

Health Ombudsman Bill 2013

Explanatory Notes

Short Title

Health Ombudsman Bill 2013

Policy Objectives

The primary policy objective of the Health Ombudsman Bill 2013 is to strengthen the health complaints management system in Queensland.

The inquiries and subsequent reports of Mr Richard Chesterman AO RFD QC, Dr Kim Forrester and Mr Jeffrey Hunter SC, along with media reports in relation to certain medical practitioners, highlighted fundamental deficiencies in the way the public is protected by the existing health complaints management system. The existing system has resulted in unjustified delays in dealing with serious allegations against medical practitioners, and inadequate responses to these allegations. There are confused roles between the existing health complaints management entities, and inadequate transparency and accountability in the health complaints management system.

The Bill provides that the main objects of the Act are:

- to protect the health and safety of the public
- to promote professional, safe and competent practice by health practitioners
- to promote high standards of service delivery by health service organisations, and
- to maintain public confidence in the management of complaints and other matters relating to the provision of health services.

Achievement of Policy Objectives

The main objects of the Act are to be achieved by establishing a transparent, accountable and fair system for effectively and expeditiously dealing with complaints and other matters related to the provision of health services. This will involve enacting a *Health Ombudsman Act 2013* to repeal and replace the *Health Quality and Complaints Commission Act 2006* and the *Health Practitioners (Disciplinary Proceedings) Act 1999*, and to amend the *Health Practitioner Regulation National Law Act 2009* to ensure a seamless interaction with that law and the *Health Ombudsman Act 2013*.

The Bill establishes a new statutory position of Health Ombudsman to manage health complaints in Queensland.

The Bill will remove the existing role confusion between complaints entities by requiring all health service complaints to be made to the Health Ombudsman, rather than being split between the Health Quality and Complaints Commission (HQCC) and the national health practitioner registration boards, as is currently the case.

To strengthen the way that serious allegations against registered health practitioners are managed in Queensland, the Health Ombudsman will assume the role of managing all such complaints. Serious matters are:

- where a health practitioner may have engaged in professional misconduct (as defined in the Health Practitioner Regulation National Law (called the ‘National Law’), or
- where another ground may exist for the suspension or cancellation of a health practitioner’s registration.

The Health Ombudsman will have the power to take immediate action to suspend or place conditions on a health practitioner’s registration where there is a serious risk to the public. The Health Ombudsman, through the Director of Proceedings appointed under the Act, may take disciplinary matters against registered health practitioners to the Queensland Civil and Administrative Tribunal (QCAT) for decision.

In performing these functions, the Health Ombudsman may need to seek clinical advice, including in the course of an investigation or before taking immediate action. To facilitate this, the Bill provides for the establishment of panels of persons or committees. Panels or committees may also be established to advise the Health Ombudsman on health consumer issues.

The Bill strengthens transparency and accountability in the health complaints management system. The Bill ensures that complainants and health service providers (health practitioners and health service organisations) are informed of decisions made during the complaints handling process. In addition, complainants and health service providers are to be provided with 3-monthly progress reports on investigations.

The Bill provides that investigations are generally to be completed within 12 months of the decision to commence the investigation, but may be extended in 3-monthly periods after that time. The Health Ombudsman must publicly report on investigations that take more than 12 months. If an investigation takes longer than 2 years, the Health Ombudsman must notify the Minister and the Parliamentary Committee (currently the Health and Community Services Committee). The Parliamentary Committee may then review whether the Health Ombudsman is satisfactorily performing the Health Ombudsman’s functions.

To strengthen public protection, the Bill provides that the Health Ombudsman is to advise an employer where the Health Ombudsman decides to take immediate action, or to undertake an investigation in response to a serious matter, concerning a health practitioner employee. For the purposes of the Bill, ‘employees’ include practitioners who work in a health service provider’s facility under an arrangement with the provider, such as visiting medical officers who are credentialed to practice in the facility.

The Bill also enables action to be taken against health practitioners who are not registered. This includes a power for the Health Ombudsman to take immediate action (called ‘interim orders’) to prohibit a person from practicing, or to place restrictions on the practitioner’s practice, where there is a serious risk to the public.

The Bill also empowers the Health Ombudsman to take serious matters about health practitioners who are not registered to QCAT for decision. On hearing a matter, QCAT may prohibit a practitioner from practicing or place restrictions on a practitioner's practice. The Bill also recognises equivalent orders in other jurisdictions as being enforceable in Queensland.

It is the Health Minister's role under the Bill to oversee the administration of the health complaints management system, the performance of the Health Ombudsman and, as far it relates to Queensland, the performance of the national boards and the National Agency in relation to the management of disciplinary matters. (The National Agency, also called the Australian Health Practitioner Regulation Agency (AHPRA), supports the national boards).

As part of this role, the Minister may request information on matters related to the performance of the health ombudsman's functions, including where the Health Ombudsman takes a particular action (e.g. to investigate a serious matter in relation to a Hospital and Health Service). The Minister, or a person authorised by the Minister to receive the information, must only use or disclose the information for the purpose of the Act.

The Minister may also direct the Health Ombudsman to publish regular performance reports on the health complaints management system, including on the performance of the national boards and the National Agency.

Under the Bill, a Parliamentary Committee (currently the Health and Community Services Committee) has the role of monitoring the operation of the health complaints management system and the performance of the Health Ombudsman, the national boards and the National Agency. The Bill provides the Parliamentary Committee with specific information-gathering powers for this purpose. The Parliamentary Committee also advises the Minister on the appointment of the Health Ombudsman.

The Bill will amend the *Health Practitioner Regulation National Law Act 2009* so that Queensland is a 'co-regulatory jurisdiction' for the purposes of the Health Practitioner Regulation National Law (the 'National Law'), which is the Schedule to the *Health Practitioner Regulation National Law Act 2009*. This will not affect the national registration of health practitioners, but enables Queensland to vary how Part 8 of the National Law applies in Queensland. Part 8 of the National Law provides for the disciplinary arrangements for registered health practitioners. The Queensland approach is not the same as the model in place in NSW (which is also a co-regulatory jurisdiction), with the National Law in Queensland being modified primarily for all complaints (called 'notifications' under the National Law) to be received by the Health Ombudsman, and for all serious disciplinary matters to be dealt with by the Health Ombudsman. The national boards will continue to deal with other disciplinary matters under the National Law.

The Bill does not amend the National Law, which is adopted by reference by other jurisdictions, other than Western Australia. The Bill modifies how the National Law applies in Queensland.

The Bill also modifies the requirement for health practitioners to mandatorily notify the Health Ombudsman (currently the national boards) under the National Law. The purpose of this modification is to not discourage health practitioners from seeking treatment for an impairment (such as substance abuse or serious mental health issue) for fear of being reported to the regulatory authorities. There are, however, tight limits on how this exception is to apply. The exception will apply if the matter relates to an impairment, does not relate to professional misconduct (as defined in the National Law), and the treating practitioner forms the reasonable view that the other practitioner does not pose a serious threat to the public. The last criteria may be met, for example, if the treating practitioner agrees to undertake a rehabilitation program.

Estimated Cost for Government Implementation

The National Registration and Accreditation Scheme (NRAS) deals with the registration of health practitioners and the disciplinary arrangements (called 'health performance and conduct' under the National Law) for registered health practitioners. The operation of NRAS is predominantly funded out of registrants' fees, which are accounted for through an Agency Fund established under the National Law.

The Bill provides that the Minister is to direct the payment of monies out of the Agency Fund to the Health Ombudsman to reflect the cost of the Health Ombudsman performing functions under the Bill that would otherwise have been performed by the national boards and the National Agency.

The additional function of taking proceedings to QCAT for unregistered health practitioners will only incur modest additional costs. Savings will accrue from the HQCC discontinuing the standard-setting function and some quality monitoring functions.

On this basis, it is intended that the Bill will be cost neutral for government.

Consistency with Fundamental Legislative Principles

- **Immediate action powers**

Part 7 of the Bill enables the Health Ombudsman to take immediate action against a health practitioner where the practitioner poses a serious risk to the public and it is necessary to take the action to protect public health and safety. The possible actions are suspending or placing conditions on a health practitioner's registration or, for a practitioner that is not registered, restricting or prohibiting the practitioner from practising. The exercise of this power affects the rights and liberties of an individual and needs to be justified.

This power is to be used in the most serious and urgent circumstances. The Bill establishes strict criteria for exercising this power, namely, where there is a serious risk to the public and it is necessary to take the action to protect public health and safety. The relevant health practitioner may apply to QCAT for a review (appeal) of the decision to take immediate action.

Generally, a show cause process is to be undertaken before the power may be exercised. However, there is provision to take the action and then proceed with a show cause process if it is necessary to ensure the health and safety of an individual or the public.

The Forrester Report (Report of the Review Panel in relation to recommendation 2 of the Chesterman Report) expressed concern with the requirement for a show cause process under the National Law, which the panel believed hampered rather than facilitated the taking of immediate action.

- **Protection against self-incrimination**

Part 12 of the Bill empowers the Health Ombudsman to establish an inquiry into a matter related to a health service complaint, a systemic health service issue or another matter relevant to achieving the Act's objects. For the purpose of an inquiry, clauses 162 and 164 provide that the Health Ombudsman may require a person to provide information or answer a question. The Bill provides that it is not a reasonable excuse that providing the information or answering the question might tend to incriminate the person. The removal of the self-incrimination protection is a breach of a fundamental legislative principle.

Inquiries such as those that may be established under the Bill aim to ascertain the facts behind an important public interest issue, rather than as a basis to take punitive action against a person. The refusal of a person to provide information or answer a question may frustrate the ability of an inquiry to ascertain such facts. To protect a person who is required to comply with these provisions, the Bill provides that any information provided is not admissible in any civil, criminal or administrative proceeding as evidence against the individual. This includes any information obtained as a direct or indirect result of the information given.

- **Protection from liability**

Clause 287 provides that an 'official' is not civilly liable for an act done, or omission made, honestly and without negligence under the Act. An official includes the Health Ombudsman, a staff member of the Office of the Health Ombudsman and an authorised person

It is not appropriate that an individual may be held personally liable for carrying out his or her responsibilities under the legislation in good faith. The Bill provides that, instead of liability being attached to the individual, the liability attaches to the State. It should be noted that the protection from liability only extends to acts done honestly and without negligence.

- **Regulation-making power**

Clause 7 of the Bill defines 'health service' for the purpose of the Act. The Bill includes a regulation-making power to extend the definition of 'health service' or to state that a particular service is not a health service for the purposes of the Act. This provision may be seen as not as having sufficient regard to the Parliament as these matters should all be defined within the Act.

The purpose of this regulation-making power is to clarify 'grey areas' in the definition of a health service, for example, leisure activities that may or may not involve a health service. This regulation-making power is considered reasonable for this purpose and in the context of the definition of health service in the Bill.

Consultation

Key stakeholders were consulted on how the current health complaints management system could be strengthened. Comments were sought on a series of issues relevant to the development of the legislative model. Stakeholders consulted included the AMAQ and other health professional associations, Health Consumers Queensland, Hospital and Health Services, the national boards and the National Agency, HQCC, the Private Hospitals Association of Queensland, and other relevant government entities. Some of these stakeholders were also provided with a confidential consultation draft of the Bill for comment.

Notes on Provisions

Part 1 Preliminary

Division 1 Introductory

Clause 1 states the short title for the Act.

Clause 2 states that this Act commences on a day to be fixed by proclamation.

Clause 3 states the main objects of the Act, namely:

- to protect the health and safety of the public
- to promote professional, safe and competent practice by health practitioners
- to promote high standards of service delivery by health service organisations, and
- to maintain public confidence in the management of complaints and other matters relating to the provision of health services.

The main objects of the Act are to be achieved by establishing a transparent, accountable and fair system for effectively and expeditiously dealing with complaints and other matters related to the provision of health services.

Clause 4 provides that the main principle for administering the Act is that the health and safety of the public are paramount. This applies, for example, when the Health Ombudsman is deciding what action to take under the Act and when the Queensland Civil and Administrative Tribunal (QCAT) is deciding a matter referred to it under this Act. A similar provision has been included in the Health Practitioner Regulation National Law (called the 'National Law') as it applies in Queensland (section 3A).

Clause 5 states that the Act binds all persons including the State, the Commonwealth and the other States.

Division 2 Interpretation

Clause 6 states that particular words used in the Act are defined in Schedule 2.

Clause 7 defines the meaning of 'health service' for the purposes of the Act. A health service is a service that is, or purports to be, a service for maintaining, improving, restoring or managing people's health and wellbeing. A health service includes a support service (for example, a pathology service) as defined in the dictionary. A health service also includes a public health service (for example, a cancer screening program), and alternative and complementary medicine. This clause also provides that a regulation may prescribe services that are, or are not, health services. (See *Consistency with Fundamental Legislative Principles*).

Clause 8 defines the meaning of 'health service provider' for the purposes of the Act. A health service provider may be an individual health practitioner (including a registered health practitioner under the National Law) and a health service organisation such as a Hospital and Health Service, nursing home or private hospital.

Division 3 Overview of Act

Clauses 9 to 19 provide an overview of the Act. These clauses aim to help a reader of the Act understand the health service complaints management system established under this Act and the National Law. The overview identifies the following key matters:

- the relationship between this Act and the National Law
- the establishment of the Health Ombudsman and the Director of Proceedings
- receiving and dealing with health service complaints
- timeframes for dealing with complaints and undertaking investigations
- disciplinary orders that can be made under the Act
- keeping complainants and practitioners informed of how complaints are being dealt with
- the Minister's role, and
- the Parliamentary Committee's role.

Division 4 Application of Act to persons whose status changes

Clause 20 provides that the Act applies to an entity that was a health service provider but is no longer a health service provider. This means that, for example, the Health Ombudsman may investigate a matter related to a former health service provider, such as a former hospital, if the investigation relates to an important systemic issue identified by the Health Ombudsman.

Clause 21 provides that the Act applies to persons who were registered health practitioners but are no longer registered. This clause is similar to section 138 of the National Law. This means that, for example, the Health Ombudsman may investigate a matter related to a previously registered practitioner and refer it to QCAT for disciplinary action. Under section 196(4) of the National Law, QCAT may make orders against persons who were registered health practitioners but are no longer registered.

Clause 22 provides that the Act applies to persons who were registered under a 'corresponding prior Act', but are not registered under the National Law. This means that a person who was registered under, for example, the repealed *Medical Practitioners Registration Act 2001* may be investigated under this Act. This clause is similar to section 139 of the National Law. Under section 196(4) of the National Law, QCAT may make orders against persons who were registered health practitioners but are no longer registered.

Clause 23 provides that the Health Ombudsman may continue to take action under the Act even if a relevant person dies. This means, for example, that the Health Ombudsman may continue to investigate a complaint if the complainant dies to ensure that the complainant's relatives can benefit from the outcome of the investigation or that the public interest can be protected if the complaint identifies professional conduct issues. An investigation concerning a health practitioner may also continue if the practitioner dies, if the investigation may identify matters concerning the protection of public health and safety.

Part 2 Health Ombudsman

Clause 24 establishes the statutory position of Health Ombudsman. Clauses 245 to 252 of the Bill provide for the appointment of the Health Ombudsman and related matters.

Clause 25 provides for the functions of the Health Ombudsman, namely:

- to receive health service complaints and take relevant action to deal with them (see definition of 'relevant action' in clause 38)
- to identify and deal with health service issues through investigations, inquiries and other relevant action
- to identify and report on systemic issues in the way health services are provided, including matters related to the quality of health services
- to monitor and report on the functions of the national health practitioner registration boards and the National Agency (which supports the national boards) as they relate to the health, performance and conduct of registered health practitioners in Queensland
- to provide information about minimising and resolving health service complaints, and
- to report on the performance of the Health Ombudsman's functions.

One of the key functions of the Health Ombudsman is to deal with serious matters raised in health service complaints, and identified in other ways, by undertaking investigations or referring matters to the Director of Proceedings for taking proceedings before QCAT. This focus on serious matters is reflected in clause 91(1) of the Bill which states that the Health Ombudsman must not refer serious matters, as defined in that clause, to the National Agency. A mirror provision in the National Law (section 193) requires a national board to advise the Health Ombudsman of serious matters for referral to the Health Ombudsman.

Under clauses 253 to 257, an Office of the Health Ombudsman is established to support the Health Ombudsman. The Health Ombudsman may elect to appoint a Deputy Health Ombudsman to deal with health (clinical) matters and a Deputy Health Ombudsman to deal with legal matters.

Clause 26 provides that the Health Ombudsman has the general power to do all things necessary or convenient to be done in connection with the performance of the Health Ombudsman's functions.

Clause 27 provides that the Health Ombudsman must act independently, impartially and in the public interest.

Clause 28 provides that the Health Ombudsman is not generally subject to the direction of any person. The exceptions to this are the specific provisions in the Act where the Minister may direct an investigation (section 81), direct an inquiry (section 152), or require information to be given or published (Part 13).

Clause 29 provides that the Health Ombudsman may establish committees and panels of persons to advise the Health Ombudsman on clinical and health consumer issues. This may be important, for example, before taking immediate action under part 7 or investigating a complex clinical matter.

Clause 30 provides that the Health Ombudsman must consult and co-operate with other relevant government entities including the Queensland Police Service and the State Coroner.

Part 3 Health service complaints

Division 1 Preliminary

Clause 31 states that a health service complaint is a complaint about a health service (as defined) or another service provided by a health service provider. The inclusion of ‘another service’ in this provision is to address circumstances where the complaint is not about a clinical matter. This clause provides examples of matters about which a complaint may be made. This includes a complaint about the level of compliance by a health service provider with a ‘prescribed conduct document’. The head of power to prescribe these documents is at clause 288 of the Bill.

Division 2 Making and dealing with a complaint

Clause 32 states that any person may make a health service complaint.

Clause 33 outlines how a person may make a complaint. A complaint may be made orally, including by telephone, or in writing, including by email. Under this clause, the Health Ombudsman must give a person reasonable assistance to make a complaint if the person requests it.

Clause 34 provides that the Health Ombudsman may ask the complainant for further information, including:

- confirming an oral complaint in writing
- providing the complainant's name and address
- providing information relevant to the complaint, and
- verifying information by a statutory declaration.

This information is to be provided in the reasonable time decided by the Health Ombudsman.

Clause 35 provides that, within seven days of receiving a complaint, the Health Ombudsman must decide to accept the complaint and the ‘relevant action’ to be taken, or decide to take no further action on the complaint. The relevant actions are outlined in clause 38. The grounds on which no further action may be taken are outlined in clause 44.

When the Health Ombudsman makes a decision, the Health Ombudsman must give written notice of the decision to the complainant and the relevant health service provider. Clause 278 outlines how the written notice is to be provided. Clause 284 (Notice to health service provider not required in particular circumstances) also applies to the giving of notices under this clause.

Division 3 Other matters dealt with as complaints

Clause 36 provides that notifications made under section 146 of the National Law are to be treated as if they were complaints made under this Act. (It should be noted that 'notification' is the equivalent term used for 'complaint' under the National Law). Section 146 of the National Law (as it is to apply in Queensland) provides that all notifications are to be made directly to the Health Ombudsman.

Clause 37 outlines how the Health Ombudsman is to treat certain matters referred to the Health Ombudsman from another entity, for example, a national board or the State Coroner. In these circumstances, the Health Ombudsman may, with a relevant person's agreement, treat the matter as a complaint and the person as a complainant. This means, for example, where a matter was referred from the State Coroner, a relative of a person who had died could become a complainant and would be provided with notices on the progress of the complaint.

Part 4 How complaints and other matters are dealt with

Clause 38 defines 'relevant action' for the purposes of the Act. The relevant actions are the matters that the Health Ombudsman may take to deal with a health service complaint or other matter. The relevant actions are to:

- assess a complaint
- facilitate the local resolution of a complaint
- take immediate action to deal with a serious matter
- investigate a matter
- refer a matter to the National Agency (for consideration of a national board) or an entity of the State, another State or the Commonwealth
- refer the matter to the Director of Proceedings to consider whether the matter should be referred to QCAT
- conciliate a complaint (which may result in a confidential, legally-binding settlement), or
- undertake an inquiry into a matter.

The clause distinguishes between actions that may be taken on complaints and actions that may be taken in relation to any other information. Some actions are only relevant to dealing with complaints - namely, assessing, facilitating local resolution or conciliating a complaint.

The Act does not generally require relevant actions to be taken in any particular order. For example, the Health Ombudsman need not undertake an assessment prior to seeking local resolution, nor undertake an investigation prior to undertaking immediate action. This discretion is qualified in Part 11 (Conciliation) to give priority to public interest matters.

Clause 39 clarifies that the actions the Health Ombudsman may take are not limited to matters that arise through complaints. In performing functions under the Act, the Health Ombudsman may come across information from a variety of sources including, for example, during an investigation. The Act provides that the Health Ombudsman may take action on such matters, notwithstanding that they were not the subject of a complaint.

Clause 40 provides that the Health Ombudsman may consider two or more health service complaints or other matters when deciding what action to take under the Act.

Clause 41 provides that the Health Ombudsman may 'split' complaints by dealing separately with two or more matters within a complaint.

Clause 42 provides that the Health Ombudsman may take more than one relevant action to deal with a matter under the Act.

Clause 43 provides that the Health Ombudsman may deal with a matter despite a proceeding before a court or tribunal, unless the court or tribunal with the necessary jurisdiction orders otherwise.

Clause 44 outlines the circumstances where the Health Ombudsman may decide to take no further action in relation to a complaint. This includes where the complaint:

- is considered to be frivolous, vexatious, trivial or not made in good faith
- is being adequately dealt with by another entity
- has been resolved or otherwise finalised, or
- cannot be resolved despite the reasonable efforts of the Health Ombudsman.

The Health Ombudsman may also decide to take no further action on a complaint where the complainant does not satisfactorily co-operate with attempts to resolve the complaint or does not provide information requested by the Health Ombudsman.

This clause also provides that the Health Ombudsman may take no further action on a complaint if the matter arose, and the complainant was aware of the matter, 2 years before the complaint is made. However, this discretion to take no further action does not apply to serious matters as defined in this clause, including where a ground may exist for the suspension or cancellation of a registered health practitioner's registration.

Part 5 Assessment of complaints

Clause 45 states that this part applies if the Health Ombudsman decides to assess a health service complaint.

Clause 46 provides that the purpose of an assessment is to obtain and analyse information relevant to the complaint and decide the most appropriate way to deal with it.

Clause 47 enables the Health Ombudsman to request a complainant or a relevant health service provider to provide submissions about the complaint within a reasonable period of not more than 14 days. The requirement to provide the information within 14 days is to ensure that this initial assessment process can occur promptly.

Clause 48 gives the Health Ombudsman the power to require information from a complainant, a relevant health service provider or another person within a reasonable period of not more than 14 days. A penalty applies for failing to comply with this requirement. The ability to require information from a person other than a complainant or health service provider may be required, for example, to sight clinical records held by a practitioner's employer. The requirement to provide the information within 14 days is to ensure that this initial assessment process can occur promptly.

Clause 49 states that the Health Ombudsman must complete each assessment within 30 days after deciding to carry out the assessment. This period of time may be extended for a further 30 days due to the size and complexity of the complaint or to receive submissions under clause 47 or information under clause 48.

Clause 50 provides that, on completion of an assessment, the Health Ombudsman must decide the 'relevant action' to take or decide to take no further action. The relevant actions are outlined in clause 38. The grounds on which no further action may be taken are stated in clause 44.

When the Health Ombudsman makes a decision, the Health Ombudsman must give written notice of the decision to the complainant and the relevant health service provider. Clause 278 outlines how the written notice is to be provided. Clause 284 (Notice to health service provider not required in particular circumstances) also applies to the giving of notices under this clause.

Part 6 Local resolution of complaints

Clause 51 states that this part applies if the Health Ombudsman decides to try to resolve a health service complaint by local resolution.

Clause 52 provides that the purpose of local resolution is to facilitate the resolution of a complaint as quickly as possible and with minimal intervention by the health ombudsman.

Clause 53 enables the Health Ombudsman to request a complainant or a relevant health service provider to provide submissions about the complaint within a reasonable period of not more than 14 days. The requirement to provide the information within 14 days is to ensure that the local resolution process can occur promptly.

Clause 54 gives the Health Ombudsman the power to require information from a complainant, relevant health service provider or other person within a reasonable period of not more than 14 days. A penalty applies for failing to comply with this requirement. The requirement to provide the information within 14 days is to ensure that the local resolution process can proceed promptly.

Clause 55 states that the Health Ombudsman must complete each local resolution within 30 days after deciding to try local resolution. This period of time may be extended for a further 30 days if resolution of the complaint is likely or for receiving submissions under clause 53 or information under clause 54.

Clause 56 provides that, if local resolution is not successful, the Health Ombudsman must decide the 'relevant action' to take or decide to take no further action. The relevant actions are outlined in clause 38. The grounds on which no further action may be taken are stated in clause 44.

When the Health Ombudsman makes a decision, the Health Ombudsman must give written notice of the decision to the complainant and the relevant health service provider. Clause 278 outlines how the written notice is to be provided. Clause 284 (Notice to health service provider not required in particular circumstances) also applies to the giving of notices under this clause.

Part 7 Immediate action in relation to health practitioners

Division 1 Immediate registration action

Clause 57 states that immediate registration action means the suspension of, or imposition of conditions on, a registered health practitioner's registration. (See *Consistency with Fundamental Legislative Principles*). It should be noted that Division 1 of this Part applies to immediate action in relation to registered health practitioners, while Division 2 relates to immediate action in relation to other health practitioners. For the purpose of the Bill, a registered health practitioner includes a student registered under the National Law.

Clause 58 gives the Health Ombudsman power to take immediate registration action in relation to a registered health practitioner on specified grounds, namely that:

- the health practitioner poses a serious risk to persons because of the practitioner's health, performance or conduct and it is necessary to take the action to protect public health or safety
- the health practitioner's registration was improperly obtained, or
- the health practitioner's registration has been cancelled or suspended under the law of another jurisdiction.

These grounds are similar to the grounds for taking immediate action under the National Law (section 156).

This clause states that this action may be taken at any time, and whether or not a complaint has been made in relation to the registered health practitioner.

Prior to taking this action, the Health Ombudsman may seek advice on clinical, legal or health consumer issues.

Clause 59 provides that the Health Ombudsman may undertake a show cause process prior to taking the immediate action. However, a show cause process is not required if the Health Ombudsman believes it is necessary to take the action without a show cause process to ensure the health and safety of an individual or the public. This may be required if the evidence before the Health Ombudsman is clear (e.g. written advice from an overseas registration authority that a practitioner's registration had been cancelled for professional misconduct) and the continuing practice of the practitioner during any show cause period would place the public at risk. If a show cause process is not undertaken prior to taking the immediate action, it must be undertaken when the immediate action is taken (see clause 62).

Clause 60 provides that, after deciding to take immediate registration action, the Health Ombudsman must give notice of the action to the practitioner, any complainant and the relevant national board.

Clause 61 provides that, if immediate action is taken without a show cause process, the Health Ombudsman must give the health practitioner a show cause notice when the immediate action is taken.

Clause 62 provides that the immediate registration action continues until QCAT sets aside the decision or the Health Ombudsman revokes the suspension or removes the condition under clause 65.

Clause 63 provides that a registered health practitioner may apply to QCAT for a review of the decision to take immediate action.

Clause 64 provides that, immediately after taking action under this Division, the Health Ombudsman must start an investigation, refer the matter to the National Agency or another entity, or refer the matter to the Director of Proceedings. This clause ensures that appropriate further action is taken promptly after a decision to take immediate registration action is made.

Clause 65 applies if the Health Ombudsman is subsequently satisfied that the immediate registration action is no longer required. In these circumstances, the Health Ombudsman must revoke the immediate action and give written notice of the decision to the health practitioner, any complainant and the relevant national board.

Division 2 Interim prohibition orders

Clause 66 states that this Division does not apply to persons in their capacity as registered health practitioners. This means that this Division does not apply to registered health practitioners while practising the profession for which they are registered. However, if a registered health practitioner was providing health services outside of that profession, action could be taken under this Division. This does not limit actions that may be taken against a registered health practitioner under Division 1 of this Part.

Clause 67 provides that an interim prohibition order is an order issued to a health practitioner:

- prohibiting the practitioner from providing any health service or a stated health service, or
- imposing restrictions on the provision of any health service or a stated health service.

Clause 68 provides that the Health Ombudsman may issue an interim prohibition order. (See *Consistency with Fundamental Legislative Principles*). The basis for issuing an order is:

- the practitioner poses a serious risk to persons because of the practitioner's health, performance or conduct, and
- it is necessary to issue the order to protect public health or safety.

This clause also lists matters that may be considered in deciding whether there is a serious risk posed to a person by a health practitioner, namely:

- practising the practitioner's profession unsafely, incompetently or while intoxicated by alcohol or drugs
- financially exploiting a person
- engaging in a sexual or improper personal relationship with a person
- discouraging a person from seeking clinically accepted care or treatment
- making false or misleading claims about the health benefits of a particular health service, or
- making false or misleading claims about the practitioner's qualifications, training, competence or professional affiliations.

This clause also provides that the Health Ombudsman may have regard to a prescribed code document under clause 288 in making a decision under this Division. A prescribed code of conduct may include a code of conduct for practitioners who are not registered health practitioners, similar to the code that currently applies in NSW.

This clause states that an order may be made at any time, and whether or not a complaint has been made in relation to the practitioner.

Clause 69 provides that the health ombudsman may undertake a show cause process prior to taking the immediate action. However, the show cause process is not required if the Health Ombudsman believes it is necessary to take the action without a show cause process to ensure the health and safety of an individual or the public. If a show cause process is not undertaken prior to taking the immediate action, it must be undertaken when the immediate action is taken (see clause 71).

Clause 70 outlines the content of an interim prohibition order, including the details of the order and the reasons for the decision to issue the order.

Clauses 71 provides that, if immediate action is taken without a show cause process, the Health Ombudsman must give the health practitioner a show cause notice after the immediate action is taken.

Clause 72 provides that a copy of the interim prohibition order is to be provided to any complainant.

Clause 73 provides that the order continues until QCAT sets aside the order or the Health Ombudsman revokes the order under clause 76.

Clause 74 provides that a health practitioner may apply to QCAT for a review of an interim prohibition order.

Clause 75 provides that, immediately after taking action under this Division, the Health Ombudsman must start an investigation, refer the matter to another entity, or refer the matter to the Director of Proceedings. This clause ensures that appropriate further action is taken promptly after a decision to issue an order is made.

Clause 76 applies if the Health Ombudsman is subsequently satisfied that an interim prohibition order is no longer required. In these circumstances, the Health Ombudsman must revoke the order and give written notice of the decision to the health practitioner and any complainant.

Clause 77 provides a head of power for a regulation to be made to prescribe an order to be a 'corresponding interstate interim order' for the purposes of this Act. For example, a regulation may prescribe interim prohibition orders made by the NSW Health Care Complaints Commission under the *Health Care Complaints Act 1993 (NSW)* as being a corresponding interstate interim order for the purposes of this Act. This clause is of relevance to the subsequent two clauses of this Bill.

Clause 78 establishes an offence for contravening an interim prohibition order or a corresponding interstate interim order. This means that corresponding interstate interim orders apply in Queensland. For example, if a health practitioner was prohibited from practising a particular profession in NSW under a NSW interim prohibition order (as mentioned above), it would also be an offence under this Act for the practitioner to practise the profession in Queensland.

Clause 79 requires the Health Ombudsman to publish the interim prohibition orders made by the Health Ombudsman. In addition, the health ombudsman is to publish information about corresponding interstate interim orders. The effect of these provisions is to establish a register of orders that apply in Queensland.

Part 8 Investigations

Clause 80 provides that the Health Ombudsman may carry out an investigation of:

- a matter related to a health service complaint
- a systemic issue relating to the provision of health services, including the quality of health services, or
- another matter relevant to achieving an object of the Act.

Clause 81 provides that the Minister may direct the Health Ombudsman to undertake an investigation of a particular matter.

Clause 82 requires the Health Ombudsman to notify a relevant health service provider about the commencement of an investigation if the provider has not otherwise been notified, for example, at the end of an assessment. This may come about if the Health Ombudsman is referred a matter from another entity and decides to investigate the matter. Clause 284 (Notice to health service provider not required in particular circumstances) applies to the giving of notices under this clause.

Clause 83 states that Part 15 of the Act provides the powers that may be exercised for the purpose of conducting an investigation.

Clause 84 requires the Health Ombudsman to give progress reports to health service providers being investigated and to any complainant. These reports are to be provided on at least 3-monthly intervals. Clause 284 (Notice to health service provider not required in particular circumstances) applies to the giving of notices under this clause.

Clause 85 outlines timeframes by which investigations are to be completed. The clause provides that, generally, investigations are to be completed within 1 year of the decision to carry out the investigation. If an investigation is not completed by this time, the Health Ombudsman may extend the period of the investigation for periods of 3 months. Where this occurs, the Health Ombudsman must keep a publicly available register of investigations that go over 1 year, including information on the reason for the extensions.

If an investigation is not completed within 2 years, the Health Ombudsman must notify the Minister and the Parliamentary Committee. The Parliamentary Committee may then review whether the Health Ombudsman is satisfactorily performing the Health Ombudsman's functions.

Clause 86 provides that, after completing an investigation, the Health Ombudsman may prepare an investigation report. If the report includes adverse comment about an entity and the report is to be made publicly available (or provided to an entity other than the Director of Proceedings, the Minister, the Parliamentary Committee, that National Agency, a national board or a government entity), the Health Ombudsman must give the entity an opportunity to comment on the report. However, a report need not be provided to the health service provider for comment if this may put a person's health or safety at risk, place a person at risk of harassment or intimidation, or prejudice an investigation.

Clause 87 outlines who an investigation report may be given to. This clause gives the Health Ombudsman a discretion in providing reports, subject to providing an opportunity for a health service provider to respond on adverse comments (clause 86) and the confidentiality requirements (clause 88).

Clause 88 addresses the disclosure of investigation reports containing confidential information. This clause is to be read in conjunction with clause 272 (Confidentiality). This clause enables the Health Ombudsman to disclose information about a health service provider, for example, a particular Hospital and Health Service. However, the Health Ombudsman may not disclose information about a complainant, a person who has received a health service or a person who gave information to the Health Ombudsman unless one of the exceptions under clause 272(4) to (6) apply. These exceptions include, for example, disclosing information with the person's consent or to the Minister, the Parliamentary Committee, the National Agency or a national board.

Clause 89 enables the Health Ombudsman to monitor the implementation of an investigation report's recommendations by requesting a health service provider to provide the Health Ombudsman with reports on the implementation of the recommendations. This situation may arise, for example, where the Health Ombudsman has prepared a report in response to public concerns about the quality of services provided by a public sector hospital. This clause enables the Health Ombudsman to follow-up, and report on, the extent to which the hospital had complied with the report's recommendations. It should be noted that, while it is an offence for a provider not to respond to an information request under this clause, the health service provider is not obliged to implement a report's recommendations. It would be up to the provider to explain the reasons for not implementing, or not fully implementing, a report's recommendations. The Health Ombudsman may subsequently publish another report in the same way that an investigation report is published.

Clause 90 provides that, on the completion of an investigation, the Health Ombudsman must decide the 'relevant action' to take or decide to take no further action. The relevant actions are outlined in clause 38. The grounds on which no further action may be taken are stated in clause 44.

When the Health Ombudsman makes a decision on the completion of an investigation, the Health Ombudsman must give written notice of the decision to any complainant and the relevant health service provider. Clause 278 outlines how the written notice is to be provided. Clause 284 (Notice to health service provider not required in particular circumstances) also applies to the giving of notices under this clause.

Part 9 Referral to National Agency or other entity

Clause 91 provides that the Health Ombudsman must not refer a serious matter to the National Agency, namely:

- where a health practitioner may have behaved in a way that constitutes professional misconduct, or
- where another ground may exist to suspend or cancel a health practitioner's registration.

The Health Ombudsman must consult with the National Agency about a proposed referral and must give the National Agency relevant information with the referral.

Clause 92 provides that the Health Ombudsman may refer a matter to another government entity whose functions include dealing with the matter. The Health Ombudsman must consult with the entity about the proposed referral.

Clause 93 provides that, if a matter is referred to an entity of the State, the entity may give the Health Ombudsman reports about the progress and results of the action taken by the entity about the matter. The entity must provide a report to the Health Ombudsman on the completion of dealing with the matter.

Part 10 QCAT

Division 1 General

Clause 94 provides for the jurisdiction of the Queensland Civil and Administrative Tribunal (QCAT). Under the Act, QCAT has jurisdiction:

- to review a decision by the Health Ombudsman to take immediate action under the Act
- to hear a matter referred to QCAT by the Director of Proceedings (see clause 103), and
- to hear an application to change or remove a condition imposed by QCAT on a registered health practitioner's registration (see clause 110).

In addition, under the National Law, QCAT is given jurisdiction:

- to review an appealable decision under section 199 of the National Law, and
- to hear a matter referred to QCAT by a national board under section 193B of the National Law.

Clause 95 outlines how a complainant is to be advised of proceedings before QCAT – either by the QCAT registrar, the Health Ombudsman or a national board. Under clause 104, the Health Ombudsman is required to notify the QCAT registrar of the complainant's details for this purpose.

Clause 96 makes cross-references to the decisions that QCAT may make under this Act and the National Law.

Clause 97 provides that disciplinary proceedings before QCAT are to be constituted by one judicial member, as defined in the QCAT Act. This applies to proceedings where the health ombudsman is the party or where a national board is a party under the National Law. The judicial member is to be assisted by assessors (see Divisions 5 and 6).

Clause 98 provides that impairment matters (for example, where proceedings relate to alcohol or drug abuse) are to be held in private unless QCAT believes it is in the public interest for it to be open to the public or the practitioner asks for it to be open to the public. This applies to proceedings where the health ombudsman is the party or where a national board is a party under the National Law.

Clause 99 provides that QCAT may exclude a complainant or other witness from a hearing until the complainant or other witness gives evidence. This applies to proceedings where the health ombudsman is the party or where a national board is a party under the National Law.

Clause 100 states that QCAT may not grant a stay of a decision where the Health Ombudsman takes immediate action under this Act or a national board takes immediate action under the National Law.

Division 2 Director of proceedings

Clause 101 provides that this Division applies if the Health Ombudsman refers a matter to the Director of Proceedings. Clauses 258 to 260 provide for the establishment of the position of Director of Proceedings and the director's functions.

Clause 102 requires the Health Ombudsman to give the Director of Proceedings all relevant information when referring a matter to the director.

Clause 103 outlines how the Director of Proceedings must deal with a referral. Under this clause, the director may refer the matter to QCAT for hearing under the QCAT Act, or refer the matter back to the Health Ombudsman. This clause outlines the matters that the director must consider in making this decision, including the paramount guiding principle under clause 4 of the Bill.

Clause 104 states that QCAT may exercise its original jurisdiction under the QCAT Act to hear and decide a matter referred by the Director of Proceedings.

Clause 105 provides that, where a matter is referred back by the Director of Proceedings to the Health Ombudsman, the Health Ombudsman must decide the 'relevant action' to take or decide to take no further action. The relevant actions are outlined in clause 38. The grounds on which no further action may be taken are stated in clause 44.

When the Health Ombudsman makes a decision, the Health Ombudsman must give written notice of the decision to any complainant and the relevant health service provider. Clause 278 outlines how the written notice is to be provided. Clause 284 (Notice to health service provider not required in particular circumstances) also applies to the giving of notices under this clause.

Division 3 Matters relating to registered health practitioners

Clause 106 states that this Division applies to registered health practitioners. For the purpose of the Bill, a registered health practitioner includes a student registered under the National Law.

Clause 107 provides for the decisions that QCAT may make on hearing a matter referred to it by the Director of Proceedings, other than in relation to a student. This clause largely replicates section 196 of the National Law.

Clause 108 provides for the decisions that QCAT may make on hearing a matter in relation to a student. This clause largely replicates section 197 of the National Law.

Clause 109 applies where QCAT decides to impose a condition on a registered health practitioner's registration under either of the previous clauses. Where a condition is imposed, the practitioner may, at a future time, apply to QCAT or the relevant national board for a review of the conditions. The purpose of the review is to decide whether the conditions are still required. Under this clause, QCAT must decide if the review is to be undertaken by QCAT itself or by the relevant national board. Under either scenario, QCAT must decide the period of time within which the practitioner cannot apply for a review of the conditions.

Clause 110 outlines the way in which a practitioner may apply to QCAT for a review of conditions and the decisions that QCAT may make at the end of the review.

Clause 111 extends the preceding two clauses to further reviews of conditions set by QCAT under clause 109.

Division 4 Matters relating to practitioners other than registered health practitioners

Clause 112 states that this Division applies to health practitioners other than registered health practitioners.

Clause 113 provides for prohibition orders that QCAT may make on hearing a matter related to a health practitioner other than a registered health practitioner. After hearing a matter, QCAT must decide if a practitioner poses a serious risk to persons because of the practitioner's health, performance or conduct. This clause also lists matters that may be considered in deciding whether there is a serious risk posed to a person by a health practitioner, which are the same matters as specified in clause 68. This clause also provides that QCAT may have regard to a prescribed code document under clause 288. A prescribed code of conduct may include a code of conduct for practitioners who are not registered health practitioners.

If QCAT decides that the practitioner poses a serious risk to persons, it may make a prohibition order:

- prohibiting the practitioner from providing any health service or a stated health service, or
- imposing restrictions on the provision of any health service or a stated health service.

Clause 114 provides a head of power for a regulation to be made to prescribe an order to be a 'corresponding interstate order' for the purposes of this Act. For example, a regulation may prescribe prohibition orders made by the NSW Health Care Complaints Commission under the *Health Care Complaints Act 1993 (NSW)* as being a corresponding interstate order for the purposes of this Act. This clause is of relevance to the subsequent two clauses of this Bill.

Clause 115 establishes an offence for contravening a prohibition order or a corresponding interstate order. This means that corresponding interstate orders apply in Queensland. For example, if a health practitioner was prohibited from practising a particular profession in NSW under a NSW prohibition order (as mentioned above), it would also be an offence under the Act for the practitioner to practise the profession in Queensland.

Clause 116 requires the Health Ombudsman to publish the prohibition orders made by QCAT. In addition, the health ombudsman may publish information about corresponding interstate orders. The effect of these provisions is to establish a register of orders that apply in Queensland.

Division 5 Appointment of assessors

Clause 117 provides for the establishment of a public panel of assessors, and professional panels of assessors for each of the professions that are registered under the National Law. Assessors assist QCAT in hearing disciplinary matters (see Division 6 of this Part). Division 5 and 6 of this Part are largely replicated from the *Health Practitioners (Disciplinary Proceedings) Act 1999*, which is to be repealed by the Bill (see clause 321).

Clause 118 provides for the Governor-in-Council to appoint individuals as members of the public panel of assessors and professional panels of assessors. The clause outlines the qualifications to be appointed to a panel of assessors.

Clause 119 provides for the temporary appointment of persons to a professional panel of assessors. Under this clause, the Minister may appoint an individual as a member of a professional panel of assessors for a period of up to 6 months if the QCAT registrar believes it is necessary because a matter is likely to involve specialist or technical issues and there are no panel members available with the desirable background or skills.

Clause 120 outlines the circumstances where an individual is disqualified from being a member of a panel of assessors.

Clause 121 outlines the procedures to be followed before recommending the appointment of a member of a panel of assessors. This process includes inviting nominations from relevant entities and individuals and by placing press or on-line advertisements.

Clause 122 states that a member of a panel of assessors may be appointed for a term of up to 5 years.

Clause 123 states that a member of a panel of assessors holds office on the conditions under this Act and on any other conditions decided by the Governor-in-Council.

Clause 124 outlines the circumstances where a member of a panel of assessors vacates office.

Clause 125 provides that an assessor assisting QCAT in a disciplinary proceeding is entitled to be paid the remuneration decided by the Governor-in-Council.

Division 6 QCAT to be assisted by assessors

Clause 126 provides that, in conducting a hearing of a disciplinary proceeding relating to a registered health practitioner, QCAT is to be assisted by one assessor chosen from the public panel of assessors and two assessors chosen from the relevant professional panel of assessors.

Clause 127 outlines the functions of assessors in hearings, namely to sit with the judicial member during hearings to advise the tribunal of questions of fact.

Clause 128 provides that the QCAT registrar must choose the assessors to assist QCAT in a hearing.

Clause 129 provides that a person is not eligible to be an assessor in a hearing if the person was a member of a national panel that considered the matter to be considered by QCAT. National panels are established under the National Law to consider health, performance and professional standards matters related to registered health practitioners.

Clause 130 provides for an appropriate gender balance in the persons constituting the tribunal and appointed as assessors for a hearing, having regard to the gender of the person who received the health service that is the subject of the hearing.

Clause 131 requires the Director of Proceedings and a national board to advise the QCAT registrar whether a matter is likely to raise issues of a specialist or technical nature and, if so, the desirable professional background or skills of assessors who should be appointed to assist in the hearing.

Clause 132 requires assessors to disclose conflicts of interest.

Clause 133 provides that the cost of assessors are to be paid out of the Agency Fund. The Agency Fund is established under the National Law to pay the costs of administering the National Registration and Accreditation Scheme. The funds in the Agency Fund are primarily drawn from registrants' fees.

Part 11 Conciliation

Clause 134 states that this Part applies if the health ombudsman decides to conciliate a health service complaint.

Clause 135 outlines the purpose of conciliation, namely to settle the complaint and, if appropriate, enter into a contract in settlement of the complaint.

Clause 136 states that only a conciliator may perform the function of conciliation under this Part. The Health Ombudsman appoints conciliators under clause 286 of the Bill.

Clause 137 provides that a conciliator must not have been involved in an investigation of the same matter that is being conciliated.

Clause 138 outlines the functions of a conciliator, which is mainly to arrange negotiations between the complainant and relevant health service provider, and to assist in the conduct of the negotiations.

Clause 139 requires the party to a conciliation to negotiate in good faith.

Clause 140 places restrictions on when conciliation may start. As the protection of the health and safety of the public is paramount, actions such as taking immediate action, carrying out an investigation, or referring the matter to the National Agency, another government entity or the Director of Proceedings, must generally be completed prior to the conciliation commencing. However, the Health Ombudsman may commence the conciliation if the conciliation is only for the purpose of arranging a financial settlement or other compensation, and the Health Ombudsman is satisfied the conciliation will not compromise the other actions being taken.

Clause 141 applies where a conciliator identifies a public interest issue during a conciliation. A public interest issue would include that grounds may exist for a practitioner to be subject to health, performance or conduct action under the National Law or that a ground may exist to take a matter to QCAT for consideration. This clause provides that the conciliator must, as soon as practicable, inform the Health Ombudsman of the issue.

Clause 142 applies where, after the commencement of a conciliation, the Health Ombudsman decides to take other relevant action in relation to the complaint (such as an investigation), including as a result of the information provided by a conciliator under the previous clause. In these circumstances, the Health Ombudsman must decide whether to end the conciliation, suspend or continue the conciliation, and notify the parties and the conciliator of the action. Under this clause, the Health Ombudsman may only continue the conciliation if the matters stated in clause 140(6) apply.

Clause 143 provides that, at the start of a conciliation, the conciliator must explain to the complainant and the relevant health service provider the conciliator's obligations to inform the Health Ombudsman of public interest issues under clause 141 and the actions that the Health Ombudsman may take under clause 142.

Clause 144 requires a conciliator to give the Health Ombudsman a written progress report about the conciliation if requested by the Health Ombudsman.

Clause 145 provides that, at the end of a conciliation, the conciliator must give a written report on the results of the conciliation to the Health Ombudsman. If agreement was not reached as a result of the conciliation, the report may include a recommendation about further action the Health Ombudsman may take.

Clause 146 provides that parties reaching agreement in a conciliation may enter into a contract in settlement of the complaint.

Clause 147 provides that, if the conciliation is unsuccessful, the Health Ombudsman must decide the ‘relevant action’ to take or decide to take no further action. (The grounds on which no further action may be taken are stated in clause 44). When the Health Ombudsman makes a decision, the Health Ombudsman must give written notice of the decision to the complainant and the relevant health service provider. Clause 278 outlines how the written notice is to be provided. Clause 284 (Notice to health service provider not required in particular circumstances) also applies to the giving of notices under this clause.

Clause 148 requires the Health Ombudsman to end the conciliation if:

- the Health Ombudsman believes that a party has not negotiated in good faith
- the Health Ombudsman decides to end the conciliation as a result of the Health Ombudsman deciding to take other relevant action to deal with the complaint, such as an investigation
- the Health Ombudsman considers the complaint cannot be resolved by conciliation, or
- the Minister directs the Health Ombudsman to investigate a complaint or hold an inquiry into the complaint.

The clause also provides that the complainant and relevant health service provider are to be given written notice of the decision to stop the conciliation. Clause 278 outlines how the written notice is to be provided. Clause 284 (Notice to health service provider not required in particular circumstances) also applies to the giving of notices under this clause.

Clause 149 provides that conciliation is a legally privileged process. This means that anything said or admitted during a conciliation, or a document prepared for a conciliation, is not admissible in any legal or disciplinary proceedings, and cannot be used for any investigation undertaken by the Health Ombudsman or to take health, performance or conduct action under the National Law.

Clause 150 provides for the confidentiality of information disclosed during a conciliation. The clause provides that a conciliator must not disclose confidential information unless it is for the purpose of conciliation under the Act. An offence applies for contravening this provision.

Part 12 Inquiries

Clause 151 provides that the Health Ombudsman may conduct an inquiry into:

- a health service complaint
- a systemic issue relating to the provision of health services, including the quality of health services, or
- another matter relevant to achieving the objects of the Act.

Clause 152 provides that the Minister may direct the Health Ombudsman to conduct an inquiry.

Clause 153 provides that the Minister may approve the appointment of other persons to conduct an inquiry with the Health Ombudsman. In these circumstances, the Health Ombudsman is to preside at the inquiry.

Clause 154 outlines the procedures to be followed in an inquiry.

Clause 155 provides that the Health Ombudsman must give at least 14 days written notice of a hearing.

Clause 156 provides that a hearing is generally to be held in public.

Clause 157 provides that the Health Ombudsman may suppress the name of a witness appearing at a hearing.

Clause 158 provides that the Health Ombudsman, other inquiry members and other persons participating in an inquiry have the same protections and immunities that apply in proceedings in the Supreme Court.

Clause 159 requires the Health Ombudsman to keep a record of the proceedings of each hearing.

Clause 160 outlines the general powers that the Health Ombudsman may exercise in a hearing.

Clause 161 gives the Health Ombudsman power to require a person to attend a hearing as a witness.

Clause 162 gives the Health Ombudsman power to require the production of stated information. A penalty applies for failing to comply with this requirement. The clause provides that it is not a reasonable excuse for complying with a requirement that giving the information might tend to incriminate the person. (See *Consistency with Fundamental Legislative Principles*).

Clause 163 outlines how records or other things produced at an inquiry may be inspected or otherwise dealt with.

Clause 164 states witness offences for a hearing, including failing to attend as required or failing to answer a question in a hearing. The clause provides that it is not a reasonable excuse for complying with a requirement that answering the question might tend to incriminate the person. (See *Consistency with Fundamental Legislative Principles*).

Clause 165 outlines matters that constitute contempt, including insulting an inquiry member or interrupting a hearing. An offence applies for contravening this provision.

Clause 166 provides that an inquiry is not affected by a change in the membership of the inquiry or the absence of an inquiry member.

Clause 167 provides that the Health Ombudsman must prepare a written report about each inquiry.

Clause 168 requires the Health Ombudsman to give a person an opportunity to comment on a report if it makes adverse comment about the person.

Clause 169 provides that the Health Ombudsman must give the report to the Minister, who must table it in the Parliament within 14 days.

Part 13 Minister's role

Clause 170 outlines the Minister's functions under the Act, namely:

- to oversee the effective and efficient administration of the health service complaints management system
- to oversee the performance of the Health Ombudsman
- to oversee the performance of the national boards and the National Agency as they relate to the health, performance and conduct of registered health practitioners in Queensland, and
- to keep the Parliament and the community informed of these matters.

Clause 171 enables the Minister to request the Health Ombudsman to give information and reports to the Minister on matters related to the performance of the Health Ombudsman's functions, including when the Health Ombudsman decides to take particular relevant actions.

Clause 172 provides that the Minister may ask a national board or the National Agency for any information related to its functions concerning the health, performance and conduct of registered health practitioners in Queensland.

Clause 173 provides that the information and reports may be given by way of periodic reports.

Clause 174 deals with circumstances where the Minister engages a person to assist the Minister to perform a function under this Act, such as to audit the management of health service complaints. In these circumstances, the Minister may direct the Health Ombudsman, a national board or the National Agency to disclose relevant information to the appointed person. Confidentiality provisions apply to a person provided with information under this clause. An offence applies for contravening the confidentiality provisions.

Clause 175 states what information may or may not be requested under the preceding clauses. The Minister may not require information to be provided about anything said during a conciliation or a document prepared for a conciliation. The Minister may require the Health Ombudsman to provide information that is held by a national board or the National Agency. The Health Ombudsman has the power to require this information to be provided to the Health Ombudsman under section 206B of the National Law (as applies in Queensland).

This clause clarifies that the information may include information that identifies a health service provider, a complainant or another person. In the case of complainants, it is not the intention of the provisions for the Minister to consider individual complaints. However, the information sought by the Minister about a system-wide issue may incidentally identify individuals. Clause 178 places a confidentiality obligation on this information.

Clause 176 relates to the publication of performance reports. Under this clause, the Minister may ask the Health Ombudsman to prepare and publish performance reports about:

- the administration of the health service complaints management system
- the performance of the Health Ombudsman's functions, or
- the performance of functions by the national boards and the National Agency as they relate to the health, performance or conduct of registered health practitioners in Queensland.

Clause 177 provides that the Health Ombudsman, a national board or the National Agency must comply with the Minister's request under this Part.

Clause 178 provides that the information given to the Minister, or someone else on the Minister's behalf, may only be used or disclosed for the performance of the Minister's functions. This provision does not limit the *Parliament of Queensland Act 2001*.

Part 14 Parliamentary Committee's role

Clause 179 states the functions of the Parliamentary Committee under the Bill. The dictionary defines the meaning of 'Parliamentary Committee' for the purposes of the Bill. Under the current arrangements, the Parliamentary Committee is the Health and Community Services Committee. The functions of the Parliamentary Committee under the Bill are:

- to monitor and review the operation of the health service complaints management system
- to identify and report on ways in which the health service complaints management system might be improved
- to monitor and review the performance of the Health Ombudsman
- to monitor and review the performance of the national boards and the National Agency as they relate to the health, performance and conduct of registered health practitioners in Queensland
- to examine reports of the Health Ombudsman, the national boards and the National Agency
- to advise the Minister on the appointment of the Health Ombudsman (see clause 246), and
- to report to the Parliament on matters referred to the Committee or on other matters identified by the Committee.

To emphasise that the Parliamentary Committee's role is to focus on systemic issues, this clause also provides that it is not a function of the Parliamentary Committee to re-investigate or re-consider particular complaints or other matters.

Clause 180 gives the Parliamentary Committee the power to ask the Health Ombudsman to provide information about any matter related to the Health Ombudsman's functions.

Clause 181 gives the Parliamentary Committee the power to ask a national board or the National Agency to provide information about any matter concerning their functions as they relate to the health, performance and conduct of registered health practitioners in Queensland.

Clause 182 provides that the information requested under the previous clauses may include requests for periodic reports to the Parliamentary Committee.

Clause 183 states what information may or may not be requested under the preceding clauses. The Committee may not require information to be provided about anything said during a conciliation or a document prepared for a conciliation. The Parliamentary Committee may require the Health Ombudsman to provide information that is held by a national board or the National Agency. The Health Ombudsman has the power to require this information to be provided to the Health Ombudsman under section 206B of the National Law.

This clause clarifies that the information may include information that identifies a health service provider, a complainant or another person. In the case of complainants, the relevant information required by the Parliamentary Committee to monitor the health service complaints management system may incidentally identify individuals.

Clause 184 provides that the Health Ombudsman, a national board or the National Agency must comply with the Committee's request under this Part.

Clause 185 clarifies that this Part does not limit the Parliamentary Committee's powers under the *Parliament of Queensland Act 2001*.

Part 15 Authorised persons

Division 1 General provisions about authorised persons

Clause 186 states an authorised person's functions under the Bill – namely to carry out investigations under the Act (as provided for under Part 8), and to investigate, monitor and enforce compliance with the Act.

Clause 187 states that the Health Ombudsman is an authorised person.

Clause 188 enables the Health Ombudsman to appoint an appropriately qualified person to be an authorised person under this Act.

Clause 189 provides that an authorised person is to hold office on specified conditions.

Clause 190 states when the office of an authorised person ends.

Clause 191 provides that an authorised person may resign.

Clause 192 provides that authorised persons are to be provided with identity cards in the form specified in the clause.

Clause 193 requires an authorised person to produce his or her identity card when exercising a power under this Act.

Clause 194 provides that an identity card must be returned when a person ceases to be an authorised person. An offence applies for contravening this provision.

Clause 195 states that if a provision of this Part refers to the exercise of a power and there is no reference to a specific power, then the reference is to the exercise of all or any of the authorised person's powers that are relevant.

Clause 196 states that a reference in this Part to a document includes a reference to an electronic document.

Division 2 Entry of places by authorised persons

Subdivision 1 Power to enter

Clause 197 states that an authorised person may enter a place if:

- an occupier consents to the entry
- it is a public place, or
- the entry is authorised under a warrant.

Subdivision 2 Entry by consent

Clauses 198 to 201 outline the procedures to be followed where an authorised person intends to enter a place by consent.

Subdivision 3 Entry under warrant

Clauses 202 to 207 outline the procedures that apply for the application and issuing of a warrant, including electronic applications.

Division 3 Other authorised persons' powers and related matters

Subdivision 1 General powers of authorised persons after entering places

Clause 208 states that the powers under this subdivision may be exercised if an authorised person enters a place with consent or under a warrant.

Clause 209 states the general powers that an authorised person may exercise after entering a place including, for example, searching any part of the place or inspecting, examining or filming any part of the place or anything at the place.

Clause 210 states that an authorised person may require a person at a place to give the authorised person reasonable help to exercise a general power including, for example, the power to produce a document or to give information.

Clause 211 states that a person must comply with a requirement made of an authorised person under the previous clause unless the person has a reasonable excuse, including that complying with the requirement might tend to incriminate the individual. An offence applies for contravening this provision.

Subdivision 2 Seizure by authorised persons and forfeiture

Clause 212 provides that an authorised person who enters a place without consent or a warrant may seize a thing at the place if the authorised person reasonably believes the thing is evidence of an offence against this Act.

Clause 213 outlines the powers of seizure that an authorised person has when entry is authorised with consent or under a warrant.

Clause 214 states that an authorised person may seize a thing despite a lien or other security over the thing claimed by another person.

Clauses 215 to 217 specify the powers an authorised person may exercise to support the seizure of a thing. Offences apply for failing to comply with a requirement made under this subdivision or for tampering with a seized thing.

Subdivision 3 Safeguards for seized things

Clauses 218 to 220 provide safeguards for things seized under the Act. These clauses deal with providing receipts and information notices in relation to a seized thing, providing access to the seized thing by the owner, and returning of the seized thing. The provision of an information notice under this subdivision triggers a right of review and appeal under this Part.

Subdivision 4 Forfeiture

Clauses 221 and 222 provide for the forfeiture of things under the Act. Under these provisions, a thing may be forfeited to the State by decision of the Health Ombudsman. Where the thing is seized, the Health Ombudsman must give the owner an information notice about the decision, which triggers a right of review and appeal.

Subdivision 5 Dealing with property forfeited or transferred to the State

Clauses 223 and 224 specify how a thing seized or transferred to the State under the Act may be dealt with by the Health Ombudsman.

Division 4 Disposal orders

Clause 225 enables a court to make an order to dispose of a thing where a person is convicted of an offence against this Act.

Division 5 Other information-obtaining powers of authorised persons

Clause 226 applies where an authorised person finds a person committing an offence against this Act or where an authorised person reasonably suspects a person has just committed an offence against this Act. In these circumstances, the authorised person may require the person to state the person's name and residential address.

Clause 227 states that a person must comply with a requirement to state their name and residential address unless they have a reasonable excuse. An offence applies for contravening this provision.

Clause 228 applies if an authorised person reasonably believes an offence has just been committed against this Act and a person may be able to give information about the offence. This clause also applies if an authorised person reasonably believes a person may be able to give information about a matter being investigated. The authorised person may, by written notice, require the person to give the authorised person information related to the offence or matter at a stated reasonable time and place.

Clause 229 states that a person must comply with a requirement to provide information under the previous clause. It is a reasonable excuse not to give the information if giving the information would tend to incriminate the individual. An offence applies for contravening this provision.

Division 6 Miscellaneous provisions relating to authorised persons

Clauses 230 and 231 deal with damage that may be caused by an authorised person in exercising powers under this Part, including provisions related to giving notice of the damage to the person who appears to be the owner or in control of the damaged thing.

Clause 232 provides that a person may claim compensation from the State if the person incurs loss because of the exercise of a power by an authorised person under this Part. However, this does not apply if the loss arose from a lawful seizure or forfeiture.

Clause 233 establishes an offence for obstructing an authorised person in the exercise of the authorised person's powers.

Clause 234 establishes an offence for impersonating an authorised person.

Division 7 Review of particular decisions

Clauses 235 to 244 provide for an internal review and appeal of a decision under this Part to seize or forfeit a thing. The provisions state that, in the first instance, the matter is to be considered by way of an application for an internal review. The provisions state how a person may apply for a review and the decisions that the Health Ombudsman may make. If the person who has applied for an internal review is dissatisfied with the review decision, the person may appeal to a court. The provisions enable a court to grant a stay of the operation of a review decision, and provide for the decisions a court may make on appeal.

Part 16 Appointment of Health Ombudsman and establishment of office

Division 1 Appointment of Health Ombudsman and related matters

Clause 245 provides that the Health Ombudsman is to be appointed by the Governor-in-Council on the recommendation of the Minister.

Clause 246 outlines the processes that the Minister is to undertake in appointing the Health Ombudsman. This includes advertising for expressions of interest from suitably qualified persons and consulting with the Parliamentary Committee about the appointment.

Clause 247 provides that the Health Ombudsman holds office for a period of no more than four years.

Clause 248 provides that the Health Ombudsman holds office on the conditions stated in the instrument of appointment.

Clause 249 provides that the Health Ombudsman may resign from office by signed notice given to the Minister.

Clause 250 outlines the grounds on which the Governor-in-Council may remove the Health Ombudsman from office, including being found guilty of an indictable offence or an offence against this Act, or engaging in inappropriate or improper conduct in an official capacity.

Clause 251 provides that the Minister may suspend the Health Ombudsman from office, on similar grounds for removal from office, if the Minister believes it is necessary in the public interest.

Clause 252 provides for the appointment of an Acting Health Ombudsman by the Minister.

Division 2 Office of the Health Ombudsman

Clause 253 provides for the establishment of the Office of the Health Ombudsman, consisting of the Health Ombudsman and the staff of the Office.

Clause 254 provides that the function of the Office is to help the Health Ombudsman perform the Health Ombudsman's functions.

Clause 255 provides that the staff of the Office are to be employed under the *Public Service Act 2008* and are not subject to the direction of anyone other than the Health Ombudsman or a person authorised by the Health Ombudsman.

Clause 256 states that the Health Ombudsman controls the Office of the Health Ombudsman.

Clause 257 states that the Office of the Health Ombudsman is a statutory body for the purposes of the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangements Act 1982*.

Division 3 Director of proceedings

Clause 258 requires the Health Ombudsman to appoint a staff member of the Office of the Health Ombudsman to be the Director of Proceedings under the Act. The appointed person must be a lawyer and otherwise appropriately qualified.

Clause 259 provides for the functions of the Director of Proceedings. These functions are to decide whether or not to refer a matter to QCAT and to prosecute complaints and other matters before QCAT.

Clause 260 states that the Director of Proceedings is not subject to the direction of the Health Ombudsman or anyone else in deciding whether or not to refer a matter to QCAT and the way in which a matter is prosecuted before QCAT.

Part 17 Offences and proceedings

Clause 261 provides that a person must not cause, or attempt or conspire to cause, detriment to another person because another person has made a health service complaint or has provided assistance to the Health Ombudsman. A contravention of this clause is a reprisal or the taking of a reprisal.

Clause 262 provides that a person who takes a reprisal commits an offence, which is punishable by a maximum penalty of 200 penalty units or 2 years imprisonment.

Clause 263 provides that a person who takes a reprisal is liable in damages to any person who suffers detriment as a result.

Clause 264 provides that a person must not give information that is false or misleading to the Health Ombudsman, a staff member of the Office of the Health Ombudsman or an authorised person. An offence applies for a contravention of this provision.

Clause 265 provides that a fine imposed under clause 107 by QCAT (at the end of a disciplinary proceeding for a registered health practitioner) is a debt due to the Office of the Health Ombudsman.

Clause 266 provides that the appointment of an 'official', and the authority of an official to do anything under the Act, is presumed in a proceeding unless a party to the proceeding requires proof of it. An official includes the Health Ombudsman, a staff member of the Office of the Health Ombudsman or an authorised person.

Clause 267 provides that a signature purporting to be the signature of an official is evidence of the signature it purports to be.

Clause 268 provides that a certificate signed by the Health Ombudsman in relation to the matters stated in this clause (for example, a notice or an appointment) is evidence of the matter.

Clause 269 provides that a proceeding for an offence against this Act, other than a reprisal offence, is to be taken in a summary way. The clause also sets time limits for starting proceedings for summary offences.

Clause 270 provides that, in a proceeding for an offence against this Act, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence of the matter.

Clause 271 sets out the requirements for taking a proceeding for an indictable offence.

Part 18 Disclosure of information and related matters

Clause 272 outlines the confidentiality obligations under the Act. This clause applies to the persons specified in the clause who are involved in the administration of the Act, including the Health Ombudsman, a staff member of the Office of the Health Ombudsman and an authorised person. This clause does not apply to a conciliator in relation to the disclosure of information to which clause 150 applies.

Under this clause, an offence applies to disclosing confidential information unless the disclosure is authorised under this clause. ‘Confidential information’ means information that is not publicly available and is a form that identifies a person who is a complainant, a health service provider, a person who was provided with a service by a health service provider, or a person who gave information to the Health Ombudsman. Clause 289 of the Bill clarifies when information identifies a person.

The clause states the specific circumstances where information may be disclosed, including:

- in the performance of a function under the Act
- with the relevant person’s consent
- to specified Commonwealth entities, such as the chief executive officer under the *Medicare Australia Act 1973 (C’wlth)*
- to the Minister or the Parliamentary Committee
- to a national board or the National Agency, and
- to government entities with corresponding functions (for example, an interstate health complaints entity) or government entities with functions related to the protecting the health and safety of the public.

Clause 273 enables the Health Ombudsman to publish information about QCAT decisions and immediate action orders.

Clause 274 provides that a person is not required to disclose confidential information (as defined in the preceding clause) to a court or tribunal unless it is necessary to do so for this Act or the National Law. However, this does not apply to the disclosure of information in a criminal or disciplinary proceeding.

Clause 275 provides protections to persons who give information, honestly and on reasonable grounds, to the Health Ombudsman, a staff member of the Office of the Health Ombudsman or an authorised person. This includes where a person gives expert advice or opinion about a matter. Persons who provide this information are not subject to any liability for giving the information and no action may be taken against the person for giving the information.

Clause 276 provides protections to persons who, in good faith, publish information for the purposes of the Act, including for the preparation of a report.

Part 19 Particular notices given by Health Ombudsman

Clause 277 defines 'employer' for the purpose of this Division. For this Division, an 'employer' includes a person who operates a facility at which a health practitioner provides health services. This means that a health service facility that has an arrangement with a health practitioner (who is not employed by the hospital) to practise at the premises will be treated as an 'employer' in relation to the practitioner for the purpose of this Division.

Clause 278 outlines how the Health Ombudsman must give notice of a decision to a complainant and a relevant health service provider. This applies on receiving a complaint, at the end of an assessment, local resolution, conciliation or investigation, and under clause 82 (at the commencement of an investigation). Under this clause, the Health Ombudsman must give the complainant and the relevant health service provider notification of the decision to take 'relevant action', as outlined in clause 38, and the reasons for the decision. Similarly, the Health Ombudsman must advise the complainant and the relevant health service provider if the Health Ombudsman decides to take no further action, and the reasons for the decision. The grounds on which no further action may be taken are stated in clause 44.

This clause does not apply in relation to a health service provider if the Health Ombudsman's decision is to take no further action and the Health Ombudsman has not previously communicated with the health service provider on this matter. This would apply where the Health Ombudsman receives a complaint which is lacking in substance and the Health Ombudsman decides to take no action on the matter. Clause 284 (Notice to health service provider not required in particular circumstances) applies to the giving of notices under this clause.

Clause 279 requires the Health Ombudsman to notify an employer where the Health Ombudsman has decided to take action in response to a serious matter concerning an employee. This is where the Health Ombudsman takes immediate action (for example, the suspension of a health practitioner's registration) or commences an investigation because the practitioner may have behaved in a way that constitutes professional misconduct.

The clause, however, states that this obligation does not apply if giving the notice to the employer may place a person's health and safety at risk, place a person at risk of harassment or intimidation, or prejudice an investigation.

Clause 280 requires the Health Ombudsman to give an employer notice of a QCAT decision concerning a health practitioner who is employed by the person.

Clause 281 requires the Health Ombudsman to notify the relevant National Board of an appeal decision taken to the Court of Appeal from a QCAT decision under the Act. This will ensure that the National Board implements the court's decision.

Clause 282 gives the Health Ombudsman discretion to advise an employer of other matters concerning a health practitioner, for example, where a series of complaints suggests a pattern of conduct.

Clause 283 requires the Health Ombudsman to notify an education provider (as defined in the National Law) that a student may have an impairment that may place the public at risk of harm.

Clause 284 provides that the health ombudsman is not required to give a notice of a decision or other matter under the Act to a health service provider if giving the notice may place a person's health and safety at risk, place a person at risk of harassment or intimidation, or prejudice an investigation.

Part 20 Other matters

Clause 285 enables the Health Ombudsman to delegate functions under this Act or another Act (such as the *Financial Accountability Act 2009*) to an appropriately qualified staff member of the Office of the Health Ombudsman. However, the Health Ombudsman may not delegate a decision to take immediate action or to conduct an inquiry.

Clause 286 requires the Health Ombudsman to appoint conciliators for the purposes of the Act.

Clause 287 provides protections for 'officials' for acts done honestly and without negligence under this Act. An official includes the Health Ombudsman, a staff member of the Office of the Health Ombudsman and an authorised person. (See *Consistency with Fundamental Legislative Principles*).

Clause 288 provides a head of power to prescribe a code of conduct, charter, standard or other document to provide guidance to persons performing functions under the Act. The regulations under the Act may prescribe, for example, the National Safety and Quality Health Service Standards and the Australian Charter of Healthcare Rights published by the Australian Commission on Safety and Quality in Healthcare. A code of conduct for practitioners who are not registered health practitioners may also be prescribed.

The clause states that a person may have regard to a prescribed document when making a decision under the Act as to what constitutes appropriate conduct or practice for a health service provider. As provided for under clause 31, a person may also take one of these documents into consideration in deciding whether to make a complaint.

Clause 289 clarifies whether information identifies a person.

Clause 290 requires the Health Ombudsman to include in the Health Ombudsman's annual report the details of any directions given by the Minister to the Health Ombudsman during the financial year.

Clause 291 provides that the Health Ombudsman may approve forms for use under the Act.

Clause 292 provides that the Governor-in-Council may make regulations under the Act. This includes regulations for the purpose of categorising complaints.

Part 21 Savings and transitional

Division 1 Preliminary

Clause 293 defines terms used in this Part.

Clause 294 refers to provisions of this Part that continue requirements under the repealed *Health Quality and Complaints Commission Act 2006* (the 'HQCC Act'), for example to provide information, as continuing in effect. This clause clarifies that these provisions do not limit any powers that the Health Ombudsman, an authorised person or another entity has under the Act to make a requirement about a similar matter.

Division 2 Application of Act to pre-commencement matters

Clause 295 provides that a health service complaint or other matter that arose before the commencement of the Act may be considered under the Act.

Clause 296 provides that the Minister, Parliamentary Committee or the Health Ombudsman may request information about matters that arose before the commencement of this Act.

Clause 297 provides that the steps that the Minister is to take in appointing the Health Ombudsman under clause 246 may be taken before the commencement of the Act. This means that the Act will be complied with if the advertising for a Health Ombudsman and consulting with the Parliamentary Committee takes place before the commencement.

Division 3 Former commission and commissioner

Clause 298 provides that the Health Ombudsman is the successor in law to the former Health Quality and Complaints Commission (HQCC).

Clause 299 provides that the assets, liabilities and information of the HQCC become the assets, liabilities and information of the Health Ombudsman. Similarly, any contracts, undertakings or other arrangements transfer from the HQCC to the Health Ombudsman.

Clause 300 provides that a proceeding that could have been started by or against the HQCC maybe started by or against the Health Ombudsman.

Clause 301 provides that any proceeding in which the HQCC was a party is to continue with the Health Ombudsman as the party.

Clause 302 provides that a reference to the former commission, commissioner or chief executive in an Act or document is taken to be a reference to the Health Ombudsman if the context permits.

Division 4 Complaints and other matters

Clause 303 applies to complaints made under the HQCC Act which had not been finally dealt with on the commencement of this Act. This clause provides that the Health Ombudsman may deal with the complaint as if it were a health service complaint made under this Act. As soon as practicable after commencement, the Health Ombudsman must decide the appropriate way to deal with the complaint and notify the complainant and relevant health service provider if the action is different to that was being undertaken under the HQCC Act.

Clause 304 applies to requirements that the HQCC made of another person under the HQCC Act to give particular information to the commission. This clause provides that this requirement continues in force as if it had been made by the Health Ombudsman.

Clause 305 continues in effect the confidentiality provisions under the HQCC Act.

Clause 306 applies the legal privilege and confidentiality provisions of this Act to a conciliation under the HQCC Act.

Clause 307 continues in effect section 167 and 185 of the HQCC Act, which relates to the preservation of rights of public service officers.

Division 5 Matters relating to authorised persons

Clause 308 provides that, where an investigation had commenced but was not completed under the HQCC Act, an authorised person may continue the investigation using the powers under Part 15 of this Act.

Clause 309 applies to requirements that an authorised person made of another person under the HQCC Act to give particular information. This clause provides that this requirement continues in force as if it had been made by an authorised person under this Act.

Clause 310 provides that this Act applies in relation to anything seized under the HQCC Act as if it had been seized under this Act.

Division 6 Continuing appointments

Clause 311 provides for the continued appointment of authorised persons.

Clause 312 provides for the continued appointment of conciliators.

Division 7 Disciplinary matters

Clause 313 provides for the continued appointment of panels of assessors under the *Health Practitioners (Disciplinary Proceedings) Act 1999*.

Clause 314 provides that proceedings that had commenced before QCAT but had not been finalised are to continue under the *Health Practitioners (Disciplinary Proceedings) Act 1999*.

Clause 315 applies to QCAT's jurisdiction to review the conditions imposed on a registered practitioner's registration under the *Health Practitioners (Disciplinary Proceedings) Act 1999*. This clause provides that this jurisdiction continues as if the Act had not been repealed.

Clause 316 provides that appeals of QCAT decisions under the *Health Practitioners (Disciplinary Proceedings) Act 1999* may be heard under that Act as if the Act had not been repealed.

Clause 317 enables transitional matters (as defined) under the *Health Practitioners (Disciplinary Proceedings) Act 1999* to continue as if the Act had not been repealed. This

provision is necessary as otherwise the repeal of the *Health Practitioners (Disciplinary Proceedings) Act 1999* would remove the capacity for outstanding disciplinary matters to continue.

Clause 318 provides that the entitlements in force for assessors under the repealed *Health Practitioners (Disciplinary Proceedings) Act 1999* remain in force.

Division 8 Disclosure of confidential information to health ombudsman

Clause 319 enables confidential information under the National Law to be disclosed to the Health Ombudsman before the Act fully commences.

Clause 320 enables confidential information under the HQCC Act to be disclosed to the Health Ombudsman before the Act fully commences.

Part 22 Repeals

Clause 321 repeals the *Health Practitioners (Disciplinary Proceedings) Act 1999*, the *Health Quality and Complaints Commission Act 2006* and the *Health Practitioner Registration and Other Legislation Amendment Act 2013*.

Part 23 Amendment of Health Practitioner Regulation National Law Act 2009

Clause 322 provides that this Part amends the *Health Practitioner Regulation National Law Act 2009*.

Clause 323 inserts a definition of 'Health Ombudsman' for the Act.

Clause 324 amends section 4 of the Act to provide that Part 4 of the Act modifies the schedule to the Act, which is called the Health Practitioner Regulation National Law (the 'National Law'). Queensland is the host jurisdiction for the National Law. As such, the National Law was enacted in Queensland for adoption by reference by other jurisdictions. (In the case of Western Australia, that jurisdiction enacted separate equivalent legislation). In Queensland, section 4 of the *Health Practitioner Regulation National Law Act 2009* adopts the National Law as a law of Queensland. The effect of the amendment to section 4, and Part 4 of the Act, is to modify how the National Law applies in Queensland. The National Law itself is not amended by this Act.

To assist readers of legislation, this clause also provides that the National Law, as it applies in Queensland, may be authorised as a reprint by Parliamentary Counsel.

Clause 325 inserts sections 7A (Co-regulatory jurisdiction), 7B (Co-regulatory authority) and 7C (Adjudication body). The effect of Queensland being a co-regulatory jurisdiction is that Part 8 (which relates to the management of the health, performance, and conduct of registered health practitioners) can be modified as it applies in Queensland. The fact that the Health Ombudsman is a co-regulatory authority means that any references in the National Law to ‘co-regulatory authority’ applies to the Health Ombudsman. This includes that the National Agency and the national boards must co-operate with the Health Ombudsman in performing their functions (sections 27 and 32) and that confidential information may be disclosed to the Health Ombudsman (section 216). The primary effect of the Health Ombudsman being an adjudication body is that a National Board must implement the Health Ombudsman’s decision to take immediate action against a registered health practitioner (section 205).

Clause 326 inserts a new Part 4 into the Act. As indicated above, this has the effect of modifying how the National Law applies in Queensland.

Section 11 inserts a definition of ‘national law provisions’.

Section 12 provides that this Part states the modifications to the National Law as they are to apply in Queensland.

Section 13 inserts a paramount guiding principle for the Act, namely, that the main principle for administering the Act is that the health and safety of the public are paramount. This section is similar to clause 4 in the *Health Ombudsman Bill 2013*, which applies to persons administering that Act.

Section 14 states that, in performing a function under the Act, regard is to be had to the paramount guiding principle.

Section 15 inserts definitions into the National Law as it is to apply in Queensland. This includes a definition of ‘referred matter’, which is a complaint or other matter referred by the Health Ombudsman to the Agency for actioning under Part 8 of the National Law.

Sections 16 and 17 insert references to ‘referred matter’.

Section 18 replaces a paragraph to refer to ‘referred matter’.

Section 19 inserts a new provision in the National Law, as it is to apply in Queensland, relating to the transfer of some fees payable by Queensland health practitioners to the Health Ombudsman. The fees to be transferred are to reflect the reasonable cost of the Health Ombudsman performing functions related to the health, performance and conduct of health practitioners that would have been performed by the national boards and the National Agency had the *Health Ombudsman Act 2013* not commenced. For this purpose, the Minister must decide, for each profession, the amount of registration fees payable by Queensland health practitioners that should be transferred to the Health Ombudsman. The Minister must consult with the Ministerial Council, the national boards and the National Agency before making the decision as to the amount of registrants’ fees to be transferred.

Section 20 modifies the way in which section 35 (Functions of National Boards) is to apply in Queensland. This amendment reflects the fact that all notifications will be made to the Health Ombudsman.

Sections 21 and 22 insert references to ‘referred matter’.

Section 23 inserts definitions for the purposes of Part 8 of the National Law (Health, Performance and Conduct) as it is to apply in Queensland.

Section 24 provides that mandatory notifications are to be made to the Health Ombudsman if the notifiable conduct occurred in Queensland.

Section 25 replaces references to ‘National Agency’ to ‘Health Ombudsman’ in section 141 as it is to apply in Queensland to reflect the fact that notifications under the National Law are to be made to the Health Ombudsman rather than the National Agency.

The Bill also modifies the requirement for health practitioners to mandatorily notify the Health Ombudsman under the National Law. The purpose of this modification is to not discourage health practitioners from seeking treatment for an impairment (such as substance abuse or serious mental health issue) for fear of being reported to the regulatory authorities. The exception will apply if the matter relates to an impairment, does not relate to professional misconduct (as defined in the National Law), and the treating practitioner forms the reasonable view that the other practitioner does not pose a serious threat to the public.

Section 26 replaces references to ‘National Agency’ with ‘Health Ombudsman’ in section 142 as it is to apply in Queensland to reflect the fact that notifications by employers under the National Law are to be made to the Health Ombudsman rather than the National Agency. This section also omits subsections 142(2) and (3) as it is to apply in Queensland, and inserts a new subsection (2) so that the Health Ombudsman has the responsibility of notifying other entities if an employer fails to notify the Health Ombudsman that a health practitioner has behaved in a way that constitutes notifiable conduct (as defined in the National Law).

Section 27 replaces the reference to ‘National Agency’ with ‘Health Ombudsman’ in section 143 as it is to apply in Queensland to reflect the fact that notifications by education providers under the National Law are to be made to the Health Ombudsman rather than the National Agency. This section also requires the Health ombudsman to give a copy of each notification received from an education provider to the National Agency.

Section 28 provides that voluntary notifications to the Health Ombudsman may be made if the relevant conduct occurred in Queensland or the practitioner’s principal place of practice is in Queensland.

Section 29 replaces references to ‘National Agency’ with ‘Health Ombudsman’ in section 144 as it is to apply in Queensland to reflect the fact that notifications under the National Law are to be made to the Health Ombudsman rather than the National Agency.

Section 30 replaces the reference to ‘National Agency’ with ‘Health Ombudsman’ in section 145 as it is to apply in Queensland to reflect the fact that notifications under the National Law are to be made to the Health Ombudsman rather than the National Agency.

Section 31 renames a heading.

Section 32 disapplies section 146 (How notification is made) in Queensland (which relates to how a notification is to be made) and substitutes a provision stating that notifications are to be dealt with as complaints under the *Health Ombudsman Act 2013*.

Section 33 disapplies sections 147 (National Agency to provide reasonable assistance to notifier) in Queensland as this matter is addressed under the *Health Ombudsman Act 2013*.

Section 34 disapplies Part 8, Division 5 (Preliminary assessment) and replaces it with a new Division to apply in Queensland. The effect of this modification is:

- to replace references to 'notifications' with references to 'referred matters'
- replace references to 'notifications' with 'referred matters', and references to a 'notifier' with a 'complainant'.
- to require the National Agency, when it receives a referral from the Health Ombudsman, to immediately refer it to the relevant national board.

Section 35 replaces sections 153 and 154 to replace references to 'notifications' with 'referred matters'.

Section 36 replaces a reference to 'notification' with 'referred matter'.

Section 37 replaces a reference to 'notification' with 'complaint' and 'notifier' to 'complainant'.

Sections 38 and 39 replace references to 'notification' with 'complaint'.

Section 40 states that a decision by a national board is subject to the requirement for the Health Ombudsman to be advised of serious matters.

Section 41 replaces a reference to 'notification' with 'complaint'. This section also modifies the actions that they National Board may by including a reference to referring a matter to the Health Ombudsman under section 193A.

Section 42 replaces a reference to 'notification' with 'complaint' and references to 'notifier' with 'complainant'.

Sections 43 and 44 replace references to 'notification' with 'complaint'.

Section 45 omits a sub-section that is not to apply in Queensland as panel members may come from Queensland.

Section 46 replaces a reference to 'notification' with 'complaint' and references to 'notifier' with 'complainant'.

Section 47 disapplies section 190 (Referral to responsible tribunal) in Queensland and substitutes a new section 190. The substituted provision provides that a panel is to advise the relevant board if the panel identifies a serious matter (as outlined in the section). The action that the board must then take is outlined in section 193. This section also inserts a new section 190A that requires a panel to stop a hearing and refer the matter to the relevant national board if the practitioner or student before the panel requests that the matter be referred to the responsible tribunal.

Section 48 modifies section 191 (Decision of panel), as it is to apply in Queensland, to reflect the fact that matters may be referred to the Health Ombudsman as well as to a national board for referral to QCAT.

Section 49 amends a reference to 'notification' to 'complaint' and references to 'notifier' to 'complainant'.

Section 50 disapplies sections 193 to 195 of the National Law in Queensland and replaces them with new sections 193, 193A and 193B. The effect of these provisions is that a National Board must notify the Health Ombudsman of a serious matter, namely, where the national board believes there has been professional misconduct or where there are grounds for the suspension or cancellation of a practitioner's registration. On receiving the notification, the Health Ombudsman may require a national board to refer the matter to the Health Ombudsman or allow the national board to continue to deal with the matter. This enables the health ombudsman to discuss the matter with a national board and decide whether the health ombudsman agrees that it is a serious matter. The clause clarifies that a national board may also take immediate action or accept the surrender of registration prior to notifying the Health Ombudsman. A panel may also suspend a practitioner prior to advising the relevant national board of a serious matter under the modified section 190.

A national board may also refer another matter to the Health Ombudsman with the Health Ombudsman's agreement.

Where a registered health practitioner before a panel elects to have a matter considered by QCAT, the matter is to be referred to QCAT by the Health Ombudsman (for serious matters) or the relevant national board (for other matters).

This section also states that subdivision 2 (Proceedings referred to responsible tribunal by a National Board) only applies to matters referred by a National Board. The *Health Ombudsman Act 2013* deals with procedural matters for QCAT referred by the Health Ombudsman.

Section 51 amends a reference to 'Division' to 'subdivision'.

Section 52 disapplies sections 201 to 203 as these matters are addressed in the QCAT Act.

Section 53 modifies section 204 (Notice from adjudication body) in Queensland so that it only requires QCAT to notify the relevant National Board of a QCAT decision. The Health Ombudsman (which is an 'adjudication body' for the purposes of the National Law) is required to notify decisions to take immediate action to the relevant National Board under the *Health Ombudsman Act 2013*.

Section 54 modifies the application of section 206 (National Board to give notice to registered health practitioner's employer) in Queensland to reflect the requirement for the Health Ombudsman to notify employers under the *Health Ombudsman Act 2013*.

Section 55 inserts new sections 206A and 206B into the National law as it is to apply in Queensland. Section 206A requires a national board to notify the Health Ombudsman of health, performance or conduct action taken by a national board, a panel, QCAT or a court, unless the Health Ombudsman was a party to the proceeding. Section 206B requires a national board or the National Agency to provide to the Health Ombudsman, when requested, information about any matter concerning the health, performance or conduct of a health practitioner, or the performance of national boards' or the National Agency's functions as they relate to the health, performance or conduct of health practitioners in Queensland.

Section 56 replaces a reference to “notification” with “complaint”.

Section 57 inserts a new Part 13 (Transitional provisions for *Health Ombudsman Act 2013*) into the National Law, as it is to apply in Queensland.

Section 306 provides for definitions for the part.

Section 307 allows the Minister to determine the fees that are to be transferred to the Health Ombudsman to be set for a part-year if the Act commences during a financial year.

Section 308 provides that a health practitioner is not mandatorily required to notify the Health Ombudsman of a matter if the health practitioner had advised the National Agency prior to the commencement of the Act.

Section 309 requires a notification that it has received but not yet referred to a National Board on commencement to be immediately referred to the relevant national board.

Section 310 applies to notifications held by a National Board in relation to serious matters, as defined in this clause. The National Board must, within 28 days of the commencement, advise the Health Ombudsman of the notifications. The Health Ombudsman may then direct the National Board as to how to deal with the notification, including by referring it to the Health Ombudsman.

Section 311 provides that, subject to the previous section, the National Board may deal with any existing notification under the National Law.

Section 312 clarifies that a reference to a referred matter includes a notification for the purpose of keeping records.

Part 24 Others Amendments

Division 1 Amendment of this Act

Clause 327 states that this Part amends this Act.

Clause 328 amends the long title of this Act.

Clauses 329 and 330 renumber the dictionary to schedule 1, to apply after the current schedule 1 (which amends others Acts) is repealed.

Division 2 Amendment of other Acts

Clause 331 states that Schedule 1 amends the various Acts stated in the schedule. These amendments primarily involve replacing:

- references to the *Health Quality and Complaints Commission Act 2006* with references to the *Health Ombudsman Act 2013*
- references to the commissioner with references to the Health Ombudsman, and
- defined terms in the *Health Quality and Complaints Commission Act 2006* with equivalent terms in the *Health Ombudsman Act 2013*.