



Queensland

Health Legislation Amendment Act 2005

Act No. 10 of 2005



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Contents

		Page
Part 1	Preliminary	
1	Short title	10
2	Commencement	10
Part 2	Amendment of Health Services Act 1991	
3	Act amended in pt 2	10
4	Amendment of s 2 (Definitions)	10
5	Amendment of s 57 (Duty of confidentiality of officials)	11
6	Insertion of new pts 7 and 7A.	11
	Part 7 Confidentiality	
	Division 1 Interpretation and application	
60	Definitions for pt 7.	11
61	Meaning of parent	13
62	Part does not apply to official	14
	Division 2 Confidentiality	
62A	Confidentiality	14
62B	Disclosure required or permitted by law	14
62C	Disclosure with consent	14
62D	Disclosure to person who has sufficient interest in health and welfare of person	15
62E	Disclosure of confidential information for care or treatment of person	16
62F	Disclosure of confidential information in the public interest	17
62G	Disclosure for data collection and public health monitoring	17
62H	Disclosure for purposes relating to health services	18
62I	Disclosure to prevent serious risk to life, health or safety etc.	18
62J	Disclosure to or by inspector	18

62K	Disclosure to official	19
62L	Disclosure to health practitioner registration board or Queensland Nursing Council	19
62M	Disclosure to approved quality assurance committee	20
62N	Disclosure to Commonwealth, another State or Commonwealth or State entity	20
62O	Disclosure to Australian Red Cross Society	21
62P	Disclosure to person performing function under Coroners Act 2003	21
62Q	Necessary or incidental disclosure	21
62R	Former designated persons	22
Part 7A	Investigation and enforcement	
Division 1	Inspectors	
63	Functions	22
63A	Appointment and qualifications	22
63B	Appointment conditions and limit on powers	23
63C	Issue of identity cards	23
63D	Production or display of identity card	23
63E	When inspector ceases to hold office	24
63F	Resignation	24
63G	Return of identity card	24
Division 2	Powers of inspectors	
Subdivision 1	Entry of places	
63H	Power to enter places	25
Subdivision 2	Procedure for entry	
63I	Entry with consent	25
63J	Application for warrant	26
63K	Issue of warrant	27
63L	Application by electronic communication and duplicate warrant	28
63M	Defect in relation to warrant	29
63N	Warrants—procedure before entry	30
Subdivision 3	Powers after entry	
63O	General powers after entering places	30
63P	Failure to help inspector	31
63Q	Failure to give information	32
Subdivision 4	Power to seize evidence	

63R	Seizing evidence at a place that may be entered without consent or warrant	32
63S	Seizing evidence at a place that may only be entered with consent or warrant	32
63T	Securing seized things	33
63U	Tampering with seized things	33
63V	Powers to support seizure	34
63W	Inspector may require thing's return	34
63X	Receipts for seized things	35
63Y	Forfeiture of seized things	35
63Z	Return of seized things	36
63ZA	Access to seized things	36
	Subdivision 5 Power to obtain information	
63ZB	Power to require name and address	36
63ZC	Failure to give name or address	37
63ZD	Power to require information	37
	Division 3 General enforcement matters	
63ZE	Notice of damage	38
63ZF	Compensation	39
63ZG	False or misleading statements	39
63ZH	False or misleading documents	39
63ZI	Obstructing an inspector	40
63ZJ	Impersonating inspector	40
7	Omission of ss 63 and 63A	40
Part 3	Amendment of Mental Health Act 2000	
8	Act amended in pt 3	41
9	Insertion of new s 90A	41
	90A Giving information about return of patient to custody	41
10	Amendment of s 174 (Notice of decision)	41
11	Amendment of s 184 (Apprehension of persons absent from interstate mental health services)	42
12	Amendment of s 192 (Notice of decision)	42
13	Amendment of s 198 (Notice of decision)	42
14	Amendment of s 204 (Restrictions on review decisions)	43
15	Amendment of s 205 (Notice of decision)	43
16	Amendment of s 213 (Notice of decision)	43
17	Amendment of s 226 (Notice of order or decision to refuse)	44
18	Amendment of s 234 (Notice of decision)	44

19	Insertion of new ss 288A and 288B	44
	288A Effect of new forensic order on existing forensic order	44
	288B Mental Health Court may approve interstate move of patient	45
20	Amendment of s 289 (Mental Health Court may order, approve or revoke limited community treatment)	45
21	Amendment of s 321 (How to start appeal)	45
22	Amendment of s 458 (Confidentiality orders)	45
23	Insertion of new s 460A	46
	460A Observer may attend hearing	46
24	Replacement of s 463 (Tribunal may adjourn hearings)	46
	463 Tribunal may adjourn hearings	46
25	Replacement of s 465 (Reasons for decision about non-party material)	46
	465 Reasons for decision about non-party material	46
26	Amendment of s 528 (Confidentiality of information—officials)	47
Part 4	Amendment of Nursing Act 1992	
27	Act amended in pt 4	47
28	Amendment of s 4 (Definitions)	47
29	Amendment of s 10 (By-laws)	48
30	Amendment of s 16 (Conduct of meetings)	49
31	Insertion of new s 16B	49
	16B Minutes	49
32	Amendment of s 48 (The register)	49
33	Amendment of s 49 (The roll)	49
34	Amendment of s 53 (Inspection of register or roll etc.)	50
35	Amendment of s 62 (Copies of certificates to be issued on application)	50
36	Amendment of s 72 (Restoration of registration or enrolment in certain cases)	51
37	Amendment of s 74 (Fees for annual licence certificates)	51
38	Amendment of pt 3, div 5 hdg	52
39	Insertion of new pt 3A	52
	Part 3A Restrictions and holding out	
	77B Definitions for pt 3A	52
	77C Taking of restricted titles etc.	53
	77D Claims by persons as to registration etc.	55
	77E Claims by persons as to other persons' registration etc.	56

	77F	Restrictions on persons with conditional, provisional or limited registration or enrolment	56
	77G	Restrictions on persons with conditional authorisation	57
	77H	Restrictions on practising nursing	57
	77I	Restrictions on caring for a woman in childbirth.	59
40		Replacement of pt 4 (Accreditation of nursing courses).	60
	Part 4	Accreditation of nursing courses	
	Division 1	Preliminary	
	78	Definitions for pt 4.	60
	Division 2	Accreditation of nursing course	
	79	Application for accreditation	61
	80	Late applications	61
	81	Criteria for applications.	62
	82	Protection from liability	62
	83	Inquiries into applications.	63
	83A	Decision	63
	83B	Failure to decide applications	64
	83C	Period of accreditation	64
	83D	Standard condition	64
	83E	Conditions	64
	83F	Accreditation certificate	65
	Division 3	Variation of accredited nursing course	
	83G	Application for approval of variation	65
	83H	Inquiries into applications.	66
	83I	Decision	66
	83J	Failure to decide applications	67
	83K	Refund of fees	67
	Division 4	Renewal of accreditation	
	83L	Applications for renewal	68
	83M	Inquiries into applications.	68
	83N	Accreditation taken to be in force while application is considered	69
	83O	Decision	69
	83P	Failure to decide application.	70
	Division 5	Cancellation of accreditation	
	83Q	Ground for cancellation	70
	83R	Show cause notice	71

	83S	Submissions about show cause notices.	71
	83T	Ending show cause process without further action . .	71
	83U	Cancellation	72
	83V	Return of accreditation certificate to council	72
	Division 6	Offences relating to accreditation	
	83W	Person must not make false claims in relation to nursing course	73
	Division 7	General provisions about accreditation	
	83X	Surrender of accreditation	73
	83Y	Replacement of accreditation certificates	74
41		Amendment of s 107 (Summons to witness)	74
42		Amendment of s 137 (Appeals)	74
43		Replacement of ss 141 and 142.	75
	141	Approval of forms	75
44		Insertion of new pt 9, div 5	75
	Division 5	Provisions for the Health Legislation Amendment Act 2005	
	155	Transitional for Health Legislation Amendment Act 2005	75
Part 5		Amendment of Pharmacists Registration Act 2001	
45		Act amended in pt 5	76
46		Insertion of pt 4, div 6A	76
	Division 6A	Ownership of pharmacy business	
	139A	Definitions.	76
	139B	Restriction on who may own pharmacy business. . .	77
	139C	Registrant whose registration is suspended or cancelled may own pharmacy business for limited period	77
	139D	Person who stops being registrant's spouse may continue as director or shareholder for limited period	78
	139E	Executor, administrator or trustee of registrant's estate may own pharmacy business for limited period	79
	139F	Friendly society that demutualises may own pharmacy business for limited period.	79
	139G	Trustee in bankruptcy and liquidator may own pharmacy business	80
	139H	Restriction on number of pharmacy businesses in which a person may have beneficial interest	80
	139I	Certain arrangements about control of pharmacy business void	81

47	Amendment of s 141 (Business providing professional services to be carried on under supervision of registrant)	81
48	Omission of pt 10, div 3	82
49	Amendment of sch 4 (Dictionary)	82
Part 6	Amendment and repeal of other legislation	
50	Amendment of other legislation	82
51	Repeal	82
Schedule	Other amendments	83
	Child Protection Act 1999	83
	Child Safety Legislation Amendment Act (No. 2) 2004	83
	Chiropractors Registration Act 2001	84
	Corrective Services Act 2000	86
	Dental Practitioners Registration Act 2001	86
	Dental Technicians and Dental Prosthetists Registration Act 2001	87
	Health Act 1937	88
	Health Practitioners (Professional Standards) Act 1999	89
	Health Services Act 1991	89
	Liquor Act 1992	89
	Mental Health Act 2000	90
	Optometrists Registration Act 2001	91
	Penalties and Sentences Act 1992	92
	Pest Management Act 2001	93
	Private Health Facilities Act 1999	94
	Radiation Safety Act 1999	95
	Transplantation and Anatomy Act 1979	96
	Transport Operations (Road Use Management) Act 1995	97



Queensland

Health Legislation Amendment Act 2005

Act No. 10 of 2005

**An Act to amend Acts administered by the Minister for Health
and for other purposes**

[Assented to 1 April 2005]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Health Legislation Amendment Act 2005*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

Part 2 Amendment of Health Services Act 1991

3 Act amended in pt 2

This part amends the *Health Services Act 1991*.

4 Amendment of s 2 (Definitions)

Section 2—

insert—

‘confidential information, for part 7, see section 60.

designated person, for part 7, see section 60.

former designated person, for part 7, see section 60.

guardian, for part 7, see section 60.

health practitioner registration Act, for part 7, see section 60.

health professional, for part 7, see section 60.

inspector means a person appointed under section 63A as an inspector.

parent, for part 7, see section 60.

personal details requirement see section 63ZB(5).

public sector health service facility, for part 7, see section 60.’.

5 Amendment of s 57 (Duty of confidentiality of officials)

Section 57(4)(b), ‘section 63(2)(j)’—

omit, insert—

‘section 62F’.

6 Insertion of new pts 7 and 7A

After section 59—

insert—

‘Part 7 Confidentiality

‘Division 1 Interpretation and application

‘60 Definitions for pt 7

‘In this part—

confidential information see section 62A(1).

designated person means a person who is—

- (a) a public service employee employed in the department;
or
- (b) a health service employee; or
- (c) the chief health officer appointed under the *Health Act 1937*; or
- (d) the director of mental health appointed under the *Mental Health Act 2000*; or

- (e) a health professional (other than a person mentioned in paragraphs (a) to (d)) engaged in delivering a public sector health service on behalf of the department, whether at a public sector health service facility or another place; or
- (f) a person (other than a person mentioned in paragraph (a) or (b)) engaged temporarily to provide administrative support services for the department; or
- (g) a person being educated or trained at a public sector health service facility as part of the requirements for—
 - (i) registration, enrolment or other authorisation (however described) to practise as a health professional; or
 - (ii) completion of a course of study qualifying a person for registration, enrolment or authorisation mentioned in subparagraph (i); or
- (h) a person providing education or training at a public sector health service facility to a person mentioned in paragraph (g); or
- (i) a volunteer carrying out duties at a public sector health service facility on behalf of the department; or
- (j) another person prescribed under a regulation for this paragraph to be a designated person.

former designated person means a person who was, but is no longer, a designated person.

guardian, of a child, means a person who is recognised in law as having the duties, powers, responsibilities and authority that, by law, parents have in relation to their children.

health practitioner registration Act means any 1 of the following Acts—

- *Chiropractors Registration Act 2001*
- *Dental Practitioners Registration Act 2001*
- *Dental Technicians and Dental Prosthetists Registration Act 2001*
- *Medical Practitioners Registration Act 2001*

- *Medical Radiation Technologists Registration Act 2001*
- *Occupational Therapists Registration Act 2001*
- *Optometrists Registration Act 2001*
- *Osteopaths Registration Act 2001*
- *Pharmacists Registration Act 2001*
- *Physiotherapists Registration Act 2001*
- *Podiatrists Registration Act 2001*
- *Psychologists Registration Act 2001*
- *Speech Pathologists Registration Act 2001.*

health professional means—

- (a) a person registered under a health practitioner registration Act or enrolled, registered or authorised to practise under the *Nursing Act 1992*; or
- (b) a person, other than a person referred to in paragraph (a), who provides a health service, including, for example, an audiologist, dietitian or social worker.

parent see section 61.

public sector health service facility means a facility at which public sector health services are usually delivered by or for the department.

‘61 Meaning of *parent*

- ‘(1) A ***parent*** of a child is the child’s mother, father or someone else having or exercising parental responsibility for the child.
- ‘(2) However, a person standing in the place of a parent of a child on a temporary basis is not a parent of the child.
- ‘(3) A parent of an Aboriginal child includes a person who, under Aboriginal tradition, is regarded as a parent of the child.
- ‘(4) A parent of a Torres Strait Islander child includes a person who, under Island custom, is regarded as a parent of the child.

‘62 Part does not apply to official

‘This part does not apply to a person who is or was an official to the extent the person acquired information because of being an official.

‘Division 2 Confidentiality**‘62A Confidentiality**

- ‘(1) A designated person or former designated person must not disclose to another person, whether directly or indirectly, any information (*confidential information*) acquired because of being a designated person if a person who is receiving or has received a public sector health service could be identified from the confidential information.

Maximum penalty—50 penalty units.

- ‘(2) For subsection (1), another person includes another designated person or former designated person.
- ‘(3) Subsection (1) applies even if the person who could be identified from the disclosure of confidential information is deceased.

‘62B Disclosure required or permitted by law

‘Section 62A(1) does not apply to the disclosure of confidential information by a designated person if the disclosure is required or permitted by an Act or another law.

‘62C Disclosure with consent

‘Section 62A(1) does not apply to the disclosure of confidential information by a designated person if—

- (a) the person to whom the confidential information relates is an adult and consents to the disclosure; or
- (b) the person to whom the confidential information relates is a child and—

- (i) the disclosure of the confidential information is by a health professional who reasonably believes the child is of sufficient age and mental and emotional maturity to understand the nature of consenting to the disclosure; and
- (ii) the child consents to the disclosure; or
- (c) the person to whom the confidential information relates is a child and—
 - (i) the disclosure of the confidential information is by a health professional who reasonably believes the child is of insufficient age or mental or emotional maturity to understand the nature of consenting to the disclosure; and
 - (ii) the child's parent or guardian consents to the disclosure; or
- (d) the person to whom the confidential information relates is a child and the disclosure of the confidential information is by a health professional who reasonably believes the disclosure of the information is in the child's best interests.

'62D Disclosure to person who has sufficient interest in health and welfare of person

- '(1) Section 62A(1) does not apply to the disclosure of confidential information by a designated person if the confidential information—
- (a) is about the condition of the person to whom the information relates and is communicated in general terms; or
- Example of communicated in general terms—*
- A switchboard operator or media staff member at a hospital discloses that a person's condition is "satisfactory".
- (b) is communicated by a health professional, under the recognised standards of the relevant health profession, to a person who, in the health professional's reasonable opinion, has a sufficient personal interest in the health

and welfare of the person to whom the information relates.

Example of persons who a health professional could possibly reasonably opine to be persons having sufficient personal interest in the health and welfare of a person to whom the confidential information relates—

- the person's spouse
 - the person's child, parent or guardian
 - another person related by blood, marriage or adoption, or because of a de facto relationship or foster care relationship, to the person
 - a friend of the person who has a close personal relationship with the person and a personal interest in the person's welfare
 - an adult who is providing home care to the person who has a chronic condition or a disability
 - a general practitioner who has had responsibility for the care and treatment of the person
- '(2) For subsection (1)(b), if the person to whom the confidential information relates is deceased another person has a sufficient personal interest in the health and welfare of the deceased person if, in the health professional's reasonable opinion, the other person would have had a sufficient interest while the deceased person was alive.
- '(3) Subsection (1) does not apply to the disclosure of confidential information to a person if the person to whom the confidential information relates asks that the confidential information not be disclosed generally or to that person.

'62E Disclosure of confidential information for care or treatment of person

'Section 62A(1) does not apply to the disclosure of confidential information by a designated person if the disclosure is required for the care or treatment of the person to whom the information relates and—

- (a) the designated person is a health professional and the disclosure is in accordance with the recognised standards of the relevant health profession; or

- (b) the disclosure is to a designated person who is a health professional.

‘62F Disclosure of confidential information in the public interest

- ‘(1) Section 62A(1) does not apply to the disclosure of confidential information by a designated person if—
 - (a) the chief executive believes, on reasonable grounds, the disclosure is in the public interest; and
 - (b) the chief executive has, in writing, authorised the disclosure.
- ‘(2) The department’s annual report for a financial year under the *Financial Administration and Audit Act 1977* must include details of—
 - (a) the nature of any confidential information disclosed under subsection (1) during the financial year; and
 - (b) the purpose for which the confidential information was disclosed.
- ‘(3) However, the details mentioned in subsection (2)(a) must not identify, directly or indirectly, the person to whom the confidential information relates.
- ‘(4) Despite the *Public Service Act 1996*, section 57, the chief executive may not delegate the chief executive’s power under subsection (1).

‘62G Disclosure for data collection and public health monitoring

- ‘Section 62A(1) does not apply to the disclosure of confidential information by a designated person if—
 - (a) the disclosure is to another designated person; and
 - (b) the disclosure and receipt of the confidential information is—
 - (i) to give effect to or manage a funding arrangement for a public sector health service; or

- (ii) for analysing, monitoring or evaluating public health; and
- (c) the other designated person is authorised in writing by the chief executive to receive the confidential information.

‘62H Disclosure for purposes relating to health services

‘Section 62A(1) does not apply to the disclosure of confidential information by a designated person if—

- (a) the disclosure is to another designated person for evaluating, managing, monitoring or planning health services; or
- (b) the disclosure is to an entity prescribed under a regulation for this paragraph for evaluating, managing, monitoring or planning health services as stated in the regulation.

‘62I Disclosure to prevent serious risk to life, health or safety etc.

‘Section 62A(1) does not apply to the disclosure of confidential information by a designated person if—

- (a) the chief executive believes, on reasonable grounds, the disclosure is necessary to assist in averting a serious risk to—
 - (i) the life, health or safety of a person, including the person to whom the confidential information relates; or
 - (ii) public safety; and
- (b) the chief executive has, in writing, authorised the disclosure.

‘62J Disclosure to or by inspector

‘Section 62A(1) does not apply to the disclosure of confidential information by a designated person if—

- (a) the disclosure is to an inspector and the confidential information is relevant in relation to the performance of the inspector's function under part 7A; or
- (b) the disclosure is by an inspector and is necessary for performing the inspector's function under part 7A.

'62K Disclosure to official

'Section 62A(1) does not apply to the disclosure of confidential information by a designated person if the disclosure is to an official and the confidential information is relevant to the functions being performed by the official.

'62L Disclosure to health practitioner registration board or Queensland Nursing Council

'Section 62A(1) does not apply to the disclosure of confidential information by a designated person if the disclosure is to a board established under a health practitioner registration Act or the Queensland Nursing Council for the purposes of—

- (a) making, or giving information about, a complaint about a person who is or was—
 - (i) registered under the health practitioner registration Act; or
 - (ii) registered, enrolled or authorised to practise under the *Nursing Act 1992*; or
- (b) answering questions or otherwise giving information as part of an investigation or a disciplinary proceeding about a person who is or was—
 - (i) registered under the health practitioner registration Act; or
 - (ii) registered, enrolled or authorised to practise under the *Nursing Act 1992*.

‘62M Disclosure to approved quality assurance committee

‘Section 62A(1) does not apply to the disclosure of confidential information by a designated person if the disclosure is to a committee declared under section 31(1) to be an approved quality assurance committee, or to a person authorised by the committee to receive the confidential information, to enable the committee to perform its functions.

‘62N Disclosure to Commonwealth, another State or Commonwealth or State entity

- ‘(1) Section 62A(1) does not apply to the disclosure of confidential information by the chief executive if—
- (a) the disclosure is to the Commonwealth or another State, or an entity of the Commonwealth or another State and the disclosure—
 - (i) is required or allowed under an agreement—
 - (A) between Queensland and the Commonwealth, State or entity; and
 - (B) prescribed under a regulation for this paragraph; and
 - (ii) is considered by the chief executive to be in the public interest; or
 - (b) the disclosure is to an entity of the State and the disclosure—
 - (i) is required or allowed under an agreement—
 - (A) between the chief executive and the entity; and
 - (B) prescribed under a regulation for this paragraph; and
 - (ii) is considered by the chief executive to be in the public interest.
- ‘(2) The Commonwealth, a State or entity that receives confidential information under an agreement under subsection (1)—

- (a) must not give it to anyone else unless allowed to do so by the agreement or in writing by the chief executive; and
 - (b) must ensure the confidential information is used only for the purpose for which it was given under the agreement.
- ‘(3) In this section—
- entity of the State* includes a department and an entity established under an Act for a public purpose.

‘62O Disclosure to Australian Red Cross Society

‘Section 62A(1) does not apply to the disclosure of confidential information by a designated person if the disclosure is to the Australian Red Cross Society for the purpose of tracing blood or tissue, or blood products derived from blood, infected with any disease or the donor or recipient of that blood or tissue.

‘62P Disclosure to person performing function under Coroners Act 2003

‘Section 62A(1) does not apply to the disclosure of confidential information by a designated person to a person who requires the confidential information to perform a function under the *Coroners Act 2003*, other than the preparation of an annual report.

‘62Q Necessary or incidental disclosure

‘Section 62A(1) does not apply to the disclosure of confidential information by a designated person that is necessary or incidental to a disclosure of confidential information otherwise permitted under this part.

Examples of necessary or incidental disclosures—

- the disclosure of confidential information to support staff at a public sector hospital who make appointments for patients, maintain patient records and undertake other administrative tasks.
- the disclosure of confidential information to the Health Insurance Commission or health insurance providers for processing the payment of accounts for treatment or diagnostic tests.

- the disclosure of confidential information to advise the chief executive about authorising the disclosure of confidential information in the public interest under section 62F or to collect confidential information for the purpose of a prescribed agreement under section 62N.
- accessing contact details for a person to seek the person's consent under section 62C to the disclosure of confidential information
- permitting contractors to access databases to write, test or analyse programs, perform database administration tasks or maintain technical aspects of computer hardware.

'62R Former designated persons

- '(1) Sections 62B, 62C(a), 62F, 62J, 62L or 62Q (the *relevant provisions*) apply to the disclosure of confidential information by a former designated person in the same way as they apply to the disclosure of confidential information by a designated person.
- '(2) For subsection (1), a reference in the relevant provisions to a designated person is taken to be a reference to a former designated person.

'Part 7A Investigation and enforcement

'Division 1 Inspectors

'63 Functions

'An inspector has the function of monitoring and enforcing compliance with part 7 or this part.

'63A Appointment and qualifications

- '(1) The chief executive may appoint any of the following persons as inspectors—
- (a) a public service officer employed in the department;
 - (b) a health service employee;

(c) a person prescribed under a regulation.

- ‘(2) However, the chief executive may appoint a person as an inspector only if the chief executive is satisfied the person is qualified for appointment because the person has the necessary expertise or experience to be an inspector.

‘63B Appointment conditions and limit on powers

- ‘(1) An inspector holds office on any conditions stated in—
- (a) the inspector’s instrument of appointment; or
 - (b) a signed notice given to the inspector.
- ‘(2) The instrument of appointment or a signed notice given to the inspector may limit the inspector’s powers under this part.
- ‘(3) In this section—
- signed notice* means a notice signed by the chief executive.

‘63C Issue of identity cards

- ‘(1) The chief executive must issue an identity card to each inspector.
- ‘(2) The identity card must—
- (a) contain a copy of a recent photo of the inspector; and
 - (b) contain a copy of the inspector’s signature; and
 - (c) identify the person as an inspector under this Act; and
 - (d) state an expiry date for the card.
- ‘(3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

‘63D Production or display of identity card

- ‘(1) In exercising a power under this part in relation to a person, an inspector must—
- (a) produce the inspector’s identity card for the other person’s inspection before exercising the power; or

- (b) have the identity card displayed so it is clearly visible to the other person when exercising the power.
- ‘(2) However, if it is not practicable to comply with subsection (1), the inspector must produce the identity card for the other person’s inspection at the first reasonable opportunity.
- ‘(3) For subsection (1), an inspector does not exercise a power in relation to a person only because the inspector has entered a place as mentioned in section 63H(1)(b) or (2).

‘63E When inspector ceases to hold office

- ‘(1) An inspector ceases to hold office if any of the following happens—
 - (a) the term of office stated in a condition of office ends;
 - (b) under another condition of office, the inspector ceases to hold office;
 - (c) the inspector’s resignation under section 63F takes effect.
- ‘(2) Subsection (1) does not limit the ways an inspector may cease to hold office.
- ‘(3) In this section—
condition of office means a condition on which the inspector holds office.

‘63F Resignation

‘An inspector may resign by notice to the chief executive.

‘63G Return of identity card

‘A person who ceases to be an inspector must return the person’s identity card to the chief executive within 21 days after ceasing to be an inspector, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

‘Division 2 Powers of inspectors

‘Subdivision 1 Entry of places

‘63H Power to enter places

- ‘(1) An inspector may enter a place if—
- (a) its occupier consents to the entry; or
 - (b) it is a public place and the entry is made when it is open to the public; or
 - (c) the entry is authorised by a warrant.
- ‘(2) For the purpose of asking the occupier of a place for consent to enter, an inspector may, without the occupier’s consent or a warrant—
- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
 - (b) enter part of the place the inspector reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

‘Subdivision 2 Procedure for entry

‘63I Entry with consent

- ‘(1) This section applies if an inspector intends to ask the occupier of a place to consent to the inspector or another inspector entering the place.
- ‘(2) Before asking for the consent, the inspector must tell the occupier—
- (a) the purpose of the entry; and
 - (b) that the occupier is not required to consent.
- ‘(3) If the consent is given, the inspector may ask the occupier to sign an acknowledgment of the consent.
- ‘(4) The acknowledgment must state—

- (a) the occupier has been told—
 - (i) the purpose of the entry; and
 - (ii) that the occupier is not required to consent; and
 - (b) the purpose of the entry; and
 - (c) the occupier gives the inspector consent to enter the place and exercise powers under this division; and
 - (d) the time and date the consent was given.
- ‘(5) If the occupier signs an acknowledgment, the inspector must immediately give a copy to the occupier.
- ‘(6) If—
- (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
 - (b) an acknowledgment complying with subsection (4) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

‘63J Application for warrant

- ‘(1) An inspector may apply to a magistrate for a warrant for a place.
- ‘(2) The inspector must prepare a written application that states the grounds on which the warrant is sought.
- ‘(3) The written application must be sworn.
- ‘(4) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the written application to be given by statutory declaration.

‘63K Issue of warrant

- ‘(1) The magistrate may issue the warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting—
- (a) there is a particular thing or activity (the *evidence*) that may provide evidence of an offence against section 62A(1) or this part; and
 - (b) the evidence is at the place or, within the next 7 days, will be at the place.
- ‘(2) The warrant must state—
- (a) the place to which the warrant applies; and
 - (b) that a stated inspector may, with necessary and reasonable help and force—
 - (i) enter the place and any other place necessary for entry to the place; and
 - (ii) exercise the inspector’s powers under this division; and
 - (c) particulars of the offence that the magistrate considers appropriate in the circumstances; and
 - (d) the name of the person suspected of having committed the offence, unless the name is unknown or the magistrate considers it inappropriate to state the name; and
 - (e) the evidence that may be seized under the warrant; and
 - (f) the hours of the day or night when the place may be entered; and
 - (g) the magistrate’s name; and
 - (h) the date and time of the warrant’s issue; and
 - (i) the date, within 14 days after the warrant’s issue, the warrant ends.

‘63L Application by electronic communication and duplicate warrant

- ‘(1) An application under section 63J may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the inspector reasonably considers it necessary because of—
- (a) urgent circumstances; or
 - (b) other special circumstances, including, for example, the inspector’s remote location.
- ‘(2) The application—
- (a) may not be made before the inspector prepares the written application under section 63J(2); but
 - (b) may be made before the written application is sworn.
- ‘(3) The magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—
- (a) it was necessary to make the application under subsection (1); and
 - (b) the way the application was made under subsection (1) was appropriate.
- ‘(4) After the magistrate issues the original warrant—
- (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the inspector, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the inspector; or
 - (b) otherwise—
 - (a) the magistrate must tell the inspector the date and time the warrant is issued and the other terms of the warrant; and
 - (ii) the inspector must complete a form of warrant, including by writing on it—
 - (A) the magistrate’s name; and
 - (B) the date and time the magistrate issued the warrant; and

(C) the other terms of the warrant.

- ‘(5) The copy of the warrant mentioned in subsection (4)(a), or the form of warrant completed under subsection (4)(b) (in either case the ***duplicate warrant***), is a duplicate of, and as effectual as, the original warrant.
- ‘(6) The inspector must, at the first reasonable opportunity, send to the magistrate—
- (a) the written application complying with section 63J(2) and (3); and
 - (b) if the inspector completed a form of warrant under subsection (4)(b)—the completed form of warrant.
- ‘(7) The magistrate must keep the original warrant and, on receiving the documents under subsection (6)—
- (a) attach the documents to the original warrant; and
 - (b) give the original warrant and documents to the clerk of the court of the relevant magistrates court
- ‘(8) Despite subsection (5), if—
- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
 - (b) the original warrant is not produced in evidence;
- the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.
- ‘(9) This section does not limit section 63J.
- ‘(10) In this section—
- relevant magistrates court***, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

‘63M Defect in relation to warrant

- ‘(1) A warrant is not invalidated by a defect in the warrant, or in compliance with section 63J, 63K or 64L, unless the defect affects the substance of the warrant in a material particular.

‘(2) In this section—

warrant includes a duplicate warrant mentioned in section 63L(5).

‘63N Warrants—procedure before entry

‘(1) This section applies if an inspector named in a warrant issued under this division for a place is intending to enter the place under the warrant.

‘(2) Before entering the place, the inspector must do or make a reasonable attempt to do the following things—

(a) identify himself or herself to a person present at the place who is an occupier of the place in the way stated in section 63D;

(b) give the person a copy of the warrant;

(c) tell the person the inspector is permitted by the warrant to enter the place;

(d) give the person an opportunity to allow the inspector immediate entry to the place without using force.

‘(3) However, the inspector need not comply with subsection (2) if the inspector believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

‘(4) In this section—

warrant includes a duplicate warrant mentioned in section 63L(5).

‘Subdivision 3 Powers after entry

‘630 General powers after entering places

‘(1) This section applies to an inspector who enters a place.

‘(2) However, if an inspector enters a place to get the occupier’s consent to enter a place, this section applies to the inspector only if the consent is given or the entry is otherwise authorised.

- ‘(3) For monitoring and enforcing compliance with part 7 or this part, the inspector may—
- (a) search any part of the place; or
 - (b) inspect, measure, test, photograph or film any part of the place or anything at the place; or
 - (c) take a thing, or a sample of or from a thing, at the place for analysis or testing; or
 - (d) take an extract from, or copy, a document at the place; or
 - (e) take into or onto the place any persons, equipment and materials the inspector reasonably requires for exercising a power under this division; or
 - (f) require the occupier of the place, or a person at the place, to give the inspector reasonable help to exercise the inspector’s powers under paragraphs (a) to (e); or
 - (g) require the occupier of the place, or a person at the place, to give the inspector information to help the inspector find out whether part 7 or this part is being complied with.
- ‘(4) When making a requirement mentioned in subsection (3)(f) or (g), the inspector must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

‘63P Failure to help inspector

- ‘(1) A person required to give reasonable help under section 63O(3)(f) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- ‘(2) If a requirement under section 63O(3)(f) relates to a document, it is a reasonable excuse for the person not to comply with the requirement that complying with the requirement might tend to incriminate the person.

‘63Q Failure to give information

‘(1) A person of whom a requirement is made under section 63O(3)(g) must comply with the requirement, unless the person has a reasonable excuse.¹

Maximum penalty—50 penalty units.

‘(2) It is a reasonable excuse for the person to fail to comply with the requirement that complying with the requirement might tend to incriminate the person.

‘Subdivision 4 Power to seize evidence**‘63R Seizing evidence at a place that may be entered without consent or warrant**

‘An inspector who enters a place under this division without the consent of the occupier and without a warrant, may seize a thing at the place only if the inspector reasonably believes the thing is evidence of an offence against section 62A(1) or this part.

‘63S Seizing evidence at a place that may only be entered with consent or warrant

‘(1) This section applies if—

- (a) an inspector is authorised to enter a place under this division only with the consent of the occupier or a warrant; and
- (b) the inspector enters the place after obtaining the necessary consent or warrant.

‘(2) If the inspector enters the place with the occupier’s consent, the inspector may seize a thing at the place only if—

- (a) the inspector reasonably believes the thing is evidence of an offence against section 62A(1) or this part; and

¹ Also, a person must not state anything the person knows to be false or misleading in a material particular—see section 63ZG (False or misleading statements).

- (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.
- '(3) If the inspector enters the place with a warrant, the inspector may seize the evidence for which the warrant was issued.
- '(4) The inspector also may seize anything else at the place if the inspector reasonably believes—
- (a) the thing is evidence of an offence against section 62A(1) or this part; and
 - (b) the seizure is necessary to prevent the thing being—
 - (i) hidden, lost or destroyed; or
 - (ii) used to continue, or repeat, the offence.
- '(5) Also, the inspector may seize a thing at the place if the inspector reasonably believes it has just been used in committing an offence against section 62A(1) or this part.

'63T Securing seized things

'Having seized a thing, an inspector may—

- (a) move the thing from the place where it was seized (the *place of seizure*); or
- (b) leave the thing at the place of seizure, but take reasonable action to restrict access to it.

Examples of restricting access to a thing—

- 1 Sealing a thing and marking it to show access to it is restricted.
- 2 Sealing the entrance to a room where the thing is situated and marking it to show access to it is restricted.

'63U Tampering with seized things

- '(1) If an inspector restricts access to a seized thing, a person must not tamper with the thing, or something restricting access to the thing, without an inspector's approval.

Maximum penalty—50 penalty units.

- ‘(2) In this section—
tamper includes attempt to tamper.

‘63V Powers to support seizure

- ‘(1) To enable a thing to be seized, an inspector may require the person in control of it—
- (a) to take it to a stated reasonable place by a stated reasonable time; and
 - (b) if necessary, to remain in control of it at the stated place for a reasonable time.
- ‘(2) The requirement—
- (a) must be made by signed notice; or
 - (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by signed notice as soon as practicable.
- ‘(3) A further requirement may be made under this section about the same thing if it is necessary and reasonable to make the further requirement.
- ‘(4) A person of whom the requirement is made under subsection (1) or (3) must comply with the requirement, unless the person has a reasonable excuse.
- Maximum penalty—50 penalty units.
- ‘(5) Subject to section 63ZF,² the cost of complying with subsection (4) must be borne by the person.

‘63W Inspector may require thing’s return

- ‘(1) If an inspector has required a person to take a thing to a stated place by a stated reasonable time under section 63V the inspector may require the person to return the thing to the place from which it was taken.

2 Section 63ZF (Compensation)

- ‘(2) A person of whom the requirement is made under subsection (1) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- ‘(3) Subject to section 63ZF, the cost of complying with subsection (2) must be borne by the person.

‘63X Receipts for seized things

- ‘(1) As soon as practicable after an inspector seizes a thing, the inspector must give a receipt for it to the person from whom it was seized.

- ‘(2) However, if for any reason it is not practicable to comply with subsection (1), the inspector must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.

- ‘(3) The receipt must describe generally each thing seized and its condition.

- ‘(4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt, given the thing’s nature, condition and value.

‘63Y Forfeiture of seized things

- ‘(1) A seized thing is forfeited to the State if the inspector who seized the thing—

- (a) can not find its owner, after making reasonable inquiries; or
(b) can not return it to its owner, after making reasonable efforts.

- ‘(2) In applying subsection (1)—

- (a) subsection (1)(a) does not require the inspector to make inquiries if it would be unreasonable to make inquiries to find the owner; and
(b) subsection (1)(b) does not require the inspector to make efforts if it would be unreasonable to make efforts to return the thing to its owner.

- ‘(3) Regard must be had to a thing’s nature, condition and value in deciding—
- (a) whether it is reasonable to make inquiries or efforts; and
 - (b) if making inquiries or efforts, what inquiries or efforts, including the period over which they are made, are reasonable.

‘63Z Return of seized things

- ‘(1) If a thing has been seized but not forfeited, the inspector must return it to its owner—
- (a) at the end of 6 months; or
 - (b) if a proceeding for an offence involving the thing is started within 6 months, at the end of the proceeding and any appeal from the proceeding.
- ‘(2) However, unless the thing has been forfeited, the inspector must immediately return a thing seized as evidence to its owner if the inspector stops being satisfied its continued retention as evidence is necessary.

‘63ZA Access to seized things

- ‘(1) Until a thing that has been seized is forfeited or returned, an inspector must allow its owner to inspect it and, if it is a document, to copy it.
- ‘(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

‘Subdivision 5 Power to obtain information

‘63ZB Power to require name and address

- ‘(1) This section applies if—
- (a) an inspector finds a person committing an offence against section 62A(1) or this part; or
 - (b) an inspector finds a person in circumstances that lead, or has information that leads, the inspector reasonably to

suspect the person has just committed an offence against section 62A(1) or this part.

- ‘(2) The inspector may require the person to state the person’s name and residential address.
- ‘(3) When making the requirement, the inspector must warn the person it is an offence to fail to state the person’s name or residential address, unless the person has a reasonable excuse.
- ‘(4) The inspector may require the person to give the inspector evidence of the correctness of the stated name or residential address if the inspector reasonably suspects the stated name or address to be false.
- ‘(5) A requirement under subsection (2) or (4) is a *personal details requirement*.

‘63ZC Failure to give name or address

- ‘(1) A person of whom a personal details requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- ‘(2) A person does not commit an offence against subsection (1) if—
 - (a) the person was required to state the person’s name and residential address by an inspector who suspected the person had committed an offence against section 62A(1) or this part; and
 - (b) the person is not proved to have committed the offence.

‘63ZD Power to require information

- ‘(1) This section applies if an inspector reasonably believes—
 - (a) an offence against section 62A(1) or this part has been committed; and
 - (b) a person may be able to give information about the offence.

- ‘(2) The inspector may, by notice given to the person, require the person to give information about the offence to the inspector at a stated reasonable time and place.
- ‘(3) The person must comply with a requirement under subsection (2), unless the person has a reasonable excuse.
Maximum penalty—50 penalty units.
- ‘(4) It is a reasonable excuse for an individual to fail to give information if giving the information might tend to incriminate the individual.

‘Division 3 General enforcement matters

‘63ZE Notice of damage

- ‘(1) This section applies if—
 - (a) an inspector damages property when exercising or purporting to exercise a power; or
 - (b) a person (the *other person*) acting under the direction or authority of an inspector damages property.
- ‘(2) The inspector must immediately give notice of particulars of the damage to the person who appears to the inspector to be the owner of the property.
- ‘(3) If the inspector believes the damage was caused by a latent defect in the property or circumstances beyond the inspector’s or other person’s control, the inspector may state the belief in the notice.
- ‘(4) If, for any reason, it is impracticable to comply with subsection (2), the inspector must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.
- ‘(5) This section does not apply to damage the inspector reasonably believes is trivial.
- ‘(6) In this section—
owner, of property, includes the person in possession or control of it.

‘63ZF Compensation

- ‘(1) If a person incurs loss or expense because of the exercise or purported exercise of a power under any of the following subdivisions of division 2³ by or for an inspector, the person may claim compensation from the State—
- (a) subdivision 1 (Entry of places);
 - (b) subdivision 3 (Powers after entry);
 - (c) subdivision 4 (Power to seize evidence).
- ‘(2) Without limiting subsection (1), compensation may be claimed for loss or expense incurred in complying with a requirement made of the person under the subdivision.
- ‘(3) Compensation may be claimed and ordered to be paid in a proceeding—
- (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
 - (b) for an offence against section 62A(1) or this part brought against the person claiming compensation.
- ‘(4) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

‘63ZG False or misleading statements

‘A person must not state anything to an inspector the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

‘63ZH False or misleading documents

- ‘(1) A person must not give an inspector a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

3 Division 2 (Powers of inspectors)

- ‘(2) Subsection (1) does not apply to a person if the person, when giving the document—
- (a) tells the inspector, to the best of the person’s ability, how it is false or misleading; and
 - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

‘63ZI Obstructing an inspector

- ‘(1) A person must not obstruct an inspector in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- ‘(2) If a person has obstructed an inspector and the inspector decides to proceed with the exercise of the power, the inspector must warn the person that—
- (a) it is an offence to obstruct the inspector unless the person has a reasonable excuse; and
 - (b) the inspector considers the person’s conduct an obstruction.

- ‘(3) In this section—

obstruct includes hinder and attempt to obstruct or hinder.

‘63ZJ Impersonating inspector

‘A person must not pretend to be an inspector.

Maximum penalty—50 penalty units.’.

7 Omission of ss 63 and 63A

Part 8, sections 63 and 63A—

omit.

11 Amendment of s 184 (Apprehension of persons absent from interstate mental health services)

Section 184(7)(b)—

omit, insert—

‘(b) for paragraph (a)—

- (i) the warrant or other document authorising the person’s apprehension is taken to be the involuntary treatment order; and
- (ii) section 112(2) applies as if the order were made when the person is received at the authorised mental health service and the document authorising the patient’s apprehension is produced to a health service employee at the authorised mental health service.’.

12 Amendment of s 192 (Notice of decision)

(1) Section 192(2)(b), ‘28’—

omit, insert—

‘60’.

(2) Section 192(4), ‘7 days after receiving the request’—

omit, insert—

‘21 days after receiving the request’.

(3) Section 192(6), ‘7’—

omit, insert—

‘21’.

13 Amendment of s 198 (Notice of decision)

(1) Section 198(2)(b), ‘28’—

omit, insert—

‘60’.

(2) Section 198(4), ‘7 days after receiving the request’—

omit, insert—

‘21 days after receiving the request’.

- (3) Section 198(7), ‘7’—

omit, insert—

‘21’.

14 Amendment of s 204 (Restrictions on review decisions)

Section 204(2), after ‘division 3’—

insert—

‘or section 288B’.

15 Amendment of s 205 (Notice of decision)

- (1) Section 205(2)(b), ‘28’—

omit, insert—

‘60’.

- (2) Section 205(4), ‘7 days after receiving the request’—

omit, insert—

‘21 days after receiving the request’.

- (3) Section 205(6), ‘7’—

omit, insert—

‘21’.

16 Amendment of s 213 (Notice of decision)

- (1) Section 213(2)(b), ‘28’—

omit, insert—

‘60’.

- (2) Section 213(4), ‘7 days after receiving the request’—

omit, insert—

‘21 days after receiving the request’.

- (3) Section 213(6), ‘7’—
omit, insert—
‘21’.

17 Amendment of s 226 (Notice of order or decision to refuse)

- Section 226(7), ‘7’—
omit, insert—
‘21’.

18 Amendment of s 234 (Notice of decision)

- (1) Section 234(2)(b), ‘28’—
omit, insert—
‘60’.
- (2) Section 234(3), ‘7 days after receiving the request’—
omit, insert—
‘21 days after receiving the request’.

19 Insertion of new ss 288A and 288B

- After section 288—
insert—

‘288A Effect of new forensic order on existing forensic order

- ‘(1) This section applies if—
- (a) the Mental Health Court makes a forensic order for a patient; and
 - (b) a forensic order is already in force for the patient.
- ‘(2) If there is any inconsistency between the new forensic order and the old forensic order, including any limited community treatment ordered or approved under the forensic orders, the new forensic order prevails over the old forensic order to the extent of the inconsistency.

‘288B Mental Health Court may approve interstate move of patient

- ‘(1) If the Mental Health Court is making a forensic order mentioned in section 288(2) for a patient, the court may, under the order, approve that the patient move out of Queensland.
- ‘(2) However, the court may approve that the patient move out of Queensland only if it is satisfied appropriate arrangements exist for the patient’s treatment or care at the place where the patient is to move.
- ‘(3) Also, the court may impose the reasonable conditions on the approval the court considers appropriate.’.

20 Amendment of s 289 (Mental Health Court may order, approve or revoke limited community treatment)

- (1) Section 289(1), ‘, may under the forensic order for the patient’—
omit, insert—
‘may, under the forensic order for the patient, decide to do any 1 or more of the following’.
- (2) Section 289(1)(a) and (b), ‘; or’—
omit, insert—
‘;’.

21 Amendment of s 321 (How to start appeal)

- Section 321(2)(a) and (b), ‘28’—
omit, insert—
‘60’.

22 Amendment of s 458 (Confidentiality orders)

- Section 458(1)—
insert—
‘(d) the reasons for taking or not taking into account material submitted under section 464.’.

23 Insertion of new s 460A

After section 460—

insert—

‘460A Observer may attend hearing

- ‘(1) A person (an *observer*) may attend a hearing that is not open to the public under section 460 to observe the hearing if—
- (a) the president gives approval for the observer’s attendance at the hearing; and
 - (b) the person the subject of the hearing has given consent to the observer’s attendance.
- ‘(2) However, the president may not give approval for an observer’s attendance at a hearing if the person the subject of the hearing is a young person.’.

24 Replacement of s 463 (Tribunal may adjourn hearings)

Section 463—

omit, insert—

‘463 Tribunal may adjourn hearings

‘The tribunal may adjourn a tribunal hearing for—

- (a) a period of not more than 28 days; or
- (b) if the adjournment is for obtaining an examination and the president has approved that the hearing be adjourned for more than 28 days but less than 61 days—the period approved by the president.’.

25 Replacement of s 465 (Reasons for decision about non-party material)

Section 465—

omit, insert—

‘465 Reasons for decision about non-party material

- ‘(1) This section applies if, under section 464, a person who is not a party to a proceeding before the tribunal submits material to the tribunal.

- ‘(2) After making its decision in the proceeding, the tribunal must, if asked by a party to the proceeding or the person who submitted the material, give reasons to the party or person for taking or not taking into account the material.
- ‘(3) However, a confidentiality order of the tribunal may displace the requirement to give the reasons for taking or not taking into account the material to the person the subject of the proceeding or the patient.⁴’.

26 Amendment of s 528 (Confidentiality of information—officials)

- (1) Section 528(1)(a)(v), ‘; and’—

omit, insert—

‘; or’.

- (2) Section 528(1)(a)—

insert—

‘(vi) another person providing services to the tribunal;
and’.

Part 4 Amendment of Nursing Act 1992

27 Act amended in pt 4

This part amends the *Nursing Act 1992*.

28 Amendment of s 4 (Definitions)

- (1) Section 4, definition *accredited nursing course*—

omit.

- (2) Section 4—

⁴ See section 458 (Confidentiality orders).

insert—

‘accredited nursing course means a nursing course accredited under part 4 and includes an accredited nursing course that has been varied under an approval under section 83I.

application fee, for part 4, see section 78.

approved form means a form approved by the council under section 141.

assessment body, for part 4, see section 78.

business name, of a business, means a name or style under which the business is carried on.

childbirth, for part 3A, see section 77B.

health practitioner registration Act, for part 3A, see section 77B.

health professional, for part 3A, see section 77B.

information notice, for part 4, see section 78.

notice, for part 4, see section 78.

profession, for part 3A, see section 77B.

professional service, for part 3A, see section 77B.

recognised person, for part 3A, see section 77B.

show cause notice, for part 4, see section 78.

show cause period, for part 4, see section 78.’.

29 Amendment of s 10 (By-laws)

- (1) Section 10(1) and (3) and heading—

omit.

- (2) Section 10(2), ‘by-law’—

omit, insert—

‘regulation’.

- (3) Section 10(2)—

relocate and renumber as section 148(2).

30 Amendment of s 16 (Conduct of meetings)

Section 16(1), ‘the by-laws’—

omit, insert—

‘a regulation’.

31 Insertion of new s 16B

After section 16A—

insert—

‘16B Minutes

‘The council must keep minutes of its meetings.’.

32 Amendment of s 48 (The register)

Section 48(3)(a)—

omit, insert—

‘(a) the following particulars in relation to each person who is a registered nurse—

- (i) the person’s name;
- (ii) the person’s date of birth;
- (iii) the person’s residential address;
- (iv) relevant qualifications held by the person;
- (v) any authorisations held by the person to practise midwifery, mental health nursing or nursing in another area of nursing;
- (vi) the person’s registration number;
- (vii) the date the person was registered;
- (viii) any other particulars prescribed under a regulation; and’.

33 Amendment of s 49 (The roll)

Section 49(3)(a)—

omit, insert—

- ‘(a) the following particulars in relation to each person who is an enrolled nurse—
- (i) the person’s name;
 - (ii) the person’s date of birth;
 - (iii) the person’s residential address;
 - (iv) relevant qualifications held by the person;
 - (v) any authorisations held by the person to practise midwifery, mental health nursing or in another area of nursing;
 - (vi) the person’s enrolment number;
 - (vii) the date the person was enrolled;
 - (viii) any other particulars prescribed under a regulation; and’.

34 Amendment of s 53 (Inspection of register or roll etc.)

Section 53(2)—

omit, insert—

- ‘(2) Subsection (1) does not apply to the following particulars contained in the register or roll—
- (a) a person’s date of birth;
 - (b) a person’s residential address;
 - (c) another particular prescribed under a regulation.’.

35 Amendment of s 62 (Copies of certificates to be issued on application)

- (1) Section 62, heading—

omit, insert—

‘62 Nurse must notify council if certificate of registration or enrolment lost or destroyed’.

- (2) Section 62—

renumber as section 62(2).

(3) Section 62—

insert—

‘(1) A nurse whose certificate of registration or enrolment is lost or destroyed must give the council written notice of the loss or destruction of the certificate, unless the nurse has a reasonable excuse.

Maximum penalty—1 penalty unit.’.

36 Amendment of s 72 (Restoration of registration or enrolment in certain cases)

(1) Section 72—

insert—

‘(1A) A person whose registration or enrolment has been cancelled as mentioned in subsection (1) may apply to the council for the restoration of the person’s registration or enrolment.

‘(1B) The application must be—

(a) in the approved form; and

(b) accompanied by the fee prescribed under a regulation.’.

(2) Section 72(2), after ‘considering’—

insert—

‘the application and’.

(3) Section 72(1A) to (2)—

renumber as section 72(2) to (4).

37 Amendment of s 74 (Fees for annual licence certificates)

Section 74(3) and (5), ‘by-law’—

omit, insert—

‘regulation’.

38 Amendment of pt 3, div 5 hdg

Part 3, division 5, heading, after ‘**practise**’—

insert—

‘**midwifery or**’.

39 Insertion of new pt 3A

Before part 4—

insert—

‘Part 3A Restrictions and holding out**‘77B Definitions for pt 3A**

‘In this part—

childbirth means the process of labour and delivery beginning with uterine contractions and ending with the expulsion of the placenta and membranes from the woman giving birth.

health practitioner registration Act means any 1 of the following Acts—

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

- *Speech Pathologists Registration Act 2001.*

health professional means a registrant under a health practitioner registration Act.

profession means—

- (a) the nursing profession as practised by a registered nurse; or
- (b) the nursing profession as practised by an enrolled nurse; or
- (c) the midwifery profession as practised by a midwife.

professional service means—

- (a) for the nursing profession as practised by a registered nurse—a service ordinarily provided by a registered nurse; or
- (b) for the nursing profession as practised by an enrolled nurse—a service ordinarily provided by an enrolled nurse; or
- (c) for the midwifery profession—a midwifery service.

recognised person, for a profession, means—

- (a) for the nursing profession as practised by a registered nurse—a registered nurse; or
- (b) for the nursing profession as practised by an enrolled nurse—an enrolled nurse; or
- (c) for the midwifery profession—a midwife.

‘77C Taking of restricted titles etc.

- ‘(1) A person who is not a recognised person for a profession must not take or use a restricted title for the profession.

Maximum penalty—1 000 penalty units.

Examples of an individual taking or using a restricted title—

- 1 AB describes himself or herself as ‘AB, registered nurse’.
- 2 AB describes himself or herself as ‘AB, enrolled nurse’.
- 3 AB describes himself or herself as ‘AB, midwife’.

- ‘(2) Subsection (1) does not apply to a person if—

- (a) the person takes or uses a restricted title for a profession as part of a business name for a business providing professional services in the profession; and
 - (b) in the carrying on of the business by the person, a recognised person for the profession provides professional services in the profession.
- ‘(3) Also, subsection (1) does not apply to a person if—
- (a) the person is undertaking an accredited nursing course for a profession; and
 - (b) the person takes or uses a restricted title for the profession, in conjunction with words indicating the person is a student in the profession.
- ‘(4) A person (the *first person*) must not, in relation to another person who the first person knows, or ought reasonably to know, is not a recognised person for a profession, use a restricted title for the profession.
- Maximum penalty—1 000 penalty units.
- ‘(5) Subsection (4) does not apply to the first person if—
- (a) the other person is undertaking an accredited nursing course for a profession; and
 - (b) the first person uses a restricted title for the profession in relation to the other person, in conjunction with words indicating the other person is a student in the profession.
- ‘(6) A person who is not a recognised person for a profession must not take or use a nursing related title for the profession.
- Maximum penalty—500 penalty units.
- ‘(7) Subsection (6) does not apply to a person if—
- (a) the person is undertaking an accredited nursing course for a profession; and
 - (b) the person takes or uses a nursing related title for the profession, in conjunction with words indicating the person is a student in the profession.
- ‘(8) A person (the *first person*) must not, in relation to another person who the first person knows, or ought reasonably to

know, is not a recognised person for a profession use a nursing related title for the profession.

Maximum penalty—500 penalty units.

- ‘(9) Subsection (8) does not apply to the first person if—
- (a) the other person is undertaking an accredited nursing course for a profession; and
 - (b) the first person uses a nursing related title for the profession in relation to the other person, in conjunction with words indicating the other person is a student in the profession.

- ‘(10) In this section—

nursing related title, for a profession, means a title (other than a restricted title), name, initial, symbol, word or description that, having regard to the circumstances in which it is taken or used, indicates or could be reasonably understood to indicate—

- (a) a person is a recognised person for the profession; or
- (b) the person is, under this Act, authorised or qualified to practise the profession.

restricted title means a title that consists of, or includes—

- (a) for the nursing profession as practised by a registered nurse—registered nurse; or
- (b) for the nursing profession as practised by an enrolled nurse—enrolled nurse; or
- (c) for the midwifery profession—midwife.

‘77D Claims by persons as to registration etc.

- ‘(1) A person who is not a recognised person for a profession must not—
- (a) claim, or hold himself or herself out, to be a recognised person for the profession; or
 - (b) allow himself or herself to be held out as being a recognised person for the profession; or

- (c) claim, or hold himself or herself out, to be eligible to be a recognised person for the profession.

Maximum penalty—1 000 penalty units.

- ‘(2) A person who is not, under this Act, authorised to practise in an area of nursing must not—

- (a) claim, or hold himself or herself out, to be authorised to practise in the area of nursing; or
- (b) allow himself or herself to be held out as being authorised to practise in the area of nursing; or
- (c) claim, or hold himself or herself out, to be eligible to be authorised to practise in the area of nursing.

Maximum penalty—1 000 penalty units.

‘77E Claims by persons as to other persons’ registration etc.

‘A person must not hold out another person as being—

- (a) a recognised person for a profession if the person knows, or ought reasonably to know, the other person is not a recognised person for the profession; or
- (b) authorised under this Act to practise in an area of nursing if the person knows, or ought reasonably to know, the other person is not authorised to practise in the area of nursing.

Maximum penalty—1 000 penalty units.

‘77F Restrictions on persons with conditional, provisional or limited registration or enrolment

‘A person whose registration or enrolment is subject to a condition, or is provisional or limited must not—

- (a) claim, or hold himself or herself out to be registered or enrolled other than as—
 - (i) subject to the condition; or
 - (ii) provisionally; or
 - (iii) subject to the limitation; or

- (b) allow himself or herself to be held out as being registered or enrolled other than as—
 - (i) subject to the condition; or
 - (ii) provisionally; or
 - (iii) subject to the limitation.

Maximum penalty—100 penalty units.

‘77G Restrictions on persons with conditional authorisation

‘A person whose authorisation, under this Act, to practise nursing or midwifery is subject to a condition must not—

- (a) claim, or hold himself or herself out to be authorised other than as subject to the condition; or
- (b) allow himself or herself to be held out as being authorised other than as subject to the condition.

Maximum penalty—100 penalty units.

‘77H Restrictions on practising nursing

- ‘(1) A person must not practise nursing unless the person is—
 - (a) a registered nurse practising the profession as practised by a registered nurse; or
 - (b) an enrolled nurse practising the profession as practised by an enrolled nurse; or
 - (c) authorised under this Act to practise in an area of nursing and practising in the area.

Maximum penalty—1 000 penalty units.

- ‘(2) Subsection (1) does not apply to caring for a woman in childbirth.⁵

- ‘(3) Also, subsection (1) does not apply to—
 - (a) a health professional carrying out, in the practise of the person’s profession, an activity that would ordinarily be carried out in the practise of the profession; or

⁵ See section 77I (Restrictions on caring for a woman in childbirth).

- (b) a person engaged in providing a health service and carrying out an activity that is within the person's professional training and expertise; or
- (c) a person, including, for example, a nursing assistant, practising under the supervision of a registered nurse; or
- (d) a person who is—
 - (i) undertaking an accredited nursing course for qualification for registration as a registered nurse or enrolment as an enrolled nurse; and
 - (ii) practising under the supervision of a registered nurse; or
- (e) a person who is—
 - (i) undertaking study or training for qualification for registration as a health professional; and
 - (ii) practising under the supervision of a health professional for the relevant health profession or a registered nurse; and
 - (iii) carrying out an activity that would ordinarily be carried out in the practise of the relevant health profession; or
- (f) a person who is—
 - (i) undertaking a midwifery course accredited by the council; and
 - (ii) practising under the supervision of a midwife; and
 - (iii) carrying out an activity as part of the course that would ordinarily be carried out by a midwife; or
- (g) a person giving help in an emergency; or
- (h) a person carrying out an activity for which no fee or reward is expected or received.

Examples for paragraph (h)—

- 1 A mother nurses a sick child at home.
- 2 A person nurses an elderly parent at home.

- (4) Without limiting subsection (1), a person may be practising nursing even if the person carries out 1 or more activities,

usually carried out in the practise of nursing, on 1 occasion only or only on a limited number of occasions.

‘771 Restrictions on caring for a woman in childbirth

‘(1) A person must not care for a woman in childbirth unless the person is authorised under this Act to practise midwifery.

Maximum penalty—1 000 penalty units.

‘(2) Subsection (1) does not apply to—

(a) any of the following persons carrying out, in the practise of the person’s profession, an activity that would ordinarily be carried out in the practise of the profession—

(i) a registered nurse;

(ii) an enrolled nurse;

(iii) a person authorised under this Act to practise nursing in an area of nursing other than midwifery;

(iv) a health professional; or

(b) a person acting under the supervision of a midwife or a medical practitioner; or

(c) a person undertaking, under the supervision of a medical practitioner or midwife, a midwifery course accredited by the council; or

(d) a person who is—

(i) undertaking an accredited nursing course for qualification for registration as a registered nurse or enrolment as an enrolled nurse; and

(ii) practising under the supervision of a registered nurse; and

(iii) carrying out an activity as part of the course that would ordinarily be carried out by a registered nurse or an enrolled nurse; or

(e) a person who is—

(i) undertaking study or training for qualification for registration as a health professional; and

- (ii) practising under the supervision of a health professional for the relevant health profession; and
- (iii) carrying out an activity that would ordinarily be carried out in the practise of the relevant health profession; or
- (f) a person giving help in an emergency; or
- (g) a person carrying out activities for which no fee or reward is expected or received.’.

40 Replacement of pt 4 (Accreditation of nursing courses)

Part 4—

omit, insert—

‘Part 4 Accreditation of nursing courses

‘Division 1 Preliminary

‘78 Definitions for pt 4

‘In this part—

application fee see section 79(2)(b)(i).

assessment body means a body recognised by the council as competent to assess standards of nursing education.

information notice, for a decision of the council, means a notice stating the following—

- (a) the decision;
- (b) the reason for the decision;
- (c) that the person to whom the notice is given may appeal against the decision within 28 days;
- (d) how the person may appeal against the decision to the District Court;
- (e) if the decision is that the accreditation of a nursing course be renewed or cancelled—a direction to return

the certificate of accreditation to the council within 14 days.

notice means written notice.

show cause notice see section 83R(1).

show cause period see section 83R(2)(d).

‘Division 2 Accreditation of nursing course

‘79 Application for accreditation

- ‘(1) A person may apply to the council for accreditation of a nursing course.
- ‘(2) The application must—
 - (a) be in the approved form; and
 - (b) be accompanied by—
 - (i) the fee (the *application fee*) prescribed under a regulation; and
 - (ii) any other documents, identified in the approved form, the council reasonably requires.
- ‘(3) Information in the application must, if the approved form requires, be verified by a statutory declaration.

‘80 Late applications

- ‘(1) This section applies if the application is made after the day prescribed under a regulation.
- ‘(2) In addition to the application fee, the application must be accompanied by the fee (the *late fee*) prescribed under a regulation.
- ‘(3) If the council reasonably considers there is insufficient time to adequately consider the application having regard to the proposed commencement day for the nursing course, the council must—
 - (a) refuse to consider the application; and
 - (b) refund the application fee and late fee.

‘81 Criteria for applications

- ‘(1) The council may grant the application only if it is satisfied the standard of education offered by the nursing course is sufficient to enable persons undertaking the nursing course to gain the skills and knowledge necessary to competently and safely practise in the area of nursing to which the nursing course relates.
- ‘(2) In deciding the application, the council may have regard to the following—
- (a) the duration, structure and content of the nursing course, including theoretical and clinical experience components;
 - (b) the nature of the assessment, and supervision, of students by teaching staff to take place under the nursing course;
 - (c) the status of the nursing course under another Act;
 - (d) the resources and facilities that will be available under the nursing course;
 - (e) the management, staffing and record-keeping policies and practices of the school of nursing that will conduct the nursing course;
 - (f) the advice and recommendation of an assessment body.

‘82 Protection from liability

- ‘(1) This section applies if an assessment body, honestly and on reasonable grounds, gives advice, or makes a recommendation, to the council under section 81(2)(f).
- ‘(2) A discloser is not liable, civilly, criminally or under an administrative process, for disclosing information contained in the advice or recommendation.
- ‘(3) Without limiting subsection (2)—
- (a) in a proceeding for defamation, the discloser has a defence of absolute privilege for publishing the disclosed information; and

- (b) if the discloser would otherwise be required to maintain confidentiality about the disclosed information under an Act or oath, or a rule of law or practice, the discloser—
 - (i) does not contravene the Act, oath, rule of law or practice by disclosing the information; and
 - (ii) is not liable to disciplinary action for disclosing the information.

‘(4) In this section—

discloser means any of the following—

- (a) an assessment body that gives advice, or makes a recommendation, under section 81(2)(f);
- (b) all the members of that assessment body;
- (c) each of the members of that assessment body.

‘83 Inquiries into applications

- ‘(1) This section applies if the council reasonably considers further information or a document is required to decide the application.
- ‘(2) The council may, by notice given to the applicant within the period prescribed under a regulation, require the applicant to give the council the further information or document within the period stated in the notice.
- ‘(3) The period stated in the notice must not be less than the period prescribed under a regulation.
- ‘(4) The applicant is taken to have withdrawn the application if the applicant does not comply with the requirement.

‘83A Decision

- ‘(1) The council must consider the application and decide to accredit, or refuse to accredit, the nursing course.
- ‘(2) If it decides to accredit the nursing course, the council must as soon as practicable issue an accreditation certificate for the nursing course to the applicant.

- ‘(3) If it decides to refuse to accredit the nursing course, the council must as soon as practicable give the applicant an information notice about the decision.

‘83B Failure to decide applications

‘If the council fails to decide the application within the period prescribed under a regulation, the council is taken to have decided to refuse to accredit the nursing course.

‘83C Period of accreditation

‘The period of accreditation that is to apply to a nursing course is the period, not more than 5 years, stated in the accreditation certificate for the nursing course.

‘83D Standard condition

‘It is a condition of the accreditation of an accredited nursing course that the holder of the certificate of accreditation—

- (a) allows an inspector to enter, at any reasonable time, a place to examine the holder’s operation for the nursing course at the place; and
- (b) complies with all reasonable requests by an inspector to inspect a document—
 - (i) relevant to the nursing course; or
 - (ii) necessary to establish the standard at which the course is being conducted;

for the purpose of the council considering whether the nursing course and the way of delivering it comply with the accreditation.

‘83E Conditions

- ‘(1) The council may decide to accredit a nursing course subject to the conditions that are relevant and reasonable.

Example of a condition the council may decide to impose on the accreditation of a nursing course—

The nursing course is not to commence until it is also accredited under the *Higher Education (General Provisions) Act 2003*.

- ‘(2) If the council decides to accredit a nursing course subject to conditions it must as soon as practicable give the applicant an information notice about the decision.

‘83F Accreditation certificate

- ‘(1) An accreditation certificate for a nursing course must be in the approved form.
- ‘(2) The approved form must provide for the inclusion of the following—
- (a) the name of the nursing course;
 - (b) the name of the holder of the certificate;
 - (c) the period of accreditation;
 - (d) the name and address of the school of nursing conducting the nursing course;
 - (e) any conditions imposed on the accreditation, other than the condition under section 83D.

‘Division 3 Variation of accredited nursing course

‘83G Application for approval of variation

- ‘(1) The holder of an accreditation certificate for a nursing course may apply to the council for approval of a variation of the accredited nursing course.
- ‘(2) The application must—
- (a) be in the approved form; and
 - (b) be accompanied by—
 - (i) the fee prescribed under a regulation; and

- (ii) any other documents, identified in the approved form, the council reasonably requires.
- ‘(3) An application for approval of a variation of an accredited nursing course may not be made during the following periods—
- (a) the period between the day prescribed under section 83L(2)(c) and the day the period of accreditation ends;
 - (b) the period between the day an application for renewal of the accreditation is made and the day a decision is made under section 83O about the application;
 - (c) the period between the day a show cause notice has been given to the holder of the accreditation certificate and the day the holder has been given a notice under section 83T(3) that no further action is to be taken about the show cause notice.

‘83H Inquiries into applications

- ‘(1) This section applies if the council reasonably considers further information or a document is required to decide the application.
- ‘(2) The council may, by notice given to the applicant, require the applicant to give the council the further information or document within the reasonable period stated in the notice.
- ‘(3) The applicant is taken to have withdrawn the application if the applicant does not comply with the requirement.

‘83I Decision

- ‘(1) The council must consider the application and approve, or refuse to approve, the variation of the accredited nursing course.
- ‘(2) In making its decision, the council may have regard to the matters to which the council may have regard in deciding whether to accredit a nursing course.⁶

6 See section 81(2) for a list of the matters.

- ‘(3) If, under subsection (2), the council receives advice or a recommendation from an assessment body, section 82 applies to the disclosure of information contained in the advice or recommendation as if the advice or recommendation had been given or made under section 81(2)(f).
- ‘(4) Without limiting subsection (2), the council must refuse to approve the variation of the accredited nursing course if the council reasonably considers—
 - (a) the proposed variation would change the character of the nursing course to the extent that it would no longer be the accredited nursing course; or
 - (b) the proposed variation is within the scope of the accredited nursing course.
- ‘(5) If it decides to refuse to approve the variation of the accredited nursing course, the council must as soon as practicable give the applicant an information notice about the decision.
- ‘(6) If it decides to approve the variation of the accredited nursing course, the council must as soon as practicable give the applicant a notice about the decision.
- ‘(7) The approval of the variation of the accredited nursing course takes effect from the day the holder of the accreditation certificate receives the notice.

‘83J Failure to decide applications

‘If the council fails to decide the application within the period prescribed under a regulation, the failure is taken to be a decision by the council to refuse to approve the variation of the accredited nursing course.

‘83K Refund of fees

- ‘(1) This section applies if—
 - (a) the council refuses under section 83I(4) to approve a variation of an accredited nursing course; or
 - (b) the council is taken, under section 83J, to have decided to refuse to approve a variation of an accredited nursing course.

- ‘(2) The council must refund the fee paid under section 83G(2)(b)(i) for the application.

‘Division 4 Renewal of accreditation

‘83L Applications for renewal

- ‘(1) The holder of an accreditation certificate for a nursing course may apply to the council for the renewal of the accreditation.
- ‘(2) The application must—
- (a) be in the approved form; and
 - (b) be accompanied by—
 - (i) the fee prescribed under a regulation; and
 - (ii) any other documents, identified in the approved form, the council reasonably requires; and
 - (c) be given to the council not later than the day prescribed under a regulation.
- ‘(3) Information in the application must, if the approved form requires, be verified by a statutory declaration.

‘83M Inquiries into applications

- ‘(1) This section applies if the council reasonably considers further information or a document is required to decide the application.
- ‘(2) The council may, by notice given to the applicant within the period prescribed under a regulation, require the applicant to give the council the further information or document within the period stated in the notice.
- ‘(3) The period stated in the notice must not be less than the period prescribed under a regulation.
- ‘(4) The applicant is taken to have withdrawn the application if the applicant does not comply with the requirement.

‘83N Accreditation taken to be in force while application is considered

- ‘(1) If an application is made under section 83L, the accreditation is taken to continue in force from the day that it would, apart from this section, have expired until the application is decided under section 83O or taken to have been withdrawn under section 83M(4).
- ‘(2) However, if the application is refused, the accreditation continues in force until the information notice for the decision is given to the applicant.
- ‘(3) Subsection (1) does not apply if the accreditation is earlier cancelled.

‘83O Decision

- ‘(1) The council must consider the application and renew, or refuse to renew, the accreditation.
- ‘(2) In making its decision, the council may have regard to the matters to which the council may have regard in deciding whether to accredit the nursing course.⁷
- ‘(3) If, under subsection (2), the council receives advice or a recommendation from an assessment body, section 82 applies to the disclosure of information contained in the advice or recommendation as if the advice or recommendation had been given or made under section 81(2)(f).
- ‘(4) If it decides to refuse to renew the accreditation, the council must as soon as practicable give the applicant an information notice about the decision.
- ‘(5) If it decides to renew the accreditation, it must as soon as practicable—
 - (a) endorse the existing accreditation certificate for the nursing course; or
 - (b) cancel the existing certificate and issue another accreditation certificate for the nursing course.

⁷ See section 81(2) for a list of the matters.

‘83P Failure to decide application

‘If the council fails to decide the application within the period prescribed under a regulation, the failure is taken to be a decision by the council to refuse to renew the accreditation of the nursing course.

‘Division 5 Cancellation of accreditation**‘83Q Ground for cancellation**

- ‘(1) The accreditation for a nursing course may be cancelled, under this division, on the ground that—
- (a) the holder of the accreditation has contravened a condition of the accreditation; or
 - (b) the nursing course is no longer being conducted in accordance with the accreditation; or
 - (c) it is otherwise no longer appropriate for the nursing course to continue to be accredited.
- ‘(2) For forming a belief that the ground exists under subsection (1)(b), the council may have regard to the matters to which the council may have regard in deciding whether to accredit a nursing course.⁸
- ‘(3) If, under subsection (2), the council receives advice or a recommendation from an assessment body, section 82 applies to the disclosure of information contained in the advice or recommendation as if the advice or recommendation had been given or made under section 81(2)(f).
- ‘(4) The accreditation of a nursing course may not be cancelled on the ground the nursing course is no longer being conducted in accordance with the accreditation if—
- (a) the ground is based on a variation in the accredited nursing course for which an application for approval was made under section 83G by the holder of the accreditation; and

8 See section 81(2) for a list of the matters.

- (b) the council refused under section 83I(4)(b) to grant the application.

‘83R Show cause notice

- ‘(1) If the council believes a ground exists to cancel the accreditation for a nursing course, the council must before taking action to cancel the accreditation give the holder of the accreditation certificate for the nursing course a notice (a *show cause notice*).
- ‘(2) The show cause notice must state the following—
 - (a) that the council proposes to cancel the accreditation under this division;
 - (b) the ground for the proposed cancellation;
 - (c) an outline of the facts and circumstances forming the basis for the ground;
 - (d) an invitation to the holder to show within a stated period (the *show cause period*) why the council should not cancel the accreditation.
- ‘(3) The show cause period must be a period that is at least the period prescribed under a regulation.

‘83S Submissions about show cause notices

- ‘(1) The holder of the accreditation certificate may make written submissions about the show cause notice to the council in the show cause period.
- ‘(2) The council must consider all written submissions made under subsection (1).

‘83T Ending show cause process without further action

- ‘(1) This section applies if, after considering the submissions about the show cause notice, the council no longer believes the ground exists to cancel the accreditation.
- ‘(2) The council must not take any further action about the show cause notice.

- ‘(3) The council must give the holder of the accreditation certificate notice that no further action is to be taken about the show cause notice.

‘83U Cancellation

- ‘(1) This section applies if, after considering the submissions about the show cause notice, the council—
- (a) still believes the ground exists to cancel the accreditation; and
 - (b) believes cancellation of the accreditation is warranted.
- ‘(2) This section also applies if there are no submissions under section 83S(1).
- ‘(3) The council may decide to cancel the accreditation.
- ‘(4) If the council decides to cancel the accreditation, it must as soon as practicable give an information notice about the decision to the holder of the accreditation certificate.
- ‘(5) The decision takes effect on—
- (a) the day the information notice is given to the holder; or
 - (b) if a later day of effect is stated in the information notice, the later day.

‘83V Return of accreditation certificate to council

- ‘(1) This section applies if the council decides to cancel the accreditation for a nursing course and gives an information notice for the decision to the holder of the accreditation certificate.
- ‘(2) The holder must return the accreditation certificate for the nursing course to the council within 14 days after the decision to cancel the accreditation takes effect under section 83U(5), unless the holder has a reasonable excuse.

Maximum penalty—10 penalty units.

‘Division 6 Offences relating to accreditation

‘83W Person must not make false claims in relation to nursing course

- ‘(1) A person must not advertise that the person is willing or able to provide an accredited nursing course unless the course is accredited under this part.

Maximum penalty—10 penalty units.

- ‘(2) A person must not do any of the following in relation to a course purporting to be an accredited nursing course or a recognised nursing course if the course is not an accredited nursing course or recognised nursing course—

- (a) enrol, or cause another person to enrol, a person in the course;
- (b) offer to enrol, or enter into an agreement to enrol, a person in the course;
- (c) collect, or accept, a fee for enrolling a person in the course;
- (d) invite a person to enrol in the course.

Maximum penalty—10 penalty units.

- ‘(3) In this section—

recognised nursing course means a course that provides a qualification that is recognised under section 77(3) by the council.

‘Division 7 General provisions about accreditation

‘83X Surrender of accreditation

- ‘(1) The holder of the accreditation certificate for a nursing course may surrender the accreditation by notice given to the council.

- ‘(2) The surrender takes effect—

- (a) on the day the notice is given to the council; or

- (b) if a later day of effect is stated in the notice, on the later day.
- ‘(3) The holder must return the accreditation certificate for the nursing course to the council within 14 days after the day the surrender takes effect, unless the holder has a reasonable excuse.

Maximum penalty—10 penalty units.

‘83Y Replacement of accreditation certificates

- ‘(1) The holder of the accreditation certificate for a nursing course may apply in writing to the council for the replacement of the certificate if it has been lost, stolen, destroyed or damaged.
- ‘(2) The council must consider the application and either grant, or refuse to grant, the application.
- ‘(3) The council may grant the application only if the council is satisfied the certificate has been lost, stolen or destroyed, or damaged in a way to require its replacement.
- ‘(4) If the council grants the application, the council must, on payment of the fee prescribed under a regulation, issue another certificate to the applicant to replace the lost, stolen, destroyed or damaged certificate.
- ‘(5) If the council refuses to grant the application, the council must as soon as practicable give the applicant an information notice about the decision.’.

41 Amendment of s 107 (Summons to witness)

Section 107(3), ‘by by-law’—

omit, insert—

‘under a regulation’.

42 Amendment of s 137 (Appeals)

Section 137(1)(a)—

insert—

‘(ix) to refuse to vary an accredited nursing course; or

- (x) to refuse to renew the accreditation of an accredited nursing course; or
- (xi) to cancel the accreditation of an accredited nursing course;’.

43 Replacement of ss 141 and 142

Sections 141 and 142—

omit, insert—

‘141 Approval of forms

‘The council may approve forms for use under this Act.’.

44 Insertion of new pt 9, div 5

After part 9, division 4—

insert—

‘Division 5 Provisions for the Health Legislation Amendment Act 2005

‘155 Transitional for Health Legislation Amendment Act 2005

- ‘(1) A nursing course that is an accredited nursing course immediately before the commencement day continues to be an accredited nursing course, for the same period and subject to the same conditions, after the commencement day as if the grant of an application for accreditation of the nursing course had been made under part 4, division 2.
- ‘(2) An application for accreditation of a nursing course made to the council and not finally dealt with before the commencement day is to be dealt with as if the application had been made, on the commencement day, under section 79.
- ‘(3) In this section—
commencement day means the day this section commences.’.

Part 5 **Amendment of Pharmacists Registration Act 2001**

45 **Act amended in pt 5**

This part amends the *Pharmacists Registration Act 2001*.

46 **Insertion of pt 4, div 6A**

Part 4, after section 139—

insert—

‘Division 6A Ownership of pharmacy business

‘139A Definitions

‘In this division—

friendly society means a company—

- (a) that is registered under the Corporations Act under a name that includes the words ‘friendly society’; and
- (b) that is not carrying on business for the dominant purpose of securing a profit or pecuniary gain for its members; and
- (c) for which any object or intention of providing a dividend to its shareholders or members is a limited and not a dominant purpose; and
- (d) that applies its property and income towards the objects of the company.

own, a pharmacy business, includes having a proprietary interest in the pharmacy business.

relative, of a registrant, means—

- (a) the registrant’s spouse; or
- (b) a child of the registrant who is at least 18 years of age.

‘139B Restriction on who may own pharmacy business

‘A person must not own a pharmacy business unless the person is—

- (a) a registrant; or
- (b) a corporation whose directors and shareholders are all registrants; or
- (ba) a corporation—
 - (i) whose directors and shareholders are a combination of registrants and relatives of the registrants; and
 - (ii) in which the majority of shares are held by registrants; and
 - (iii) in which only registrants hold voting shares; or
- (c) a friendly society that, at the commencement of this section, operates a pharmacy business in the State or another State; or
- (d) a friendly society that is an amalgamation of 2 or more friendly societies mentioned in paragraph (c); or
- (e) Mater Misericordiae Health Services Brisbane Limited ACN 096 708 922.

Maximum penalty—200 penalty units.

‘139C Registrant whose registration is suspended or cancelled may own pharmacy business for limited period

- ‘(1) This section applies if—
- (a) an individual who is a registrant—
 - (i) owns a pharmacy business; or
 - (ii) is a director of or a shareholder in a corporation that owns a pharmacy business; and
 - (b) the individual’s registration is—
 - (i) cancelled under this Act; or

- (ii) suspended or cancelled under the *Health Practitioners (Professional Standards) Act 1999*.
- ‘(2) Despite section 139B, the individual or corporation may continue to own the pharmacy business for the period or periods approved by the board.
- ‘(3) In deciding whether to grant an approval under subsection (2), the board must have regard to—
- (a) the objects of this Act; and
 - (b) the financial circumstances of the pharmacy business.
- ‘(4) Each period approved by the board under subsection (2) must not be more than 3 months.
- ‘(5) An individual or corporation who owns a pharmacy business under an approval granted under this section—
- (a) must give the board notice of the name of the registrant under whose personal supervision and management the pharmacy business will be carried on under section 141; and
 - (b) if the person is an individual—must not personally provide a professional service; and
 - (c) must comply with any other condition the board reasonably believes is necessary to give effect to this Act and included in the approval.

Maximum penalty for subsection (5)—200 penalty units.

‘139D Person who stops being registrant’s spouse may continue as director or shareholder for limited period

- ‘(1) This section applies if—
- (a) a person is a director or shareholder of a corporation that owns a pharmacy business because of being the spouse of a registrant; and
 - (b) the person stops being the registrant’s spouse.
- ‘(2) Despite section 139B, the corporation may continue to own the pharmacy business—

- (a) during the period starting on the day the person stops being the registrant's spouse and ending 1 year after that day; or
- (b) during the longer period decided by the board having regard to—
 - (i) the objects of the Act; and
 - (ii) the financial circumstances of the pharmacy business.

'139E Executor, administrator or trustee of registrant's estate may own pharmacy business for limited period

- '(1) This section applies if, immediately before his or her death, a registrant owned a pharmacy business.
- '(2) Despite section 139B, the executor, administrator or trustee of the estate of the deceased registrant may continue to operate the business—
 - (a) during the period starting on the day the registrant dies and ending 1 year after that day; or
 - (b) during the longer period decided by the board having regard to—
 - (i) the objects of the Act; and
 - (ii) the financial circumstances of the pharmacy business.

'139F Friendly society that demutualises may own pharmacy business for limited period

- '(1) This section applies if—
 - (a) a company that is a friendly society owns a pharmacy business; and
 - (b) the company demutualises.
- '(2) Despite section 139B, the company may own the pharmacy business for 6 months after the day of the demutualisation.

‘(3) In this section—

demutualisation, of a company, means a modification of the constitution of the company, or an issue of shares—

- (a) that will result in or allow a modification of the mutual structure of the company; and
- (b) to which the Corporations Act, schedule 4, part 5, applies.

‘139G Trustee in bankruptcy and liquidator may own pharmacy business

‘(1) This section applies if—

- (a) a registrant who owns, or is the director of or a shareholder in a corporation that owns, a pharmacy business becomes bankrupt; or
- (b) a corporation that owns a pharmacy business is in liquidation.

‘(2) Neither the trustee nor the liquidator commits an offence against section 139B because of being the registrant’s trustee or the corporation’s liquidator.

‘139H Restriction on number of pharmacy businesses in which a person may have beneficial interest

‘(1) A registrant must not have a beneficial interest in more than 5 pharmacy businesses at the same time.

Maximum penalty—200 penalty units.

‘(2) For subsection (1), a registrant has a beneficial interest in a pharmacy business if the registrant—

- (a) owns the pharmacy business; or
- (b) is a director of, or shareholder in, a corporation that owns the pharmacy business.

‘(3) A corporation must not own more than 5 pharmacy businesses at the same time.

Maximum penalty—200 penalty units.

‘(4) A friendly society must not own more than 6 pharmacy businesses at the same time.

Maximum penalty—200 penalty units.

‘(5) Mater Misericordiae Health Services Brisbane Limited ACN 096 708 922 must not own more than 6 pharmacy businesses at the same time.

Maximum penalty—200 penalty units.

‘139I Certain arrangements about control of pharmacy business void

‘A bill of sale, mortgage, lease, franchise, agency or other service or commercial arrangement for a pharmacy business is void to the extent it—

(a) gives to a person, other than the owner of the business—

(i) the right to control in whole or part the way in which the business is carried on; or

(ii) the right to receive any consideration that varies according to the profits or takings of the business; or

(b) requires goods or services for the business to be obtained from a stated person or body.’.

47 Amendment of s 141 (Business providing professional services to be carried on under supervision of registrant)

(1) Section 141, heading, ‘**Business providing professional services**’—

omit, insert—

‘Pharmacy business’.

(2) Section 141(1), ‘business providing professional services (a *pharmacy business*)’—

omit, insert—

‘pharmacy business’.

Schedule Other amendments

section 50

Child Protection Act 1999

- 1 **Section 194, heading, ‘health service employees’—**
omit, insert—
‘a health services designated person’.

- 2 **Section 194(1), ‘health service employee’—**
omit, insert—
‘health services designated person’.

- 3 **Section 194(3), definitions *confidential information* and *health service employee*—**
omit, insert—
 ‘*confidential information* has the meaning given by the *Health Services Act 1991*, section 60.
 ‘*health services designated person* means a designated person under the *Health Services Act 1991*, section 60.’.

Child Safety Legislation Amendment Act (No. 2) 2004

- 1 **Section 24, insertion of new section 159O, heading, ‘health service employees’—**
omit, insert—
‘a health services designated person’.

Schedule (continued)

- 2 Section 24, insertion of new section 159O, section 159O(1), ‘health service employee’—**
omit, insert—
‘health services designated person’.
- 3 Section 24, insertion of new section 159O, section 159O(4), definitions *confidential information* and *health service employee*—**
omit, insert—
‘*confidential information* has the meaning given by the *Health Services Act 1991*, section 60.
health services designated person means a designated person under the *Health Services Act 1991*, section 60.’.
- 4 Section 24, insertion of new section 159R, example, ‘section 63’—**
omit, insert—
‘section 62A(1)’.
- 5 Section 46, insertion of new section 31EA, section 31EA(2), example, ‘section 63’—**
omit, insert—
‘section 62A(1)’.

Chiropractors Registration Act 2001

- 1 Section 131(1), after ‘against section’—**
insert—
‘120A.’.

Schedule (continued)

- 2 Section 201, heading, after ‘against s’—**
insert—
‘120A,’.
- 3 Section 201(1), after ‘against section’—**
insert—
‘120A,’.
- 4 Part 10, division 2, heading—**
omit, insert—
- ‘Division 2 Transitional provisions for Act No. 3 of 2001’.**
- 5 Part 10—**
insert—
- ‘Division 3 Transitional provision for Health Legislation Amendment Act 2005**
- ‘237 Sections 131 and 201 not to apply to certain convictions for offences against s 120A**
- ‘(1) This section applies if—
- (a) a person is convicted of an offence against section 120A; and
 - (b) the offence was committed before the commencement of this section.
- ‘(2) Sections 131 and 201 do not apply in relation to the person’s conviction for the offence.’.

Schedule (continued)

Corrective Services Act 2000**1 Section 53(8)—***omit, insert—*

- (8) If a prisoner is transferred to an authorised mental health service and becomes a classified patient under the *Mental Health Act 2000*, the patient is taken to be in the custody of the administrator of the patient's treating health service under that Act.'

2 Schedule 3, definition *prisoner*, paragraph (a), 'being detained in an authorised mental health service'—*omit.***Dental Practitioners Registration Act 2001****1 Section 153(1), after 'against section'—***insert—*

'139A,'.

2 Section 223, heading, after 'against s'—*insert—*

'139A,'.

3 Section 223(1), after 'against section'—*insert—*

'139A,'.

Schedule (continued)

4 Part 10—*insert—***‘Division 5 Transitional provision for Health
Legislation Amendment Act 2005****‘269 Sections 153 and 223 not to apply to certain convictions
for offences against s 139A****‘(1) This section applies if—**

- (a) a person is convicted of an offence against section 139A; and
- (b) the offence was committed before the commencement of this section.

‘(2) Sections 153 and 223 do not apply in relation to the person’s conviction for the offence.’.**Dental Technicians and Dental Prosthetists
Registration Act 2001****1 Section 135(1), after ‘against section’—***insert—***‘124A.’.****2 Section 205, heading, after ‘against s’—***insert—***‘124A.’.****3 Section 205(1), after ‘against section’—***insert—***‘124A.’.**

Schedule (continued)

4 Part 10, division 2, heading—*omit, insert—***‘Division 2 Transitional provisions for Act No. 5 of 2001’.****4 Part 10—***insert—***‘Division 3 Transitional provision for Health Legislation Amendment Act 2005****‘240 Sections 135 and 205 not to apply to certain convictions for offences against s 124A****‘(1) This section applies if—**

- (a) a person is convicted of an offence against section 124A; and
- (b) the offence was committed before the commencement of this section.

‘(2) Sections 135 and 205 do not apply in relation to the person’s conviction for the offence.’.**Health Act 1937****1 Section 100E(6), ‘section 63’—***omit, insert—***‘section 62A(1)’.****2 Section 100FO(3), ‘section 63’—***omit, insert—***‘section 62A(1)’.**

Schedule (continued)

- 3 Section 102—**
omit.

Health Practitioners (Professional Standards) Act 1999

- 1 Section 224(9), definition *special witness*, paragraph (a), '12'—**
omit, insert—
'16'.

Health Services Act 1991

- 1 Section 2, definition *Australian Health Care Agreement*, '28 August 1998'—**
omit, insert—
'31 August 2003'.

Liquor Act 1992

- 1 Section 12(2)(e), 'within the meaning of the *Pharmacy Act 1976*, section 5'—**
omit.
- 2 Section 12(4)—**
insert—

Schedule (continued)

'pharmacist means a person registered under the *Pharmacists Registration Act 2001*.'.

Mental Health Act 2000

- 1 Sections 70(3)(c), 86(2)(c), 91(3)(c), 216(2)(f), 218(1)(a)(iv), 237(4)(c), 245(2)(c), 250(1)(c), 252(d), 286(2)(b), 291(g) and 324(2)(c), 'chief executive for families'—**

omit, insert—

'chief executive for young people'.

- 2 Section 190, 'treatment.'—**

omit, insert—

'treatment.⁹'.

- 3 Section 216(4), 'subsection (2)'—**

omit, insert—

'section 214 or 215'.

- 4 Section 343(c), 'section 341'—**

omit, insert—

'section 342'.

- 5 Section 530(1)—**

omit, insert—

⁹ See section 457 (Tribunal may order examination) which provides that the tribunal may order the person the subject of a proceeding to submit to an examination by a stated psychiatrist, doctor or other health practitioner.

Schedule (continued)

- ‘(1) For a person (a *relevant person*) exercising a power under this Act—
- (a) a designated person under the *Health Services Act 1991*, part 7, may disclose information to the relevant person that is confidential information under that part; and
 - (b) the director or an officer, employee or agent of the department may disclose information to the relevant person that is subject to confidentiality under the *Private Health Facilities Act 1999*, section 147.’.

6 Schedule 2, definition *chief executive for families*, ‘for families’—

omit, insert—

‘for young people’.

Optometrists Registration Act 2001

1 Section 131(1), after ‘against section’—

insert—

‘120A.’.

2 Section 201, heading, after ‘against s’—

insert—

‘**120A**,’.

3 Section 201(1), after ‘against section’—

insert—

‘120A.’.

Schedule (continued)

4 Part 10, division 2, heading—*omit, insert—***‘Division 2 Transitional provisions for Act No. 10 of 2001’.****5 Part 10—***insert—***‘Division 3 Transitional provision for Health Legislation Amendment Act 2005****‘233 Sections 131 and 201 not to apply to certain convictions for offences against s 120A****‘(1) This section applies if—**

- (a) a person is convicted of an offence against section 120A; and
- (b) the offence was committed before the commencement of this section.

‘(2) Sections 131 and 201 do not apply in relation to the person’s conviction for the offence.’.**Penalties and Sentences Act 1992****1 Section 176(4), from ‘section 63’ to ‘administered,’—***omit, insert—***‘section 62A(1), does not apply to a designated officer under part 7 of that Act’.**

Schedule (continued)

Pest Management Act 2001**1 Section 26(1)(c), from ‘a registered chemical product’—**

omit, insert—

‘an agricultural chemical product under the *Chemical Usage (Agricultural and Veterinary) Control Act 1988* in contravention of section 13 or 13A of that Act.’

2 Section 26(4)—

omit.

3 Section 136—

omit, insert—

‘136 Certain licences not to include activity for timber pests starting on determining day

‘(1) This section applies if—

- (a) on the commencement day a licence held by a pest management technician was a licence under section 133(1) that was not a restricted licence; and
- (b) during the relevant period the pest management technician’s licence was or is renewed under this Act (the *renewed licence*); and
- (c) immediately before the determining day, the pest management technician does not have a timber pests qualification.

‘(2) Starting on the determining day, the renewed licence is taken not to authorise the carrying out of a pest control activity for timber pests.

‘(3) Subject to subsection (4), the pest management technician must return the technician’s renewed licence to the chief executive within 7 days after the determining day, unless the technician has a reasonable excuse.

Maximum penalty—10 penalty units.

Schedule (continued)

- ‘(4) Subsection (3) does not apply if the renewed licence states that the pest control activity that may be carried out under the the licence does not include a pest control activity for timber pests after 20 September 2005.
- ‘(5) After the chief executive receives the renewed licence, the chief executive must as soon as practicable, issue a new licence to the pest management technician.
- ‘(6) In this section—
relevant period means the period commencing on the commencement day and ending immediately before the determining day.’.

Private Health Facilities Act 1999**1 Section 144(2)(c), ‘to monitor the general state of health of the public’—**

omit, insert—

‘to monitor, analyse or evaluate public health’.

2 Section 147(4)(f)—

omit, insert—

‘(f) the disclosure of the information is required or permitted by an Act or another law; or’.

3 Section 147(4)—

insert—

‘(h) the disclosure of the information is—

- (i) to a person authorised in writing by the chief executive to receive the information for evaluating, managing, monitoring or planning health services;
or

Schedule (continued)

- (ii) to an entity prescribed under a regulation for this subparagraph for the purpose of evaluating, managing, monitoring or planning health services as stated in the regulation.’.

4 Section 147(6)—

omit, insert—

- ‘(6) The chief executive may authorise, in writing, the disclosure of information to a person if the chief executive believes, on reasonable grounds, the disclosure is in the public interest.’.

5 Section 147(8) and (9), ‘Minister’—

omit, insert—

‘chief executive’.

6 Section 148(2)—

insert—

- ‘(c) section 147(6).’.

Radiation Safety Act 1999**1 Section 209(7), ‘section 63’—**

omit, insert—

‘section 62A(1)’.

Schedule (continued)

Transplantation and Anatomy Act 1979**1 After section 23—**

insert—

‘23A Authority to access deceased person’s medical records

- ‘(1) This section applies if, under section 22 or 23, the removal of tissue from the body of a deceased person for transplanting to the body of a living person is authorised.
- ‘(2) The senior available next of kin may consent to the disclosure of the deceased person’s health record to a health professional for the purposes of the transplantation of the tissue.
- ‘(3) Also, for the purposes of obtaining the consent under subsection (2), a designated person may disclose information in the deceased person’s health record about the deceased person’s next of kin and the next of kin’s contact details to another designated person.
- ‘(4) This section applies despite the *Health Services Act 1991*, section 62A(1).
- ‘(5) In this section—

designated person has the meaning given by the *Health Services Act 1991*, section 60.

health professional has the meaning given by the *Health Services Act 1991*, section 60.

health record, for a deceased person, means the deceased person’s hospital record or another document recording the deceased person’s health history, condition and treatment.’.

Schedule (continued)

**Transport Operations (Road Use Management) Act
1995****1 Section 142(3), definition *health professional*,
paragraphs (b) to (d)—**

omit, insert—

- ‘(b) a person registered under the *Occupational Therapists Registration Act 2001* or a corresponding law to that Act; or
- (c) a person registered under the *Optometrists Registration Act 2001* or a corresponding law to that Act; or
- (d) a person registered under the *Physiotherapists Registration Act 2001* or a corresponding law to that Act.’.

2 Schedule 4, definition *doctor*, paragraph (b), ‘*Medical Act 1939*’—

omit, insert—

‘*Medical Practitioners Registration Act 2001*’.