Health Quality and Complaints Commission Bill 2006

Explanatory Notes

Title of the Bill

Health Quality and Complaints Commission Bill 2006

Objectives of the Bill

The main objectives of the Bill are to provide for oversight and review of, and improvement in, the quality of health services, and independent review and management of health complaints.

Achievement of the Objectives

The Bill fulfils the Government's commitment to establish a new health commission and improve the health complaints system, based on the recommendations of the 2005 Queensland Health Systems Review (the Forster Review).

The Bill establishes the Health Quality and Complaints Commission (the commission) to replace the Health Rights Commission (HRC) and repeals the *Health Rights Commission Act 1991*.

Functions and powers of the commission

The Bill confers on the commission the functions of the HRC as well as new quality and safety and complaints functions recommended by the Forster Review.

The Bill imposes a duty on all health service providers to establish, maintain and implement processes to improve the quality of services, including processes to monitor the quality of the service and to protect the health and well-being of consumers. The commission will be able to make standards about how providers may comply with this duty, including standards about safety and clinical effectiveness.

The Bill allows any person, including staff, to make a complaint about the quality of a health service ('health quality complaint'). The commission will have the power to monitor, investigate and report on the quality of

health services, either in response to complaints or on its own initiative. For example, if a nurse complained about the lack of appropriate credentialing procedures in a public hospital, the commission could investigate. If the initial investigations also raised concerns about infection control procedures and the professional conduct of a doctor, the commission could investigate those matters on its own initiative. The commission could refer the doctor to the Medical Board of Queensland for investigation, or it could coordinate the investigation into credentialing procedures, infection control and the doctor's professional conduct. A report of the commission investigation could be provided to the Medical Board for it to consider disciplinary action. If the hospital failed to take action to address the commission's recommendations, the commission could report on the matter publicly, to the Minister or a body with a function or power to take action on matters in the report.

The commission will also have all the powers of the HRC to investigate complaints about the provision of a health service by a particular provider ('health service complaints'), as well as new powers to investigate complaints about registered providers. The consultation arrangements between the commission and registration boards have been simplified to reduce bureaucratic delays in resolving these complaints.

The commission will also have a new function of nominating people for membership of District Health Councils established under the *Health Services Act 1991*.

Governance and staffing of commission

The Bill establishes the commission with a governing body comprised of a Commissioner and 5 to 7 Assistant Commissioners. All members must have skills and experience in governance. Consistent with the Forster Review recommendations, there must be at least one Assistant Commissioner with expertise in each of the fields of law, medicine, nursing and allied health. In addition, one Assistant Commissioner must have expertise in consumer issues.

The commission will be supported by an Office of the Commission, consisting of a Chief Executive Officer appointed by Governor in Council and public servants (including current HRC staff). To ensure the commission's independence, the Bill expressly states the Chief Executive Officer is subject to the direction of the commission, not the Minister.

Quality of health services

The commission will monitor, investigate and inquire into the quality and safety of health services. The Bill places an obligation on health service

providers to establish, maintain and implement processes to improve the quality of health services, including processes to monitor the quality of health services and to protect the health and well being of users of health services.

The Bill provides the commission with powers to monitor, investigate or conduct public inquiries into the quality of health services, including systemic issues. The commission functions include promoting continuous quality improvement in health services. It is anticipated the commission will seek reports from health services about health services' own monitoring and quality improvement activities, and will combine analysis of data provided by health services with audits and inspections to assess quality.

The commission will have powers to investigate and make recommendations to providers about improving health service quality. Following investigations, reports and recommendations by the commission may also be given to other bodies, including a registration board, professional association, an employer, a coroner or an organisation with a function or power to act on matters raised in the report.

A commission report may be given to the Minister. If the commission requests it, the Minister must table the report in the Legislative Assembly within 7 days. Matters which the commission considers should be brought to public attention can therefore be guaranteed to be brought to the attention of the parliament.

Standards

One of the ways health service providers may meet their obligations to monitor and improve the quality of their services is to comply with relevant commission standard. The Bill enables the commission to make or adopt standards about any aspect of the quality of health services, which could include standards about safety, clinical and cost effectiveness, patient focus, access and responsiveness, public health, facilities and governance and the review of deaths in hospitals. Where existing standards are suitable, it is anticipated that the new commission will adopt standards developed by quality, accreditation and professional bodies.

Complaints about health services

The commission may receive two types of complaints - 'health quality complaints' and 'health service complaints'. The distinction serves two main purposes: first, to preserve consumer autonomy in the choice to make a complaint about the particular service they have received, while also enabling staff and others to complain about the quality of services; and

secondly, to ensure that quality complaints can be made not just about a single health service, but also about multiple health services and their interaction in the continuum of care. It will not be necessary for people who approach the commission to know which type of complaint they wish to make.

Health quality complaints are complaints about the quality of a health service, including complaints about breaches of the provider's statutory duty to have processes to improve the quality of health services. Any person, including health service staff, may make a health quality complaint. Information the commission obtains in the course of managing health complaints (except during conciliation of health service complaints) can also be used by the commission in monitoring and reviewing the quality of health services.

The commission must deal with health quality complaints in a way that is consistent with protecting the public and improving the quality of health services. It will have discretion to, for example, use the information from a quality complaint in its monitoring of the quality of a health service, investigate the issues raised in a complaint, refer a complaint to a registration board or other body, or conduct an inquiry into serious matters. Quality complaints may not be privately resolved in conciliation. However, where a matter arising from a health quality complaint is appropriate for conciliation, the commission can deal with the matter as a health service complaint, including by conciliation.

Health service complaints are complaints by a consumer (or their representative) about a health service provider. Health service complaints may be made to the commission about a broad range of matters, including the adequacy of a provider's own handling of a health service complaint.

Consistent with the Forster Review recommendations, the commission will promote resolution of health service complaints by the provider when this is practical and reasonable. The commission will provide information and advice to consumers about making a complaint directly to the health service provider where appropriate. The commission may resolve health service complaints informally or through conciliation, it may investigate, refer complaints to a registration board or other body, or conduct a public inquiry into serious matters. To improve complaint management by providers, the commission may make a standard about complaint management processes.

Amendments to other Acts

The Bill amends the *Health Services Act 1991* to give effect to the commission's new function to nominate people suitable for appointment to District Health Councils. The amendments also require the Minister to table District Health Councils annual reports in the Legislative Assembly and address procedural matters for District Health Councils.

The Bill also makes consequential and minor amendments to other Acts.

Alternative Ways of Achieving Policy Objectives

The only way the policy objectives can be achieved is by legislation.

Estimated Cost for Government Implementation

The Government has announced that the commission will have an annual operating budget of $7.7 million.

Consistency with Fundamental Legislative Principles

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

Self-incrimination

Under Chapter 8 of the Bill, the commission may conduct an inquiry into matters such as health service complaints, health quality complaints or systemic issues about the quality of health services. Clauses 107 and 109 give the commission power to require a person to provide information for the purpose of an inquiry, or as a witness at an inquiry. Self-incrimination is excluded as an excuse for non-compliance with such a requirement.

Removal of the privilege against self-incrimination is necessary to enable the commission to identify the detail and causes of serious matters, and to recommend action to improve the quality of the services. However, clauses 107 and 109 include safeguard provisions to balance removal of the privilege against self-incrimination. Those provisions specify that evidence given under these clauses, or other evidence obtained as a result of the evidence given, is not admissible against an individual in civil or criminal proceedings, except in criminal proceedings about the falsity or misleading nature of the evidence.

Powers of entry

Clause 126 of the Bill gives an authorised person power to enter a health service facility for the purpose of monitoring compliance with a health

service provider's obligation under clause 20 to improve the quality of health services. Entry is permitted without consent or a warrant if authorised by the chief executive, the facility is open for business or otherwise open for entry and the occupier is given at least 24 hours notice of the entry. It is necessary for the effective monitoring to be able to enter, without consent or a warrant, in order to establish whether the provider is complying with the obligation under clause 20.

The inappropriate exercise of these powers could infringe a person's right to privacy (eg. entering a room in which a patient is be examined by a medical practitioner). Therefore, clause 134 provides a safeguard which requires that, when exercising powers under the Bill, an authorised person must not do anything that may adversely affect the health or physical privacy of a person.

Immunity from civil liability

Clause 215 specifies that officials (ie. commission members or officers, persons engaged to perform a service for the commission, members of a committee established by the commission, authorised persons or people acting under their direction or authority) are not civilly liable for an act, or omission, made honestly and without negligence. It is not considered appropriate that an individual be made personally liable as a consequence of carrying out his or her responsibilities under the legislation in good faith. The clause prevents civil liability from being attached to the individual. However liability attaches to the commission. The proposed immunity under this clause does not extend to an official who has been negligent, even though the official may have acted in good faith.

Transitional regulation-making power

Clause 231 of the Bill enables a regulation to be made to assist in the transition from the *Health Rights Commission Act 1991* to the *Health Quality and Complaints Commission Act 2006*. Although the Bill deals with all matters anticipated as necessary to effect the transition, the regulation making power provides a mechanism to swiftly address any unforeseen consequences that arise during the transition and are not addressed in the Bill. The clause would be used only in exceptional circumstances. The Bill specifies that the clause and any transitional regulation expire 1 year after the Act commences.

Consultation

In March 2006, an exposure draft of the Bill was provided for comment to key stakeholders including the Health Rights Commissioner, Office of the

Health Practitioner Registration Boards, the Queensland Nursing Council, Ombudsman, Crime and Misconduct Commission, the Commissioner for Children and Young People and Child Guardian, the State Coroner, Private Hospitals Association Queensland, Queensland Nurses Union, Australian Medical Association (Queensland Branch), Queensland Council of Social Services, Queensland Alliance and the Bundaberg Hospital Patients Support Group. Comments on the exposure draft Bill were discussed with each of these stakeholder organisations.

The exposure draft was also distributed to 31 non-government health support groups, and representatives of 10 organisations attended a forum in April 2006 to provide comments on the draft Bill.

NOTES ON PROVISIONS

Chapter 1 Preliminary

Clause 1 specifies the short title of the Act.

Clause 2 provides for commencement of the Act.

Clause 3 sets out the main objects of the Act as being to provide oversight and review of, and improvement in, the quality of health services, and independent review and management of health complaints. The clause provides that this object is achieved mainly by establishing the Health Quality and Complaints Commission (the commission), and conferring on the commission certain functions and powers.

Clause 4 specifies that the Act binds all persons including the State, the Commonwealth and other States but does not make them liable to be prosecuted for an offence against the Act.

Clause 5 provides that, subject to section 195, which deals with civil damages for a reprisal, a contravention of the Act does not create a civil cause of action.

Clause 6 provides that the Act does not affect other civil rights or remedies that exist apart from the Act, whether at common law or otherwise.

Clause 7 specifies that the Dictionary in Schedule 5 defines particular words used in the Act.

Clause 8 defines the term "health service" to mean a service provided to an individual for, or purportedly for, the benefit of human health, including a service stated in Schedule 1, Part 1, and excluding a service stated in Schedule 1, Part 2. The definition also includes an administrative service related to a health service. The definition and the services specified in Schedule 1 are the same as those in the *Health Rights Commission Act 1991*, except in one respect. The administrative services covered by the Bill are not required to be "directly" related to a health service, so that matters such as a health service provider's investigation of an incident could be the subject of a complaint.

Clause 9 defines the term "provider" to mean a person who provides a health service or a registered provider. The definition includes organisations which provide a health service.

Clause 10 defines the term "user" to mean an individual who uses or receives a health services, and specifies that an individual is not a user merely because they arrange a health service for another individual.

Chapter 2 Establishment, independence, functions and powers of commission

Clause 11 establishes the Health Quality and Complaints Commission, and specifies that the commission is a body corporate with perpetual succession and a common seal, and may sue and be sued in its corporate name.

Clause 12 requires the commission to act independently, impartially and in the public interest in performing its functions.

Clause 13 sets out the commission's health service complaints functions, including: receiving, assessing and managing health service complaints; encouraging and helping users and providers to resolve health service complaints; helping providers develop effective complaint management procedures; and conciliating or investigating health service complaints. These functions are similar to the complaint management functions currently in the *Health Rights Commission Act 1991*.

Clause 14 sets out the commission's quality functions, which include: monitoring and reporting on providers' compliance with the duty in section 20; making standards relating to the quality of health services; assessing the quality of health services and processes associated with health services; responding to health quality complaints, including undertaking investigations and inquiries; promoting continuous quality improvement in health services; recommending ways of improving health services; promoting the effective coordination of reviews of health services carried out by public or other bodies; identifying and reviewing issues arising from complaints; and receiving, analysing and disseminating information about the quality of health services.

Clause 15 sets out the commission's information functions, including: the provision of information, education, and advice to users, providers, the public and others about health rights and responsibilities, health complaint procedures, the quality of health services, commission standards and the commission's functions and powers; and providing information, advice and reports about health complaints to registration boards.

Clause 16 sets out the commission's other functions, which include: suggesting ways of improving health services and of preserving and promoting health rights; investigating or inquiring into matters under this Act; advising and reporting to the Minister on matters relating to health services or the administration of this Act; advertising for and nominating to the Minister persons it considers suitable for appointment as District Health Council members; conducting research relating to its functions; and performing other functions conferred under the Act.

Clause 17 requires the commission, in performing its functions, to keep effective links with health service providers and organisations that have a demonstrated interest in the provision of health services. The commission must consult and cooperate with any public authority that has a function that is relevant to, or may impact on, a function of the commission, including for example the Anti-Discrimination Commission, the Commission for Children and Young People and Child Guardian, the Crime and Misconduct Commission, the Human Rights and Equal Opportunity Commission of the Commonwealth, the Ombudsman, a registration board and the State Coroner. Each of these authorities and the commission may have a common interest in a complaint or issue, and co-operation is essential to ensure that matters are dealt with in a timely and effective manner, without adversely affecting the rights of those involved.

Clause 18 specifies that the commission has all the powers of an individual, and other powers given to it under an Act. It may enter into contracts or

arrangements, for example memoranda of understanding with other public authorities about matters that may fall within the jurisdiction of more than one agency.

Clause 19 provides that in performing its functions, the commission must observe natural justice and act as quickly, and with as little formality and technicality, as possible. This clause is subject to the express provisions of the Act.

Chapter 3 Quality of health services

Clause 20 imposes a duty on health service providers to establish, maintain and implement reasonable processes to improve the quality of health services, including processes to monitor the quality of health services and to protect the health and well-being of users of health services. The clause also provides that health service providers can fulfil their obligation by complying with commission standards (made under section 22) but clarifies that this does not limit the way the provider may comply with the duty.

Clause 21 enables the commission to ask a provider for reports about the quality of health services provided by or for the provider. The commission could, for example request regular reports about health services' complaint management, quality improvement mechanisms, and data about the quality of services provided. This is one method the commission may use to monitor the quality of health services. However, the provision states this does not limit the use of coercive powers under Chapter 9 to obtain information from a provider relating to the quality of health services.

Clause 22 enables the commission to make standards ("commission standards") about any aspect of the quality of health services, including matters relating to safety, clinical and cost effectiveness, patient focus, access and responsiveness, public health, facilities, governance and the reviews of deaths in hospitals. Under section 23 of the *Statutory Instruments Act 1992*, the "making" of a statutory instrument such as a standard includes adopting, applying or incorporating another document. It is anticipated that the commission will adopt standards developed by other organisations if it considers they are appropriate. It is anticipated that the commission will consider international standards, along with standards

of the Australian Commission on Safety and Quality in Health Care, and other health quality and health professional organisations.

The commission must consult with those likely to be affected by a standard, and with anyone else the commission considers appropriate, before making a standard.

The clause also requires the commission to maintain a website with details of standards it makes or adopts. Consumers and health service providers will be able to readily access current standards expected of health services.

Clause 23 provides that in considering whether a provider has complied with the duty in section 20, the commission may have regard to a commission standard or whether the provider has been accredited for a relevant purpose by an entity the commission considers is competent to give the accreditation. For example, licensed private health facilities must comply with standards made under the *Private Health Facilities Act 1999*. The commission may consider a health service facility's compliance with those standards as sufficient to fulfil the obligation in section 20.

Clause 24 outlines the action the commission may take if it believes a provider has contravened the duty in section 20. It may advise the provider of the contravention and make recommendations for compliance with the duty; refer it to another entity if it believes the entity should investigate or otherwise deal with the contravention; or prepare a report about the contravention and give it to all or any of the entities specified in section 24(2), including the Minister. If asked by the commission to table the report in the Legislative Assembly, the Minister must, under section 30, table the report.

Clause 25 specifies that the commission must not finalise a report under section 24 unless it first gives the provider a "show cause notice". The show cause notice must state that the commission believes the provider has contravened the duty in section 20; provide an outline of the facts and circumstances forming the basis for the commission's belief; and state that the commission is considering making a report about the contravention. The show cause notice must invite the provider to show within a stated period ending at least 21 days after the show cause notice is given to the provider, why the commission should not make the report.

Clause 26 allows the provider to make written representations about the show cause notice within the period stated, and requires the commission to consider the representations.

Clause 27 specifies that if the commission, after considering the provider's written representations about the show cause notice, no longer believes that

the provider has contravened the duty in section 20, it must not take further action about the show cause notice and must, as soon as practicable, give notice to the provider that no further action is to be taken.

Clause 28 allows the commission to finalise a report under section 24(1)(b) if the provider has not made representations in response to the show cause notice or, after considering the provider's written representations about the show cause notice the commission still believes the provider has contravened the duty in section 20 and that a report is warranted.

Clause 29 allows the commission to finalise a report under section 24(1)(b) without first giving the provider a show cause notice, if it believes the provider poses a serious potential risk to the life, or the physical or psychological health, safety or welfare, of users of the provider's services or another person, including the provider, and it is necessary to make the report to protect the users or person.

Clause 30 specifies that if the commission asks the Minister to table a report under section 24(2) when giving the report to the Minister, then the Minister must do so within 7 days of receiving it.

Chapter 4 Development of Code of Health Rights and Responsibilities

Clause 31 provides that within 2 years of the commission being established, it must develop a Code of Health Rights and Responsibilities for the Minister's consideration. The commission must report to the Minister on the progress of developing a Code no later than 1 year after commencement of the Act.

Clause 32 specifies that the commission must consult with the consumer and clinical advisory committees established under section 169, and invite submissions from and consult with interested parties on the development of the code. Interested organisations will include consumer, community and health provider organisations.

Clause 33 requires that, in developing the code, the commission must consider its content and application and make recommendations to the Minister about those matters. It must have regard to the principles in

section 34, along with to all matters relevant to the provision of health services

Clause 34 sets out principles to which the commission must have regard in developing the content of the code.

Chapter 5 Health Complaints

Part 1 Interpretation

Clause 35 provides for two types of health complaint - health quality complaints and health service complaints.

Clause 36 defines "health quality complaint" to be a complaint about any of the following: the quality of a health service; a contravention of the duty to improve the quality of health services in section 20(1); and matters relating to the provision of more than 1 health service. The clause also clarifies that a health quality complaint may be about the service provided to more than one consumer.

Health quality complaints could be made about any aspect of quality. This includes, for example, systemic issues, problems about co-ordination of care between different health service providers, problems of access to services, complaints about a particular provider or more than one provider.

Clause 37 defines "health service complaint" and mirrors the definition of that term in the *Health Rights Commission Act 1991*. However, as a consequence of the definition of "health service" in section 8, which now includes an administrative service that is related to a health service, the scope of health service complaints now includes administrative actions that are related, but not necessarily *directly* related, to a health service.

Part 2 Making health complaints

Division 1 Who may make health quality complaints

Clause 38 allows anyone to make a health quality complaint to the commission. Unlike a health service complaint, a health quality complaint does not have to be made by or on behalf of a consumer. For example, a staff member of a health service may make a health quality complaint.

Clause 39 states that a health quality complaint to be made about a matter that happened before the Act commenced.

Division 2 Who may make health service complaints

Clause 40 specifies that a health service complaint may be made by the user of a health service, someone acting on their behalf, the Minister, or a person the commission considers should be permitted to make a complaint in the public interest.

Clause 41 specifies the circumstances when someone acting on behalf of a consumer may make that a health service complaint. The commission must be satisfied that it would be difficult or impossible for the user to make the complaint personally. Generally the consumer must choose a representative, or if they cannot choose someone to make a complaint, it must be a person the commission considers has a sufficient interest.This clause allows for a complaint to be made, for example, by a parent on behalf of a child, or by a relative, partner or friend with sufficient interest to make a complaint on behalf of a person who is unwell, frail, or for another reason cannot easily make a complaint. A person who the commission considers has a sufficient interest may also make a complaint on behalf of a user after the user's death.

Clause 41 also allows for people appointed under the *Guardianship and Administration Act 2000* or the *Powers of Attorney Act 1998* to make a complaint on behalf of a user who has impaired capacity within the meaning of the *Guardianship and Administration Act 2000*.

Clause 42 allows a health service complaint to be made about a matter that arose before the commencement of the Act. This is subject to section 63(3), which prevents the commission taking action (such as conciliation) on a complaint made more than 1 year after the matter occurred and where the complainant was aware of the matter more than 1 year before making the complaint. However, section 63(4) specifies that complaints about matters the commission reasonably believes may warrant the suspension or cancellation of a registered provider's registration, enrolment or authorisation are not subject to the 1 year limit.

Clause 43 enables a person to be substituted as the complainant for a health service complaint if the commission is satisfied it would be difficult or impossible for the original complainant to continue, or the original complainant dies. The commission must be satisfied the person has a sufficient interest. In addition, another person may be substituted for the complainant if the original complainant has impaired capacity.

Clause 44 deals with the situation where the commission receives a complaint about a person who was a registered provider but is no longer registered, and the complaint is about their conduct or practice when registered. The clause requires the commission to deal with the complaint as though it was a health service complaint about a registered provider.

Division 3 Process for making health complaints

Clause 45 specifies that a person can make a health complaint to the commission orally (either in person or by any form of distance communication such as the telephone) or in writing given to the commission. This applies to both making a health service complaint or a health quality complaint. Making a complaint in writing includes making a complaint by electronic means, such as by email.

Clause 46 provides that, unless the commission is satisfied it is not necessary, it must require a person who makes an oral complaint, to confirm the complaint in writing within a fixed reasonable time.

Clause 47 provides that a person making a complaint must tell the commission their name and address and any other information about their identity that the commission reasonably requires. The commission may keep this information confidential if there are special circumstances and if the commission considers it is in the person's interest to do so. However,

the commission may accept an anonymous health complaint in the public interest.

Clause 48 allows the commission to ask a complainant to provide more information about the health complaint within a reasonable time fixed by the commission.

Clause 49 enables the commission to require a health complaint or information provided by the complainant to be verified by the complainant by oath or statutory declaration.

Part 3 Dealing with health quality complaints

Clause 50 specifies that the commission must deal with a health quality complaint in a way that is consistent with protecting the public and improving the quality of health services. The commission may do any of the following in dealing with a health quality complaint: seek information from a provider, user, the complainant or anyone else; refer the matter to a registration board if the complaint is about a registered provider and raises conduct that would provide a ground for disciplinary action; investigate the complaint under Chapter 7; inquire into the complaint under Chapter 8; and/or refer the complaint to another entity. If it considers that no action is warranted, the commission may decide not to act on a complaint.

Clause 51 provides that if the commission considers that a matter raised by a quality complaint could be dealt with as a health service complaint, the commission may decide to deal with the matter as a health service complaint.

Part 4 Dealing with health service complaints

Division 1 Early resolution of health service complaints

Clause 52 provides for early resolution of a complaint if the commission considers early resolution is possible and the complainant agrees. In such

circumstances the commission may take the action it considers reasonable to facilitate the resolution of the complaint, instead of immediately assessing the complaint. This clause is subject to section 66, which deals with circumstances in which the commission must refer complaints to registration boards.

Division 2 Assessment of health service complaints

Clause 53 provides that the commission must immediately assess a health service complaint. It must not start assessment until: the commission is satisfied that the complainant is eligible to make the health service complaint; if the complaint is made orally, that the complainant has confirmed the complaint in writing or the commission decides that there is a good reason this not necessary; the complainant gives the commission their name, address and other information the commission requires in relation to the complainant's identity or the commission decides to accept the complaint in the public interest; and the complainant complies with any request by the commission for further information or for the further information or complaint to be verified by oath or statutory declaration. However, if the commission attempts early resolution of a complaint under section 52, it is not required to start assessment of the complaint until it is satisfied the complaint cannot be resolved under section 52, or the complaint is still not resolved after 30 days, whichever is earlier.

This clause is also subject to section 66 (referral to registration board in public interest).

Clause 54 provides that the commission must, as soon as practicable, and within 14 days of beginning the assessment of a complaint, notify the complainant, the provider to whom the complaint relates, and the provider's registration board that the complaint is being assessed.

The notice to the provider must state the nature of the complaint and the notice to the registration board must also include a copy of the complaint. This clause is subject to section 206, which deals with those circumstances when notice may be dispensed with.

If a notice is not given in the prescribed time, section 208 (1) and (2) provide that the commission is not limited in performing its functions or exercising its powers.

Clause 55 provides that in assessing a health service complaint the commission may, by notice, invite submissions about the complaint from the complainant or provider. The notice must state the day that submissions are due, which must be no less than 14 days after the complainant or provider have received the notice. If a submission is received within the time stated in the notice, the commission must consider the submission in its assessment of the complaint.

Clause 56 enables the commission, in assessing a health service complaint, to require a person to give stated information to the commission within a stated reasonable time and in a stated reasonable way. Failure to provide this information constitutes an offence with a maximum penalty of 50 penalty units, unless the person has a reasonable excuse. It is a reasonable excuse not to give the information if giving that information might tend to incriminate the individual.

Clause 57 requires the commission to consult with the relevant registration board about a health service complaint about a registered provider. Consultation must occur before the commission makes a decision about whether or not to take action on a complaint. The registration board must give its comments to the commission as soon as practicable and within 14 days of being consulted, or within a longer period agreed by the commission.

The commission must not make a decision to take action, or not take action, on a health service complaint until the first of the following occurs: the registration board's comments about the complaint are received; the registration board advises the commission that the board does not intend to give comments about the complaint; or the period stated for the board to provide comments has ended. The commission must consider any comments made by the registration board within the time stated before making a decision about whether or not to take action on a complaint.

The commission must not decide to take no action on a complaint if the registration board advises the commission within the time stated that it considers the complaint warrants action by the board.

Clause 58 sets time limits for the commission to assess a health service complaint. The commission must assess the complaint within 60 days of starting the assessment. This may be extended by the commission for up to a further 30 days if it considers that: the complaint is too complex to assess within 60 days; the complaint may be satisfactorily resolved; or information the commission has requested cannot be reasonably provided within the 60 days but may be provided within the extended timeframe.

If the commission is required to consult with a registration board about a health service complaint, the period within which it must assess the complaint is extended from 60 days to a period equal to the time taken to carry out the consultation. For example, if consultation and receipt of the board's comments takes 14 days, then the period within which the commission must assess the complaint is 74 days.

If the commission fails to assess a complaint in the required time, the commission is not limited in performing its functions or exercising its powers, and it must assess the complaint.

Clause 59 provides that on assessing a health service complaint, the commission must decide to either accept the complaint for action or decide not to take action on the complaint for one of the reasons outlined in Division 4 (Decisions not to take action on health service complaints).

Before deciding to accept a complaint for action, the commission must first be satisfied that, if there are practical or reasonable steps that could be taken by the complainant to resolve the complaint with the provider, this has occurred. Also, the commission must be satisfied that there has been a reasonable opportunity given to the complainant to resolve the complaint with the provider, if this is practical and reasonable. The provision recognises that there are circumstances when it is not practical or reasonable to expect that a consumer and provider can resolve a complaint directly. For example, it would not be reasonable to expect that a complaint alleging sexually inappropriate behaviour by a health professional could be resolved directly between a complainant and the provider.

Clause 60 requires the commission to notify the complainant and provider about its decision on assessing a health service complaint. If the commission decides to take action on the complaint, the notice must state the action, for example, referral of the complaint to a registration board. If the commission decides not to take action on the complaint, the notice given to the complainant must state the reason for the decision. The provision does not require reasons to be given to the health service provider, as the commission may decide under section 59 not to take action on a complaint before it has given the provider a notice under section 54.

This clause is subject to section 206, which sets out the circumstances in which the commission may dispense with a notice. If a notice is not given in the prescribed time, section 208 (1) and (2) provide that the commission is not limited in performing its functions or exercising its powers.

Division 3 Action on acceptance of health service complaints

Clause 61 specifies the actions the commission may take if it decides to accept a health service complaint for action. The commission may conciliate the complaint, investigate it, refer it to the provider's registration board, and/or refer the complaint to another entity.

If the commission considers that a complaint can be resolved by conciliation, taking into account the public interest, then the commission must try to resolve it by conciliation. The requirement for the commission to consider the public interest before deciding whether to conciliate a complaint recognises that some complaints should not be resolved in the privileged environment of conciliation, but should be dealt with in a way that is consistent with the public interest.

Clause 62 provides that if the commission refers a complaint about a registered provider to the provider's registration board, it must not conciliate the complaint until it receives the registration board's completion notice for the complaint. If the commission intends to conciliate the complaint after the registration board has finished dealing it, the commission must advise the board of this when it refers the complaint.

However, the commission may start conciliation of the complaint before receiving the completion notice from the registration board if the sole purpose of conciliation is to arrange a financial settlement or other compensation with the user, and the commission and registration board agree that the conciliation will not compromise or interfere with the board's action on the complaint.

Division 4 Decisions not to take action on health service complaints

Clause 63 provides for the circumstances when the commission must decide not to take the actions of conciliation, investigation and/or referral of a health service complaint. The commission must not take such actions if it considers that the complaint: is frivolous, vexatious or trivial; is misconceived or lacking in substance; or has been adequately dealt with by the commission or another public authority.

Further, if an issue raised in a health service complaint has already been decided by a court, disciplinary body, industrial or other tribunal authorised to decide the issue, the commission must decide not to take action on the complaint to the extent that it attempts to reopen the issue.

The commission must also decide not to take action on a health service complaint if the matter arose more than 1 year before the complaint was made to the commission and the person was aware of the matter more than 1 year before making the complaint to the commission. However, this time limitation does not apply if the commission believes that the matter is one that may warrant the suspension or cancellation of a registered provider's registration.

Clause 64 sets out further circumstances where the commission may decide not to take action on a health service complaint. They are: the complainant fails to comply with the commission's request to confirm the complaint in writing, provide more information about their identity, provide more information about their complaint or verify the complaint or information by oath or statutory declaration; the complaint has been resolved since it was made; or the user has commenced a civil proceeding about the matter and a court has begun to hear it, or the matter has been referred to an ADR process under the *Uniform Civil Procedure Rules 1999*.

Clause 65 provides that the commission may decide not to take action if a complainant withdraws a health service complaint. However, withdrawal of a complaint does not prevent the commission from taking action, except that a complaint that is withdrawn cannot be conciliated.

Division 5 When commission must refer health service complaints to registration boards

Clause 66 provides for immediate referral of a complaint about a registered provider to the relevant board if it is in the public interest to do so. If the commission considers that it may be in the public interest to immediately refer the complaint, it is to consult with the registration board before forming its view. If the commission then considers that it is in the public interest to immediately refer the complaint, it must do so. This allows for prompt referral if, for example, it is considered there is a risk the registered provider may cause serious harm to consumers or others.

If the commission intends to later conciliate the complaint, it must tell the registration board, and it must not start conciliation until it receives a completion notice from the board. If the commission refers the complaint to the registration board under this clause, it must give notice of the referral to the complainant and the registered provider within 14 days of the referral. If a notice is not given in the prescribed time, section 208 (1) and (2) provide that the commission is not limited in performing its functions or exercising its powers.

Division 6 Other matters

Clause 67 provides that the commission may deal with a health service complaint as two or more complaints, and gives examples of when this may occur. The commission must deal with each separate complaint as if it had been made as a health service complaint under Part 2 Division 2 (Who may make health service complaints).

Clause 68 provides that a registration board may delegate a function or power of the board under section 57 (Consultation with registration board) to a board member, a committee of the board, the executive officer of the Queensland Nursing Council, or the executive officer of the Office of the Health Practitioner Registration Boards or another member of staff with the executive officer's agreement.

Clause 69 provides for reports by an entity of the State to which the commission has referred a complaint for investigation or other action under section 61(2)(d). The entity may provide the commission with reports it considers appropriate; and must within 28 days of ceasing to deal with the complaint, give the commission a written report of the results of action taken by the entity.

Clause 70 provides that the commission may use information obtained in relation to a health service complaint, other than information gained during conciliation, to perform its quality functions. For example, information received in a health service complaint against a provider may be used by the commission in its monitoring of the health service provider's compliance with commission standards.

Clause 71 provides that the commission may, at any time, seek and obtain information the commission considers appropriate in relation to health service complaints. The commission may also attempt to resolve the complaints by whatever lawful means the commission considers

appropriate. This may include seeking assistance from a person the commission consider may help resolve the complaint.

Chapter 6 Conciliation

Clause 72 provides that only a commission officer to whom the function of conciliation has been delegated under section166 may perform the function of conciliation under this chapter.

Clause 73 provides that a commission officer may not conciliate and investigate the same complaint.

Clause 74 provides that the conciliation of a health service complaint must be performed by one or more conciliators assigned by the commission. A conciliator's function is to encourage the settlement of the health service complaint by: arranging negotiations between the provider and the complainant; assisting in the conduct of negotiations; assisting the parties to reach agreement; and assisting the resolution of the complaint in any other way.

Clause 75 provides that before the conciliation of a health service complaint starts, the commission must identify and inform the conciliator of any issue raised by the complaint that the commission considers involves the public interest. The conciliator must draw those issues to the attention of the parties and explain the effect of subsections (3) to (5) and section 76(1) at the start of the conciliation.

In the course of the conciliation, the conciliator must draw to the attention of the parties any other issues involving the public interest that the conciliator considers are raised by the health service complaint. The conciliator must report to the commission any issues involving the public interest that are raised by the complaint, unless the issue has already been identified by the commission.

Clause 76 provides that on receiving a conciliator's report under section 75(5) about matters involving the public interest, or otherwise becoming aware of a public interest issue relating to the complaint, the commission may investigate the complaint or refer it to a registration board or an entity the commission considers is able to investigate or take appropriate action.

Before referring a complaint to a registration board or other entity, the commission must consult with the board or entity. The commission must also advise the registration board or entity at the time of referral if the commission intends to investigate or continue to conciliate the complaint after the board or entity has finished dealing with it.

Generally, the commission must not continue the conciliation of the complaint until receiving a completion notice for the complaint from the board or other entity. However, the commission may continue conciliation before receiving the completion notice if the provider has agreed to conciliation for the sole purpose of arranging a financial settlement or other compensation with the user, and the commission and board or entity agree that the conciliation will not compromise or interfere with the board or entity's actions in relation to the complaint.

The commission must give written notice to the complainant and provider of the referral to the board or another entity within 14 days of referring the complaint, subject to section 206, which provides circumstances where a notice can be dispensed with. If a notice is not given in the prescribed time, section 208 (1) and (2) provide that the commission is not limited in performing its functions or exercising its powers.

Clause 77 provides that the commission may ask a conciliator for a written progress report about a conciliation and the conciliator must comply with the request.

Clause 78 provides that the conciliator must give a written report of the results of the conciliation to the commission at the conclusion of the conciliation. If an agreement is reached between the parties, the conciliator must include details of the agreement in the report. If agreement is not reached between the parties, the report may recommend the action the commission should take under section 80(1) or make no recommendation.

The conciliator must give a copy of the report to the provider and complainant, and if practicable, give the report to the parties on the same day the report is given to the commission.

Clause 79 provides that parties reaching agreement in conciliation of a health service complaint may enter a contract in settlement of the complaint. The conciliator of the health service complaint must not be a party to, or attest to, the contract.

Clause 80 provides that on receiving a report under section 78 that agreement was not reached in conciliation, the commission may refer the complaint to a registration board or other entity, investigate, further conciliate, or take no action.

Before referring a complaint to a registration board or other entity, the commission must consult with the board or entity. The commission must also advise the registration board or entity at the time of referral if the commission intends to investigate the complaint after the board or entity has finished dealing with it.

Clause 81 provides that if the commission considers that a health service complaint that is the subject of conciliation can not be resolved in that way, the commission may end the conciliation. The commission may refer the complaint to the registered provider's registration board or to another entity the commission considers appropriate, investigate the complaint under chapter 7 (Investigations by commission), or take no action.

Consultation with the registration board or other entity is required before referral of a complaint. If the commission intends to investigate the complaint after the board or entity has finished dealing with it, it must advise of this at the time of referral.

The commission must end the conciliation of a health service complaint if the Minister gives a direction under section 164(1)(c) to investigate the complaint or under section 163 to conduct an inquiry in relation to the complaint.

Clause 82 provides that anything said or admitted during conciliation or any document prepared for or in the course of conciliation is not admissible as evidence in a proceeding before a court, tribunal or disciplinary body. The information or documents can not be used by the commission as a ground for an investigation or inquiry, or as evidence in an investigation or inquiry.

For example, anything said or admitted during conciliation for a health service complaint cannot be admitted in a proceeding to enforce a contract entered into under section 79 in settlement of a complaint. However, this does not apply to the anything said or admitted during conciliation if the persons who attended or were named, consent to its admission, or if the person who prepared the document and all persons named, consent to its admission.

Clause 83 provides that a conciliator must not disclose information gained during conciliation in any further conciliation or to the commission, a commission member, a commission officer or a person engaged by the commission unless the disclosure is authorised under this chapter. However, conciliators may discuss matters arising in relation to the performance of the conciliator's functions with a commission officer or member.

Clause 84 provides that the commission must ensure, to the extent practicable, that each conciliator is advised in the performance of the conciliator's functions people with knowledge or experience in dispute resolution ('professional mentors'). The conciliator may discuss all matters arising in relation to performance of the conciliator's functions with the conciliator's professional mentor. The mentor must not be involved in the investigation of health service complaints the conciliator is conciliating. It is an offence for the professional mentor to disclose information gained by the conciliator during conciliation and communicated to the mentor.

Clause 85 ensures that information gained in conciliation may be lawfully given to a commission officer who provides administrative support to a conciliator in the performance of the conciliator's functions. It is an offence for the commission officer to disclose the information.

Chapter 7 Investigations by commission

Part 1 Commission's investigations

Clause 86 specifies that the commission may investigate: a health service complaint; a health quality complaint; the quality of a health service; systemic issues relating to the quality of health services; a reportable death under the *Coroners Act 2003* if the commission considers the quality of a health service or systemic health service issues may be relevant to the death; the use of premises for the reception, care or treatment of aged persons, persons with a mental or physical illness, persons with a disability or persons in receipt of pensions, allowances or benefits because of age, illness or disability; and a health complaint or systemic issues at the direction of the Minister. The commission may carry out the investigation through an authorised person appointed under Chapter 9 (Monitoring, enforcement and investigations).

Part 2 Referral of matter to other entity

Clause 87 provides that if the commission considers that a matter raised in the course of an investigation under this chapter should be investigated or otherwise dealt with by another entity that has a function or power under an Act or a Commonwealth Act to investigate or take other appropriate action about the matter, the commission may refer the matter to the entity after first consulting the entity.

Clause 88 provides that if the commission refers a matter to an entity under section 87, it may request reports of the progress and results of any investigation or other action taken by the entity, and the entity may provide reports.

Clause 89 provides that the commission's powers to investigate a matter are not affected by referral of the matter to another entity under section 87. This enables the commission to continue with an investigation, including an investigation on behalf of or in conjunction with an entity to which the matter has been referred.

Part 3 Action on investigation

Clause 90 defines the terms 'complainant' and 'provider' for this Part.

Clause 91 provides that the commission may at any time prepare a report about an investigation for the purpose of giving it to an entity mentioned in section 92. The report may contain information, comment, opinion and recommendations for action the commission considers appropriate, subject to section 205, which deals with the right to respond to adverse comments in commission reports. If the commission intends to recommend that a registration board or other entity take particular action about a matter in its report, the commission must consult with the board or other entity before finalising the report.

Clause 92 lists the entities to which the commission may give reports about investigations conducted by the commission.

Part 4 Conciliation after investigation

Clause 93 provides that the commission may conciliate a health service complaint that has been investigated.

Chapter 8 Inquiries by commission

Clause 94 provides that the commission can conduct an inquiry relating to any of the following matters if it considers it is in the public interest to do so: a health complaint (that is, a health service complaint or a health quality complaint); the quality of a health service; systemic issues relating to the quality of health services; or another matter relevant to the commission's functions. The commission may also inquire into matters arising directly or indirectly from the matter being inquired into.

Clause 95 provides that the commission must conduct an inquiry about a matter mentioned in section 94(1)(a) to (c) if directed to do so by the Minister under section 163 (Minister may direct inquiry).

Clause 96 provides that the commission must be constituted by at least three members for an inquiry. The commission may appoint another commission member to act as an inquiry member if there is a vacancy or the inquiry member is absent from duty or unable to perform the duties of office.

Clause 97 specifies that, if the commissioner is an inquiry member, he or she is to preside at the inquiry. Otherwise, the commission is to appoint a presiding member.

Clause 98 provides that the commission must be assisted at the inquiry by a lawyer of at least 5 years standing.

Clause 99 sets out procedural issues for the commission to follow when conducting inquiries. The commission must observe natural justice and act as quickly, and with as little formality and technicality as is consistent with a fair and proper consideration of the issues. The commission is not bound by the rules of evidence, may inform itself in any way it considers appropriate including holding hearings, and may decide the procedures to be followed for the inquiry. The commission must, however, comply with this chapter and any procedural rules prescribed under a regulation.

Clause 100 provides that the commission must give at least 14 days notice of the time and place of an inquiry to any person the commission reasonably believes should be given the opportunity to appear at the inquiry. The commission may also give public notice of the inquiry, for example by advertising in the press.

Clause 101 provides that an inquiry must be held in public. However, the whole or part of an inquiry may be held in private if the commission considers it appropriate to do so in the special circumstances of the case. A decision not to hold the inquiry in public may result from the application of a person appearing before or represented at the inquiry, or may be at the commission's initiative. If the commission directs that all or part of an inquiry is to be held in private, the commission may give directions about who may be present.

Clause 102 enables the commission to order the suppression of the name of a witness appearing at the inquiry.

Clause 103 provides that commission members, lawyers, representatives, witnesses and other persons complying with a requirement to give information to the inquiry have the same protections and immunity as if involved in Supreme Court proceedings.

Clause 104 specifies that the commission must keep a record of the proceedings of an inquiry.

Clause 105 sets out the commission's powers in conducting an inquiry.

Clause 106 provides that the presiding member may, by notice given to a person, require the person to attend an inquiry at a stated time and place to give evidence or produce stated records or things. The person is entitled to the witness fees prescribed under a regulation, or if no fees are prescribed, the reasonable witness fees decided by the commission.

Clause 107 specifies that, for the purposes of an inquiry, the commissioner or the presiding member may give a notice a person to require them to give the commission stated information within a stated reasonable time and in a stated reasonable way. It is an offence not to comply with this requirement, and it is not a reasonable excuse that giving the information might tend to incriminate the person. The rationale for this provision and clause 109 removing the right to claim privilege on the grounds of self-incrimination is outlined on page 5 of these Notes.

Any information given by an individual in response to a notice from the commission to provide information, and the fact of giving that information, as well as any information obtained as a direct or indirect result of the

individual giving information, is not admissible in evidence against the individual in any civil or criminal proceeding. However, this privilege does not prevent the use of the evidence in criminal proceedings about the falsity or misleading nature of the evidence given by the individual.

Clause 108 allows the commission to inspect records or other things produced to the commission at an inquiry, and make copies of, photograph, film or take extracts from, the record or thing if it is relevant to the inquiry. The commission may also take possession of the record or other thing and keep it while it is necessary for the inquiry. However, in doing this it must permit a person otherwise entitled to possession to inspect, make copies of, photograph, film or take extracts from, the record or other thing at a reasonable time and place the commission decides.

Clause 109 makes it an offence for a person who is required to do so, to fail to attend an inquiry or, when appearing at an inquiry, fail to take an oath or make an affirmation, answer a question or produce a record, without a reasonable excuse. The provision also specifies that it is not a reasonable excuse to fail to answer a question or produce a record on the grounds of self-incrimination. The same limitations apply as in clause 107 regarding the admissibility of evidence given under this provision.

Clause 110 makes it an offence for a person to insult the commission or a commission member at an inquiry, deliberately interrupt the inquiry, create or continue a disturbance at the inquiry, or do anything that would be contempt of court if the commission were a judge acting judicially.

Clause 111 clarifies that the conduct of an inquiry is not affected by a change in the commission members or the absence of a commission member.

Clause 112 requires the commission to prepare a written report about each inquiry conducted by it and give the report to the Minister.

Clause 113 requires the Minister to table a report in the Legislative Assembly within 7 days of receiving it.

Chapter 9 Monitoring, enforcement and investigations

Part 1 Authorised person's functions and powers generally

Clause 114 specifies the functions of an authorised person to monitor and enforce compliance with the Act and to investigate matters under the Act.

Clause 115 provides that an authorised person has the powers given to the authorised person under the Act.

Part 2 Appointment of authorised persons

Clause 116 empowers the commission to appoint commission members, commission officers or another person as an authorised person. The commission must be satisfied the person has the necessary expertise or experience to be an authorised person.

Clause 117 specifies that an authorised person holds office on the conditions stated in their instrument of appointment or in a notice authorised by the commission. The instrument or notice may limit the powers of an authorised person.

Clause 118 requires the commission to issue an identity card to each authorised person and sets out the details an identity card must contain.

Clause 119 requires an authorised person to produce or display their identity card if exercising a power in relation to a person. However, if it is not practicable in the circumstances to do so before exercising the power, the identify card must be produced as soon as is practicable.

Clause 120 states the circumstances in which an authorised person ceases to hold office but states that the circumstances listed are not exhaustive.

Clause 121 states that an authorised person may resign by written notice to the commission.

Clause 122 requires an authorised person to return their identity card within 21 days of ceasing to be an authorised person, unless they have a reasonable excuse.

Part 3 Powers of authorised person

Division 1 Power to obtain information

Clause 123 empowers an authorised person to give a notice to a person requiring the person to give information or attend before the authorised person to answer questions or produce a stated thing. These powers do not apply for investigating an inquiry matter, as sections 106 (Notice to witness) and 107 (Notice requiring information) provide for notices to witnesses and notices requiring information for an inquiry.

Clause 124 makes it an offence for a person not to give information to an authorised person, or attend before an authorised person to answer questions or produce things, if required to do so under section 123, unless the person has a reasonable excuse. It is a reasonable excuse for an individual not to give information, answer a question or produce a stated thing on the basis that it might tend to incriminate the person.

Clause 125 specifies the powers that may be exercised in relation to a thing produced to an authorised person.

Division 2 Entry of places

Clause 126 specifies that an authorised person may enter a place if:

- the occupier consents or a warrant authorises entry
- it is a public place and entry is made when it is open to the public; or
- for the purpose of monitoring compliance with section 20(1) – the chief executive authorises entry with 24 hours notice to a health service facility and entry is made when the facility is open for business or otherwise open for entry.

Division 3 Procedure for entry

Clause 127 outlines the procedures an authorised person must follow when seeking consent to enter a place. The clause also provides that, in a proceeding the onus of proof to prove the entry was lawful lies with the person relying on the lawfulness of the entry unless the person obtained an acknowledgement under subclause (4).

Clause 128 allows an authorised person to apply to a magistrate for a warrant to enter a place. Under this provision, a magistrate may refuse to consider an application until an authorised person provides the magistrate with the information the magistrate requires.

Clause 129 sets out the grounds of which a magistrate must be satisfied before issuing a warrant. The clause specifies the information that must be stated in the warrant.

Clause 130 makes provision for an authorised person to apply for a warrant by phone, fax, email, radio videoconferencing or another form of communication because of urgent or other special circumstances.

Clause 131 provides that a warrant issued under clauses 128, 129 or 130 is invalidated only if a defect in the warrant affects the substance of the warrant in a material particular.

Clause 132 outlines the procedures that must be followed by an authorised person prior to entering a place under a warrant.

Division 4 Powers after entry

Clause 133 specifies what powers are available to an authorised person who has entered a place.

Clause 134 specifies that, when exercising powers under this Part, an authorised person must not do anything that may adversely affect the health or physical privacy of a person. For example, an authorised person should not enter a room where a person is being examined by a doctor.

Clause 135 makes it an offence for a person to fail to help an authorised person if requested under section 133(3)(e), unless the person has a reasonable excuse. It is a reasonable excuse for an individual to not comply with a request to give information or provide a record on the basis that complying might tend to incriminate the individual.

Division 5 Power to seize evidence

Clause 136 specifies that an authorised person who enters a place without consent or a warrant may seize a thing at a place, if the authorised person reasonably believes that the thing is evidence of a contravention of section 20(1), to an offence, or to the investigation being carried out by the authorised person.

Clause 137 allows an authorised person to seize a thing at a place if the authorised person entered with consent or with a warrant. A thing may be seized if the authorised person reasonably believes that the thing is evidence of a contravention of section 20(1), of an offence, or relevant to the investigation being carried out. Seizure of the thing must be consistent with the purpose of entry as told to the occupier when seeking consent to enter, or, if entry was by warrant, the thing is evidence for which the warrant was issued. The authorised person may also seize anything else if it is evidence or seizure is necessary to prevent the thing being hidden lost or destroyed.

Clause 138 requires an authorised person to issue a receipt for a seized thing to the person from whom the thing was seized. However, if this proves impractical, the authorised person must leave the receipt at the place of seizure in a conspicuous position and in a secure way.

Clause 139 specifies that a seized thing will be forfeited to the commission if the owner cannot be found or the thing cannot be returned after making reasonable inquiries or efforts, having regard to the nature of the thing.

Clause 140 specifies that, on forfeiture of a thing it becomes the property of the commission which may deal with it as it considers appropriate.

Clause 141 requires that, until a seized thing is forfeited or returned, the authorised person must, if practicable, allow the owner to inspect it or take extracts from it or copy it.

Clause 142 specifies when an authorised person must return a seized thing to its owner, if the thing has not been forfeited.

Division 6 Compensation

Clause 143 requires an authorised person to give notice if they, or a person acting on their authority, damages property person when exercising a

power. The notice must detail the damage and be given to the apparent the owner of the property. However, if this is not practical, the authorised person must leave the notice secured in a conspicuous position.

Clause 144 makes provision for a person to be compensated, where the person has incurred loss or expense because of the exercise or purported exercise of a power by an authorised person under divisions 2, 4 or 5 of Part 3.

Division 7 General enforcement matters

Clause 145 provides that a person must not obstruct an authorised person in the exercise of a power under this Act unless the person has a reasonable excuse. The clause also provides that if an authorised person decides to exercise a power after a person obstructs them, the authorised person must warn the person that it is an offence to obstruct the authorised person unless the person has a reasonable excuse, and that the authorised person considers the person's conduct is an obstruction.

Section 146 specifies that a person must not pretend to be an authorised person.

Chapter 10 Matters concerning the commission

Part 1 Membership

Clause 147 provides that the commission consists of the commissioner and the assistant commissioners.

Clause 148 specifies that there is to be a Health Quality and Complaints Commissioner, who is to be appointed by the Governor in Council. The commissioner is to be a person with the standing appropriate for performing the commissioner's role.

Clause 149 provides that there are to be a minimum of 5 and a maximum of 7 Health Quality and Complaints Assistant Commissioners. The Assistant Commissioners are to be appointed by Governor in Council.

The clause provides that all the assistant commissioners must have skills and experience in governance. At least one of the assistant commissioners must be a lawyer, one must be a person who is a medical practitioner with clinical experience, at least one must be a nurse or midwife, one must be a an allied health professional, and one must have skills and experience in consumer issues.

Clause 150 provides that conviction of an indictable offence is ineligible for appointment as a commission member. Conviction of an indictable offence includes a conviction where the offence is dealt with summarily.

Clause 151 specifies that the commissioner and assistant commissioners may be appointed under this Act (and not the *Public Service Act 1996)* for up to 4 years on a full time or part time basis. Appointments of up to 4 years could include some shorter appointments to ensure overlap in terms, and continuity in the commission. Commission members are appointed on terms and conditions decided by Governor in Council.

Clause 152 provides that the office of a commission member becomes vacant if the member gives signed notice of resignation to the Minister or is removed from office under section 153.

Clause 153 sets out the circumstances in which the Governor in Council may remove a commission member from office.

Clause 154 provides that the commissioner may grant leave of absence to a commission member on the conditions the Minister considers appropriate.

Clause 155 provides that the Governor in Council may appoint an acting a commission member during a vacancy in office or during periods when a member is absent from duty or from the State or is for any reason unable to satisfactorily perform the functions of office.

Part 2 Commission business

Clause 156 provides that the commission must conduct its business, including its meetings, in the way it considers appropriate, subject to this Act.

Clause 157 provides that the commissioner must preside at all commission meetings at which the commissioner is present. If the commissioner is absent, an assistant commissioner chosen by the assistant commissioners must preside.

Clause 158 provides that commission meetings are to be held at the times and places the commissioner decides. If asked in writing by at least the number of assistant commissioners forming a quorum for a commission meeting, the commissioner must call a meeting.

Clause 159 specifies that a half the commission members constitute a quorum for a commission meeting, or if half the members is not a whole number, the next highest whole number.

Clause 160 provides details about the conduct of commission meetings.

Clause 161 provides that the commission must keep minutes of its meetings and note any resolution made under section 160(6) in the minutes of the next commission meeting next after the resolution is made. If requested by the commission member, the minutes must record a commission member's vote against a resolution.

Clause 162 requires commission members to disclose, to a commission meeting, any interest in an issue that could conflict with the proper performance of the member's duties about the consideration of the issue.

Part 3 Ministers powers to give directions

Clause 163 provides that the Minister may give the commission a written direction to conduct an inquiry under chapter 8 (Inquiries by commission) relating to a matter mentioned in section 94(1)(a) to (c) after first consulting with the commission about the inquiry matter. The Minister must state the purpose of the inquiry. The commission must comply with the direction despite section 12 (Commission's independence) which provides for the commission's independence.

Clause 164 provides that the Minister may give a written direction to the commission to provide the Minister with a report on a specified matter; establish a specified committee under section 169; investigate a health complaint, including one made by the Minister; intervene in disciplinary proceedings against a registered provider under section 190; investigate the

quality of a health service, or investigate systemic issues relating to the quality of health services.

The clause also specifies that a direction may state a period within which, or a way in which, the direction must be complied with. The commission must comply with the direction despite section 12 (Commission's independence).

Part 4 Other matters

Clause 165 clarifies that the commission does not represent the State.

Clause 166 allows the commission to delegate its functions and powers to the chief executive or another appropriately qualified commission officer, other than its function and power to conduct inquiries under chapter 8 (Inquiries by commission).

Clause 167 preserves the employment rights of public service officers appointed as commission members.

Clause 168 clarifies that a public service officer appointed as a commission member continues to be eligible to be a member of the State Public Sector Superannuation Scheme under the *Superannuation (State Public Sector) Act 1990*.

Clause 169 specifies that the commission must establish a consumer advisory committee and a clinical advisory committee, and may also establish other committees. The clause also provides for the committees' functions and specifies that the committees must include persons the commission considers have the expertise and experience necessary for the performance of the committees' functions.

Clause 170 specifies the matters to which the commission must have regard in nominating suitable people to the Minister for appointment as members of District Health Councils. Section 16(d) confers this nomination function on the commission.

Clause 171 specifies that the commission is a unit of public administration under the *Crime and Misconduct Act 2001* and a statutory body under the *Financial Administration and Audit Act 1977* and the *Statutory Bodies Financial Arrangements Act 1982*.

Clause 172 specifies the information the commission must include in its annual report under the *Financial Administration and Audit Act 1977*.

Subject to section 205 (Response to adverse comment in commission report), the commission may include in its annual report information, opinion and recommendations, including: matters about health complaints, investigations and inquiries; contraventions of the Act; the quality of health services; and systemic issues relating to the quality of health services.

Clause 173 enables the commission to provide a special report to the Minister about the commission's activities. The Minister must table a special report in the Legislative Assembly within 7 days of receipt.

Chapter 11 Office of the Health Quality and Complaints Commission

Part 1 Establishment

Clause 174 establishes the Office of the Health Quality and Complaints Commission (the office), consisting of the chief executive and the other staff of the office.

Part 2 Office's function and powers

Clause 175 specifies that the function of the office is to help the commission in the performance of its functions, and that it has power to do anything necessary or convenient to perform this function.

Clause 176 clarifies that the office is not a statutory body for the *Financial Administration and Audit Act 1977* or the *Statutory Bodies Financial Arrangements Act 1982*. The office is a public service office.

Part 3 Chief executive officer

Clause 177 provides for the appointment of the chief executive officer ('chief executive') of the office by the Governor in Council. The clause specifies that the chief executive is to be appointed for a term of up to 5

years, stated in the instrument of appointment and that the *Public Service Act 1996* does not apply to the appointment of the chief executive.

Clause 178 provides that the remuneration and conditions of appointment of the chief executive are decided by Governor in Council.

Clause 179 specifies that the function of the chief executive is to control the office and be responsible for its efficient and effective administration and operation. The chief executive is subject to direction by the commission.

Clause 180 specifies that the chief executive must act independently, impartially and in the public interest in performing his or her functions and exercising powers. The clause specifies that the chief executive is not subject to the direction of the Minister.

Clause 181 enables the chief executive to delegate the chief executive's functions to an appropriately qualified commission officer, including a function delegated to the chief executive by the commission..

Clause 182 specifies that the chief executive may resign from the position by signed notice to the Minister.

Clause 183 sets out the grounds on which the Governor in Council may end the appointment of the chief executive.

Clause 184 allows the Minister to appoint an acting chief executive if the office of the chief executive is vacant, or if the chief executive is absent from duty or cannot, for another reason, perform the functions of the office.

Clause 185 preserves the employment rights of a public service officer appointed to the position of chief executive to ensure that a public service officer is not disadvantaged by being appointed as the chief executive.

Clause 186 clarifies that a public service officer appointed as chief executive remains eligible to be a member of the State Public Sector Superannuation Scheme under the *Superannuation (State Public Sector) Act 1990*.

Part 4 Other staff of the office

Clause 187 provides that the staff of the office, other than the chief executive, are to be employed under the *Public Service Act 1996*.

Chapter 12 Registration boards

Clause 188 allows the commission to ask, and allows a registration board to give the commission information, comment and recommendations about a health complaint, and a registered provider to whom the complaint relates. A health complaint could include a 'health quality complaint' made for example, about a hospital in which a registered provider practices. The board must comply with a request from the commission.

Clause 189 allows a registration board to ask the commission for information about any complaints made to the commission about the registration board's registered providers. The commission must comply with a request from the registration board.

Clause 190 allows the commission to intervene in disciplinary proceedings taken against a registered provider and appeals against decisions made in those proceedings. The clause also specifies that on intervention the commission becomes a party to the proceedings or appeal.

Chapter 13 Offences and proceedings

Clause 191 makes it an offence for a person to state anything to the commission, a commission member or an authorised person, that the person knows is false or misleading in a material particular.

Clause 192 makes it an offence for a person to give the commission, a commission member or an authorised person, a record containing information the person knows is false or misleading in a material particular.

Clause 193 provides that a person must not cause, or attempt or conspire to cause, a detriment to another person who may or has made a health complaint, or may or has helped the commission. The clause provides that such a detriment (or attempted detriment) is an unlawful reprisal, and includes a detriment based on a belief that a person has, or may, complain to or assist the commission. If a person causes a detriment to another person, it is sufficient if the unlawful ground is a substantial ground for the act or omission that is the reprisal. This provision also applies to a detriment to a person in relation to the repealed *Health Rights Commission Act 1991*.

Clause 194 makes it an offence to take a reprisal.

Clause 195 provides that a person who takes a reprisal is liable in damages to any person who suffers detriment as a result. The provision also specifies the power of a court to grant an appropriate remedy and that damages claims must be decided by a judge sitting without a jury.

Clause 196 specifies that an offence against the Act, other than an offence against section 194 for taking a reprisal, is a summary offence.

Clause 197 specifies the time limitation for starting summary proceedings under the *Justices Act 1886* for a summary offence.

Clause 198 specifies how proceedings for an indictable offence against the Act may be taken and the circumstances in which a magistrate must not hear the charge summarily.

Clause 199 sets out the circumstances in which proceedings for indictable offences must be before a magistrate. It also specifies the limited jurisdiction that may be exercised if a proceeding is brought before a justice who is not a magistrate.

Clause 200 provides that in a proceeding for an offence against the Act involving false or misleading information or records, it is enough for a charge to state that the information or record was, without specifying which, 'false or misleading'.

Clause 201 provides the matters must be presumed in a proceeding unless a party requires proof. Those matters relate to appointments and the authority of commissioner members and authorised persons to do things under the Act.

Clause 202 specifies that signatures purporting to be particular signatures are evidence of those signatures.

Clause 203 specifies that particular certificates about matters relating to the Act are evidence of those matters.

Chapter 14 Other matters

Clause 204 provides that for the purpose of a duty imposed by the Act on a person to take an oath to verify information, the oath the person must take is an oath that the information is true.

Clause 205 provides that the commission must not include adverse comments about an individual or organisation in its various reports without giving the person or organisation a reasonable opportunity to make submissions and give a written statement to the commission. The commission must include the statement, or a fair summary of the statement, in the report if the person or organisation so requests.

Clause 206 allows the commission to dispense with notice requirements if giving notice would put at serious risk the health and safety of a person, or put a complainant or other person at risk of being harassed or intimidated, or prejudice an investigation or inquiry. This clause does not apply to the requirement in section 205 in relation to the commission's annual report or special report made under sections 173 and 174.

Clause 207 enables the commission to give a combined notice if it may or is required to give a person notices under more than one provision of this Act.

Clause 208 provides that the commission is not limited in exercising its powers if it fails to give a notice in the specified time under sections 54(1), 60(1), 66(3), 77(6), 81(4) or 82(6). If the commission does not assess a complaint in the time required in section 58, the commission must assess the complaint, and is not limited in the exercise of its powers.

Clause 209 allows consultation between the commission and a registration board under sections 57(1), 76(2) 80(2) and 81(4) to be in the form of a standing agreement or more specific consultation.

Clause 210 provides that if the commission refers a health complaint to a registration board or other entity under Chapter 5 (Health complaints) or Chapter 7 (Investigations by commission), the commission may give the board or other entity any information given to, or gathered by, the commission in the course of dealing with the complaint, except for information obtained through conciliation.

Clause 211 provides that an investigation or inquiry under the Act may start or continue, and a report under the Act may be made or given, despite any proceedings before any court or tribunal, unless a court of tribunal of competent jurisdiction orders otherwise.

Clause 212 provides that a person is not liable for giving information honestly and on reasonable grounds, for the purpose of a health complaint or in the course of an investigation or inquiry. In addition, the person cannot be held to have breached any code or standard of professional conduct merely because they give the information.

Clause 213 specifies that a person has a defence of absolute privilege for the publication of any defamatory statements made in good faith in a report, or for the preparation of a report, authorised or required to be made under the Act.

Clause 214 makes it an offence for a person to record, disclose or use "confidential information" (as defined in clause 214(9)) gained through involvement in the administration of the Act or the repealed Act, unless the person does so for the purpose of the Act or the repealed Act; when expressly authorised under another Act; when authorised under a regulation; or for the purposes of the *Health Practitioners (Professional Standards Act) 1999* or the *Nursing Act 1992* (if the information is about a registered provider).

The clause also provides that a person is not required to disclose, or produce a report containing, confidential information to a court or tribunal unless it is necessary to do so for the purpose of the Act. However, this does not apply to the disclosure of confidential information or production of a record to a disciplinary body.

Clause 215 provides that an "official" (as defined in clause 215(3)) is not civilly liable for an act done, or omission made, honestly and without negligence under this Act. If this provision prevents civil liability attaching to an official, it attaches instead to the commission.

Clause 216 specifies that it is Parliament's intention that the Legislative Assembly will establish a committee as soon as practicable after the commission has been in operation for 1 year, to review and report on the performance of the commission and generally on the operation of the Act.

Clause 217 provides that the Governor in Council may make regulations under the Act.

Chapter 15 Repeal and transitional provisions

Part 1 Repeal

Clause 218 repeals the *Health Rights Commission Act 1991*.

Part 2 Transitional provisions

Clause 219 defines terms used in this Part.

Clause 220 specifies that references to the repealed Act or former commission in an Act or document may respectively be taken as a reference to this Act or to the commission.

Clause 221 makes assets and liabilities of the Health Rights Commission assets and liabilities of the commission and enables contracts entered into by the former commission to be enforced by or against the commission.

Clause 222 provides that officers of the former commission immediately before the Act commenced continue their employment as commission officers.

Clause 223 specifies that records of the former commission become records of, and may be used by, the commission.

Clause 224 enables proceedings that have started or continued by or against the former commission may be started or continued by or against the commission. The provision also clarifies how proceedings under sections 121, 121 and 130 of the repealed Act may be continued.

Clause 225 allows the commission or another entity such as a registration board to deal with health service complaints made to the former commissioner under the repealed Act and not finalised before the commencement of the Act. The provision also specifies how particular actions arising from a health service complaint made under the repealed Act may be continued.

Clause 226 requires the commission to comply with any directions given by the Minister under section 31 of the repealed Act and not complied with prior to the Act commencing.

Clause 227 allows for the continuation of proceedings for an offence against the repealed Act as if the new Act had not commenced.

Clause 228 provides that things seized under the repealed Act are taken to have been properly seized.

Clause 229 requires the commission to prepare the annual report under the *Financial Administration and Audit Act 1977* for the financial year ending 30 June 2006 and specifies that the report must comply with sections 34 and 36 of the repealed Act.

Clause 230 clarifies that the amendment of a regulation in schedule 3 does not affect the power of Governor in Council to amend or repeal the regulation.

Clause 231 allows a transitional regulation to be made to provide for matters which are not provided for, or sufficiently provided for, under the Act. The provision and any transitional regulation made will expire 1 year after the Act commences. The rationale for the provision is set out on page 6 of these Notes.

Chapter 16 Amendment of Health Services Act 1991

Clause 232 provides that this chapter amends the *Health Services Act 1991*.

Clause 233 inserts a new definition in section 2 and amends a definition.

Clause 234 amends section 10 to specify that the Minister must recommend to the Governor in Council for appointment as members of District Health Councils, persons nominated as suitable for appointment by the Health Quality and Complaints Commission. The provision notes that the commission has this nomination function under section16(d) of the Act.

Clause 235 amends section 17 to require District Health Councils to meet monthly instead of bi-monthly.

Clause 236 amends section 22 to reflect that Managers of Health Service Districts are not employed as public service officers and are subject to the General Manager of the Health Service Area rather than the chief executive.

Clause 237 inserts new section 23A that requires the Minister to table in the Legislative Assembly the annual reports from District Health Councils within 2 months of the end of the financial year.

Clause 238 amends section 24 to allow the chief executive to appoint health service employees in the administrative units of the Department of Health prescribed under a regulation. Consistent with the Forster Review recommendations, it is proposed that all units of the Department with the exception of Corporate Office will be prescribed.

Clause 239 inserts new section 62LA to ensure that Queensland Health is not prevented from providing information to the Health Quality and Complaints Commission because of the confidentiality requirements of section 62A(1) of the Act. The new section allows a designated person to disclose confidential information for the purpose of making or giving information about complaints, to answer questions or give information about a person who is or was a health service provider, information requested by the commission about the quality of health services, and aggregated data about complaint management, patient safety or another matter relating to the quality of health services.

Clause 240 inserts new Division 6 of Part 9 which clarifies that the appointment of District Health Council members end when the provision commences and that those members are not entitled to compensation for the loss of office. This clause is to commence by proclamation.

Chapter 17 Amendment of other legislation

Clause 241 specifies that Schedules 3 and 4 amend the Acts and regulations they mention.

Schedule 1

Part 1 lists the services that are included in the meaning of the term "health services" as defined in section 8 (a) of the Act. Part 2 lists the services that are excluded from the meaning of the term "health services".

Schedule 2

Schedule 2 lists the entities that are "registration boards" for the purpose of the definition of that term in Schedule 5 of the Act.

Schedule 3

With the exception of the amendments mentioned below, Schedule 3 amends various Acts to make consequential changes to provisions in those Acts containing references to the Health Rights Commission, Health Rights Commissioner or the *Health Rights Commission Act 1991*.

Freedom of Information Act 1992

The amendment inserts a provision in section 11(1) that makes the Health Quality and Complaints Commission exempt from the application of the Act in relation to the conciliation of health service complaints. An equivalent exemption currently applies to the Health Rights Commission.

Health Practitioners (Professional Standards) Act 1999

Amendments 3, 10 and 11 amend sections 11, 58 and 59 so that the test for a registration board to immediately suspend a registrant is "possible serious risk" rather than "imminent threat". These amendments are made in response to comments made in the Davies Report that the current test potentially limits registration bodies from taking swift action about a registrant who may pose a serious risk, if the risk is not immediate.

Amendments 6, 8 and 9 amend sections 51 and 54 to enable a board to reject a complaint if the board and the Health Quality and Complaints Commission agree to this course of action. The amendments address an anomaly in the current provisions which require the board to refer complaints to the Health Rights Commission despite grounds existing for the board to reject the complaint.

Amendments 12 and 13 amend section 62 which specifies when a board must investigate a registrant. The amendments omit provisions that deal with complaint referral arrangements under the *Health Rights Commission Act 1991* that will not apply under the *Health Quality and Complaints Commission Act 2006*.

Amendment 14 inserts new section 117 to enable an entity to respond to adverse comment made about it in a report given to the Minister by the Health Quality and Complaints Commission about investigations conducted by boards.

Amendment 22 inserts new sections 405A–405H which are transitional provisions that principally require boards to deal with specified matters that they would have been required to deal with if *the Health Rights Commission Act 1991* had not been repealed.

Nursing Act 1992

Amendments 6 amends section 102C which specifies when the Queensland Nursing Council must investigate a nurse, midwife or person authorised to practise nursing. The amendment omits a provision that deals with complaint referral arrangements under the *Health Rights Commission Act 1991* that will not apply under the *Health Quality and Complaints Commission Act 2006*.

Amendment 12 inserts new sections 156-159 which are transitional provisions that principally require the council to deal with specified matters that they would have been required to deal with if *the Health Rights Commission Act 1991* had not been repealed.

Personal Injuries Proceedings Act 2002

The amendments clarify when notices under sections 9and 9A must be given by claimants who have made a health service complaint under the *Health Rights Commission Act 1991* or the *Health Quality and Complaints Commission Act 2006*.

Public Service Act 1996

The amendment amends Schedule 1 of the Act to include the Office of the Health Quality and Complaints Commission as a "public service office" and the chief executive officer as the Office's "head". The amendment is necessary to enable the staff of the Office, with the exception of the chief executive officer, to be employed as public servants under the Act.

Schedule 4 Other amendments

With the exception of the amendments mentioned below, Schedule 4 amends various Acts to update cross-references to other legislation, omit redundant provisions, correct minor errors and make other changes to reflect current drafting practice.

Health Act 1937

The amendment provides for section 102, which deals with evidentiary matters about standards for drugs, to be re-inserted into the Act. The section was repealed by the *Health Legislation Amendment Act 2005* as it would have become redundant once new Commonwealth legislation about therapeutic products commenced. However, as the expected

commencement date of the Commonwealth legislation was delayed, the section needs to be retained.

Public Health Act 2005

Amendment 1 inserts a new definition of "teacher" in section 158.

Amendments 2-6 and 9 amend various provisions of the Act regarding the Pap Smear Register to enable information to be collected for the Register about tests of HPV samples.

Research Involving Human Embryos and Prohibition of Human Cloning Act 2003

The definition of "proper consent" in section 21 is amended to refer to new ethical guidelines published by the National Health and Medical Research Council.

Schedule 5 Dictionary

Schedule 5 contains definitions of words used in the Act.