

HEALTH AND OTHER LEGISLATION AMENDMENT BILL 2003

EXPLANATORY NOTES

GENERAL OUTLINE

Policy Objectives of the Bill

The main policy objectives of the Bill are to:

- amend the *Health Act 1937* to ensure that the disclosure of information to registration bodies about conduct by health practitioners or veterinary surgeons, involving suspected offences against the Act or inappropriate use of drugs of dependency, does not infringe Queensland Health's privacy policy.
- amend the *Health Practitioners (Professional Standards) Act 1999* to provide more flexible arrangements for the constitution of the Health Practitioners Tribunal when conducting directions conferences and hearings, and to enhance the ability of Professional Conduct Review Panels to make decisions or issue delegations in an expeditious and cost effective way.
- amend the *Health Rights Commission Act 1991* to clarify that health service complaints may be made on behalf of deceased users of health services and that complaints can continue to be dealt with after the complainant has died.
- amend the *Health Services Act 1991* and the *Freedom of Information Act 1992* to encourage greater participation in the activities of quality assurance committees and ensure that such committees can effectively perform their functions.
- amend the *Health Services Act 1991* to enable information about a person who is receiving, or has received a public sector health service to be given when it is in the public interest and authorised by the chief executive.

- amend the *Hospitals Foundations Act 1982* to provide a more streamlined and flexible process for appointing members of bodies corporate established under the Act, and to reduce the frequency of appointments.
- amend the *Medical Practitioners Registration Act 2001* to allow retired medical practitioners who obtain non-practising registration to continue to use the title “doctor” and refer to their medical qualifications, and to provide protection from liability for certain bodies or persons who provide information to the Medical Board of Queensland for the purposes of the Act.
- amend the *Pest Management Act 2001* to clarify the scope of certain provisions in the Act to ensure its effective operation.
- amend the *Private Health Facilities Act 1999* and the *Radiation Safety Act 1999* to simplify the process for the notification of standards made under those Acts and to ensure the validity of notices about standards made under the *Private Health Facilities Act 1999*.
- make miscellaneous amendments to various Health portfolio Acts to correct minor errors, renumber provisions, update cross-references to other legislation and reflect current drafting practice.

Means of Achieving Objectives

Amendment of Health Act 1937

As part of its monitoring, investigation and enforcement responsibilities in relation to the *Health (Drugs & Poisons) Regulation 1996*, Queensland Health may need to investigate whether a health practitioner, nurse or veterinary surgeon has engaged in conduct involving misappropriation, self-administration or unauthorised prescribing of a controlled or restricted drug. The investigation could result in proceedings being brought against the person for an offence against the Regulation, or action taken to suspend, cancel, or impose or vary conditions on, an approval or authority held by the person under the Regulation.

Queensland Health provides information about investigations of this nature to the person’s registration body to assist the registration body to identify and manage registrants who have an impairment resulting from the use of drugs of dependency, and to take other appropriate action necessary

to protect the public. The provision of such information is consistent with the objective of public protection in Acts providing for registration of health practitioners, nurses and veterinary surgeons.

However, it is possible that the giving of this information, to the extent that it identifies an individual, may contravene Queensland Health's privacy policy (contained in Information Standard No. 42A), unless the disclosure is authorised by law.

The Bill therefore inserts a provision in the *Health Act 1937* authorising the chief executive to give information of this nature to the relevant registration body.

Amendment of Health Practitioners (Professional Standards) Act 1999

Under the *Health Practitioners (Professional Standards) Act 1999*, when a disciplinary matter concerning a health practitioner is referred to the Health Practitioners Tribunal, the chairperson of the Tribunal must choose a Tribunal member to be the constituting member for the purpose of conducting directions conferences and the hearing of the matter.

The Act allows the Tribunal chairperson to, after a hearing has started, choose another Tribunal member to replace a constituting member who is, for any reason, unable to continue with the hearing. To provide greater flexibility in the arrangements for holding directions conferences and hearings, the Bill allows any Tribunal member to hold a directions conference or issue practice directions and provides that the Tribunal chairperson may choose a Tribunal member to replace the constituting member at any time before the hearing has started.

The Bill also amends the Act to allow Professional Conduct Review Panels, when delegating the power to hold a directions conference, or reaching a decision on a question before the Panel, to meet by any form of communication.

Amendment of Health Rights Commission Act 1991

Section 61 of the *Health Rights Commission Act 1991* allows a health service complaint to be made by a person acting on behalf of the user if the Health Rights Commissioner is satisfied that it would be difficult or impossible for the user to choose anybody to make the complaint in the user's place, and the person has a sufficient interest.

Doubts have been raised whether this provision allows a representative complaint to be made on behalf of a deceased user, or whether a complaint can continue to be dealt with by the Commissioner after the complainant dies. The Bill clarifies that a complaint may be made by a person on behalf of a deceased user and that a substituted complainant may pursue the complaint if the original complainant dies. In each case, the Commissioner must be satisfied the person has a sufficient interest. The Bill also validates past complaints made on behalf of deceased users or which were dealt with after the original complainant died.

The Bill also makes minor consequential amendments to the Act and corrects an error made when the wrong provision was amended by the *Guardianship and Administration Act 2000*.

Amendment of Freedom of Information Act 1992

The *Health Services Act 1991* enables quality assurance committees to be declared by the Minister to be approved quality assurance committees. The primary function of approved quality assurance committees is to evaluate and assess the quality of health services with a view to recommending how the quality of health care can be improved and the incidence of adverse events reduced. For committees to effectively perform this function, they need to have access to comprehensive information from hospitals, health care providers and other sources and must be able to have full and frank discussions about the issues under consideration. In addition, information in a committee's working documents which, for example, is incomplete or yet to be evaluated by a committee, could be misinterpreted by the public if subject to disclosure.

Concerns about the possibility of the public disclosure of information relating to their activities restrict the ability of quality assurance committees to effectively perform their function and has acted as a major deterrent to the establishment of such committees.

Documents in the possession or control of public sector quality assurance committees are accessible under the *Freedom of Information Act 1992* unless the documents contain exempt matter. There is no certainty that such documents would be exempt from disclosure because the issue of whether an exemption applies must be determined on a case by case basis.

In recognition of the strong public interest considerations in improving the quality of health care through the activities of approved quality assurance committees, the Bill amends the Act to exclude committees, declared to be approved quality assurance committees, from its application.

It should be noted that the amendment does not affect a quality assurance committee's obligation under the *Health Services Regulation 2002* to make specified information available to the public.

Amendment of Health Services Act 1991

Quality assurance committees

As noted above, the *Health Services Act 1991* enables quality assurance committees to be declared by the Minister to be approved quality assurance committees. Although the Act provides quality assurance committees with certain protection from the disclosure of information created by, or given to, committees, this protection is deficient in a number of respects.

In particular, the provisions prohibiting disclosure of such information only apply to members and former members of a committee and not to other persons authorised by a committee to receive information to enable the committee to perform its functions (eg. support staff). The Act also prohibits this information being disclosed in proceedings before a court, tribunal, board or person. However, this protection does not prevent disclosure being compelled in other situations eg. pursuant to a warrant or an application for non-party disclosure in court proceedings. The Bill addresses these deficiencies by extending the prohibition from disclosure to also include persons authorised by a committee to receive information to enable the committee to perform its functions and by providing that the disclosure of information cannot be compelled by any statutory requirement or legal process.

The Bill also inserts a head of power for a regulation to be made requiring approved quality assurance committees to give specified information to the chief health officer.

Confidentiality

Section 63(1) of the *Health Services Act 1991* imposes a strict duty of confidentiality on employees, officers and agents of Queensland Health. The duty prohibits the giving of any information to another person if the information would enable a person who is receiving, or has received, a public sector health service to be identified.

Section 63(2) sets out a range of exceptions to the duty of confidentiality. However, there is no capacity for information to be given in response to unusual circumstances where the giving of the information is in the public interest. The Bill therefore incorporates a new exception into section 63(2) to enable information to be given where the chief executive has certified

that the giving of information is justified in the public interest. As a consequence of this proposal, it is also necessary to amend the exceptions to the duty of confidentiality imposed on officials (ie auditors and investigators) under section 57. In order to give effect to proposed public interest exception under section 63, it may be necessary for officials (or former officials) to give information to the chief executive or to another officer, employee or agent of the department authorised, in writing, by the chief executive to receive the information. For example, an official may possess information that could supplement written records about a past event that the official was required to investigate.

The chief executive will be required to report any public interest disclosures made under section 63 in Queensland Health's annual report. While this report will not include any patient-identifying information, it will however document that a disclosure had occurred and explain why the disclosure was considered to be in the public interest.

Amendment of Hospitals Foundations Act 1982

The *Hospitals Foundations Act 1982* currently requires that the Minister must, before nominating a person for appointment as a member of a body corporate established under the Act, consult with specified entities which must furnish a panel of names to the Minister. These processes have proved to be administratively burdensome and have contributed to delays occurring in the appointment and reappointment of members.

The Act also provides for members of a body corporate to be appointed on a rotating basis, with one-third of initial appointments for 3, 4 and 5 year terms with subsequent appointments for 3 year terms. This effectively means that appointments must be made every year, for one-third of the members of the 12 bodies corporate established under the Act.

The Bill provides for a more streamlined and flexible process for the appointment of members of bodies corporate, whilst ensuring that an appropriate level of accountability is maintained. The amendments provide that the Minister may nominate a person as a body corporate member if the Minister is of the opinion that the person has an interest in, and is able to assist in achieving, the body corporate's object. Before making the nomination, the Minister must consult with entities the Minister considers have an interest in the purposes or objects of the body corporate.

In addition, to reduce the frequency with which appointments must be made, the Bill provides that all appointments may be for a term of up to 5 years.

Amendment of Medical Practitioners Registration Act 2001

Under the *Medical Practitioners Registration Act 2001*, a person who is not registered under the Act must not use a restricted title (eg. “medical practitioner”) or another title (eg “doctor”), name or description that indicates, or could be reasonably understood to indicate, the person is a medical practitioner or is authorised or qualified to practise the profession.

The Act also provides that a regulation may prescribe recency of practice requirements and that renewal of registration is subject to the Medical Board of Queensland (“the board”) being satisfied that registrants have met any relevant recency of practice requirements. Recency of practice requirements have yet to be prescribed.

As a consequence, once recency of practice requirements are prescribed, retired doctors who do not meet applicable recency of practice requirements would not be entitled to have their registration renewed and therefore would no longer be allowed to use the title “doctor” or other titles restricted under the Act.

The Bill overcomes this difficulty by inserting a new Division 10A in Part 3 of the Act to establish a category of non-practising registration. The new Division provides for matters including:

- the eligibility criteria for non-practising registration;
- the procedural requirements about applications for non-practising registration and the granting of applications;
- the standard condition on registration (ie. that the registrant must not practise); and
- the grounds and processes for cancelling non-practising registration.

A person will be eligible for non-practising registration if the person is, or has been, registered as a medical practitioner and is a suitable person to be a non-practising registrant. In deciding whether an applicant is a suitable person, the board may have regard to the whether the applicant has been convicted of any relevant offences, whether the applicant’s registration has been adversely effected, or any other issue relevant to the applicant’s suitability to be a non-practising registrant. Factors relating to a person’s fitness to competently and safely practise, which can be taken into account for the other categories of registration under the Act, are not relevant to suitability for non-practising registration. Non-practising registration will not require renewal or be subject to recency of practice requirements.

The Bill also amends the provisions of the Act which restrict the use of titles so that non-practising registrants will be permitted to use the title “doctor” and refer to medical qualifications they hold. Consequential amendments are also made to a number of other provisions of the Act to specify that they do not apply to non-practising registrants.

Other significant amendments in the Bill are those which provide protection from civil or criminal liability to bodies or persons who honestly and on reasonable grounds:

- give advice or make recommendations to the board about the standards of postgraduate medical education; or
- give information to the board about the practice of registrants who are registered on the condition that they practise under supervision.

Amendment of Pest Management Act 2001

The Bill amends the *Pest Management Act 2001* to amend and relocate the definition of “fumigant” to include a reference to substances capable of producing a vapour and to clarify that household fumigants (eg. mothballs) are not fumigants for the purposes of the Act. Other amendments correct minor errors and ensure that certain notices to be given to the chief executive must be given in writing.

Amendment of Private Health Facilities Act 1999 and Radiation Safety Act 1999

The *Private Health Facilities Act 1999* and the *Radiation Safety Act 1999* allow for standards to be made by the chief health officer and the chief executive respectively and provide that a standard has no effect unless the Minister notifies its making by gazette notice. Both Acts specify that the gazette notice is subordinate legislation.

The Bill removes the requirement that the notification of the making of the standards under the Acts must be published in the gazette as this requirement is superfluous as the notices are subordinate legislation and therefore published as such. The Bill also inserts a provision to remove any doubts about the validity of notices about standards made under the *Private Health Facilities Act 1999*.

Estimated Cost for 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 principles issues are outlined below.

Amendment of Medical Practitioners Registration Act 2001**Power to obtain criminal history reports**

When deciding if an applicant for non-practising registration is a suitable person to be registered, the board may have regard to the applicant's criminal history including whether the applicant has been convicted of an indictable offence, an offence against health practitioner legislation, or an offence relating to the practice of the profession.

Clause 45 of the Bill (section 150D) specifies that the board may require the police commissioner to provide a written report about the applicant's criminal history. The exercise of this power may be regarded as adversely affecting an individual's privacy.

The provision of this information will assist the board to decide whether an applicant is a suitable person to be a non-practising registrant. As non-practising registrants will be able to use the title "doctor" and refer to their qualifications, it is important that the board has access to this information to satisfy itself as to the integrity of non-practising registrants.

It is important to note that the Bill does not affect the operation of the *Criminal Law (Rehabilitation of Offenders) Act 1986*. Unlike applications for other categories of registration under the Act, the full criminal history of the applicant will not be able to be obtained. The argument for overriding the *Criminal Law (Rehabilitation of Offenders) Act 1986*, on the grounds of protecting the public, does not apply in relation to the registration of non-practising registrants.

Immunity from liability

Clause 47 affords protection from liability to bodies that give advice, or make recommendations to the board, about the standards of postgraduate medical education, for the purposes of the board's function of accrediting intern training programs. The Post-Graduate Medical Education Foundation of Queensland (the Foundation) is the only body that currently

performs this role. In addition, clause 51 extends the protection from liability conferred under section 272 of the Act to persons who give information to the board about the practice of registrants who are registered on the condition that they practise under supervision.

Under both of these provisions, the body or person is not liable civilly, criminally or under an administrative process for giving information to the board if it is given honestly and on reasonable grounds.

These provision are defensible on the grounds that bodies such as the Foundation and persons reporting on the supervised practice of registrants play key roles in protecting the public by ensuring that high standards of intern training are maintained and that the board has a mechanism to determine if a registrant is practising safely under supervision.

It is essential that concerns about the potential legal liability (eg. for defamation) do not constrain the Foundation from providing the board with full and frank assessments of intern training programs. In making such assessments, the Foundation may need to comment on the skills and abilities of persons who are involved with the management and administration of the program. Similarly, if persons involved in the supervised practice of registrants were liable to be sued for defamation there is a risk that they would be less likely to provide candid and comprehensive reports about those registrants. The board relies on these reports to ensure that the registrant is practising safely and to assist it to decide if the supervised practice condition should be lifted at the conclusion of the supervised practice period.

Consultation

Amendment of Health Act 1937

All health practitioner registration boards, the Veterinary Surgeons Board of Queensland, the Queensland Branch of the Australian Medical Association (AMAQ), the Queensland Nursing Council and the Queensland Nurses Union were consulted about the proposed amendments.

Amendment of Health Practitioners (Professional Standards) Act 1999

The Chief Judge of the District Court and the Secretary of Professional Conduct Review Panels were consulted about the proposed amendments.

Amendment of Health Rights Commission Act 1991

The Health Rights Commissioner was consulted about the proposed amendments.

Amendment of Freedom of Information Act 1992

The Department of Justice and Attorney-General was consulted about the proposed amendment.

Amendment of Hospitals Foundations Act 1982

All hospital foundations established under the Act were consulted about the proposed amendments.

Amendment of Medical Practitioners Registration Act 2001

The Medical Board of Queensland and the AMAQ were consulted about the proposed amendments.

NOTES ON PROVISIONS**PART 1 - PRELIMINARY**

Clause 1 sets out the short title of the Act.

Clause 2 provides for the retrospective commencement of certain provisions of the Act. This is necessary to ensure that an error in the *Pharmacists Registration Act 2001* is corrected with effect from the commencement date of that Act.

PART 2 - AMENDMENT OF FREEDOM OF INFORMATION ACT 1992

Clause 3 specifies that this part of the Bill amends the *Freedom of Information Act 1992*.

Clause 4 amends section 11(1) to exclude, from the application of the Act, committees declared to be approved quality assurance committees under the *Health Services Act 1991*. The rationale for this provision is explained in the General Outline section of these Notes.

PART 3 - AMENDMENT OF HEALTH ACT 1937

Clause 5 specifies that this part of the Bill amends the *Health Act 1937*.

Clause 6 amends section 5(1) to refer to the new definition of “nurse” inserted by clause 7.

Clause 7 inserts a definition of “nurse” for Division 1 of Part 2.

Clause 8 inserts a new section 18B which authorises the chief executive to give information to relevant registration bodies if the chief executive reasonably believes a registrant, nurse or veterinary surgeon has committed an offence against the Act, or a ground exists for the chief executive to take action against such persons under the *Health (Drugs and Poisons) Regulation 1996*. The purpose of this provision is discussed in the General Outline section of these Notes.

Clauses 9 and 10 amends sections 153Y and 153ZD to ensure that those sections do not apply to seized things.

PART 4 - AMENDMENT OF HEALTH PRACTITIONERS (PROFESSIONAL STANDARDS) ACT 1999

Clause 11 specifies that this part of the Bill amends the *Health Practitioners (Professional Standards) Act 1999*.

Clause 12 amends section 176 to allow a professional conduct review panel to delegate the holding of a pre-hearing conference to the secretary of professional conduct review panels by any form of communication. For example, the delegation could be given by telephone or by email.

Clause 13 amends section 188 to allow a professional conduct review panel to vote on questions before the panel by any form of communication.

Clause 14 amends section 217 to ensure that the powers under that section in relation to the holding of directions conferences may be exercised by any member of the Health Practitioners Tribunal.

Clause 15 inserts a new section 227A to ensure that the constituting member of the Tribunal may be substituted by another Tribunal member, before the Tribunal starts to hear disciplinary proceedings, if the constituting member ceases to be qualified to be a Tribunal member or, for any other reason, is unable to take part in the proceedings.

Clause 16 amends section 259(3) to ensure that any Tribunal member may issue directions about a matter before the Tribunal.

PART 5 - AMENDMENT OF HEALTH RIGHTS COMMISSION ACT 1991

Clause 17 specifies that this part of the Bill amends the *Health Rights Commission Act 1991*.

Clause 18 amends section 3 by inserting a new definition of “complainant” which extends the meaning of that term to include persons substituted under section 61(5) which is inserted by clause 21.

Clause 19 amends section 59(1)(b) to include a reference to the specific provisions in section 61 about representative complainants.

Clause 20 inserts a new section 60(3) to correct an error made when a consequential amendment to the Act made by the *Guardianship and Administration Act 2000* substituted section 60(3) instead of section 61(3). The original section 60(3) is reinstated in a form that accords with current drafting practice.

Clause 21 inserts new subsections (3) to (5) in section 61. The insertion of subsection (3) complements the amendment in clause 20 to correct the error referred to in that clause. Subsections (4) and (5) clarify that a health

service complaint may be made on behalf of a deceased user and that a person may be substituted as complainant if the original complainant dies. In both cases, the Health Rights Commissioner must be satisfied the person has a sufficient interest.

Clauses 22 and 23 amend sections 64 and 65 to insert the defined term “complainant”.

Clause 24 amends section 66 to correct a grammatical error.

Clause 25 amends section 67(2)(d) to ensure that the provision also applies to representative complainants.

Clause 26 amends section 79(5)(b) to clarify that the provision does not apply to a person substituted as complainant under section 67(5).

Clause 27 inserts a new heading for Part 10.

Clause 28 inserts a new section 151 to validate complaints that have been made on behalf of a deceased user or where a complaint has been pursued by a person substituted as complainant after the original complainant dies. While clause 21, by inserting section 61(4) and (5), clarifies that such complaints may be made or dealt with, the validating provision is necessary to remove any doubt about the validity of past complaints made or dealt with in these circumstances.

PART 6 - AMENDMENT OF HEALTH SERVICES ACT 1991

Clause 29 specifies that this part of the Bill amends the *Health Services Act 1991*.

Clause 30 amends section 2 by including a reference to the definitions in section 30.

Clause 31 amends section 30 by inserting a definition of “relevant person”. This term is used in the amendments made by clause 32 and means a person authorised by a quality assurance committee to receive information to enable the committee to perform its functions.

Clause 32 inserts new sections 33 and 34. Section 33(1) duplicates the existing section 33 with the exception that subparagraph (b) clarifies that the requirements about the publication of information obtained by quality

assurance committees would be specified in a regulation made, or direction given, under section 37 and not by way of standards established by the Minister.

Section 33(2) prohibits relevant persons from disclosing information they receive in that capacity except for the purpose of enabling the committee to perform its functions.

The new section 34 extends its application to relevant persons and also widens its scope by prohibiting persons to whom the section applies from being compelled to produce documents or divulge information in compliance with a requirement under an Act, or legal process.

Clause 33 amends section 36 by extending the protection from liability and right to indemnity conferred by the section to include persons acting at the request of the committee. This clause also amends section 36(2) to clarify that the protection from liability and right to indemnity applies to all or each of the committee members.

Clause 34 amends section 37 by omitting the regulation-making power in subsection (1)(d) and inserting a head of power for a regulation to be made requiring approved quality assurance committees to give specified information to the chief health officer.

Clause 35 inserts a new subsection (4) in section 57, which imposes a duty of confidentiality on officials and former officials (eg. auditors and investigators). Subsection (4) sets out a new exception to the duty of confidentiality as a consequence of the new section 63(2)(gb). Under this provision, an official (or former official) will be able to give information to the chief executive, or an officer, employee or agent of the department authorised by the chief executive to receive the information, if the chief executive considers the giving (and receipt) of the information is in the public interest under section 63(2)(gb).

Clause 36 inserts new provisions 63(2)(ga), 63(2)(gb) 63(4A), 63(4B) and 63(4C) in section 63, which prohibits the giving of any information, if the information would enable a person who is receiving, or has received, a public sector health service to be identified.

The new paragraph 63(2)(gb) specifies that the duty of confidentiality imposed on an officer, employee or agent under section 63(1) does not apply, if the chief executive considers the giving of the information is in the public interest. Under this exception, information that would normally be treated as being confidential may be given to another person by the chief executive or an officer, employee or agent of the department authorised, in writing, by the chief executive.

Paragraph 63(2)(ga) provides for an officer, employee or agent of the department to give the chief executive information to allow the chief executive to act under paragraph 63(2)(gb).

Subsection 64(3) also gives effect to paragraph 63(2)(gb) by enabling a former officer, employee or agent of the department to give information to the chief executive or an officer, employee or agent of the department authorised, in writing, by the chief executive to receive the information. Former officers, employees and agents would otherwise be bound by the duty of confidentiality imposed on them under subsection 63(4).

Subsection 63(4B) and (4C) require the chief executive to include information (other than information that may identify a person) in the department's annual report about the giving of information under paragraph 63(2)(gb). The information must include details about the nature of information given and the purpose for which the information was given.

PART 7 - AMENDMENT OF HOSPITALS FOUNDATIONS ACT 1982

Clause 37 specifies that this part of the Bill amends the *Hospitals Foundations Act 1982*.

Clause 38 amends section 18 by omitting the requirement that the Minister must, before nominating a person for appointment as a member of a body corporate established under the Act, consult with specified entities which must furnish a panel of names to the Minister. The clause inserts provisions that specify that the Minister may nominate a person as a body corporate member if the Minister is of the opinion the person has an interest in, and is able to assist in achieving, the body corporate's object. Before making the nomination, the Minister must consult with entities the Minister considers have an interest in the purposes or objects of the body corporate. The clause also omits section 18(2) which is redundant.

Clause 39 omits an unnecessary provision.

Clause 40 omits unnecessary provisions and specifies that an appointed member of a body corporate established under the Act is to be appointed for a term of not more than 5 years.

PART 8 - AMENDMENT OF MEDICAL PRACTITIONERS REGISTRATION ACT 2001

Clause 41 specifies that this part of the Bill amends the *Medical Practitioners Registration Act 2001*.

Clause 42 amends section 111(2) to ensure that specialist registration under that provision is only available to persons who are not qualified for general registration.

Clause 43 inserts a new section 121A that specifies that, if a person is registered as a specialist on the condition that the registrant carry out the registrant's practise under supervision, the board may ask a person involved in the supervision to give information to the board about the supervised practice. This section operates in conjunction with clause 51 which confers protection from liability on persons who give information to the board in response to a request made under this section or section 141A.

Clause 44 inserts a new section 141A that mirrors section 121A but applies to special purpose registrants.

Clause 45 inserts new Division 10A of Part 3 (sections 150B to 150J).

Section 150B specifies that to be eligible for non-practising registration a person must be a registrant or have been previously registered, and be a suitable person to be a non-practising registrant.

A number of the processes for applying for, and deciding applications for, non-practising registration are the same as the general registration processes under Part 3, Division 2. To avoid unnecessary duplication of provisions, section 150C "cross-applies" relevant provisions in Part 3, Division 2 so that they will apply to non-practising registration.

Section 150D(1) sets out the issues the board may have regard to when considering whether an applicant for non-practising registration is a suitable person to be a non-practising registrant. These issues include:

- whether the applicant has been convicted of an indictable offence, an offence against health practitioner legislation or another practice-related offence in any jurisdiction;
- if the applicant is or was previously registered in any jurisdiction (including previous registration in Queensland) and the registration was subject to conditions, suspended or cancelled or affected in another way, and the reasons why; and

- any other issue relevant to the applicant's suitability to be a non-practising registrant.

Section 150D(2) specifies that a conviction mentioned in section 150D(1) does not include convictions that are not part of the applicant's criminal history. Section 150D(3) and (4) give the board power to obtain an applicant's criminal history. Section 150D(5) defines the term "criminal history" for the purposes of the section.

Section 150E specifies that the board may, before deciding an application for non-practising registration, investigate the applicant and require the applicant to provide further information or documentation within a reasonable time of at least 30 days. An applicant who fails to comply with this requirement is taken to have withdrawn the application.

Section 150F sets out the timeframes within which the board must decide an application for non-practising registration and specifies that if the application is not decided within these timeframes, the application is taken to have been refused.

Section 150G requires a certificate of non-practising registration to be in the approved form, which must include at least the information specified in section 150G(2).

Section 150H specifies that a non-practising registration is subject to the condition that the registrant does not practise the profession and makes it an offence for a registrant to contravene this condition.

Although the term "practise" is not defined in the Act, it would be an offence for non-practising registrants to provide any type of medical service (eg. writing prescriptions or referring patients) whether or not they receive remuneration for such service.

Sections 150I and J gives the board power to cancel a non-practising registration. The process for cancelling a non-practising registration mirrors the process for cancelling a general registration under of Part 3, Division 6. To avoid unnecessary duplication of provisions, section 150I "cross-applies" relevant provisions for the purpose of cancelling a non-practising registration. With the exception of the grounds for cancellation, this means that:

- the same show cause process applies as for general registration; and
- the board's decision to cancel a non-practising registration is a decision that may be appealed under Part 7 of the Act.

Section 150J sets out the grounds for cancelling a non-practising registration, namely that the registrant:

- has been convicted of an indictable offence, an offence against health practitioner legislation or a corresponding law; or
- has contravened the condition of registration mentioned section 150H; or
- was registered because of a materially false or misleading representation or declaration.

Clause 46 amends section 157 to permit a non-practising registrant to take or use the title “doctor” or a title, name, symbol, word or description indicating a medical qualification held by the registrant. This clause also provides that the term “registrant” in section 157 does not include a non-practising registrant. This means that a non-practising registrant, although permitted to use the title “doctor” and refer to qualifications held, is prohibited from taking or using the restricted title “medical practitioner” or any other title or description indicating the registrant is a medical practitioner or authorised or qualified to practise the profession.

Clause 47 inserts a new section 180A which protects a body that honestly and on reasonable grounds, gives advice or makes a recommendation to the board under section 180(2)(d). By virtue of this provision, the body and its members are not liable civilly, criminally or under an administrative process for giving information contained in the advice or recommendation. The rationale for this provision is explained in the General Outline section of these Notes.

Clauses 48 to 50 amend various provisions of the Act to ensure they do not apply to non-practising registrants.

Clause 51 amends section 272 to extend the protection under that section to persons who honestly and on reasonable grounds, give information to the board in response to a request made under section 121A or 141A. This means that such persons are not liable civilly, criminally or under an administrative process for giving the information. The rationale for this provision is explained in the General Outline section of these Notes.

Clause 52 amends Schedule 1 to include decisions about non-practising registration for which information notices must be given.

Clause 53 amends Schedule 3 (Dictionary) to insert new definitions of terms used in Part 3, Division 10A and amend a number of existing definitions.

PART 9 - AMENDMENT OF PEST MANAGEMENT ACT 2001

Clause 54 specifies that this part of the Bill amends the *Pest Management Act 2001*.

Clause 55 inserts a new section 5A that contains a new definition of the term “fumigant”. The purpose of the new definition is to clarify that fumigants are substances that are capable of producing a vapour as well as a gas and that the Act does not apply to fumigation activities involving the use of fumigants ordinarily used for household purposes.

Clause 56 amends section 54 to ensure that notices required to be given under that section must be in writing.

Clauses 57 and 58 amend sections 96 and 101 to ensure that those sections do not apply to seized things.

Clause 59 amends section 111 to correct a minor drafting error.

Clause 60 amends Schedule 3 to include a reference to the definition of “fumigant” in section 5A.

PART 10 - AMENDMENT OF PRIVATE HEALTH FACILITIES ACT 1999

Clause 61 specifies that this part of the Bill amends the *Private Health Facilities Act 1999*.

Clause 62 amends section 12 by omitting the requirement that the Minister’s notification of the making of standards made under section 12(1) must be by way of gazette notice. This clause also omits section 12(4) which is superfluous because of the operation of section 32 of the *Statutory Instruments Act 1992*.

Clause 63 corrects an error in section 143A.

Clause 64 inserts a new Part 13 to validate certain notices made under section 12(3). This is necessary because such notices were not published in the gazette as required by section 12(3).

PART 11 - AMENDMENT OF RADIATION SAFETY ACT 1999

Clause 65 specifies that this part of the Bill amends the *Radiation Safety Act 1999*.

Clause 66 amends section 16 by omitting the requirement that the Minister's notification of the making of radiation safety standards made under section 16(1) must be by way of gazette notice. This clause also omits section 16(5) which is superfluous because of the operation of section 32 of the *Statutory Instruments Act 1992*.

PART 12 - AMENDMENT OF ACTS

Clause 67 provides for the amendment of the Acts mentioned in the Schedule.

SCHEDULE

The Schedule lists the Act and the minor amendments made to them under clause 67. The amendments update cross-references in other legislation, renumber certain provisions, correct minor drafting errors and make minor changes to reflect current drafting practice.