining four members of the Council specified in the Bill are a person with expertise in health research, a medical practitioner with expertise in health research, a person with expertise in health ethics, and a nominee of the senate of The University of Queensland

The Bill makes amendments to enable the Council, as the body responsible for management of QIMR, to appoint personnel for joint research projects. Joint research projects are an increasing part of QIMR activity, as part of Co-operative Research Centres, partnerships with private sector organisations, and in conjunction with other research institutes and universities.

Amendments are included to enable the Council to accept a gift or bequest, and to determine the purpose to which a gift or bequest shall be applied in circumstances where the donor, settler or testator does not specify a purpose for the gift or bequest.

The Bill also amends or repeals a number of outdated provisions in the Act.

***Amendment of Transplantation and Anatomy Act 1979***

*Prevention of non-consensual retention and use of tissues and organs after death*

Public response to recent events in the United Kingdom and Australia clearly indicates a strong community expectation that the performance of non-coronial autopsies and the retention and use of tissues and organs, for non-diagnostic purposes, should only occur with either the express consent of the deceased (given during life), or the fully informed consent of the deceased's next of kin.

Certain aspects of the Transplantation and Anatomy Act do not meet this expectation and have the undesirable effect of creating an opportunity for the non-consensual retention and use of tissues, organs and bodies.

The Act currently requires the following consents for the performance of non-coronial autopsies, and for the removal of tissues and organs (from both coronial and non-coronial cases), for non-diagnostic purposes:

- the deceased's oral consent;
- the deceased's written consent; or
- the consent of the senior available next of kin (where the deceased had not expressed an objection during life and there is no objection from any other senior available next of kin).

However, in certain circumstances, the Act goes further to permit the removal and use of tissues and organs for non-diagnostic purposes, performance of non-coronial autopsies, and use of the deceased person's body for anatomical purposes without either the express consent of the deceased or the informed consent of the deceased's next of kin. The Act currently allows a designated officer to authorise the above matters in circumstances where, although the deceased person had not expressly consented, he or she is not known to have objected and the designated officer is unable to locate any next of kin.

Authorisations given under the Act have effect as follows:

- tissues and organs removed under an authority given under Part 3 of the Act may be used for any of the purposes of transplantation or *other therapeutic purposes or for other medical or scientific purposes*;
- an authority given under Part 4 of the Act (to perform a non-coronial autopsy) automatically authorises the use of any tissues or organs removed for the purpose of the autopsy, for any *therapeutic or other medical or scientific purposes*; and
- an authority given under Part 5 of the Act authorises the use of the deceased person's body for any of the purposes of anatomical examination, study or teaching.

The Act also provides that a coroner's order under the *Coroners Act 1958* to perform a coronial autopsy automatically authorises the use of any tissues or organs removed for the purpose of the autopsy, for any '*therapeutic or other medical or scientific purposes*'. This is subject to any contrary order by the coroner.

In order to reflect contemporary community expectations, the Bill amends the Act to:

- remove the capacity to rely solely on the deceased's oral consent (given during life). This amendment reflects the potential for this type of consent to be abused, particularly in the case of seriously ill or infirm persons;
- remove the power for designated officers to give authorisations in the absence of the deceased's written consent or the consent of the senior available next of kin;
- clarify that the senior available next of kin may consent in writing to the removal of tissues and organs for non-diagnostic purposes or the performance of a non-coronial autopsy; or where it is not practicable to obtain written consent (for example, where the senior available next of kin is contactable only by telephone) - orally. The amendments place responsibility on designated officers to ensure that certain accountability measures are undertaken in relation to oral consents;
- limit the use of tissues and organs removed under a Part 3 authorisation to the purposes specified by the deceased or the senior available next of kin in their consent given under the Act;
- clarify that the removal of tissues and organs under a Part 4 authorisation (to perform a non-coronial autopsy) is limited to tissues and organs required for the purpose of the autopsy; and
- create a very limited exception to the consent requirements under Part 3 of the Act in relation to certain tissue specimens taken from a coronial or non-coronial autopsy. The exception allows certain specimens in the form of tissue blocks and microscope slides to be used for non-therapeutic medical purposes or scientific purposes (eg. teaching and research) without the consent of the deceased person or their next of kin.

The Bill also increases the maximum penalties for offences in relation to the removal of tissues and organs from 10 penalty units ($750) to 100 penalty units ($7500) or imprisonment for one year.

In addition, new provisions are inserted in Part 9 of the Act to provide 'whistleblower' protection to persons who provide information, assistance or evidence in relation to the investigation or prosecution of an alleged offence against the Act.

*Clarification of application of the Act*

The Act does not currently specify that it binds the State. This means that, for example, the activities of public sector health facilities are not

limited by Part 7 of the Act, which prohibits trading in tissue, while individuals and private sector organisations are prohibited from selling or purchasing tissue.

This anomaly is overcome by the Bill, which inserts a clear statement in the Act that it binds all persons, including the State.

*Cost recovery for the retrieval, evaluation, processing, storage and distribution of donated tissues*

Part 7 of the Act currently makes it unlawful to buy or sell tissue or to take tissue from a person's body, except where the Minister has given the purchaser a permit under the Act. The practice of supplying tissue on a cost recovery basis is likely to constitute a 'sale' within the meaning of Part 7 of the Act and is therefore prohibited. Because Part 7 of the Act does not currently apply to public sector health facilities, it has allowed Queensland Health tissue banks to charge a processing fee for the supply of donated tissues to certain categories of recipients. This fee includes the costs of retrieval, evaluation, storage, and distribution of donated tissue to recipients. In contrast, private sector tissue banks are bound by the Act and are thereby prevented from levying a charge for the processing of tissue supplied by them.

The most significant implication of amending the Act to expressly state that it binds all persons, including the State, is that the offence provisions relating to the sale of tissue will apply to Queensland Health tissue bank facilities. Without exemption from the prohibition on trade in tissue, these facilities would be prevented from charging processing fees for the supply of donated tissue.

Cost recovery for the supply of donated tissue is consistent with the recommendation of the Australian Law Reform Commission's 1977 Report, *Human Tissue Transplants* (ALRC 7) that *the reimbursement of expenses incurred in any activity involved in the gift of tissue should not be forbidden if the tissue itself was obtained without payment*.

For these reasons, the Bill inserts a new provision in Part 7 of the Act to provide an exemption that will allow prescribed tissue bank facilities to recover the reasonable costs (including direct and indirect costs) associated with retrieval, evaluation, storage, processing and distribution of donated tissue.

## Estimated Cost of Government Implementation

The Bill will not have any significant financial impact.

## Consistency with Fundamental Legislative Principles

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

### *Amendments to Food Act 1981*

*Compliance with Food Standards Code*

Clause 30 of the Bill (which inserts section 16 into the Food Act) requires that any person who conducts a food business must comply with the Food Standards Code, which is developed by the Australia New Zealand Food Authority (ANZFA). As the Code is not subject to disallowance by the Legislative Assembly, it may be regarded as inconsistent with fundamental legislative principles. However, its adoption is essential as it has been adopted by all jurisdictions, including Queensland, and is nationally recognised on food standards issues.

The Queensland Government provides input to the development of the Food Standards Code through a mechanism prescribed under the *Australia New Zealand Food Authority Act 1991* (Cwlth). This process requires ANZFA to conduct two rounds of public consultation on proposals to vary existing standards or to include new standards in the Code, and for the Australia New Zealand Food Standards Council to endorse any proposal before it becomes law. The Council consists of Health Ministers from each jurisdiction.

*Defences*

The defences in clause 31 of the Bill (which include section 17D, 'Defence of due diligence') for breaches of the new offences effectively reverse the onus of proof. However, placing the onus of proof on the defendant to prove a particular defence is justified as the defences relate to issues that may be considered the unique knowledge of the food business. Without their inclusion it may be extremely difficult to obtain evidence for a prosecution under the Act. This is particularly the case where prosecution of an offence requires the collection and examination of documents relating to the production, supply and sale of food from a food business which are not readily available to the authorised person.

To avoid confusion about the interaction of this section with sections 23 ('Intention—motive') and 24 ('Mistake of fact') of the Criminal Code, section 17E expressly disapplies section 23 in relation to offences under Part 2 ('Offences relating to food'), and section 24 in relation to offences under Part 2, Division 2 ('Other offences relating to food'). If these

sections were not expressly disapplied, unnecessary litigation would be caused in order to decide the effect of section 17D in relation to sections 23 and 24 of the Criminal Code.

This exclusion is consistent with those in other modern safety legislation, such as the *Dangerous Goods Safety Management Act 2001, Workplace Health and Safety Ac*t, the *Coal Mining Safety and Health Act 1999* and the *Mining and Quarrying Safety and Health Act 1999*. The exclusion of these sections of the Criminal Code is balanced by the fact that defences are written into the Bill in Part 2, Division 3. With reference to the defence of due diligence, it is a defence for a person to prove that the person exercised all due diligence to prevent the commission of the offence by the person or by another person under the person's control.

*Emergency Powers*

Clause 32 of the Bill provides for the chief executive to make orders to prevent or reduce the possibility of a serious danger to public health or to mitigate the adverse consequences of a serious danger to public health. No appeal mechanism is provided for businesses or persons affected by the issuing of such orders, which may be argued to be inconsistent with the principles of natural justice.

However, this provision is considered justifiable as:

- the orders are likely to relate to urgent matters that may constitute a serious danger to public health; and
- the Bill provides for persons bound by an order who suffer a loss as a result of the order to seek compensation if the person considers that there were insufficient grounds for the order.

***Amendments to Health Act 1937***

*Powers of Entry*

Under clause 56 (section 144) an inspector may, without consent or a warrant, enter a place of business (eg. a pharmacy) when the place is open for business or otherwise open for entry, to account for controlled drugs, restricted drugs or poisons kept by the holder of an endorsement (under the *Health (Drugs and Poisons) Regulation 1996*).

Given the potential health risks associated with the unaccounted use or supply of controlled drugs, restricted drugs or poisons, the power to enter business premises at any time such premises are open is warranted to enable

the stock of controlled drugs, restricted drugs or poisons kept at the premises to be reconciled.

*Reasonable excuse for failure to comply with document production requirement*

Clause 58 (section 153O) makes it an offence for a person to fail to provide a document to an inspector unless the person has a reasonable excuse. The provision specifies that non-compliance on the basis of a tendency to incriminate the person is not a reasonable excuse. This provision may be regarded as compromising the person's protection against self-incrimination.

An inspector's power to require a person to produce a document or make a document available for inspection is limited to documents issued to, or required to be kept by, the person under the relevant provisions, for example, a drug manufacturer's licence. Given the limited extent of this provision and the importance of such documents in achieving the objectives of the legislation, it is reasonable to require a person to comply with the requirement even if to do so might tend to incriminate the person.

*Reversal of Onus of Proof*

Clause 60 (section 153ZM) effectively provides that an act or omission of a person's representative (relating to a proceeding for an offence against the provisions of the Act to which Part 4A applies) 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 they could not, by the exercise of reasonable diligence, have prevented the act or omission.

Section 153ZN provides that, if a corporation is convicted of an offence, 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 controls placed on the supply of drugs and poisons under the Act are aimed at protecting the health of the public, it is appropriate that:

- persons 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.

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

*Immunity from Civil Liability*

Clause 61 (section 153ZT) specifies that the chief executive, a State analyst, an inspector or a person acting under the direction of an inspector is not civilly liable for an act done, or omission made, honestly and without negligence under a relevant provision or Part 4A of the Act.

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

*Cancelled As-of-Right Authorities*

The amendment of the Health Act to remove any doubt that as-of-right authorities cancelled under the *Poisons Regulation 1973* remain cancelled raises a fundamental legislative principle issue due to its retrospective nature. Section 4(2)(g) of the *Legislative Standards Act 1992* specifies that legislation must have sufficient regard to the "rights and liberties of an individual by not adversely affecting the rights and liberties of that person, retrospectively".

Under the Poisons Regulation an as-of-right authority could be cancelled if a person was convicted of an offence against the Health Act or Poisons Regulation; or the chief health officer deemed that a person was unfit to hold such an authority (eg due to a person self-administering drugs such as pethidine or inappropriately prescribing drugs to drug dependent persons).

Clause 64 of the Bill (section 185) confirms that, as of 1 January 1997, the as-of-right authorities cancelled by the chief health officer under the Poisons Regulation remain cancelled despite the repeal of that Regulation and the promulgation of the *Health (Drugs and Poisons) Regulation 1996*. While the effect of this provision is retrospective, the rights of those practitioners who held the authorities are not adversely affected because none of these practitioners have acted on the assumption that the cancelled authorities were in force from 1 January 1997.

It is in the public interest to ensure that any doubt regarding the as-of-right authorities is removed, as the department must be able to act with certainty when dealing with these practitioners.

***Amendments to Health Practitioner Registration Acts***

The amendment of the Acts to over-ride the protection provided by the *Criminal Law (Rehabilitation of Offenders) Act 1986* raises a fundamental legislative principle issue, as the power to access a person's full criminal history may be regarded as adversely affecting an individual's privacy. Section 4(2)(a) of the *Legislative Standards Act 1992* specifies that legislation must have sufficient regard to the rights and liberties of an individual.

When deciding whether an applicant is to be registered, the boards must determine whether the applicant is fit to practise the profession for which they are seeking registration. Under the Acts, the boards may have regard to whether the applicant has been convicted of an indictable offence, an offence against the health practitioner legislation or an offence relating to the practice of the profession.

The capacity for the boards to access information about an applicant's full criminal history will assist the boards to assess whether a person is fit to practise the profession. A more complete picture of an applicant's criminal history, including information about 'old' convictions and charges may indicate a pattern of behaviour that could compromise the applicant's ability to practise the profession safely and competently. This process is vital to ensure that all potential registrants are fit to hold positions of trust in the community, which may involve providing services to society's most vulnerable groups, such as children, older persons and persons with a disability.

Provisions of this kind are common in occupational registration legislation where, for the purpose of protecting the public, the integrity of industry participants must be ensured. Those aspects of the Bill that

provide for the amendment of the Acts are consistent with the scope of criminal history provisions under other statutes that deal with the employment or registration of persons who work primarily with children (ie. *Education (Teachers Registration) Act 1988* and *Commission for Children and Young People Act 2000*).

***Amendments to Mental Health Act 2000***

Amendments providing for the making of non-contact orders may be considered to affect the rights and liberties of an individual. However, it should be noted that orders can only be made in limited circumstances; ie. an indictable offence has been committed against the person of someone, and on the revocation of a forensic order or on a decision not to make a forensic order where a person has been found of unsound mind or permanently unfit for trial. The person the subject of the order has a right of reply against material submitted to the decision-maker by an interested party, has a right of appeal against the decision, and can apply for a variation or revocation of the order.

A non-contact order is limited to a maximum of two years and a person can be prosecuted only if the person knowingly breaches the order. In addition, a Magistrates Court, on hearing a breach of a non-contact order, may elect to vary the order rather than impose a penalty.

***Amendments to Private Health Facilities Act 1999***

Clause 190 inserts a new section 143A which requires persons holding an approval or licence for a private health facility to notify the chief health officer of certain events that may affect the person's suitability to continue to operate a private health facility. It could be argued that the requirement compromises the person's rights as this information could be used to take action against the person.

However, the requirement is appropriate given the main object of the Act is to protect the health and well-being of patients receiving health services at private health facilities. The notification of these matters will enable the chief health officer to promptly identify whether circumstances exist requiring action to be taken to protect the public eg. by suspending or cancelling the person's licence to operate the facility.

## Consultation

### *Amendment of Food Act 1981*

Extensive consultation on the issues included in the Bill was undertaken during the Blair Review and by ANZFA. The Model Food Act Working Group, formed by ANZFA, consulted widely with government, industry, charitable and consumer groups. A detailed discussion paper regarding the review of the Food Acts was issued by ANZFA in February 1998 and a Draft Model Food Bill, Regulatory Impact Statement and Implementation Agreement were released for public comment in April 1999.

### *Amendment of Health Practitioners (Professional Standards) Act 1999*

The Medical Board of Queensland and the Office of the Health Practitioner Registration Boards were consulted about the amendments.

### *Amendment of Medical Practitioners Registration Act 2001*

The Medical Board of Queensland has been consulted.

### *Amendment of Mental Health Act 2000*

An extensive process of consultation was undertaken in establishing the policy intentions of the *Mental Health Act 2000*. All amendments, other than those relating to victims of crime, do not represent a change in policy but are simply technical amendments to improve the operation of the Act.

Significant consultation occurred with victims of crime in developing the *Mental Health Act 2000*. Although no specific consultation occurred with victims of crime in the drafting of the additional proposals relating to victims of crime in this Bill, the proposals seek to address further concerns raised publicly by victims of crime in recent months.

### *Amendment of the Queensland Institute of Medical Research Act 1945*

The Queensland Institute of Medical Research, and those bodies which nominate persons for appointment to the Council of QIMR have been consulted.

***Amendment of Transplantation and Anatomy Act 1979***

The Queensland Bone Bank, the Queensland Eye Bank, the Queensland Heart Valve Bank and the Australian Red Cross Blood Service and Skin Bank have been consulted in relation to the amendment to Part 7 of the Act to permit cost recovery for the retrieval, evaluation, processing, storage and distribution of donated tissues.

# NOTES ON PROVISIONS

## PART 1—PRELIMINARY

*Clause 1* sets out the short title of the Act.

*Clause 2* provides for the commencement of the provisions in the Act.

## PART 2—AMENDMENT OF CHIROPRACTORS REGISTRATION ACT 2001

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

*Clause 4* inserts new subsections (2) and (3) in section 42, which sets out the procedural requirements for applications for general registration. Subsection (2) enables the board to require the disclosure of an applicant's criminal history. Subsection (3) specifies that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to this disclosure.

*Clause 5* amends section 45 to enable the board to have regard to an applicant's full criminal history when deciding whether an applicant for general registration is fit to practise the profession. Subclause 5(3) requires the board to have particular regard to certain convictions.

Clause 5 also amends section 45 to specify that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to a board request

for, or the provision of a report about, an applicant's criminal history by the commissioner of the police service.

*Clause 6* inserts new subsections (4) and (5) in section 47, which currently sets out who may be appointed to conduct a health assessment of an applicant for general registration.

Under section 46 of the Act, the board may require an applicant for general registration to undergo a health assessment in order to assess the applicant's mental and physical capacity to practise the profession. Subsection (4) authorises the board, if it considers it relevant, to disclose an applicant's criminal history to the person appointed to conduct a health assessment. For example, an applicant may have a series of charges and convictions which indicate a pattern of behaviour that affects the applicant's ability to practise the profession safely and competently. Subsection (5) specifies that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to this disclosure.

*Clause 7* amends section 70 to clarify when an application for renewal of general registration must be received by the board.

*Clause 8* amends the definition of 'information' in section 196(6) in light of the amendments made to the Act to enable access to an applicant's criminal history, to ensure that if information about an applicant's criminal history is obtained under the Act, it is protected.

*Clause 9* inserts a new definition for the term 'criminal history' in Schedule 4, to replace the definition omitted from subsection 45(6) by clause 5.

## PART 3—AMENDMENTS TO DENTAL PRACTITIONERS REGISTRATION ACT 2001

*Clause 10* specifies that this part of the Bill amends the *Dental Practitioners Registration Act 2001.*

*Clause 11* inserts new subsections (2) and (3) in section 42, which sets out the procedural requirements for applications for general registration. Subsection (2) enables the board to require the disclosure of an applicant's criminal history. Subsection (3) specifies that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to this disclosure.

*Clause 12* makes various amendments to section 45 to enable the board to have regard to an applicant's criminal history when deciding whether an applicant for general registration is fit to practise the profession. Subclause 12(3) requires the board to have particular regard to certain convictions.

Clause 12 also amends section 45 to specify that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to a board request for, or the provision of a report about, an applicant's criminal history by the commissioner of the police service.

*Clause 13* inserts new subsections (4) and (5) in section 47, which currently sets out who may be appointed to conduct a health assessment of an applicant for general registration.

Under section 46 of the Act, the board may require an applicant for general registration to undergo a health assessment in order to assess the applicant's mental and physical capacity to practise the profession. Subsection (4) authorises the board, if it considers it relevant, to disclose an applicant's criminal history to the person appointed to conduct a health assessment. For example, an applicant may have a series of charges and convictions which indicate a pattern of behaviour that could compromise the applicant's ability to practise the profession safely and competently. Subsection (5) specifies that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to this disclosure.

*Clause 14* amends section 70 to provide greater clarity as to when an application for renewal of general registration must be received by the board.

*Clause 15* amends the definition of 'information' in section 218(6) in light of the amendments made to Act to enable access to an applicant's criminal history, to ensure that if information about an applicant's criminal history is obtained under the Act, it is protected.

*Clause 16* inserts a new definition for the term 'criminal history' in Schedule 4, to replace the definition omitted from subsection 45(6) under clause 12.

# PART 4—AMENDMENTS TO DENTAL TECHNICIANS AND DENTAL PROSTHETISTS REGISTRATION ACT 2001

*Clause 17* specifies that this part of the Bill amends the *Dental Technicians and Dental Prosthetists Registration Act 2001*.

*Clause 18* inserts new subsections (2) and (3) in section 42, which sets out the procedural requirements for applications for general registration. Subsection (2) enables the board to require the disclosure of an applicant's criminal history. Subsection (3) specifies that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to this disclosure.

*Clause 19* makes various amendments to section 45 to enable the board to have regard to an applicant's criminal history when deciding whether an applicant for general registration is fit to practise the profession. Subclause 19(3) requires the board to have particular regard to certain convictions.

Clause 19 also amends section 45 to specify that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to a board request for, or the provision of a report about, an applicant's criminal history by the commissioner of the police service.

*Clause 20* inserts new subsections (4) and (5) in section 47, which currently sets out who may be appointed to conduct a health assessment of an applicant for general registration.

Under section 46 of the Act, the board may require an applicant for general registration to undergo a health assessment in order to assess the applicant's mental and physical capacity to practise the profession. Subsection (4) authorises the board, if it considers it relevant, to disclose an applicant's criminal history to the person appointed to conduct a health assessment. For example, an applicant may have a series of charges and convictions which indicate a pattern of behaviour that could compromise the applicant's ability to practise the profession safely and competently. Subsection (5) specifies that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to this disclosure.

*Clause 21* amends section 70 to provide greater clarity as to when an application for renewal of general registration must be received by the board.

*Clause 22* amends the definition of 'information' in section 200(6) in light of the amendments made to Act to enable access to an applicant's

criminal history, to ensure that if information about an applicant's criminal history is obtained under the Act, it is protected.

*Clause 23* inserts a new definition for the term 'criminal history' in Schedule 4. The existing definition of the term 'criminal history' has been omitted from subsection 45(6) under clause 19.

## PART 5—AMENDMENT OF FOOD ACT 1981

*Clause 24* specifies that this part of the Bill and Schedule 1 amend the *Food Act 1981*.

*Clause 25* amends the long title of the Act to reflect the new offences and objects inserted into the Act.

*Clause 26* inserts the objects of the Act and specifies that the *Food Safety (Production) Act 2000*, which deals with food safety matters relating to the production of primary produce, is in addition to, and does not limit, the Food Act.

*Clause 27* amends section 5 to:

- omit the definitions of terms which are no longer referred to in the Act (such as 'appliance' and 'drug');
- amend some definitions to provide consistency with definitions in the Model Food Bill (such as 'analysis', 'equipment' and 'proprietor' of a food business);
- add definitions for terms not currently defined in the Act (such as 'food business', 'exercised all due diligence' and 'handling' of food); and
- relocate section 5 to Schedule 3—Dictionary.

*Clause 28* replaces section 5A and inserts sections 5B to 5E, which provide new definitions of 'food', 'food standards code', 'sell', 'unsafe' food and 'unsuitable' food as provided by the Model Food Bill. The definition of 'food' continues to include ingredients and processing aids used in making food and chewing gum. The definition excludes a substance or thing which is declared a therapeutic good under the *Therapeutic Goods Act 1989* (Cwlth).

Section 5B provides that the 'food standards code' is as defined in the *Australia New Zealand Food Authority Act 1991* (Cwlth). Subsection 5B(2) provides for modifications to the Code to ensure consistency with Queensland's food safety regulatory system. Through the definition, the Act does not adopt Food Safety Standard 3.2.1 (Food Safety Programs) and clause 4 (Notification) of Food Safety Standard 3.2.2 (Food Safety Practices and General Requirements). Consideration will be given to the adoption of these requirements after review of licensing and registration provisions in the *Food Hygiene Regulation 1989*.

Section 5C defines 'sell' broadly, to encompass food that is given away in the furtherance of any trade or business, such as a free sausage sizzle at a hardware store or car sales yard, or other food given away by food businesses.

The meaning of 'unsafe' food (section 5D) takes into consideration what happens to the food after the consumer has purchased it. For example, if a person purchased a cooked meat pie and left it at room temperature for three hours, the pie would not be considered 'unsafe' for the purposes of the Act, as the person stored the food in a way that would affect its reasonable intended use. Also, food is not considered 'unsafe' because it may cause an adverse reaction to a minority of persons. For example, a chocolate that contains peanuts may cause an allergic reaction in some people, but would be considered safe for the majority of persons.

The meaning of 'unsuitable' food (section 5E) provides that food may be considered safe but may be of a lesser quality than reasonable expected by the consumer.

*Clause 29* replaces Part 2 of the Food Act with *Division 1, Part 2,* and inserts the new Part 2 heading - *Offences Relating to Food*. Division 1 - *Serious offences relating to food*, has high maximum penalties (including up to 2 years imprisonment) because persons committing these offences are considered to know, or ought to know, that their actions constitute a risk to a potentially large number of consumers. Section 9 makes it an offence to handle food for sale in an unsafe way. Section 10 makes it an offence to sell unsafe food. Section 11 makes it an offence to falsely describe food in a manner that will or may lead to a person suffering physical harm, or to sell falsely described food that will or may lead to a person suffering physical harm.

*Clause 30* inserts *Division 2—Other offences relating to food.*

Section 12 makes it an offence to handle food for sale in an unsafe way, or to sell unsafe food. Section 13 includes similar offences in relation to handling or selling unsuitable food.

Section 14 includes offences for misleading conduct relating to the sale of food. The offences apply to persons conducting a food business who—

- engage in conduct that is misleading or deceptive;
- cause food to be advertised, packaged or labelled in a way that falsely describes the food; and
- sell food that is packaged or labelled in a way that falsely describes the food.

These offences do not require that a person has been put at risk of physical harm for an offence to have occurred.

Section 15 makes it an offence for a person to sell equipment or packaging or labelling material that could make food unsafe.

Section 16 creates offences for non-compliance with the Food Standards Code developed by the Australia New Zealand Food Authority.

Section 16(5) provides an exemption from the labelling requirements in Volume 1 of the Code, for food businesses that pack food in the presence of the purchaser. Currently this exemption is available only for Volume 2 of the Code and would, for example, exempt a take-away food outlet, or delicatessen, from the labelling requirements if the food is packed in the presence of the purchaser.

Section 17 outlines the circumstances in which food would be considered to be falsely described under the Act. Section 17A clarifies that in relation to the offences, it does not matter that the food was intended for sale outside Queensland.

*Clause 31* inserts *Part 2, Division 3—Defences*, which provides defences in relation to the offences in Part 2, including the defence of due diligence, where it is considered a defence if a person exercised all due diligence to prevent the commission of the offence. The amended dictionary defines 'exercised all due diligence' to include taking all reasonable precautions.

The Act also provides a food business with defences for offences under the Act relating to—

- advertising;
- food for export to another country;

- food which is destroyed or dispose of after being handled in a way that is likely to make the food unsafe or unsuitable; and
- equipment that was sold with the intention that it would not be used in connection with the handling of food. For example, a second hand dealer could rely on the defence if he or she sold an old stove as an antique, and reasonably believed that a person would not use the stove for cooking purposes.

Section 17E clarifies that the defence in section 23 of the Criminal Code does not apply to an offence under Part 2, and that the defence in section 24 of the Criminal Code does not apply to an offence under Part 2, Division 2.

*Clause 32* omits *Part 3—Labelling Requirements* and inserts *Part 3—Emergency Powers*.

Section 18 provides the chief executive with the power to make orders necessary to prevent or reduce the possibility of a serious danger to public health or to mitigate the adverse consequences of a serious danger to public health.

Section 19 details the nature of the orders that may be made. Section 19A provides details regarding recall orders that may require the recall and/or disposal of food which is considered unsafe. This provision replaces section 13 of the *Food Standards Regulation 1994*.

Section 19B specifies how orders are to be made, and when an order has effect. Section 19C enables a person to seek compensation from the chief executive if the person suffers loss as a result of an order by which they were bound, and considers there were insufficient grounds for the order. Section 19D creates offences for non-compliance with an order.

*Clause 33* expands the duties of local government under the Food Act to include the superintendence and execution of standards 3.1.1, 3.2.2 and 3.2.3 (ie. the food safety standards) of the Code. The duty was previously contained in the *Food Hygiene Regulation 1989.* However, the amendment to section 26 provides local government with the ability to prosecute a person, under section 16(1), for failing to meet the requirements of the food safety standards in the Code.

*Clause 34* inserts section 29A, which provides that any analysis of an article or other thing taken by an authorised officer under section 28(1)(a)(iii) and (viii) must be done by an analyst who is authorised by or under the Act.

*Clause 35* inserts *Part 5A—Appeals* into the Act to provide for appeals against the chief executive's decision regarding compensation sought under

section 19C arising from the exercise of the emergency powers. Appeals are to the Magistrates Court, with appeals from a Magistrate's decision on questions of law to the District Court.

*Clause 36* inserts section 40F, which is a transitional arrangement that will be removed from the Act when Volume 1 of the Food Standards Code is repealed (expected in December 2002). The labelling requirement in section 40F(1) was previously in section 19(4) of the Food Act, and is not provided for in Volume 1 of the Code, but is included in Volume 2. The requirement relates only to packages with a surface area of at least 100cm$^2$.

*Clause 37* amends section 41 of the Food Act, so that the defence for export of food under the section is only available for an offence against section 40F. The defence for the export of food is available in Part 2, Division 3 (Section 17C) in regard to offences in that Part only and therefore is not available for an offence in section 40F.

*Clause 38* inserts section 45A, which provides for alternative verdicts to serious offences under section 9 and 10. For example, a person may be charged with knowingly selling unsafe food (section 10), but found guilty of the lesser offence of selling unsafe food (section 12(2)) if it was found the person committed an offence, but it could not be established that they knew or reasonably ought to have known, that they were committing an offence.

*Clause 39* replaces section 50(2), with a provision from Annex B of the Model Food Bill (section 94(2)), which provides an employer with a defence of due diligence if an employee commits an offence against the Act. Clause 39 also corrects a cross-referencing error in section 50(4).

*Clause 40* provides that a regulation cannot be made that is inconsistent with the Food Standards Code.

*Clause 41* renumbers the Schedule.

*Clause 42* inserts Schedule 2, which provides modifications to the Code to ensure consistency with the food safety regulatory system in Queensland.

*Clause 43* inserts Schedule 3—Dictionary into the Act.

# PART 6—AMENDMENT OF HEALTH ACT 1937

*Clause 44* specifies that this part of the Bill amends the *Health Act 1937*.

*Clause 45* amends section 5(1) by inserting definitions for terms used in new Part 4A. This clause also inserts new definitions of "analyst" and "inspector".

*Clause 46* corrects an error in section 18A(1)(a) and removes the requirement in section 18A(1)(c) that the chief executive must notify the Medical Board of certain action taken against medical practitioners under the *Health (Drugs and Poisons) Regulation 1996*.

*Clause 47* amends section 27A to extend its application to State analysts appointed under the new Part 4A or another law of the State.

*Clause 48* amends section 124A to include a reference to the new Part 4A.

*Clause 49* omits section 125, which is a redundant provision.

*Clause 50* omits section 131, which is a redundant provision.

*Clause 51* inserts a new heading for Part 4, Division 10.

*Clause 52* omits sections 132 to 151. The subject matters of these provisions are dealt with in new Part 4A.

*Clause 53* amends section 152 by omitting provisions enabling a regulation to be made about matters which are dealt with in new Part 4A.

*Clause 54* provides for the renumbering of sections 152 and 153 as sections 132 and 133.

*Clause 55* inserts Divisions 1 and 2 of Part 4A (sections 134 to 143) and the heading for that Part.

Section 134 specifies the provisions to which Part 4A applies.

Section 135 provides that Part 2, Division 4 does not limit Part 4A.

Section 136 contains definitions for Part 4A.

Section 137 authorises the chief executive to appoint an officer of the department (ie a public service employee), a health service employee or a person prescribed under a regulation as an inspector provided that the chief executive considers the person has the necessary expertise or experience to be an inspector.

Section 138 specifies that an inspector holds office on the conditions stated in the person's instrument of appointment, a signed notice given to the person, or a regulation and that the instrument of appointment, signed notice or a regulation may limit the inspector's powers under Part 4A.

Section 139 requires the chief executive to provide each inspector with an identity card containing a recent photo of the person and other relevant particulars.

Section 140 requires an inspector to produce the inspector's identity card before exercising any power under Part 4A or display the card when exercising the power. However, if it is not practical to comply with this requirement, the inspector must produce the card at the first reasonable opportunity.

Section 141 specifies the circumstances under which an inspector ceases to hold office.

Section 142 specifies how an inspector may resign.

Section 143 makes it an offence for a person who ceases to be an inspector, to fail to return, without a reasonable excuse, the person's identity card to the chief executive within 21 days after ceasing to be an inspector.

*Clause 56* inserts Subdivisions 1 to 3 of Division 3 of Part 4A (sections 144 to 153).

Section 144 confers on an inspector a right to enter a place if:

- the occupier consents to the entry; or
- the entry is authorised by a warrant; or
- it is a public place and the entry is made when it is open to the public; or
- the entry is to account for controlled drugs, restricted drugs or poisons kept at the place by the holder of an endorsement (under the *Health (Drugs and Poisons) Regulation 1996*) and the place is open for business or otherwise open for entry.

Section 145 outlines the procedures an inspector must follow when seeking consent to enter a place. The section also provides that, should the issue arise in a proceeding whether the occupier consented to the entry, the onus is on the person relying on the lawfulness of the entry to prove that the occupier consented to the entry.

Section 146 makes provision for an inspector to apply to a Magistrate for a warrant to enter a place.

Section 147 sets out the conditions under which a Magistrate may issue a warrant and specifies the information that must be stated in a warrant.

Section 148 makes provision for an inspector to apply for a warrant by phone, fax, radio or another form of communication because of urgent or other special circumstances.

Section 149 outlines the procedures that must be followed by an inspector prior to entering a place under a warrant.

Section 150 authorises an inspector to ask or signal a person in charge of a motor vehicle to stop the vehicle if the inspector suspects on reasonable grounds that a thing in or on the vehicle may provide evidence of the commission of an offence against the relevant provisions. The section also authorises an inspector to give directions that a stationary vehicle not be moved, or be moved and kept at a stated reasonable place. After stopping a vehicle, an inspector would only be authorised to enter the vehicle with the consent of the occupier or a warrant.

Section 151 specifies what powers are available to an inspector who has entered a place for the purposes of monitoring and enforcing compliance with the relevant provisions.

Section 152 makes it an offence for a person to fail to help an inspector under section 151(3)(f), unless the person has a reasonable excuse.

Section 153 makes it an offence for a person to fail to provide an inspector with information asked for under section 151(3)(g), unless the person has a reasonable excuse.

*Clause 57* inserts Subdivision 4 of Division 3 of Part 4A (sections 153A to 153K).

Section 153A provides an inspector with the power to seize a thing at a place entered, without consent or a warrant, if the inspector reasonably believes that the thing is evidence of an offence against the relevant provisions.

Section 153B provides an inspector with the power to seize a thing at a place if:

- the inspector obtained the necessary consent to enter the place; and the inspector reasonably believes that the thing is evidence of an offence against the relevant provisions; 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 inspector is authorised to enter the place under a warrant and the seizure is authorised by the warrant; or
- the inspector reasonably believes another thing at the place is evidence of an offence against the relevant provisions and needs to be seized to secure evidence or to prevent repeat offences; or has just been used in committing an offence against the relevant provisions.

Section 153C enables an inspector to take action in relation to a thing which has been seized ie. 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.

Section 153D makes it an offence for a person to interfere, or attempt to interfere, with those actions taken by an inspector to restrict access to seized things or make seized equipment inoperable, without an inspector's approval.

Section 153E makes provision for an inspector to require the person in control of a thing to be seized to take it to a stated reasonable place by a stated reasonable time; and if necessary, to remain in control of it at the stated place for a reasonable time.

Section 153F requires an inspector to issue a receipt for any seized thing and to give the receipt to the person from whom the thing was seized. However, if this is impractical, the inspector must leave the receipt at the place of seizure in a conspicuous position and in a secure way.

Section 153G 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. A right of appeal is provided against an inspector’s decision which results in forfeiture of a thing.

Section 153H makes provision for a court to order, on convicting a person for an offence against the relevant provisions, the forfeiture to the State of anything that has been seized.

Section 153I enables the chief executive to deal with a thing which has been forfeited to the State, as the chief executive considers appropriate, including the destruction or disposal of the thing. However, the chief executive must not deal with the thing in a way that could prejudice the outcome of an appeal relevant to the thing.

Section 153J specifies when an inspector must return a seized thing to its owner, if the thing has not been forfeited.

Section 153K 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 58* inserts Subdivision 5 of Division 3, and Division 4 of Part 4A (sections 153L to 153Y).

Section 153L enables an inspector, if an offence has or appears to have been committed against the relevant provisions, 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 inspector must warn the person it is an offence to fail to state the person's name or address, unless they have a reasonable excuse.

Section 153M makes it an offence for a person, without a reasonable excuse, to fail to comply with a request made under section 153L, 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 relevant provisions.

Section 153N makes provision for an inspector to:

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

Section 153O makes it an offence for a person to fail to comply with a request made under section 153N to produce a document, unless the person has a reasonable excuse.

Section 153P makes it an offence for a person to fail to comply with a request made under section 153N to certify a document, unless the person has a reasonable excuse.

Section 153Q enables an inspector to require a person, by written notice, to attend before the inspector to provide information about an offence against the relevant provisions. It is an offence for a person to fail to comply with such a request, unless the person has a reasonable excuse.

Section 153R enables the chief executive or an inspector to issue a compliance notice to a person if the chief executive or inspector reasonably believes that:

- the person is contravening a relevant provision or Part 4A or has contravened same in circumstances that make it likely the contravention will continue or be repeated; and
- the matter is reasonably capable of being rectified and it is appropriate to give the person an opportunity to rectify the matter.

The section 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.

Section 153S requires an inspector to give written notice if an inspector, or a person acting under the direction or authority of an inspector, 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 this proves impractical, the inspector must leave the notice in a conspicuous position and in a secure way.

Section 153T 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 inspector under the following subdivisions of Division 3 of Part 4:

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

Section 153U makes it an offence for a person to state anything to an inspector that the person knows is false or misleading in a material particular.

Section 153V makes it an offence to give an inspector a document containing information that the person knows is false or misleading in a material particular.

Section 153W makes it an offence to obstruct an inspector in the exercise of a power, unless the person has a reasonable excuse.

Section 153X makes it an offence to pretend to be an inspector.

Section 153Y sets out the steps that an inspector must take in relation to a thing which the inspector has taken or seized, and which must be analysed by a State analyst. The steps involve dividing the thing into 3 parts, sealing or fastening each part to prevent tampering, and labelling with specified details.

*Clause 59* inserts Division 5 of Part 4A (sections 153Z to 153ZE).

Section 153Z provides for the chief executive to appoint an officer (ie a public service officer) of the department or a health service employee as a State analyst provided the chief executive considers the person has the necessary expertise or experience to be a State analyst.

Section 153ZA specifies that a State analyst holds office on the conditions stated in the person's instrument of appointment, a signed notice given to the person, or a regulation and that the instrument of appointment, signed notice or a regulation may limit the State analyst's powers.

Section 153ZB specifies the circumstances under which a State analyst ceases to hold office.

Section 153ZC specifies that a State analyst may resign by signed notice given to the chief executive.

Section 153ZD makes provision for a State analyst to issue a certificate of analysis for a thing taken or seized by an inspector.

Section 153ZE specifies that a certificate of analysis must include information about the methodology used to conduct the analysis.

*Clause 60* inserts new Division 6 of Part 4A (sections 152ZF to 153ZN).

Section 153ZF specifies that Division 6 of Part 4A applies to a relevant provision or Part 4A.

Sections 153ZG to 153ZI specify those matters that do not have to be proved in a proceeding under a relevant provision or Part 4A, or which are considered to be evidence of those matters.

Section 153ZJ provides for offences under the relevant provisions or Part 4A to be dealt with as summary offences and specifies the period within which proceedings for an offence can be commenced.

Section 153ZK provides for the recovery of costs where a court convicts a person of an offence against a relevant provision or Part 4A.

Section 153ZL provides that an application under section 153AK is to be heard in the court's civil jurisdiction and is to be decided on the balance of probabilities.

Section 153ZM 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.

Section 153ZN 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 was 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.

*Clause 61* inserts new Divisions 7 and 8 of Part 4A (sections 153ZO to 153ZT).

Section 153ZO specifies that the owner of a thing forfeited to the State under section 153G(1)(c) may appeal against the decision.

Section 153ZP specifies that an appeal may be started at the Magistrates Court at Brisbane or nearest the place where the person lives or carries on business. The section also specifies when the notice of appeal must be filed.

Section 153ZQ provides that an appeal is by way of rehearing and that the court is not bound by the rules of evidence but must comply with natural justice.

Section 153ZR specifies the court’s powers on appeal.

Section 153ZS provides that an appeal lies to the District Court from a decision of a Magistrates Court made under section 153ZR, but only on question of law.

Section 153ZT specifies that the persons referred to in section 153ZT(3) who have a role in the administration of the relevant provisions or Part 4A are not civilly liable for an act or omission, made honestly and without negligence, under the relevant provisions or Part 4A. Instead, such liability attaches to the State.

*Clause 62* omits section 154 as it is redundant.

*Clause 63* inserts new section 154O which specifies that Part 6, with the exception of sections 175, 178(f), 180(1) and 180(2)(f) do not apply to Part 4A or a relevant provision. This is necessary to avoid inconsistency between the provisions of Part 4A , a relevant provision and Part 6.

*Clause 64* inserts a new Part 8, Transitional Provisions for *Health Legislation Amendment Act 2001.*

Section 184 sets out the transitional arrangements that apply to anything done, omitted, or started under, or in relation to, a relevant provision (a provision to which Part 4A applies as in force before the commencement of the section) or a repealed provision (any of sections 132 to 151 of the pre-amended Act). This would include, for example, a proceeding for an offence, the seizure of a drug or the analysis of a sample of a drug).

The section specifies that the pre-amended Act continues to apply to in relation to those things as if the *Health Legislation Amendment Act 2001* had not been passed and that a proceeding for an offence against a relevant provision or a repealed provision committed before the commencement may be started or continued, and the pre-amended Act applies to the proceeding.

Section 185 clarifies that an as-of-right authority under section D2 of the *Poisons Regulation 1973* that was cancelled by the chief health officer remained cancelled despite the repeal of the Poisons Regulation and the enactment of the *Health (Drugs and Poisons) Regulation 1996.* This amendment will correct a deficiency in the transitional provisions of the *Health (Drugs and Poisons) Regulation 1996,* which failed to address the status of those authorities cancelled under the Poisons Regulation at the time this regulation was repealed.

## PART 7—AMENDMENT OF HEALTH PRACTITIONERS (PROFESSIONAL STANDARDS) ACT 1999

*Clause 65* specifies that Part 7 amends the *Health Practitioners (Professional Standards) Act 1999* (the "Act").

*Clause 66* amends section 240 to ensure that the health assessment Tribunal, in making a decision about a registrant's impairment, can also have regard to any failure to attend or co-operate at an external assessment.

*Clause 67* amends section 241 to ensure consistent use of terms.

*Clause 68* amends section 243 to provide for 3 further actions that can be taken if the grounds for disciplinary action are established against a former registrant. The amendments enable the Tribunal to set conditions for any re-application for registration and make other appropriate orders in relation to the person's actions.

*Clause 69* amends section 288 to enable the health assessment committee to require a registrant to undergo an external health assessment in relation to any aspect of the impairment. External assessment may be necessary where a specialised health assessment of the registrant is required. For example, a specialist neuropsychiatric assessment may be necessary to assist the committee in its overall health assessment of the registrant. An external assessment is part of the health assessment of the registrant undertaken by the committee. An external assessor is to be appropriately qualified to conduct the type of assessment required by the committee. The provision requires notice of each external assessment to be given by the committee to the registrant and specifies the contents of the notice.

This clause also inserts section 288A which provides for the appointment of an external assessor to conduct the external assessment under section 288. This provision also prevents a person who has a professional or personal connection with the registrant from being appointed as an external assessor.

*Clause 70* amends section 289 to change the cross-reference to section 288, in keeping with the new section 288.

*Clause 71* inserts section 295A which specifies that a report is to be provided by an external assessor to the health assessment committee. This provision also specifies the matters to be included in the report.

*Clause 72* amends section 296 to –

- ensure that the health assessment committee also gives consideration to any external assessment report in the preparation of its assessment report; and
- include any external assessment report in the committee's assessment report.

*Clause 73* amends section 307 to ensure that the external assessment report is shielded from use in any proceeding before a court (except disciplinary proceedings under the Act). This is to ensure that the report is

only used for the purpose for which it was created and not for any other kind of actions.

*Clause 74* amends section 308 to provide that the board establishing the health assessment committee is responsible for the paying the costs of an external assessment required by that committee.

*Clause 75* amends section 381 to provide that a suspended registrant continues to be a registrant for the purposes of any action taken under the Act relating to that registrant. This is clarify that, even though section 381(1) states that a suspended registrant is "taken not to be registered", it is intended that that person be subject to all actions under the Act, such as disciplinary proceedings and investigations.

*Clause 76* amends section 392 to ensure that an external assessor has a duty of confidentiality in relation to information acquired about a person's affairs.

*Clause 77* inserts a Part 14 (section 406). Section 406 applies to the decisions already made by the Tribunal under section 241 in relation to registrants who were suspended at the time of the decision. To remove any doubt, section 406 validates these decisions of the Tribunal.

*Clause 78* inserts the definitions of "external assessment", "external assessment report" and "external assessor" into the Dictionary.

## PART 8—AMENDMENT OF MEDICAL PRACTITIONERS REGISTRATION ACT 2001

*Clause 79* specifies that this part of the Bill amends the *Medical Practitioners Registration Act 2001*.

*Clause 80* inserts new subsections (2) and (3) in section 42, which sets out the procedural requirements for applications for general registration. Subsection (2) enables the board to require the disclosure of an applicant's criminal history. Subsection (3) specifies that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to this disclosure.

*Clause 81* makes various amendments to section 45 to enable the board to have regard to an applicant's criminal history when deciding whether an applicant for general registration is fit to practise the profession. Subclause 81(3) requires the board to have particular regard to certain convictions.

Clause 81 also amends section 45 to specify that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to a board request for, or the provision of a report about, an applicant's criminal history by the commissioner of the police service.

It should be noted that the fitness to practise requirements for general registration are also applicable to specialist registration (see section 111 of the Act) and special purpose registration (see sections 131 and 139 of the Act). The board will therefore be able to have regard to an applicant's criminal history when deciding whether to register an applicant for either of these categories of registration; and to obtain a written report about an applicant's criminal history from the commissioner of the police service.

*Clause 82* inserts new subsections (4) and (5) in section 47, which currently sets out who may be appointed to conduct a health assessment of an applicant for general registration.

Under section 46 of the Act, the Board may require an applicant for general registration to undergo a health assessment in order to assess the applicant's mental and physical capacity to practise the profession. Subsection (4) authorises the board, if it considers it relevant, to disclose an applicant's criminal history to the person appointed to conduct a health assessment. For example, an applicant may have a series of charges and convictions which indicate a pattern of behaviour that could compromise the applicant's ability to practise the profession safely and competently. Subsection (5) specifies that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to this disclosure.

It should be noted that the board also has the power to require an applicant for specialist registration (who is not a general registrant) and an applicant for special purpose registration to undergo a health assessment (see sections 112 & 113 for specialist registration and sections 131 & 139 for special purpose registration). Consequently, if the board decides that an applicant for either of these categories of registration should undergo a health assessment, the board may disclose their criminal history to the person appointed to conduct the assessment, if the board considers this information is relevant.

*Clause 83* amends section 72 to provide greater clarity as to when an application for renewal of general registration must be received by the board.

*Clause 84* amends section 110 to insert new subsections (2) and (3). Subsection (2) specifies that the board may require an applicant, who is not a general registrant, to disclose their criminal history by way of the

approved for registration as a specialist. Subsection (3) specifies that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to this disclosure.

*Clause 85* inserts a new section 143A which provides that:

- registrants, who are registered under section 135 (special purpose registration) to practise in a specialty in an area of need, are taken to also be specialist registrants in the specialty; and
- the registrant's deemed registration is taken to be subject to any conditions of the registrant's special purpose registration.

The purpose of deemed specialist registration is discussed in the General Outline section of these Notes.

The provision also provides that Division 9 of Part 3 (relating to specialist registration) does not apply to deemed specialist registrants and that Division 11 of Part 3 (relating to special purpose registration ) does not apply to the registrant's deemed specialist registration. This is necessary to prevent those Divisions applying to both categories of registration.

*Clause 86* inserts a new heading for Part 3, Division 10, Subdivision 5 and a new section 149A. Section 149A provides that the board must give the registrant a show cause notice if the board reasonably believes the conditions on the registrant's special purpose registration need to be changed for the registrant to competently and safely undertake the activity the subject of the registration.

The provision also sets out the particulars that a show cause notice must contain and specifies that the registrant may make written representations about the action the board may take. The board must give the registrant an information notice if it decides to changes the conditions.

The purpose of this provision is discussed in the General Outline section of these Notes.

*Clause 87* omits sections 150(4) and (5), which are redundant due to the insertion of new section 150A, and renumbers section 150(6).

*Clause 88* inserts a new section 150A which requires special purpose registrants to return their registration certificate to the board within 14 days after receiving notice that the board has decided to change conditions under section 149A(4) or remove conditions under section 150(3).

*Clause 89* amends section 176 of the Act. This clause gives effect to the original policy intention that the scope of the immunity under this section should cover the provision of information about all indictable offences.

This is achieved by replacing the reference to 'crime' with the broader concept of 'indictable offence', which includes crimes and misdemeanours. Having regard to section 535 of the Criminal Code, it also includes an attempt to commit any indictable offence.

*Clause 90* amends the definition of 'information' in section 257(6) in light of the amendments made to the Act to enable access to an applicant's criminal history, to ensure that if information about an applicant's criminal history is obtained under the Act, it is protected.

*Clause 91* amends section 293 to provide that persons registered under section 17C (d) and registered, or purported to be registered, under section 18 of the *Medical Act 1939* are not, despite section 293(2), taken to hold specialist registration under section 293. As those specialists will hold deemed specialist registration under section 143A (by virtue of their special purpose registration under section 135), the amendment avoids the anomaly of those specialists also holding specialist registration under section 293.

*Clause 92* amends section 294 by inserting a new heading and extending its application so that section 149A also applies to conditions imposed under the *Medical Act 1939*.

*Clause 93* amends Schedule 1 by inserting a reference to decisions made under section 149A.

*Clause 94* inserts a new definition for the term 'criminal history' in Schedule 3, to replace the definition omitted from subsection 45(5) under clause 81.

## PART 9—AMENDMENT OF MEDICAL RADIATION TECHNOLOGISTS REGISTRATION ACT 2001

*Clause 95* specifies that this part of the Bill amends the *Medical Radiation Technologists Registration Act 2001*.

*Clause 96* inserts new subsections (2) and (3) in section 42, which sets out the procedural requirements for applications for general registration. Subsection (2) enables the board to require the disclosure of an applicant's criminal history. Subsection (3) specifies that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to this disclosure.

*Clause 97* makes various amendments to section 45 to enable the board to have regard to an applicant's criminal history when deciding whether an applicant for general registration is fit to practise the profession. Subclause 97(3) requires the board to have particular regard to certain convictions.

Clause 97 also amends section 45 to specify that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to a board request for, or the provision of a report about, an applicant's criminal history by the commissioner of the police service.

*Clause 98* inserts new subsections (4) and (5) in section 47, which currently sets out who may be appointed to conduct a health assessment of an applicant for general registration.

Under section 46 of the Act, the board may require an applicant for general registration to undergo a health assessment in order to assess the applicant's mental and physical capacity to practise the profession. Subsection (4) authorises the board, if it considers it relevant, to disclose an applicant's criminal history to the person appointed to conduct a health assessment. For example, an applicant may have a series of charges and convictions which indicate a pattern of behaviour that could compromise the applicant's ability to practise the profession safely and competently. Subsection (5) specifies that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to this disclosure.

*Clause 99* amends section 74 to provide greater clarity as to when an application for renewal of general registration must be received by the board.

*Clause 100* amends the definition of 'information' in section 211(6) in light of the amendments made to Act to enable access to an applicant's criminal history, to ensure that if information about an applicant's criminal history is obtained under the Act, it is protected.

*Clause 101* inserts a new definition for the term 'criminal history' in Schedule 3. The existing definition of the term 'criminal history' has been omitted from subsection 45(6) under clause 97.

# PART 10—AMENDMENT OF MENTAL HEALTH ACT 2000

*Clause 102* specifies that this part and Schedule 2 amend the *Mental Health Act 2000*.

*Clause 103* ensures the Mental Health Review Tribunal is given notice when a person becomes a classified patient to ensure consistency across the scheme of notifications. Under the *Mental Health Act 2000* the Tribunal is notified on the patient ceasing to be a classified patient. The Tribunal needs to be aware when a person becomes a classified patient because limited community treatment cannot be ordered or authorised without the Director of Mental Health's approval. Also, a patient under an involuntary treatment order cannot be placed under the community category of the order while a classified patient.

*Clause 104* ensures consistency across the scheme of notifications. The amendment is necessary to ensure that the relevant parties are aware that the person is no longer an involuntary patient.

*Clause 105* ensures that the test the Director of Mental Health must apply before approving limited community treatment for a classified patient is consistent with similar tests applied by the Mental Health Review Tribunal and Mental Health Court. These are set out in clauses 111, 126 and 129.

*Clause 106* amends section 139 of the *Mental Health Act 2000* to enable electroconvulsive therapy to be only given to a person who has given informed consent to the treatment or on approval of the Mental Health Review Tribunal where a person does not, or cannot, give informed consent. The amendment also ensures that where a person objects to the treatment, electroconvulsive therapy could only be given if both the Tribunal has given approval and an involuntary treatment order has been made for the person.

*Clause 107* and *clause 108* amend sections 147 and 160 to ensure the Director of Mental Health has greater flexibility to require different data on mechanical restraint and seclusion to be provided in accordance with the circumstances. This will enable the Director of Mental Health to require information that had not been anticipated during drafting and approval of a form.

*Clause 109* corrects a drafting error in relation to notices given after the order for a patient's transfer from one authorised mental health service to

another. As the Mental Health Review Tribunal does not have any powers in relation to involuntary patients detained for assessment, it is not proper to notify the Tribunal of the transfer.

*Clause 110* amends the Act to clearly require the Mental Health Review Tribunal, before ordering or approving limited community treatment for a forensic patient, to consider whether the order should be subject to a condition that the patient must not have contact with a stated person.

*Clause 111* clarifies that the Mental Health Review Tribunal must not revoke a forensic order or place a forensic patient on limited community treatment if the patient represents an unacceptable risk to his or her safety or the safety of a member of the public, having regard to the patient's mental illness or intellectual disability. The clause further ensures that the test the Tribunal must apply before approving limited community treatment for a forensic patient with outstanding charges for criminal offences is expressed consistently.

*Clause 112* ensures consistency within the scheme of notifications for forensic patients. As a forensic patient's allied person is notified of a hearing by the Mental Health Review Tribunal, the allied person should also be given notice of the Tribunal's decision.

*Clause 113* ensures consistency across the scheme of notifications by providing the applicant with notice of the hearing of a review by the Mental Health Review Tribunal of a person's mental condition to decide the person's fitness for trial. As, under section 210, any person may make an application for a review, the applicant may be a person other than a person mentioned in section 211(1), paragraphs (a) to (d).

*Clause 114* amends section 212 of the *Mental Health Act 2000* to place a clear requirement on the Mental Health Review Tribunal to decide whether a person is likely to be fit for trial in a reasonable time on the last review within the first twelve months of the Mental Health Court's or jury's decision and on subsequent reviews.

*Clause 115* ensures consistency across the scheme of notifications by ensuring that similar persons to those under other reviews are given notice of the Mental Health Review Tribunal's decision on a hearing of person's mental condition to decide the person's fitness for trial. The clause also omits a specific requirement to give the Attorney-General notice of the decision, as the parties to the proceeding are given notice under section 213(1)(a) of the *Mental Health Act 2000*. The Attorney-General, under section 450(1)(c), is a party to the proceeding.

*Clause 116* amends the Act to ensure that a notification order may be made in relation to a forensic patient who has been found permanently unfit for trial.

*Clause 117* clarifies that notification orders and non-contact orders may be made in favour of similar persons.

*Clause 118* ensures consistency across the scheme of notifications by requiring the Mental Health Review Tribunal to give notice to the patient's allied person.

*Clause 119* inserts a new part under chapter 6 to empower the Mental Health Review Tribunal to make a non-contact order in addition to its decision to revoke a forensic order for a person.

Section 228A provides the circumstances in which a non-contact order may be made.

Sections 228B and 228C set out in whose favour a non-contact order may be made and clarifies that the Mental Health Review Tribunal must have previously made a notification order for the person. This is to ensure that, in practice, a person will be aware that the Mental Health Review Tribunal is to conduct a review of a forensic patient and enable the person to submit relevant material to the Tribunal if it is considered that a non-contact order should be made.

It is intended that the Mental Health Review Tribunal should come to a decision to make a non-contact order separately from its decision to revoke the forensic order. Matters the Tribunal must consider in deciding whether to make a non-contact order are also provided.

Sections 228D and 228E make provision for notice of the order. It is intended that a copy of the non-contact order will be filed in the Magistrates Court nearest to the person the subject of the order.

Section 228F empowers a Magistrates Court to vary or revoke a non-contact order on application. The amendment sets out notice provisions, who may apply for the variation or revocation and the test for varying or revoking the order.

Section 228G establishes the offence for contravention of a non-contact order and the Magistrates Court's powers on convicting a person of this offence.

*Clause 120* amends section 232 to be consistent with the amendment under clause 109 by replacing references to 'involuntary patient' with the term 'person'. It also clarifies that the requirement to notify a patient's

allied person of the hearing only applies if the person is an involuntary patient.

*Clause 121* amends section 234 to replace references to involuntary patient and clarify that the requirement to notify a patient's allied person of the hearing only applies if the person is an involuntary patient.

*Clause 122* ensures consistency across the scheme of notifications. It should be noted that there is no requirement for the Mental Health Review Tribunal to be notified when Chapter 7, Part 2 ceases to apply to a patient treated under an involuntary treatment order. As a safeguard in circumstances of concern, the Director of Mental Health is empowered to make an application to the Tribunal for a review.

Retention of the notice in relation to forensic patients is consistent with the requirement on the Tribunal, on a review, to have regard to both the treatment needs of the patient as well as the risk of offending behaviour and the community's safety.

*Clause 123* similarly ensures consistency across the scheme of notifications. Consistent with the retention of notification of the Mental Health Review Tribunal if Chapter 7, Part 2 applies to a forensic patient, the Tribunal is notified when the Director of Mental Health becomes aware that Chapter 7, Part 2 no longer applies. For example, Chapter 7, Part 2 may cease to apply if a patient's charges are withdrawn.

*Clause 124* requires notice of the Attorney-General's decision under section 247 of the Act *also* to be given to the Mental Health Review Tribunal to ensure consistency across the scheme of notifications.

*Clause 125* ensures consistency across the scheme of notifications and sets out additional persons who must be given notice of a decision by the Attorney-General, under section 247, that proceedings against a patient for an offence are to be discontinued.

*Clause 126* ensures that the test the Mental Health Court must apply before approving limited community treatment for a patient ordered, under section 273(1)(b), to be detained to an authorised mental health service is consistent with similar tests applied by the Mental Health Review Tribunal and Director of Mental Health.

*Clause 127* ensures that it is clear, on the face of the legislation, what material may be submitted by a non-party to the Mental Health Court. It is intended that the Mental Health Court may receive in evidence material that is relevant to any decision under chapter 7, part 5, 6 or 7. For example, a victim's views about the risk the alleged offender is believed to represent

to the victim or their family may be relevant to a decision by the Mental Health Court about whether to approve limited community treatment or to make a forensic order. The clause also ensures that material relevant to the Mental Health Court's decision to make a non-contact order is before the court.

*Clause 128* amends the Act to omit section 286(2), as the operation of section 286(1)(d) makes this redundant.

*Clause 129* amends the Act to clearly require the Mental Health Court, before ordering or approving limited community treatment for a forensic patient, to consider whether the order should be subject to a condition that the patient must not have contact with a stated person.

The clause also ensures that the test the Mental Health Court must apply before ordering or approving limited community treatment for a forensic patient is consistent with similar tests applied by the Mental Health Review Tribunal and Director of Mental Health.

*Clause 130* amends section 301 of the Act to clarify the meaning of the provision.

*Clause 131* inserts a new part under chapter 7, equivalent to similar amendments in relation to the Mental Health Review Tribunal, empowering the Mental Health Court to make a non-contact order in addition to its decision not to make a forensic order for a person found of unsound mind or permanently unfit for trial. There is a similar requirement that the Mental Health Court should come to a decision to make a non-contact order separately from its decision about whether to make a forensic order.

*Clause 132* ensures consistency of terms used between the appeal provisions and the non-contact order amendments.

*Clause 133* ensures that material relevant to the Mental Health Review Tribunal's decision to make a non-contact order is before the Tribunal.

*Clause 134* empowers the administrator of an authorised mental health service to appoint a person to be a health practitioner. The intention of the amendment is to enable persons, other than those mentioned under the limited definition of health practitioner in Schedule 2 (Dictionary), to perform the role of health practitioner if the person has the necessary training, qualifications and expertise in provision of mental health services.

*Clause 135* amends a drafting error under the transitional provisions of the Act. The amendment aims to ensure patients who were detained for involuntary treatment under the repealed Act prior to the commencement

day, on the order of a doctor who is not a psychiatrist, have the right to a statutory review within 6 weeks of the new order being made. This is to provide parity with those patients for whom involuntary treatment orders are made after the commencement day, and at the same time, to ensure that a 6-week review is not mandatory for a person who has been under involuntary treatment for a longer period of time.

*Clause 136* amends a further drafting error under the transitional provisions. The clause omits the reference to section 21(6) of the repealed Act, as this is not analogous to an application for a review under the *Mental Health Act 2000*. Rather, this is equivalent to the statutory reviews under section 187(1)(a) of the *Mental Health Act 2000*. The transitional provision setting out the timing of statutory reviews is set out in section 571.

Clause 136 also amends section 569 to remove the requirement for the Mental Health Review Tribunal to hear an application within the 7 day limit set out in section 187(4)(a) of the Act if the application was made under the repealed Act and had not been heard immediately prior to the commencement day. This amendment resolves an anomaly created in circumstances where a period greater than 7 days has elapsed after the application is made. Instead, the Tribunal will be required, under section 187(4)(b) to hear the application within a reasonable time.

*Clause 137* aims to clarify how the timing of hearings by the Mental Health Review Tribunal of a person's mental conditions to decide fitness for trial is calculated in cases where the review cycle under the repealed Act had started prior to the commencement day. It is intended that the interval for reviews should continue as if they had been carried out under the *Mental Health Act 2000*.

Clause 137 also ensures that proceedings are continued where a person is found fit for trial and the Attorney-General or Governor In Council has not, immediately before the commencement day, made an order to continue proceedings. A timeframe within which the proceedings must be continued is also set.

*Clause 138* amends the dictionary consistent with amendments to the provisions in relation to justices of the peace, health practitioners and non-contact orders.

The definition of Justice of the Peace ensures that a Justice of the Peace (Magistrates Court) will have the same powers under the Act as a Justice of the Peace (Qualified).

# PART 11—AMENDMENT OF OCCUPATIONAL THERAPISTS REGISTRATION ACT 2001

*Clause 139* specifies that this part of the Bill amends the *Occupational Therapists Registration Act 2001.*

*Clause 140* inserts new subsections (2) and (3) in section 42, which sets out the procedural requirements for applications for general registration. Subsection (2) enables the board to require the disclosure of an applicant's criminal history. Subsection (3) specifies that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to this disclosure.

*Clause 141* makes various amendments to section 45 to enable the board to have regard to an applicant's criminal history when deciding whether an applicant for general registration is fit to practise the profession. Subclause 141(3) requires the board to have particular regard to certain convictions.

Clause 141 also amends section 45 to specify that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to a board request for, or the provision of a report about, an applicant's criminal history by the commissioner of the police service.

*Clause 142* inserts new subsections (4) and (5) in section 47, which currently sets out who may be appointed to conduct a health assessment of an applicant for general registration.

Under section 46 of the Act, the board may require an applicant for general registration to undergo a health assessment in order to assess the applicant's mental and physical capacity to practise the profession. Subsection (4) authorises the board, if it considers it relevant, to disclose an applicant's criminal history to the person appointed to conduct a health assessment. For example, an applicant may have a series of charges and convictions which indicate a pattern of behaviour that could compromise the applicant's ability to practise the profession safely and competently. Subsection (5) specifies that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to this disclosure.

*Clause 143* amends section 70 to provide greater clarity as to when an application for renewal of general registration must be received by the board.

*Clause 144* amends the definition of 'information' in section 196(6) in light of the amendments made to Act to enable access to an applicant's criminal history, to ensure that if information about an applicant's criminal history is obtained under the Act, it is protected.

*Clause 145* inserts a new definition for the term 'criminal history' in Schedule 3. The existing definition of the term 'criminal history' has been omitted from subsection 45(6) under clause 141.

## PART 12—AMENDMENT OF OPTOMETRISTS REGISTRATION ACT 2001

*Clause 146* specifies that this part of the Bill amends the *Optometrists Registration Act 2001.*

*Clause 147* inserts new subsections (2) and (3) in section 42, which sets out the procedural requirements for applications for general registration. Subsection (2) enables the board to require the disclosure of an applicant's criminal history. Subsection (3) specifies that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to this disclosure.

*Clause 148* makes various amendments to section 45 to enable the board to have regard to an applicant's criminal history when deciding whether an applicant for general registration is fit to practise the profession. Subclause 148(3) requires the board to have particular regard to certain convictions.

Clause 148 also amends section 45 to specify that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to a board request for, or the provision of a report about, an applicant's criminal history by the commissioner of the police service.

*Clause 149* inserts new subsections (4) and (5) in section 47, which currently sets out who may be appointed to conduct a health assessment of an applicant for general registration.

Under section 46 of the Act, the board may require an applicant for general registration to undergo a health assessment in order to assess the applicant's mental and physical capacity to practise the profession. Subsection (4) authorises the board, if it considers it relevant, to disclose an applicant's criminal history to the person appointed to conduct a health assessment. For example, an applicant may have a series of charges and convictions which indicate a pattern of behaviour that could compromise the applicant's ability to practise the profession safely and competently. Subsection (5) specifies that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to this disclosure.

*Clause 150* amends section 70 to provide greater clarity as to when an application for renewal of general registration must be received by the board.

*Clause 151* amends the definition of 'information' in section 196(6) in light of the amendments made to Act to enable access to an applicant's criminal history, to ensure that if information about an applicant's criminal history is obtained under the Act, it is protected.

*Clause 152* inserts a new definition for the term 'criminal history' in Schedule 4, to replace the definition omitted from subsection 45(6) under clause 148.

## PART 13—AMENDMENT OF OSTEOPATHS REGISTRATION ACT 2001

*Clause 153* specifies that this part of the Bill amends the *Osteopaths Registration Act 2001*.

*Clause 154* inserts new subsections (2) and (3) in section 42, which sets out the procedural requirements for applications for general registration. Subsection (2) enables the board to require the disclosure of an applicant's criminal history. Subsection (3) specifies that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to this disclosure.

*Clause 155* makes various amendments to section 45 to enable the board to have regard to an applicant's criminal history when deciding whether an applicant for general registration is fit to practise the profession. Subclause 155(3) requires the board to have particular regard to certain convictions.

Clause 155 also amends section 45 to specify that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to a board request for, or the provision of a report about an applicant's criminal history by the commissioner of the police service.

*Clause 156* inserts new subsections (4) and (5) in section 47, which currently sets out who may be appointed to conduct a health assessment of an applicant for general registration.

Under section 46 of the Act, the board may require an applicant for general registration to undergo a health assessment in order to assess the applicant's mental and physical capacity to practise the profession.

Subsection (4) authorises the board, if it considers it relevant, to disclose an applicant's criminal history to the person appointed to conduct a health assessment. For example, an applicant may have a series of charges and convictions which indicate a pattern of behaviour that could compromise the applicant's ability to practise the profession safely and competently. Subsection (5) specifies that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to this disclosure.

*Clause 157* amends section 70 to provide greater clarity as to when an application for renewal of general registration must be received by the board.

*Clause 158* amends the definition of 'information' in section 196(6) in light of the amendments made to Act to enable access to an applicant's criminal history, to ensure that if information about an applicant's criminal history is obtained under the Act, it is protected.

*Clause 159* corrects a drafting error in section 218 of the Act. The reference to 'subsection (5)' in subsections 218(2) and (3) is corrected to refer to subsection (4).

*Clause 160* inserts a new definition for the term 'criminal history' in Schedule 2. The existing definition of the term 'criminal history' has been omitted from subsection 45(6) under clause 155.

## PART 14—AMENDMENT OF PHARMACISTS REGISTRATION ACT 2001

*Clause 161* specifies that this part of the Bill amends the *Pharmacists Registration Act 2001.*

*Clause 162* inserts new subsections (2) and (3) in section 43, which sets out the procedural requirements for applications for general registration. Subsection (2) enables the board to require the disclosure of an applicant's criminal history. Subsection (3) specifies that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to this disclosure.

*Clause 163* makes various amendments to section 46 to enable the board to have regard to an applicant's criminal history when deciding whether an applicant for general registration is fit to practise the profession. Subclause 163(3) requires the board to have particular regard to certain convictions.

Clause 163 also amends section 46 to specify that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to a board request for, or the provision of a report about, an applicant's criminal history by the commissioner of the police service.

*Clause 164* inserts new subsections (4) and (5) in section 51, which currently sets out who may be appointed to conduct a health assessment of an applicant for general registration.

Under section 50 of the Act, the board may require an applicant for general registration to undergo a health assessment in order to assess the applicant's mental and physical capacity to practise the profession. Subsection (4) authorises the board, if it considers it relevant, to disclose an applicant's criminal history to the person appointed to conduct a health assessment. For example, an applicant may have a series of charges and convictions which indicate a pattern of behaviour that could compromise the applicant's ability to practise the profession safely and competently. Subsection (5) specifies that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to this disclosure.

*Clause 165* amends section 74 to provide greater clarity as to when an application for renewal of general registration must be received by the board.

*Clause 166* amends the definition of 'information' in section 201(6) in light of the amendments made to Act to enable access to an applicant's criminal history, to ensure that if information about an applicant's criminal history is obtained under the Act, it is protected.

*Clause 167* inserts a new definition for the term 'criminal history' in Schedule 4, to replace the definition omitted from subsection 46(6) under clause 163.

## PART 15—AMENDMENT OF PHYSIOTHERAPISTS REGISTRATION ACT 2001

*Clause 168* specifies that this part of the Bill amends the *Physiotherapists Registration Act 2001.*

*Clause 169* inserts new subsections (2) and (3) in section 42, which sets out the procedural requirements for applications for general registration.

Subsection (2) enables the board to require the disclosure of an applicant's criminal history. Subsection (3) specifies that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to this disclosure.

*Clause 170* makes various amendments to section 45 to enable the board to have regard to an applicant's criminal history when deciding whether an applicant for general registration is fit to practise the profession. Subclause 170(3) requires the board to have particular regard to certain convictions.

Clause 170 also amends section 45 to specify that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to a board request for, or the provision of a report about, an applicant's criminal history by the commissioner of the police service.

*Clause 171* inserts new subsections (4) and (5) in section 47, which currently sets out who may be appointed to conduct a health assessment of an applicant for general registration.

Under section 46 of the Act, the board may require an applicant for general registration to undergo a health assessment in order to assess the applicant's mental and physical capacity to practise the profession. Subsection (4) authorises the board, if it considers it relevant, to disclose an applicant's criminal history to the person appointed to conduct a health assessment. For example, an applicant may have a series of charges and convictions which indicate a pattern of behaviour that could compromise the applicant's ability to practise the profession safely and competently. Subsection (5) specifies that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to this disclosure.

*Clause 172* amends section 70 to provide greater clarity as to when an application for renewal of general registration must be received by the board.

*Clause 173* amends the definition of 'information' in section 196(6) in light of the amendments made to Act to enable access to an applicant's criminal history, to ensure that if information about an applicant's criminal history is obtained under the Act, it is protected.

*Clause 174* inserts a new definition for the term 'criminal history' in Schedule 4, to replace the definition omitted from subsection 45(6) under clause 170.

# PART 16—AMENDMENT OF PODIATRISTS REGISTRATION ACT 2001

*Clause 175* specifies that this part of the Bill amends the *Podiatrists Registration Act 2001*.

*Clause 176* inserts new subsections (2) and (3) in section 42, which sets out the procedural requirements for applications for general registration. Subsection (2) enables the board to require the disclosure of an applicant's criminal history. Subsection (3) specifies that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to this disclosure.

*Clause 177* makes various amendments to section 45 to enable the board to have regard to an applicant's criminal history when deciding whether an applicant for general registration is fit to practise the profession. Subclause 177(3) requires the board to have particular regard to certain convictions.

Clause 177 also amends section 45 to specify that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to a board request for, or the provision of a report about, an applicant's criminal history by the commissioner of the police service.

*Clause 178* inserts new subsections (4) and (5) in section 47, which currently sets out who may be appointed to conduct a health assessment of an applicant for general registration.

Under section 46 of the Act, the board may require an applicant for general registration to undergo a health assessment in order to assess the applicant's mental and physical capacity to practise the profession. Subsection (4) authorises the board, if it considers it relevant, to disclose an applicant's criminal history to the person appointed to conduct a health assessment. For example, an applicant may have a series of charges and convictions which indicate a pattern of behaviour that could compromise the applicant's ability to practise the profession safely and competently. Subsection (5) specifies that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to this disclosure.

*Clause 179* amends section 70 to provide greater clarity as to when an application for renewal of general registration must be received by the board.

*Clause 180* amends the definition of 'information' in section 196(6) in light of the amendments made to Act to enable access to an applicant's criminal history, to ensure that if information about an applicant's criminal history is obtained under the Act, it is protected.

*Clause 181* inserts a new definition for the term 'criminal history' in Schedule 4. The existing definition of the term 'criminal history' has been omitted from subsection 45(6) under clause 177.

## PART 17—AMENDMENT OF PRIVATE HEALTH FACILITIES ACT 1999

*Clause 182* specifies that this part of the Bill amends the *Private Health Facilities Act 1999*.

*Clauses 183 to 185* correct minor drafting errors.

*Clause 186* amends section 87 to accord with the *Police Powers and Responsibilities Act 2000*.

*Clauses 187 to 189* correct minor drafting errors.

*Clause 190* inserts a new section 143A which requires an authority holder (the holder of an approval or a licence for a private health facility) to notify the chief health officer after becoming aware of certain specified events which may affect the person's suitability to hold the authority. The provision makes it an offence not to comply with the requirement.

## PART 18—AMENDMENT OF PSYCHOLOGISTS REGISTRATION ACT 2001

*Clause 191* specifies that this part of the Bill amends the *Psychologists Registration Act 2001*.

*Clause 192* inserts new subsections (2) and (3) in section 42, which sets out the procedural requirements for applications for general registration. Subsection (2) enables the board to require the disclosure of an applicant's criminal history. Subsection (3) specifies that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to this disclosure.

*Clause 193* makes various amendments to section 45 to enable the board to have regard to an applicant's criminal history when deciding whether an

applicant for general registration is fit to practise the profession. Subclause 193(3) requires the board to have particular regard to certain convictions.

Clause 193 also amends section 45 to specify that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to a board request for, or the provision of a report about, an applicant's criminal history by the commissioner of the police service.

*Clause 194* inserts new subsections (4) and (5) in section 47, which currently sets out who may be appointed to conduct a health assessment of an applicant for general registration.

Under section 46 of the Act, the board may require an applicant for general registration to undergo a health assessment in order to assess the applicant's mental and physical capacity to practise the profession. Subsection (4) authorises the board, if it considers it relevant, to disclose an applicant's criminal history to the person appointed to conduct a health assessment. For example, an applicant may have a series of charges and convictions which indicate a pattern of behaviour that could compromise the applicant's ability to practise the profession safely and competently. Subsection (5) specifies that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to this disclosure.

*Clause 195* amends section 76 to provide greater clarity as to when an application for renewal of general registration must be received by the board.

*Clause 196* amends the definition of 'information' in section 212(6) in light of the amendments made to Act to enable access to an applicant's criminal history, to ensure that if information about an applicant's criminal history is obtained under the Act, it is protected.

*Clause 197* inserts a new definition for the term 'criminal history' in Schedule 3, to replace the definition omitted from subsection 45(6) under clause 193.

## PART 19—AMENDMENT OF QUEENSLAND INSTITUTE OF MEDICAL RESEARCH ACT 1945

*Clause 198* specifies that this part amends the *Queensland Institute of Medical Research Act 1945.*

*Clause 199* replaces and simplifies the short title of the Act.

*Clause 200* amends section 2 to update two definitions.

*Clause 201* amends section 5 to provide for a Council of 11 members appointed by Governor in Council.

*Clause 202* amends section 5A to be consistent with amendments made to section 5.

*Clause 203* amends section 7 to specify that a quorum of the Council is a majority of the members holding office.

*Clause 204* to *clause 206* remove redundant provisions.

*Clauses 207* and *208* omit requirements to obtain Governor in Council approval to appoint staff to joint research projects, and to obtain assistance from Government departments.

*Clause 209* amends section 13A to remove provisions about Council management of the budget, which are unnecessary in light of the *Financial Administration and Audit Act 1977*.

*Clause 210* amends section 14 to enable the Council of the Institute to accept a gift or bequest.

*Clause 211* amends section 15 to allow the Council to determine the purpose for which a gift or bequest will be used if the donor or testator has not directed that it be used for a particular purpose.

*Clause 212* removes an unnecessary provision.

*Clause 213* amends section 21 to modernise regulation making powers under the Act.

*Clause 214* provides that members of the Council will cease to hold office on commencement, to enable appointment of a Council in accordance with section 5 as amended.

## PART 20—AMENDMENT OF SPEECH PATHOLOGISTS REGISTRATION ACT 2001

*Clause 215* specifies that this part of the Bill amends the *Speech Pathologists Registration Act 2001*.

*Clause 216* inserts new subsections (2) and (3) in section 42, which sets out the procedural requirements for applications for general registration. Subsection (2) enables the board to require the disclosure of an applicant's criminal history. Subsection (3) specifies that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to this disclosure.

*Clause 217* makes various amendments to section 45 to enable the board to have regard to an applicant's criminal history when deciding whether an applicant for general registration is fit to practise the profession. Subclause 217(3) requires the board to have particular regard to certain convictions.

Clause 217 also amends section 45 to specify that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to a board request for, or the provision of a report about, an applicant's criminal history by the commissioner of the police service.

*Clause 218* inserts new subsections (4) and (5) in section 47, which currently sets out who may be appointed to conduct a health assessment of an applicant for general registration.

Under section 46 of the Act, the board may require an applicant for general registration to undergo a health assessment in order to assess the applicant's mental and physical capacity to practise the profession. Subsection (4) authorises the board, if it considers it relevant, to disclose an applicant's criminal history to the person appointed to conduct a health assessment. For example, an applicant may have a series of charges and convictions which indicate a pattern of behaviour that could compromise the applicant's ability to practise the profession safely and competently. Subsection (5) specifies that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to this disclosure.

*Clause 219* amends section 70 to provide greater clarity as to when an application for renewal of general registration must be received by the board.

*Clause 220* amends the definition of 'information' in section 196(6) in light of the amendments made to Act to enable access to an applicant's criminal history, to ensure that if information about an applicant's criminal history is obtained under the Act, it is protected.

*Clause 221* inserts a new definition for the term 'criminal history' in Schedule 3. The existing definition of the term 'criminal history' has been omitted from subsection 45(6) under clause 217.

# PART 21—AMENDMENT OF TRANSPLANTATION AND ANATOMY ACT 1979

*Clause 222* specifies that this Part of the Bill and Schedule 3 amend the *Transplantation and Anatomy Act 1979*.

*Clause 223* inserts a new section 2, which clarifies that all persons, including the State, are bound by the Act. However, the State can not be prosecuted for an offence against the Act.

*Clause 224* amends section 22 of the Act. Section 22 sets out the consents required to support an authorisation by a designated officer for the removal of tissues and organs for donation from a deceased person's body, where the body is in a hospital. As noted in the General Outline above, the breadth of the current consent regime creates opportunities for the non-consensual retention and use of tissues and organs.

The effect of clause 224 is to tighten the consent regime by providing that a designated officer can only rely on the following consents in order to authorise the removal of tissue and organs for transplantation or use for other therapeutic, medical or scientific purposes:

- the written consent of the deceased (given during life); or
- the consent of the senior available next of kin (where the deceased had not expressed an objection during life and there is no objection from any other senior available next of kin).

Subclauses 224(1) to (4) omit subsections 22(1) to (3), renumber the provisions and amend the consent requirements.

Subclause 224(5) inserts new subsections (6) to (10), which set out a range of accountability measures in relation to consents obtained from the senior available next of kin.

Subsection (6) requires the consent of the senior available next of kin or a communication made by the senior available next of kin under subsection 22(3), as renumbered, to be given in writing. However, subsection (7) makes it clear that if in the circumstances, it is not practicable for the consent or communication to be given in writing (for example, because the senior available next of kin is contactable only by phone) then the consent or the communication may be given orally.

If the consent or communication is given orally under subsection (7), subsection (8) places responsibility on the designated officer to ensure that

the following accountability measures are undertaken as soon as practicable:

- the fact that the consent or communication was given and the details of it must be documented in writing and placed on the hospital records relating to the deceased person; and
- reasonable attempts must be made to have the consent confirmed in writing by the senior available next of kin.

In addition, subsection (9) gives the designated officer responsibility for ensuring that the senior available next of kin's written consent, or written confirmation of the senior available next of kin's oral consent or communication is placed on the hospital records relating to the deceased person, as soon as practicable. It should be noted that whilst the designated officer is ultimately responsible for ensuring that these measures are undertaken, the designated officer does not have to undertake these tasks himself or herself. There is nothing to prevent the designated officer from making administrative arrangements for other hospital staff to actually undertake these tasks.

Subsection (10) makes it clear that a failure to undertake the accountability measures specified in subsection (8) does not void the oral consent given under subsection (7).

*Clause 225* amends subsection 24(3) to reflect the internal renumbering of section 22.

*Clause 226* amends section 25 of the Act to limit the use of tissues and organs removed under a Part 3 authorisation to the purposes specifically stated in the authority. Having regard to subsection 22, as amended, and section 23 of the Act, an authority given under Part 3 must reflect the terms of the consent given by the deceased person or the senior available next of kin.

*Clause 227* amends section 26 of the Act. Section 26 sets out the consents required to support an authorisation by a designated officer for the performance of a non-coronial autopsy, where the deceased person's body is in a hospital.

The effect of clause 227 is to tighten the consent regime by providing that a designated officer can only rely on the following consents in order to authorise the performance of a non-coronial autopsy:

- the written consent of the deceased (given during life); or

- the consent of the senior available next of kin (where the deceased had not expressed an objection during life and there is no objection from any other senior available next of kin).

Subclauses 227(1) and (2) omit subsections 26(1) to (3), renumber the provisions and amend the consent requirements.

Subclause 227(3) inserts new subsections (6) to (10), which set out a range of accountability measures in relation to consents obtained from the senior available next of kin.

Subsection (6) requires the consent of the senior available next of kin or a communication made by the senior available next of kin under subsection 26(3), as renumbered, to be given in writing. However, subsection (7) makes it clear that if in the circumstances, it is not practicable for the consent or communication to be given in writing (for example, because the senior available next of kin is contactable only by phone) then the consent or the communication may be given orally.

If the consent or communication is given orally under subsection (7), subsection (8) places responsibility on the designated officer for ensuring that the following accountability measures are undertaken as soon as practicable:

- the fact that the consent or communication was given and the details of it must be documented in writing and placed on the hospital records relating to the deceased person; and
- reasonable attempts must be made to have the consent confirmed in writing by the senior available next of kin.

In addition, subsection (9) gives the designated officer responsibility for ensuring that the senior available next of kin's written consent, or written confirmation of the senior available next of kin's oral consent or communication is placed on the hospital records relating to the deceased person, as soon as practicable. As for the amendments made by clause 224, the designated officer's responsibility is to ensure that these accountability measures are undertaken, and is not required to personally undertake them.

Subsection (10) makes it clear that a failure to undertake the accountability measures specified in subsection (8) does not void the oral consent given under subsection (7).

*Clause 228* amends subsection 28(3) to reflect the internal renumbering of section 26.

*Clause 229* amends section 29 of the Act.

The effect of subclause 229(1) is to clarify that an authorisation given under Part 4 of the Act (to perform a non-coronial autopsy) authorises the removal of tissues and organs only for the purpose of the autopsy investigation. A Part 3 authorisation is required before any tissues and organs can be removed and used for non-diagnostic purposes, for example, transplantation or medical research.

Subclause 229(2) replaces subsections 29(2) and (3) with new provisions that create a very limited exception to the consent regime under Part 3 of the Act (for the removal and use of tissues and organs for non-diagnostic purposes). The exception allows certain tissue specimens to be used for non-therapeutic medical purposes or scientific purposes, without the consent of the deceased or the senior available next of kin.

The exception applies only to 'specimen tissue'. This is defined in subsection (8) to mean tissue samples in the form of tissue blocks and microscope slides. When tissue is removed from the body for examination at autopsy, it is initially preserved or 'fixed' in formalin. This so-called 'wet tissue' is then dissected into smaller representative pieces, which are used to produce specimens for microscopic examination. These pieces of tissue are dehydrated, treated and then embedded in a substance such as paraffin wax, to produce what is commonly known as a 'tissue block'. The tissue block is then 'sectioned' or shaved to produce very thin slices that are stained and mounted on glass slides.

It is important to note that the definition of 'specimen tissue' does <u>not</u> include a tissue block or slide containing tissue that is, or comprises a substantial part of, a whole organ. The practical effect of the new subsections 29(2) and (3) is that an authorisation under Part 3 of the Act will be required for the non-diagnostic use of whole or substantial parts of organs (retained in any form) or other body parts or tissue samples preserved in any form other than tissue blocks and slides (eg. in formalin).

The provisions apply to specimen tissue taken from coronial and non-coronial autopsies. However, subsection (4) allows a coroner to make an order preventing the non-diagnostic use of specimen tissue obtained from a coronial autopsy. For example, such an order may be made where the non-diagnostic use of tissue blocks and slides could compromise an ongoing coronial investigation. Subsections (5) and (6) clarify the operation of section 29, to the extent that it applies to coronial autopsies, in relation to the *Coroners Act 1958* and the *Coroners Rules 1959*. Subsection (7) makes it clear that nothing in section 29 prevents the use of tissue removed at a coronial or non-coronial autopsy, for the purpose of the autopsy investigation.

*Clause 230* amends section 31 of the Act. Section 31 sets out the consent required to support an authorisation by a designated officer for the use of a deceased person's body for anatomical purposes, where the body is in a hospital.

Clause 230 tightens the consent regime by providing that a designated officer can only rely on the written consent of the senior available next of kin (where the deceased person had not expressed an objection during life and there is no objection from any other senior available next of kin), in order to authorise the use of a deceased person's body for anatomical examination, study or teaching.

Subclauses 230(1) and (2) omit subsections 31(1) and (2) and amend the consent requirements.

Subclause 230(3) inserts new subsections (5) and (6), which set out accountability measures in relation to consents obtained from the senior available next of kin under subsection 31, as amended.

Subsection (5) requires the consent of the senior available next of kin or a communication made by the senior available next of kin under subsection 31(3) to be given in writing.

Subsection (6) places responsibility on the designated officer for ensuring that the written consent or communication is placed on the hospital records relating to the deceased person as soon as practicable. It should be noted that whilst the designated officer is ultimately responsible for ensuring that this occurs, the designated officer is not required to undertake this task himself or herself. The designated officer could make administrative arrangements for other staff to actually undertake this task.

*Clause 231* amends subsection 34(2) to reflect the internal renumbering of section 31.

*Clause 232* amends section 35 of the Act to limit the use of a deceased person's body, subject to a Part 5 authorisation, for the purpose specifically stated in the authority. Having regard to section 31, as amended, section 32 and section 33 of the Act, an authority given under Part 5 must reflect the terms of the consent given by the senior available next of kin or the deceased person.

*Clause 233* inserts a new section 42A in Part 7 of the Act. Part 7 makes it unlawful to buy or sell tissue or the right to take tissue from a person's body, except where the Minister has given the purchaser a permit under section 40 of the Act. The effect of section 42A is to allow certain persons

to recover the reasonable costs associated with the retrieval, evaluation, processing, storing and distribution of donated tissue.

Subsection (1) limits the capacity to engage in cost recovery under this section to persons who own or control a tissue bank that is prescribed by regulation under the Act. In practice, those facilities where cost recovery charges are reasonable will be prescribed under subsection (1). In addition, subsection (4) provides flexibility for the regulation to limit the circumstances of cost recovery under this section. For example, the regulation could state that a particular tissue bank facility is prescribed under subsection (1) only in relation to specified tissue products or only for the supply of tissue for specified purposes.

It is important to note that the persons specified in subsection (1) are only permitted to recover costs that are:

(a) *reasonable*—a person who attempts to recover unreasonable costs eg. unjustifiably generous allowances for overseas travel and conferences, risks removal of the relevant tissue bank from the regulation;

(b) *associated with* the core business of tissue banking ie. the retrieval, evaluation, processing, storage and distribution of tissue—this is intended to cover both direct costs (for example, labour costs, premises, motor vehicles, processing and storage equipment, maintenance, consumables, pathology (testing) and licensing under the *Therapeutic Goods Act 1989*) and indirect costs (for example, research, data collection and quality assurance activities and membership of relevant tissue banking associations); and

(c) not attributed to the tissue itself—the activities specified in subsection (1) must relate to tissue donated in accordance with the Act.

Subsections (2) and (3) exclude persons who charge or pay an amount under subsection (1) from the operation of section 42 and 40 of the Act, which prohibit the unauthorised selling or buying of tissue.

Subsection (5) makes it clear that an amount charged outside the scope of the regulation can not be recovered under this section. This means, for example, that a person who owns or controls a tissue bank that is not prescribed under subsection (1) and who attempts to recover the costs of that tissue bank's activities, commits an offence against section 42 of the Act. Similarly, if the circumstances in which a person can recover the costs of a prescribed tissue bank's activities are limited by the regulation, an

attempt by the person to recover costs which fall outside the limitation specified in the regulation will breach section 42 of the Act.

Subsection (6) defines the terms 'distributing', 'donated tissue', 'owns', 'processing', storing' and 'tissue bank' for the purpose of section 42A.

*Clause 234* amends section 48 of the Act to increase the maximum penalties for the offences under section 48 to 100 penalty units ($7,500) or imprisonment for one year.

*Clause 235* inserts new sections 49A to 49C in Part 9 of the Act to provide 'whistleblower' protection to persons who suffer reprisals because of the provision of information or evidence in relation to an alleged offence against the Act. The Macquarie Dictionary defines 'reprisal' as retaliation, or an act of retaliation.

Section 49A makes it unlawful for anyone to take a reprisal against a person who provides information to another person or who gives evidence to a court for the purpose of having an alleged offence against the Act investigated or prosecuted. This section also establishes a test for determining when an unlawful reprisal has taken place.

Section 49B makes it an offence for a person to take a reprisal within the meaning of section 49A.

Section 49C entitles a person who suffers a detriment as the result of the taking of a reprisal within the meaning of section 49A, to sue for damages. It also sets out the procedure and powers of the court for dealing with a claim for damages under the provision.

*Clause 236* inserts a new Part 10 in the Act. Part 10 contains a provision stating that once this section commences, a body or tissue removed from the body, which was the subject of an authority under Part 3, 4 or 5 of the Act prior to the commencement of this section, can only be used under this Act to the extent allowed by the new consent regimes implemented by this Bill. This means, for example, that a whole organ retained after a coronial autopsy and used for research purposes under the old section 29(3), can no longer be used for this purpose in the absence of the written consent of the deceased (given during life) or the consent of the senior available next of kin.

## PART 22—OTHER AMENDMENTS OF ACTS

*Clause 237* provides for the amendment of the Acts mentioned in Schedule 4.

## SCHEDULE 1—AMENDMENT OF FOOD ACT 1981

*Schedule 1—Amendment to the Food Act 1981*, lists minor amendments to the Food Act. These amendments ensure the Act is drafted consistently with the terms and definitions in the Model Food Bill. The Schedule also omits sections 20 and 25, which are redundant, due to the new emergency powers inserted by clause 32 of the Bill.

## SCHEDULE 2—AMENDMENT OF MENTAL HEALTH ACT 2000

*Schedule 2* lists minor amendments to the Mental Health Act. These amendments ensure consistency with amendments to the definitions and ensure internal consistency of headings and cross-references. The Schedule also makes minor amendments to reflect amendments made to the provisions for electroconvulsive therapy, the appointment of health practitioners and non-contact orders.

## SCHEDULE 3—AMENDMENT OF TRANSPLANTATION AND ANATOMY ACT 1979

*Schedule 3* amends the specified sections of the Transplantation and Anatomy Act to reflect current drafting practice in relation to the use of conjunctives and disjunctives.

# SCHEDULE 4—AMENDMENT OF VARIOUS ACTS

*Schedule 4* lists the Acts and the amendments made to them under clause 237.