

Legislative Assembly for the Australian Capital Territory

Health Professionals Bill 2003

EXPLANATORY STATEMENT

OVERVIEW OF HEALTH PROFESSIONALS BILL 2003

The aim of this Bill is to consolidate and update the existing legislation relating to the regulation of health professionals in the ACT. In doing this it is intended that this Bill provide enhanced protection for the ACT community.

Although the existing legislative approach has contributed to the ACT's high standard of health practice there have been concerns about the legislation's ability to effectively respond to contemporary consumer protection concerns. There have also been concerns that the legislation is falling behind the requirements of professional regulation in other jurisdictions.

While the Bill seeks to retain a high level of health professional involvement in their own regulation, it also introduces new levels of expectation in relation to the rigour and transparency of Board decision-making. The Bill also recognises that there should be an increased focus on community standards within board process. The Bill seeks to increase the involvement of the community through a number of measures. These include an increased potential for Ministerial scrutiny, enhanced links with the Community and Health Services Complaints Commissioner, community representation on boards and panels, and an expectation that boards will engage the community both in terms of professional standards development and in terms of educating the community on the professional standards they should expect.

One of the major advances of the Bill is the development of the ACT Health Tribunal to hear serious misconduct and appeal matters. A magistrate will chair this body and he or she will support increased independence and community confidence in health professional inquiry matters.

To achieve the aim of the Bill, the Bill proposes to deal with the following key matters:

a) The repeal of existing Acts relating to the registration and regulation of health professionals and their replacement by this Bill and associated Regulations. Acts and Regulations to be repealed are:

- *Medical Practitioners Act 1930.*
- *Nurses Act 1988.*
- *Dentists Act 1931.*
- *Chiropractors and Osteopaths Act 1983.*
- *Optometrists Act 1956.*
- *Pharmacy Act 1931.*
- *Physiotherapists Act 1977.*
- *Podiatrists Act 1994.*
- *Psychologists Act 1994.*
- *Dental Technicians and Dental Prosthetists Act 1988.*
- *Health Professions Boards (Procedures) Act 1980.*
- *Health Professions Boards Act 1981.*
- *Medical Practitioners (Advertising) Regulations 1985.*

b) Revising the existing health professional boards structure and operation to provide for their enhanced role in community protection through –

- requiring all boards to have community representation within their membership;
- providing for greater efficiency and effectiveness of health boards through permitting boards to represent more than one registered health profession;
- clarifying and extending the role of health boards in relation to registering health professionals, setting required standards of practice for health professionals, ensuring that health professionals continue to meet practice standards for the profession and taking action in relation to reports and complaints about health professionals;
- providing guidance on the assessment of applications to become a registered health profession;
- introducing obligations on health boards to exercise their functions diligently and providing for the Minister to take actions in relating to a non-performing board; and
- clarifying the operational status of health profession boards.

c) Providing for the operation of a Health Professions Tribunal as a body to both assess serious complaints and reports about the standard of practice of a health professional and to review decisions of a health profession council. Empowering the health professions tribunal to take action in relation to a health professional's registration including sole power to suspend or cancel registration.

d) Confirming in the Bill that it is an offence to pretend to be registered in a regulated profession.

e) Introducing the term 'required standard of practice' and defining it within the Bill as the exercise of professional judgement, knowledge, skill and conduct at a level that maintains public protection and safety.

f) Introducing the concept of reporting to encourage, the reporting of behaviour of registered health professionals that breaches, or may breach the required standard of practice.

g) Ensuring that processes established by this Bill in respect of reports are consistent with those processes in place for the management of complaints under the *Community and Health Services Complaints Act 1993*.

h) Requiring that reports or complaints about registered health professionals be jointly considered and managed by the Community and Health Services Complaints Commissioner and the relevant health profession board.

- i) Providing for emergency orders to be made if it is necessary or desirable to make an emergency order to protect the public or the wellbeing of the health professional.

- j) Prescribing that a health profession board may establish personal assessment panels and professional standards panels to assist in dealing with complaints or reports about registered health professionals.
- k) Personal assessment panels may receive reports or complaints about health professionals where it is indicated that a health professional's mental or physical health or both may be affecting a health professional's ability to meet the required standard of practice, and the professional may be rehabilitated. Recommendations made by a personal assessment panel require the endorsement of the relevant health professional board.
- l) Professional assessment panels are empowered to inquire into reports or complaints that a registered health professional has breached or is breaching the required standard of practice of the profession. The Bill provides that a professional assessment panel may make decisions and take action in relation to a health professional as if the actions and decisions were those of the health profession board. A professional assessment panel does not have power to cancel or suspend a health professional's registration.
- m) Protecting people who have made a report or people who have participated in proceedings from civil or criminal liability.

HEALTH PROFESSIONALS BILL 2003

PART 1 – INTRODUCTORY

Clause 1. Name of Act - If passed the Bill will become the *Health Professionals Act 2003*. The title indicates that the provisions apply to all health professionals who are registered in the Territory.

Clause 2. Commencement – Provides that the Bill commences on a date fixed by notification by the Minister and advertised in the Gazette. Different dates may be set for the commencement of different provisions within the Bill. Facility for graduated commencement is provided to enable health boards to adopt the revised powers and processes stemming from the enactment of this legislation. If the Bill has not commenced within one year then clause 2(2) commences it.

Clause 3. Dictionary – Certain words and expressions used in the Bill are defined in the dictionary set out at the end of the Bill. A definition found in the dictionary applies to the use of words in the entire Bill unless another meaning applies in a particular part of the Bill.

Clause 4. Notes – Within the Bill notes are used to assist in the understanding of particular provisions. The notes themselves are for explanation purposes only and do not form part of the Bill.

Clause 5. Offences Against Act- Other legislation applies in relation to offences against this Act. The Criminal Code applies to all offences against this Act.

PART 2 – WHAT DOES THIS ACT DO

Clause 6. Outlines – Part 2 of the Bill is provided as a guide for people in relation to the intended operation and application of the Act. The Bill extensively revises the existing laws related to prescribed health professions. This part is an important support in understanding and identifying the revised laws.

Clause 7. Regulation of health professionals – This section identifies that the Bill establishes a system for the registration of certain health professions. The health professions this Bill applies to are those that the Executive Governments under Part 4 of the Bill decides should be regulated.

The Bill requires that health boards continue to administer the process of health professional regulation. The responsibilities exercised by a health professional board include –

1. registering health professionals in professions;
2. setting the required standard of practice for the profession;
3. ensuring health professionals continue to meet the required standard of practice; and
4. taking action in relation to reports or complaints about health professionals.

The Bill establishes a body to be known as the health professions tribunal to consider and/or act on matters relevant to a health professional's practise that may lead to the suspension or cancellation of a health professional's registration. The tribunal may also hear appeals about decisions of health boards.

To operate effectively the Bill requires persons who practise in prescribed health professions to be registered. Penalties exist within the Bill for unregistered persons who provide health services in regulated professions.

Clause 8. How does a health professional's behaviour come to a health profession board's attention? – The Bill provides that a health profession board is informed about a health professional's behaviour through either –

1. someone making a report under this Bill;
2. a complaint being made under the *Community and Health Services Complaints Act 1993*; or
3. a report is made following the review of a health professional's performance.

Clause 9. Reports – The Bill introduces the concept of reporting as an additional way people may express concerns about the standard of practice or suitability to practise of a health professional. The use of the term report is intended to allow for the expression of concern without involving issues of blame, liability or settlement.

To effect appropriate management of a report the Bill introduces a requirement that each report is to be jointly considered by the relevant board and Community and Health Services Complaints Commissioner.

Where a report indicates that a health professional's mental or physical health is affecting their ability to meet the required standard of practice or satisfy the suitability to practise requirements the Bill provides for a matter to be considered by a personal assessment panel. Health profession boards establish such panels under part 12 of the Bill.

If a report concerns the health professional's standard of practice, or if a report has not been successfully dealt with by a personal assessment panel, then a board can consider the report through a body it establishes as a professional standards panel.

Clause 10. Personal assessment panel – The Bill supports the appropriate use of personal assessment panels as a pro-active and cooperative approach to the review of concerns about a health professional's mental and physical health in relation to the meeting of the required standard of practice. Matters that go before a personal assessment panel do so with or without the agreement of the health professional. The health professional may choose whether they will participate in a panel assessment. The health professional's agreement is required if the panel recommends to the board that a condition be placed on the health professional's registration. Where a health professional does not agree to the recommendation of a personal assessment panel the absence of agreement is noted in the referral of the recommendation to the health profession board for possible further action under part 11 of the Bill.

Clause 11. Professional standards panel – The Bill provides for the board to establish a professional standards panel as a body empowered to review and take action where a health professional has breached a standard of practice requirement or does not satisfy suitability to practise requirements.

The professional standards panel has certain powers to deal with matters however these powers do not include action to suspend or cancel a health professional's registration. Only the health professions tribunal exercises these latter powers.

Clause 12. Interaction with Community and Health Services Complaints Act – The Bill requires that the Community and Health Services Complaints Commissioner consult with the relevant health profession board whenever he or she receives a report or complaint about a registered health professional. Such consultation is intended to commit the parties to a joint decision about how to deal with a report or complaint. Where a joint decision cannot be reached then the most serious of the actions proposed by either the health profession board or the commissioner is to be given effect to.

The Bill overall seeks to provide a more flexible system of dealing with reports and complaints than is provided for under the current law.

PART 3 – MAIN OBJECT AND IMPORTANT CONCEPTS

This part sets out that the main object of the Bill, the steps detailed within the Bill to assist achieve the object and the key concepts that underpin the application and operation of the Bill.

Clause 13. Main Object - The Bill provides that the object of the Bill is to protect the public from risk of harm through ensuring that health professionals regulated by the Act are competent to provide health services and that they attain and keep up the required standard of practice. The Bill achieves this objective by -

1. applying the provisions of the Bill to an individual health profession if such action promotes the protection of the public;
2. providing a clear criteria for regulating health professions;
3. establishing a system of registration of health professionals including providing for the issue of practising certificates for continuing registration;
4. providing for a system that continuously reviews the standard of practice of health professionals;
5. providing boards with appropriate powers to administer the provisions of the Bill in respect of one or more health professions;
6. providing an accessible structure through which the public may report concerns about the competence of health professionals;
7. putting in place a structure and system for the management of reports about a health professional's breach of the required standard of practice or failure to satisfy the suitability to practise requirements;
8. establishing a system for dealing with health professionals who are found to be breaching or to have breached the required standard of practice or the competence to practise requirements; and

9. providing for the establishment and operation of a health professions tribunal.

Clause 14. Who is a health professional? – This provision defines what is meant when the term ‘health professional’ is used within the Bill. A health professional is a person who provides a health service while working in a health profession.

Clause 15. What is a health service? – A health service is referred to within the Bill as being a service provided by a person for the purposes of -

1. assessing, recording, maintaining or improving the physical, mental, or emotional health, comfort or wellbeing of the service user;
2. diagnosing or treating an illness, disability, disorder or condition of the service user.

This explanation has been adapted from a definition of a ‘health service’ that appears in the *Health Records (Privacy and Access) Act 1997*.

Clause 16. What is a regulated health service? – The term regulated health service means a health service usually provided by a health professional in a regulated health profession.

Clause 17. When is someone a registered health professional? – A person is considered to be registered when they have been granted registration under requirements and standards applying to a profession as set out under this Act. People whose registration is suspended are considered to be registered for the purposes of action being taken under this Act. People whose registration is suspended may not however actively practice as a registered health professional (see Part 8 Offences).

Clause 18. What is the required standard of practice? – The required standard of practice is a phrase used throughout the Bill and refers to the exercise of a health professional’s judgement, knowledge, skill and conduct at a level that maintains public protection and safety.

This provision provides that regulations made under the Act may prescribe particular behaviours that do and do not meet the required standards of practice. The regulations do not however limit what behaviour does or does not meet the required standard of practice.

The Bill clarifies that where standards of practise operating under this Bill are inconsistent with standards that may be developed under the *Community and Health Services Complaints Act 1993*, the latter standards have precedence.

Clause 19. What is the relevant health profession board? – The Bill provides clarification of the use of the phrase *relevant health profession board* where it is used in relation to a health professional.

PART 4 REGULATION OF HEALTH PROFESSIONS

Clause 20. Decision to regulate health profession – The Bill provides that the Executive may, in writing, recommend that a health profession be regulated. The

Executive may make such a recommendation on its own initiative or on behalf of a body or person who the Executive considers acts on behalf of the applicant profession.

Before the Executive makes a recommendation under this part it needs to be of the opinion that it is both necessary and desirable to register the applicant profession.

Any notice of decision to register a health profession is a disallowable instrument.

Clause 21. Deciding whether regulation necessary or desirable – In order to assess how necessary and desirable it is to register a health profession the Executive is required to give reference to the following considerations –

1. the potential for harm and the likely extent of harm to the health and safety of the public if the profession is not provided properly;
2. if the quality of health services provided to the public will be improved as a result of the profession being regulated;
3. if the profession could operate effectively in a non-regulatory environment; and
4. whether the profession can be regulated.

In order to assess if a profession can be regulated the Executive must consider if –

1. the profession has a distinct area of practice; and
2. there is an objective basis for assessing the competence of members and potential members of the profession; and
3. if significant training and education is needed to become a competent member of the profession.

The Executive may consider other relevant matters in deciding whether to register a profession.

Clause 22. How may the regulations regulate health professions – A health profession becomes regulated through the approval of a regulation under the Act. The Executive can approve such a regulation. A regulation may make provision in relation to anything that the executive is given power to regulate under the Act. Matters that are either necessary or convenient for regulating the professions may also be set out in the regulations. The regulation establishing the profession as a regulated profession must also –

1. contain a statement of the general area of operation of the profession. It is intended that this statement will be informative and identify by way of statement the general activities undertaken by persons registered in the profession;
2. the requirements that a health professional needs to satisfy in order to be considered suitable to practise in the profession.

Clause 23. Suitability to practise requirements – People seeking to practise in a regulated health profession need to demonstrate their suitability to practise. The relevant health professional regulation must set out the suitability requirements for a person who applies to be unconditionally registered in a particular profession. The regulations must set out –

1. qualification requirements; and
2. requirements about mental and physical health;
3. requirements for admission to a specialty area (if any) within the profession; and
4. requirements in relation to the maintenance and demonstration of continuing competency, recency of practice and professional development.

PART 5 HEALTH PROFESSION BOARDS

Division 5.1 Establishment and function of boards

Clause 24. Establishment of Health Profession Boards – In order to give effect to the regulation of a profession the regulations must establish a health professions board in relation to a health profession.

The regulations are required to establish certain provisions in relation to a particular health board. These provisions include –

1. the size of a board and its composition, including the number of community members it is to have and whether or how many members are appointed or elected;
2. if any members are elected, how elections are to take place;
3. reference to at least one community representative being appointed to each health board; and
4. reference to any requirement that a community representative be a member of another profession (such as a member of the legal profession).

Clause 25. Number of health profession boards – The Bill requires that there be only one health profession board for a particular health profession. There may therefore not be two boards that register, for example, nurses. More than one profession may however share a health board. There could be for example an allied health profession board. The regulations may also require two or more health professions to form a single health board. Where a health board regulates more than one health profession there must be representation of at least one member of each health profession on the health profession board.

Clause 26. What do health profession boards do? – The role of a health professional Board is to assist the Minister with the administration of the Act. The health professional Board is given specific functions including the following –

1. administering a scheme of registration and a scheme to continually review the standard of practice of registered health professionals;
2. setting fees for activities administered by the board;
3. giving advice to the Minister, profession and public about matters relevant to the profession;
4. setting standards of practice for the profession;
5. participating in the activities of a body that is responsible for the development of national policies for the maintenance of standards of practice within the profession or within regulated health professions generally;
6. approving educational and training courses related to professional qualifications;

7. promoting and monitoring the continuing competence of relevant registered health professionals and promoting and monitoring their professional development;
8. dealing with registered professionals who are not competent to practise, or who may breach a required standard of practice;
9. providing information to enable the laying of charges against people who commit offences against the Act;
10. assisting in the development of the required standard of practice;
11. promoting the required standard of practice;
12. developing and promoting the required standards of practice;
13. developing supportive relationships with individuals and bodies that have a shared interest in public protection and health professional regulation;
14. providing information to confirm whether or not someone is a registered professional.

The activities of a health profession board are limited by restrictions on their capacity to cancel or suspend the registration of a health professional. A board may only suspend or cancel registration when acting on the direction of a health professions tribunal. .

Clause 27. Obligation to exercise functions diligently – The Bill requires a health professional board to diligently exercise its functions.

Clause 28. Reporting on exercise of functions – The Bill provides that the Minister, in writing, may request that a health professional board provide a report about the exercise of its functions. The request may be for a general report or may be for a report on stated criteria or matter. The health professions board must respond in writing to the Minister within the time set by the Minister which must be reasonable in the circumstances.

Clause 29. Failure by health profession board to exercise functions diligently – Health profession boards are entrusted with significant roles in relation to public protection. Where a board fails to perform their functions appropriately as required by the Bill or regulations then the Minister has an obligation to take action on such matters. The Bill provides certain powers to the Minister responsible where he or she is satisfied that the health professional board is not exercising its functions diligently. The Minister may in writing advise the board of his or her concerns and provide a further explanation of why he or she is not satisfied. The time period for the health profession board to respond to the Minister will be set out in the Minister’s notice however it must allow a minimum of 14 days.

The Minister may consider any representations from the health profession board on the issue. If the Minister remains dissatisfied that the health profession board is not exercising its functions diligently then he or she may write to the board to tell them what they are to do to conduct themselves diligently.

The Minister may be guided in his or her assessment of the diligence of a board by reference to the functions of board set out within the Act. The Minister may or must

also take into account any matter set out in regulations regarding to the functions of a board.

Clause 30. Discharging health profession board - After giving the board written notice, and after a reasonable time has passed the Minister may advise the board of why he or she is not satisfied that the board is exercising its functions diligently. The Minister may also provide the board a minimum of 14 days to provide reasons why it should not be discharged.

After considering any representations from a health professions board the Minister may ask the Legislative Assembly to approve the discharge of a health board. The Legislative Assembly may agree to such action by the passing of a resolution. The Bill provides that if the Legislative Assembly approves the discharge of a health profession board the discharge is given effect by the Minister writing to the board.

Clause 31. Effect of discharge-interim Board – If action has been completed to discharge a health profession board the Minister may appoint health professionals to an interim health profession board if the Minister is satisfied that the person has the experience to exercise the functions required of a board member. An appointment is for 6 months only and may not be extended. The period of 6 months is to permit the necessary arrangements to be made to appoint a replacement board including the calling of nominations and the fulfilment of electoral processes if required.

Division 5.2 Status and Powers of health profession boards

Clause 32. Legal status of health profession board – The Bill provides that a health professional board has the usual characteristics of a corporation.

This provision provides amongst other matters certainty about the status of a health profession board. In particular it clarifies that board conduct is independent of other agency decision-making and supports the existing practise of Boards managing their independent business affairs.

Clause 33. Banking and investment of money of board – Health boards must-

1. maintain one or more accounts with a deposit taking institution; and
2. pay all monies received into an accounts; and
3. pay all amounts it spends out of an account.

The health professional board can also invest its money in a manner that it considers appropriate.

The *Legislation Act 2001* defines what is meant by an authorised deposit taking institution.

Clause 34. Prohibition of business – Members of board must not knowingly agree to a health profession board engaging in business that is outside of its functions.

Clause 35. Borrowing power – The Bill permits a health profession board, following an unopposed resolution, to

1. Borrow money required for the exercise of its functions;
2. Secure repayment of any amount borrowed and the payment of interest on the borrowed amount.

An unopposed resolution means a resolution that no one votes against and there is at least one vote in favour of the resolution.

Clause 36. Community representative list – The Bill provides for one or more community representatives to be appointed as members of a health professions board. To facilitate this community representation, the board is to maintain a list of persons who are suitable to represent community interests in relation to the health profession. The Bill requires that the Minister endorse the list in writing. The list is a notifiable instrument.

PART 6 REGULATION OF HEALTH PROFESSIONALS

Division 6.1 Registration of health professionals

Clause 37. Who may be registered as a health professional? – The health profession board for a health profession is required to register or renew the registration of a person (or a corporation should the regulations allow a corporation to be registered in the health profession) as a health professional if the health board is satisfied that –

1. the person satisfies the suitability to practise requirements for the profession; and
2. the persons (individual applicants or individuals who may be providing health services on behalf of the corporation) knowledge of written and spoken English is adequate to allow the person to practice in the profession; and
3. the person is covered by insurance (if any) required by the regulations.

In assessing a health professional's application for registration or re-registration a health board may register a person with conditions placed on their registration or register a person unconditionally. Notwithstanding that a person has met the general requirements for registration as set out in the Act, the regulations may prescribe profession specific requirements for registration that may mean a person does not meet the requirements for unconditional registration.

The health professional regulation may also be prescriptive in terms of details of –

1. what an application for registration must contain and how it must be made; and
2. when a person is taken to be suitable to practise in the health profession; and
3. when someone may be registered conditionally, and
4. when the health professional board may apply to the health professions tribunal for the suspension or cancellation of registration.

The regulations may also set out when a health professional's registration may be renewed (for example, annually on a particular date) or the requirements if a registration is renewed retrospectively.

Division 6.2 Performance reviews – The Bill provides that in addition to examining a health professional’s initial suitability for registration a health profession board has a role in the overseeing the application of a health professional’s professional practice.

Clause 38 Review of health professionals professional practice -Health profession boards may review a health professional’s professional practice in circumstances where either –

1. the health professional agrees; or
2. the health professional has been required to take part in a review by a health professions tribunal or by a professional standards panel.

Health Boards are agents of government and persons who are engaged by a board to review a health professional’s practice act on behalf of the board. The reviewer of a health professionals practice may do so by asking the health profession questions, by requiring the health professional to undergo a test or by reviewing the health professionals clinical records. It is intended that any inquiry conducted in relation to the health professional’s clinical records complies with relevant Privacy legislation.

Clause 39. Initial and final review reports - The Bill requires that the person who conducts a review of a health professionals professional practice must prepare an initial report on the results of the review, and give a copy of the review to the health professional. The reviewer must also give written notice to the health professional that they have 30 days in which to respond to the report.

After considering the health professional’s response the reviewer is to prepare a written report and give a copy to the health professional and relevant health board. The health professional board may or may not choose to consider the report as a breach of a required standard of practice.

PART 7 HEALTH PROFESSIONAL TRIBUNAL

Division 7.1 Health professions tribunal

Clause 40. Establishment and functions of health profession tribunal – The Bill provides for the establishment of the Australian Capital Territory Health Professions Tribunal. The tribunal is a new entity that functions to bring independent judgement and scrutiny to applications concerning registered health professionals. Matters to be considered by the tribunal include-

1. applications made to the tribunal for decision about whether a registered health professional has met the required standard of practice or satisfies the suitability to practise requirements. Usually such matters would involve serious public protection concerns and may if established lead to the health professional’s registration being suspended or cancelled. Matters of lesser seriousness would in most circumstances be dealt with by a health profession board through its panel system;
2. the making of emergency orders if required;
3. to hear applications to review a decision of health profession boards and

- professional standard panels;
- 4. to answer questions of law referred to the health profession tribunal by health profession boards.

The Bill permits other functions to be given to the health professions tribunal by the Bill or by any other law of the Territory.

Clause 41. Appointment of tribunal president – The Executive Government may appoint a person who is a magistrate to be president of the health professions tribunal. An appointment under this clause is for 5 years and the appointment is subject to scrutiny as a notifiable instrument.

Clause 42. How is a health professions tribunal panel made up? A health profession tribunal panel is formed by the health professions tribunal president and 3 members nominated under clause 43 of the Bill.

A health professions tribunal panel is formed to hear an application about a matter relating to a registered health professional. The panel may hear more than one matter relating to health professions in that profession. The Bill also establishes circumstances where the health tribunal president may act alone.

Clause 43. Nomination of panel members - The Bill provides that where an application to a health professions tribunal is made about a health professional the tribunal president must ask the relevant health professions board to provide panel members. The health professions board is to nominate 3 panel members of whom -

1. 2 must be health professionals, with one of these health professionals being from the same health profession as the health professional to which the application relates. Such health professional participation is considered to provide enhanced knowledge within the panel of professional standards of practice and competence to practise requirements; and
2. 1 must be a community representative. Community representation supports enhanced consideration of public protection aspects of an application.

To ensure an appropriate nomination of a health professional to a health professions tribunal panel the Bill permits the health professional to be drawn from either the ACT or elsewhere.

The health professions board is to nominate the community representative from the community representative list that it maintains under the Act.

Where a suitable health professions tribunal panel is in existence the health professions tribunal president need not call for fresh nominations from the health professions board.

Clause 44. When may president alone constitute health profession tribunal? – The Bill permits that in certain circumstances it will be expedient and appropriate for the health profession tribunal president to consider matters alone. The functions that a health profession tribunal president may perform while sitting alone include –

1. an application by a health profession board for an interim or emergency order about a health professional's registration;

2. an application from a health profession board for directions on how to proceed in relation to a report or a complaint about a health professional;
3. a matter that is admitted or not contested or in relation to a matter where the parties have agreed to an approach;
4. a matter where the relevant parties agree to the president exercising his or her powers alone;
5. an application that a hearing, or part hearing, be closed
6. conducting a preliminary hearing into a matter under clause 58.

A fully constituted tribunal panel must hear matters that are outside of the above functions.

Clause 45. Registrar – The Bill provides that the registrar of the Magistrates Court is to be the registrar of the health professions tribunal. The registrar acts under the direction of the health professions tribunal president.

Division 7.2 Applications to health professions tribunal

Clause 46. Application to health professions tribunal for review – The Bill establishes that an application for review may be made to a health professions tribunal in respect of a decision of a health professions board to –

1. to register or not register a person;
2. to register a person conditionally;
3. to register a person for less than 1 year;
4. to impose conditions or refuse to impose conditions on a person's registration.

A health professions tribunal may also review a decision of a health profession board's professional standards panel that a person has breached the required standard of practice or competence to practice requirements. The tribunal may in addition review any other decision relating to powers exercised by a board under the regulations to this Bill.

Applications for review of a decision of a health professions board may be made by a person directly affected by the decision or anyone else with the leave of the health professions tribunal.

Clause 47. How to make an application – Under the Bill an application to the health professions tribunal is made by filing a written application with the tribunal. Where an application is in respect of a matter set out in clause 46 of the Bill the application must be made within 28 days of the health professional receiving notice of the health profession board's decision. The Bill however allows the health professions tribunal discretion to extend the time in which an application can be made.

Clause 48. Parties to proceeding – The Bill sets out that the parties to a proceeding on an application relating to a decision about a person include-

1. the person;
2. the health profession board that made the decision or the board that established the professional standard panel that made the decision;

3. any one else with leave of the health professions tribunal.

Clause 49. Referral to panel by tribunal – The Bill provides the health professions tribunal with facility to refer an application or part of an application for consideration by a panel established by a health profession board. The health professions board may prepare a report on its consideration of the matter and refer its report back to the tribunal. The tribunal has power to adopt the board’s report as its own or it may adopt a decision made in a report as its own decision in respect to an application.

Division 7.3 Tribunal proceedings

Clause 50. Time and place of proceedings - The Bill provides that the tribunal president decides the times and places that a health tribunal will sit.

Clause 51. Notice of hearing – The Bill requires that the health professions tribunal president give notice of the intention to hear an application to the parties to the proceeding on the application. At least one month’s notice of a hearing is to be provided to the parties.

Clause 52. Hearing usually in public – The Bill provides that most applications or inquiry into applications that proceed before a health professions tribunal are to be open to the public. In circumstances prescribed by clause 53 a tribunal hearing or part of a hearing may be closed to the public.

Clause 53. Closed hearings in special circumstances – In the interests of justice or where it is otherwise in the public interest a health profession’s tribunal may –

1. order that a hearing or part of a hearing is to be held in private and give directions about the people who may be present at a restricted hearing;
2. direct that evidence including documentation given at either a public or private hearing be subject to publication prohibitions or restrictions.
3. direct the non-disclosure or restriction of disclosure of evidence or documents to one or more parties to a proceeding.

Persons who contravene this clause without reasonable excuse may be subject to penalty.

Clause 54. Evidence - In order to permit the efficient hearing of a matter the Bill does not restrict a health professions tribunal to the rules of evidence. A tribunal must however ensure that it conducts itself within the expectations of natural justice.

Clause 55. Procedures - The Bill provides that where procedural guidance is not provided within the Act or within other law the health professions tribunal may decide its own procedures. Procedures followed by the tribunal should be simple and quick and observe natural justice.

Clause 56. Natural justice – The Bill requires the health professions tribunal to observe natural justice in all its operations.

Clause 57. Representation before tribunal - The Bill permits parties to a proceeding before a health professions tribunal to appear personally or to be represented by another person. Parties may be represented by a lawyer.

Clause 58. Preliminary hearing – The Bill provides that a tribunal president may conduct a preliminary hearing to decide matters that are preliminary to application. The tribunal president may do one or more of the following at a preliminary hearing –

1. make orders for the conduct of a hearing of the application;
2. require parties to make discover or permit inspection of evidentiary material;
3. require parties to file pleadings;
4. strike out an application on the basis that it is frivolous or vexatious.

During a preliminary hearing a tribunal president may also give instructions that a matter may be suitably referred to a health board’s personal assessment panel or professional standards panel. The tribunal president may also give instructions about the matters that should be considered or done by a health board panel. This provision facilitates both the efficient handling of matters and also provides an opportunity for the tribunal president to provide support for the activities of a health board panel.

Clause 59. Powers in relation to witnesses etc – The Bill states that a tribunal president or a person authorised in writing by the president may require a person to appear before the tribunal and give evidence or produce specified documents. Notice under this clause is to be provided in writing.

Persons who are required by notice to attend a tribunal must do so and must attend until excused by the health professions tribunal president. A specified penalty may be applied to persons who breach this provision.

The Tribunal president has the option of taking evidence under oath or by affirmation. The president also has power to require a witness to a hearing to answer a question or to produce a document or anything else that is relevant to a hearing. The Bill provides that persons who fail to take an oath or make an affirmation or persons who fail to give evidence may be subject to penalty.

Clause 60. Adjournment – The Bill supports reasonable action by the health profession’s tribunal to adjourn proceedings at any point considered appropriate.

Clause 61. Interim and Emergency Orders – The Bill empowers the health professions tribunal to make an interim or emergency order where –

- a) it is requested to make an interim or emergency order and the Tribunal considers such action to be in the public interest or the wellbeing of the health professional; or
- b) it considers an interim or emergency order to be appropriate prior to an adjournment of proceedings.

An interim or emergency order that is made when a proceeding is adjourned generally ends when a final order is made at the end of a tribunal proceeding. The health professions tribunal may however determine an earlier end to an interim or emergency order.

An interim or emergency order that is made in respect to an application is valid for the period stated in the order but may not be in force for more than 3 months. The tribunal may however renew an interim or emergency order for one further period of 3 months. The intent of this time limitation is to encourage the early resolution of proceedings.

Clause 62. Decision without inquiry – The Bill provides for certain matters to be dealt with expeditiously. A health professions tribunal may decide to give a decision on a matter without holding an inquiry hearing. Circumstances where action under this provision may occur include where a health professional agrees that they have been; contravening or have contravened a required standard of practice; does not satisfy the suitability to practice requirements; or does not have the insurance (if any) required under the regulations. The health professions tribunal is however to be satisfied, prior to making a decision under this provision, that it has considered representations made about the matter, that the public interest has been satisfied and that it has sufficient information upon which to base its decision. The health professions tribunal must give written notice to parties to the proceeding that they have 21 days to make representations about the tribunal’s intention to make a decision without an inquiry.

Clause 63. Decisions of tribunal – The Bill provides that a decision of a tribunal panel is the decision about which the majority of the panel members agree. Where there is no majority agreement then the decision of the health tribunal president becomes the decision of the tribunal panel.

Clause 64. Orders tribunal may make – The Bill provides that a health professions tribunal may make one or more of the following orders in relation to a registered health professional –

1. counsel, caution or reprimand the person;
2. require the person to undergo stated medical, psychiatric, or psychological assessment, counselling or both;
3. impose on the person’s registration any condition that the tribunal considers appropriate to protect the public;
4. require the person to take part in a review of the persons clinical practice;
5. require the person to complete a stated educational or other stated professional development course;
6. require the person to report on the person’s practice at stated times, in the way stated, and to a named person;
7. require the person to seek and take advice from a stated entity about the management of the person’s practice;
8. require the supervision, monitoring or reporting about the affect of something the person is required to do by the tribunal;
9. accept a voluntary undertaking from the person;
10. require the relevant health professional board to suspend the persons registration for a stated period;
11. cancel the person’s registration;

12. if the person is not registered – declare that, if the person had been registered, the tribunal would have found that the person contravened a required standard of practice, or did not satisfy the suitability to practise requirements. (this provision allows a tribunal to take action in respect to a person who was previously registered as a health professional. Circumstances may exist where the persons standard of practice as a registered health professional was such that an order to protect the public is required in the event that they should again seek to practise as a registered health professional.)

The tribunal may also make any other order it considers are appropriate. As soon as practical the tribunal is to give written notice of an order to the parties to a proceeding. The tribunal may give notice of an order to any one else with a legitimate interest in the proceedings that it considers appropriate.

Clause 65. Notice of decision – Notice of a decision of the tribunal is to be known as the decision notice. The decision notice is to contain an explanation of the reasons for the tribunal’s decision. Certain information may be omitted from the notice if the tribunal considers that it is not in the interests of a person or is not necessary or desirable in the public interest. Where a decision is taken to omit information than the decision notice must contain a statement to this effect.

Clause 66. Referral of questions of law to Supreme Court – The Bill provides that the health professions tribunal can, on its own application or on behalf of a party to a proceeding, make an application to the Supreme Court to obtain guidance on a matter of law. When an application is made to the court the tribunal cannot act in a manner that presupposes the court’s judgement. The tribunal can also not act contrary to a decision that is made by the court.

Clause 67. Appeals to Supreme Court – The Bill directs that a party to a hearing of a health professions tribunal may appeal to the Supreme Court about a decision of the tribunal.

Clause 68. Disrupting etc a health professions tribunal – A person who either at a health professions tribunal or within the hearing of the tribunal does any of the following, may be subject to penalty –

1. threaten, disturb or insult the health professions tribunal;
2. interrupt, interfere with or obstruct proceedings of the tribunal; or
3. commit any other act that is a wilful contempt of the tribunal.

Clause 69. Approved forms – The Bill provides that a tribunal may in writing approve forms for particular purposes. Approved forms are a notifiable instrument.

PART 8 - OFFENCES

Clause 70. Meaning of registered for pt 8 – For part 8 a person is not registered, if the person’s registration is suspended.

Clause 71. Offence to pretend registration –It is an offence under this Bill for a person to pretend that they are registered as a health professional when they are not currently registered under this Act. This provision supports one of the fundamental public protection principles of the Bill. Requiring standards to be met by those who operate as registered health professionals protects the public.

Clause 72. Provision of regulated health service by unregistered people – This provision provides that a person is not to provide, as part of their business, a regulated health service to a person in the ACT unless they are registered as a health professional. A person commits an offence if they intentionally do so and the person is not registered in a health profession. A regulated health service is defined in the Bill as a service ordinarily provided by a health professional who belongs to a regulated health profession.

This provision does not apply in certain circumstances where –

1. a health service is provided in an emergency. For example where a person who is registered in a health profession in another State or Territory provides a health service in the ACT during an event that is recognised as an emergency;
2. where a person who is registered in a health profession in another State or Territory is in the ACT solely for the purposes of body organ retrieval or removal for purposes associated most commonly with transplantation;
3. where a person who is registered in a health profession in another State or Territory acts as a health escort to a person being transported in or out of the territory; or
4. the provision, by mail order, or over the Internet or by other electronic means, of manufactured aids to rehabilitation, surgical prosthetics and orthotics or pharmaceuticals; or
4. where the health service provided is one that is ordinarily a service provided by a profession that is not subject to regulation under this Act.

It is not intended that the restrictions under this provision apply to the conduct of business or activities of persons who supply, via a mail order system, rehabilitation aids, prosthetic aids and orthotics aids, or pharmaceuticals.

Clause 73. Conditions on practice – Where a person has a condition placed on their registration a registered health professional commits an offence if he or she knowingly provides a regulated health service in contravention of that condition. This provision applies if the condition has been placed on the person’s registration in the ACT or under similar laws that apply in another jurisdiction.

Clause 74. Change of registered details – In order that action may be taken to protect the public a health board needs to have access to current access information on each person registered in the profession. This provision requires that a registered

health professional promptly advise in writing the relevant board of any change to their name or address. Failure to do so within the specified period constitutes an offence.

Clause 75. No insurance – The bill provides that if a health professional is required to have insurance and they cease to have this insurance they must inform the relevant health professional board as soon as practical. Failure to inform constitutes an offence.

PART 9 REPORTING

Division 9.1 Object of pt 9

Clause 76. Object of Pt 9 – Part 9 encourages the reporting of a registered health professional's behaviour where such behaviour contravenes or may have contravened a required standard of practice, or does not satisfy the suitability to practise requirements. The purposes of reporting are both to promote action being taken to protect the public and to effect a scheme of early intervention in terms of rehabilitation or retraining for the health professional concerned. The term 'report' has been used to separate protective action under this Act from schemes involving health complaints. The latter complaint schemes may more broadly involve negligent conduct or systemic issues and may also involve settlement and fault. Reporting is intended to be a largely pro-active process related only to registered health professionals and unrelated to dispute resolution.

Division 9.2 Reporting

Clause 77. Meaning of registered health professional for div 9.2 – Under this part the term-registered health professional refers to a person who is or was registered at the time an action or omission occurred.

Clause 78. Who may report? Any one may report if they have a reasonable believe that a registered health professional may have been contravening or have contravened a required standard of practice or does not satisfy the suitability to practise requirements. Persons, who as a result of their occupation gain information that constitutes a report, such as officers of the court or a police officer are included in the definition of persons who may make a report.

Clause 79. Who may report be given to? – It is intended that a report could either be made to a health profession board or to the Community and Health Service Complaints Commissioner. The Commissioner will perform the function of register of all reports and accordingly the health board is required to give a copy of any report to the Commissioner.

Clause 80. False or misleading report – Persons who provide a false or misleading report may be penalised under the Act.

Clause 81. How must a report be made? – The Bill intends that the legitimacy of a report be encouraged through requiring reports to be in writing, to be signed and to include details of the reporter’s name and address. Where a reporter does not comply with these requirements the health board or commissioner may still take action on the report (this legislative requirement has been adopted from the formal process for the making of a complaint under the *Community and Health Services Complaints Act 2002*) however the Bill permits the Minister to make guidelines for exercise by the relevant board in relation to this matter. The Community and Health Services Complaints Commissioner or the health board has, by exception, power to accept a verbal report. Guidelines are a disallowable instrument and must be notified.

Clause 82. Help in making a report – The Bill permits the Community and Health Services Complaints Commissioner or an executive officer of a health profession board to assist some one prepares a written report.

Clause 83. Further information about reports – The Bill provides that a health profession board can seek additional information and confirmation in relation to a report including requiring a report to be attested to by the making of a statutory declaration. The Bill requires that the board set a reasonable time period for this requirement to be met. (note: the *Community and Health Services Complaints Act 1993* gives similar powers to the commissioner)
If the reporter does not comply with a request to provide information in the form of a statutory declaration the report may still be made but a board is not bound to take action in relation to the report.

Clause 84. Notice to health professional reported – The Bill requires that where a report is made about a health professional in a regulated profession the relevant health profession board or the Community and Health Services Complaints Commissioner must tell the health professional concerned. The form of advice must be in writing, and it must provide information in relation to the general terms of the report and the intention of board and the commissioner to consider the report. The advice to the health professional should also contain the name of the person making the report unless it is considered that the provisions of clause 129 of this Bill apply. The provisions of clause 129 of the Bill are derived from section 27 of the *Community and Health Services Complaints Act 1993*. Section 27 of the latter Act prevents the Commissioner from giving the provider information in circumstances where the Commissioner considers that the disclosure might –

- put someone’s health or safety at risk; or
- cause some one to be provided with a community service or health service of a lower standard than the person would otherwise have received; or
- prejudice the assessment of a report or an investigation by the commissioner.

Where the commissioner stops believing that the above circumstances apply, the commissioner must provide the information.

PART 10 – JOINT CONSIDERATION WITH COMMISSIONER

The intent of this part is to prescribe joint consideration of a report between the Community and Health Services Complaints Commissioner and the relevant health board.

Clause 85. What does pt 10 apply to – The bill provides that certain matters will be jointly considered by the Community and Health Services Complaints Commissioner. Such matters include –

1. a report or complaint that the relevant health professional board considers indicates that a health professional may be contravening or have contravened a required standard of practice or does not satisfy the suitability to practise requirements;
2. a report or complaint that has been considered by a boards personal standards panel and the board considers that the matter now indicates a breach of standard of practice;
3. where a board rejects the recommendations of a board’s personal standards panel and the board considers that a health professional has breached or is likely to breach the required standard of practice;
4. a professional standards panel refers a matter back to board because the panel considers the report or complaint to have been inappropriately referred to it.

Clause 86. Consultation with the commissioner etc – the Bill provides that a health professional board must consult with the Community and Health Services Complaints Commissioner in relation to matters dealt with in part 10. The relevant board must also seek to make joint decisions with the commissioner in relation to matters dealt with under this part.

Where a jointly agreed decision cannot be made than the most serious action proposed by either the board or the commissioner must be followed.

Decision on actions to be taken in respect to a matter considered under part 10 are as follows. The actions are listed from most serious to least serious –

1. make an application to the tribunal for an emergency order under part 11 of the Bill;
2. refer the matter to the health professions tribunal;
3. refer the matter for investigation by the Community and Health Service Commissioner;
4. refer the health professional to a professional standards committee of board;
5. refer the health professional to a personal assessment panel of board;
6. if the matter is a complaint refer the matter for conciliation under the *Community and Health Services Complaints Act 1993*;
7. refuse to investigate the matter further.

If a complaint or report indicates that the health professional may have committed an offence against a law of the Territory than board may provide information to the chief police officer.

The Bill does not restrict a board from only taking a series of actions on a matter.

Clause 87. Indication that offence committed – The Bill provides that if a complaint or report indicates that an offence against another Territory law has

occurred then the board may give police a copy of the report or complaint. The board may however continue to take action on a matter that it has reported to police.

PART 11 – PERSONAL ASSESSMENT PANELS

A personal assessment panel is a panel that a board may establish as a means to hear a matter concerning a health professional's mental or physical health. The panel is prescribed as a less formal forum that has a rehabilitation focus. Most matters addressed by the panel will take place with the consent of the health professional involved. A personal assessment panel does not make decisions in its own right but recommends actions for a health professions board's consideration.

Division 11.1 Establishment and Purpose

Clause 88. Establishment of personal assessment panel - The Bill provides that a board may establish one or more personal assessment panels. A board may refer a report or a complaint to a personal assessment panel if -

1. the report, complaint or review suggests that the state of a health professional's mental health or physical health, or both, are affecting the professional's competence to practise; and
2. the board is satisfied that there are grounds for believing that the health professional may be rehabilitated.

The bill requires that a health board refer a report or a complaint to a personal assessment panel if required to do so under the Community and Health Services Complaints Act.

Clause 89. Referral of application by health professions tribunal – The Bill establishes that where a health professions tribunal refers an application or part of an application to a personal assessment panel a board is obliged make such a referral. In such circumstances the panel is required to inquire into the matter as if it was a report and to report back to the tribunal. The panels report to the tribunal may include a recommendation that is the same type of recommendation that a panel can make to a health board under clause 98. The panel may alternatively recommend that the health professional be counselled. The Bill further provides that a panel could report that it cannot make an appropriate recommendation.

Clause 90. What does a personal assessment panel do? – the Bill provides that the role of a personal assessment panel is to –

1. assess whether the mental or physical health or both, of a registered health professional are affecting the health professional's ability to meet the required standard of practice or suitability to practise requirements; and
2. if the panel is satisfied that the health professional's mental or physical health, or both, are affecting the professional's ability to meet the required standard of practice, or the suitability to practise – decides whether and how the professional may be rehabilitated.

A personal assessment panel also considers applications to review conditions on registration that may have been imposed as a result of a panel's recommendation. A personal assessment panel cannot assess a report or complaint on its own motion.

Clause 91. Who must be on a personal assessment panel? – The Bill provides that a personal assessment panel is appointed by a health professions board and consists of 3 members. At least one member of the panel must be a registered health professional but may be registered in another jurisdiction. The Bill does not require that the health professional be registered in the same health profession as the board is responsible for.

The Bill seeks to ensure that a broad non-health professional view of the report or complaint is considered by providing that one member of the panel is not to be a registered health professional. The bill also supports that members of the panel may be drawn both from the ACT or elsewhere. The health professions board is to appoint one member of the panel as the panel chairperson.

Division 11.2 Assessments by personal assessment panels

Clause 92. Natural justice – The Bill provides that the panel must observe natural justice.

Clause 93. Assessment by personal assessment panel – The Bill allows a panel to consider information that is available to it including the report or complaint, any other information provided by the Community and health Services Complaints Commissioner or person who made the report and any other relevant information collected by the panel.

The personal assessment panel is also obliged consider information provided by the health professional.

Clause 94. Powers of personal assessment panel on inquiry – The Bill requires that a personal assessment panel must –

1. endeavour to talk to the health professional about the report, complaint or application;
2. give the health professional an opportunity to respond to information given to the panel;
3. consider whether the health professional is contravening the required standard of practice;
4. if satisfied if there was a contravention – consider whether the breach was caused, or contributed by to, by the health professional’s mental or physical health.

To assist the panel the Bill provides that a panel may make enquires or obtain information from anywhere appropriate. The panel may also require that a health professional undergo a medical, psychiatric or psychological examination or test. Where such a test is performed the board meets the cost of the initial examination or test.

Clause 95. Legal representation before personal assessment panel – The Bill intends that matters before a panel be non-adversarial. The Bill provides that a lawyer may represent a person before a personal assessment panel.

Clause 96. How does a personal assessment panel reach a decision? – The Bill provides that the agreed decision of a majority of panel members is the decision of the panel. If however the panel cannot reach a majority decision than the decision of the panel chairperson is the decision of the panel.

Clause 97. Action of personal assessment panel after inquiry – The Bill provides that following an inquiry the personal assessment panel may with the agreement of the health professional concerned do 1 or more of the following –

1. counsel the health professional;
2. recommend that the health professional attend counselling or a rehabilitative program;
3. recommend to the health professional board that they take no further action in relation to the health professional;
4. recommend to the board that the board accept a voluntary undertaking from the health professional;
5. recommend that a stated condition be placed on the health professional's registration by the health board.

The personal assessment panel's recommendation to a board may include a recommendation that a health professional attend a named counsellor or program. The panel may also recommend that a panel review a health professional's registration or a condition placed on registration, at a particular time.

If a panel considers that it has no appropriate action available to it than it does not need to take action under this section.

Clause 98. Inappropriate referral to personal assessment panel – The Bill provides that a personal assessment panel may refer a matter back to board if the panel is of the view that the matter was inappropriately referred to them.

Clause 99. Referral to board – Where a personal assessment panel has considered a matter the Bill requires that the panel report back to the health professional board that originally considered the matter with the following information –

1. the information obtained by the panel;
2. a description of the assessment of the health professional;
3. what the panel decided to do and why; and
4. whether the health professional agreed to the action proposed to be taken to the panel.

Division 11.3 Action by Board after inquiry by personal assessment panel

Clause 100. Board consideration of referral by personal assessment panel – The Bill provides that where a personal assessment panel has referred a report to a health professional, Board must consider the report and decide what to do.

If the board considers that the health professional has, or may be contravening a standard of practice then it must take the matter back for consideration of appropriate

action with the Community and Health Services Complaints Commissioner or apply to the tribunal for an emergency order if satisfied this is necessary

Unless this is a matter for further review with the commissioner, board may –

1. Take action under clause 102;
2. refer the matter to a professional standards panel;
3. refer the matter to the Community and Health Services Complaints Commissioner for further investigation;
4. ask the health professional tribunal to suspend or cancel the health professional's registration;
5. ask the health professional tribunal to take any other appropriate action;
6. take no further action.

Clause 101. Acceptance of condition – The Bill provides that where a personal assessment panel has recommended that a condition be placed on a health professional's registration and the health professional has agreed a board may take such action.

Clause 102. Decision on referred health professional – Where a health professional makes a decision on a report from a personal assessment panel it is required to give the health professional a notice of decision. The notice is to include an explanation of the reasons for the decision. The board make also give written notice of the decision to the commissioner.

Clause 103. Application for condition review – If a decision has been placed on a health professional's registration the health professional may apply to have the condition removed or changed.

Clause 104. Review of application – The Bill provides that where an application has been received from a health professional for a review under clause 104, the board is to refer the matter to a personal assessment panel. The board is where possible, to refer the application to the panel that originally considered the matter.

The personal assessment panel must do one of the following after considering a review application –

1. recommend to the health professional board that the application be granted;
2. recommend to board that the stated parts of the application be granted or rejected;
3. recommend to board that the application be rejected;
4. recommend that the application be reviewed by a professional standards panel, the health tribunal or considered jointly by the Community and Health Services Complaints Commissioner and the board;
5. recommend that other action be taken and explain why the action is appropriate.

Recommendations under this section by the panel must be given to the health professions board in writing.

Clause 105. Action by board on recommendation by personal assessment panel

– The Bill provides that where a board has accepted the recommendations of a personal assessment panel that the health professions board is to advise the health professional in writing and include reasons for the decision.

If the health professions board rejects the recommendations of the panel they must make a decision on the application and advise the health professional in writing of the decision and the reasons for it.

If the board considers that the application relates to whether the health professional is contravening or has contravened the required standard of practise then it may choose to consider the matter jointly with the Community and Health Services Complaints Commissioner.

If the board considers the matter without consultation with the commissioner than it may tell the commissioner about the decision.

PART 12 PROFESSIONAL STANDARDS PANEL

A Professional Standards Panel is a panel that a board may establish as a means to hear a report, complaint or application for a condition review about a health professional's standard of practice. A professional standards panel considers reports or complaints where the outcome is not one that may lead to the suspension or removal of registration of a health professional. The decisions of the professional standards panel are decisions of board.

Division 12.1 Establishment of professional standards panel

Clause 106. Establishment of professional standards panel – The Bill provides that a health professions board may establish 1 or more professional standards panels.

Clause 107. What does a professional standards panel do? – Under this Bill the role of the professional standards panel is to decide whether a registered health professional has contravened or is contravening the required standard of practice or fails to satisfy the suitability to practise requirements.

The professional standards panel may consider a range of information that is available to it, including –

1. the report or complaint;
2. any information provided by the Community and Health Services Complaints Commissioner, or by the person made the report or complaint;
3. any other relevant information given to the panel.

The panel must consider information provided by the health professional before it makes any decision under this section.

A professional assessment panel may not consider a matter on its own motion but may only act on a matter that is the subject of a referral to it.

Clause 108. Who must be on a professional standards panel – The Bill provides that a professional standards panel consists of 3 members appointed by the board. One member of the panel must be registered, either locally or in an equivalent jurisdiction, in the same profession as the health professional to be considered by the panel. At least one member of the panel must not be a registered health professional. Panel members may be drawn from the ACT or elsewhere.

The health professions board is to appoint one member as the panel chairperson. A panel may be constituted to consider one individual matter about a health professional or it may be a panel established by board to consider all such professional standards matters.

Clause 109. Referral of application by health professions tribunal – The Bill provides that a board must refer an application or part of an application to a professional standards panel if required to do so by a health profession tribunal. The professional assessment panel must conduct an inquiry into such applications that have been referred to it as if the matter was a report. It is however not appropriate in these circumstances that the panel exercises its powers to make an interim order under clause 119.

After the professional standards panel considers an application it must provide a report to the tribunal. The panel's report may recommend that the tribunal take any of the actions that the panel could make under clause 123 of the Bill.

If the panel is unable to make an appropriate recommendation to the tribunal then it must state this fact to the tribunal.

Division 12.2 Inquiries by professional standards panels

Clause 110. When may professional standards panel choose not to inquire? – The Bill provides that where a health professional admits to a matter, a professional standards panel may consider that it is appropriate to make a decision without the need for an inquiry.

Clause 111. How does a professional standards panel reach a decision? – Decisions of a professional standards panel are the decisions about which a majority of the panel agrees. Where a panel is unable to reach a majority decision then the decision of the panel is the decision of the panel chairperson.

Clause 112. Inappropriate referral to professional standards panel – The Bill provides that a panel may refer a matter back to a board when it considers that the original referral of the matter was inappropriate. An inappropriate referral may be made in circumstances where –

1. the panel believes on reasonable grounds that the report or complaint if substantiated may provide grounds for suspension or cancellation of a person's registration;
2. the panel considers that the matter should appropriately be considered by a personal assessment panel; or
3. the panel considers that emergency action is necessary.

Where a matter is referred back to the board as an inappropriate referral than board is to consider the referral jointly with the Community and Health Services Complaints Commissioner.

Division 12.3 Procedural requirements for inquiry hearings

Clause 113. Setting inquiry hearing times – If a matter is referred to a health professional standards panel the panel must set a time for holding an inquiry about a health professional. The Bill also requires that at least 1 month before the hearing day the panel give written notice of the hearing time and place to the health professional, the relevant health professions board and the Community and Health Services Complaints Commissioner. The panel may also give notice of the inquiry to the person who made the report or complaint.

Clause 114. Conduct of inquiry hearing – The Bill provides that a professional standards panel can conduct a hearing in any way it considers fit. The panel is required however to observe natural justice.

Clause 115. Inquiry by professional standards panel – The Bill permits a standards panel to make inquires and obtain any information it needs to decide a matter before it. The panel has power in this regard to arrange for a performance review to be conducted of a health professional's practise. The panel need not confine itself to a review of one incident but may also consider information relating to the pattern of practice of a health professional.

Clause 116. Role of commissioner – The Bill provides that the Community and Health Services Complaints Commissioner may give evidence about an assessment or an investigation that he or she has conducted in respect to a report or complaint. The Bill further permits the Commissioner to be present at a professional standards panel hearing even though he or she is not giving evidence.

Clause 117. Inquiry hearings closed – Inquiry hearings will normally be closed to the public. The Bill however provides that a professional standards panel may direct that a hearing be open to the public if the benefits of an open hearing outweigh the disadvantages to the health professional concerned.

Clause 118. Interim actions– The Bill provides that a professional standards panel may take action under clause 123 (2) on an interim basis prior to the finalisation of a hearing. Action taken of an interim nature is to be based on a need to protect the public. An interim decision has effect until the panel reaches its final decision.

Clause 119. Adjournment – A standards panel may adjourn an inquiry if such action is appropriate. The Bill however provides that a decision to adjourn a matter should be balanced by the desirability to deal with matters promptly.

Clause 120. Representation at professional standards panel inquiry hearing – The Bill provides that persons specified may be accompanied at a standards panel inquiry by a legal adviser or other support person. Specified persons include –

1. the health professional;

2. the Community and Health Services Commissioner;
3. a witness that is permitted by the panel to attend the inquiry.

The Bill intends that a professional standards panel be conducted in a manner that is as non-adversarial as possible. The panel will also in most instances be conducted in the first person. Where the panel is of the view that special circumstances exist they may agree to a person being represented by a lawyer or other support person.

Clause 121. Record of standards inquiry – The Bill requires that a professional standards panel must keep a record of a standards inquiry.

Clause 122. Action of professional standards panel after inquiry – The Bill provides that a decision of a professional standards panel involves consideration of –

1. if the health professional has contravened or is contravening the required standard of practice or fails to satisfy the suitability to practise requirements; or
2. if the health professional has or is otherwise putting or has put public safety at risk.

Where a professional standards committee is satisfied that a health professional has breached the requirements or put public safety at risk the panel may do one or more of the following –

1. counsel, caution or reprimand the health professional;
2. require the health professional to undergo stated medical, psychiatric or psychological assessment, counselling or both;
3. impose on the health professionals registration a condition that the panel considers appropriate to protect the public;
4. require the health professional to take part in a review of the health professionals clinical practice;
5. require the health professional to complete a stated professional development course;
6. require the health professional to report on the professional's practice at stated times, in a way stated and to a named person;
7. require that the health professional seek and take advice from stated entities in relation to the management of the professionals practice;
8. require the supervision, monitoring or reporting about the affect of something the health professional is required to do by the panel;
9. refer the report, complaint or application for conditions review, along with standard inquiry report, to the health professions tribunal;
10. accept a stated voluntary undertaking from the health professional.

If the professional standards committee acts in the above ways then the action is an act of the health professions board.

Clause 123. Inquiry report – The Bill requires that a professional standards panel will, as soon as practical after finishing a standards inquiry, prepare a written report that includes the following information;

1. if the panel decides that the health professional contravened or is contravening the required standard of practice or fails to satisfy the

- suitability to practise requirements – how the requirements were contravened;
2. whether there is, or was a risk to the public from the health professional's practise and what the risk is or was;
 3. the action taken by the panel and reasons for the action.

The Bill requires that the panel, within 28 days of the end of a standards inquiry, will give the standards inquiry report to –

1. the health professional; and
2. the health professional board that established the panel; and
3. the Community and Health Services Complaints Commissioner.

The panel may also give the report to any one else that it considers appropriate. The panel may however omit from a copy of the report material in order to protect someone's confidentiality.

Clause 124. Publication of standards inquiry report – A standards inquiry is conducted in the public interest and therefore the Bill requires a professional standards panel to publish a standards inquiry report. The Bill provides however that a panel may omit material, including the name of the health professional, from a copy of the report if there is reasonable grounds that the public interest is not served by including the material. If through omitting material the report is not readily understood the panel may publish a summary of the report.

PART 13 PROTECTION AND INFORMATION

This part provides for the protection of persons and information from action or disclosure in circumstances that support the protective intent of the legislation.

Clause 125. Meaning of informed person for pt 13 – The Bill provides for the use and definition of the term 'informed person' where a person is or has been –

1. a member of a health profession board; or
2. a member of the health profession tribunal; or
3. a member of a personal assessment panel or a professional standards panel; or
4. a member of the staff of a health profession board; or
5. acting under the direction or authority of a health profession board; or
6. a member of the staff of the health profession tribunal; or
7. acting under the direction or authority of the health professions tribunal; or
8. providing advice or expertise to the health profession tribunal.

Clause 126. Protection of participants and people reporting – the Bill provides that an action cannot be taken against certain persons to whom this section applies in relation to an act done or omitted to be done where they have acted honestly. The Bill prescribes these persons as being a person who is or has been a participant in a proceeding about a report, a complaint or an application for a standards review before a health board, a personal assessment panel; a professional standards panel, the health professions tribunal. This section also protects the person who made a report.

Clause 127. Protection of informed person – The Bill provides that a person who is an informed person under the Act does not incur civil or criminal liability for anything done or not done by the person acting honestly and without negligence for the Act.

The Bill further provides that if a civil liability arises then this is a liability of the ACT and not the informed person.

Clause 128. Non-disclosure of reports - The Bill contains a fundamental provision in relation to the protection of persons who make a report. This provision has been developed from the *Community and Health Services Complaints Act 1993*. Persons in the category of persons referred to in clause 126 as being ‘informed persons’ must not disclose information to a health professional that permits the reporter to be identified where this would –

1. put at risk the health or safety of anyone; or
2. cause anyone to receive a lower standard of health service than the person would have received if the reporter had not been identified; or
3. prejudice the management of the report or an investigation by the Community and Health Services Complaints Commissioner or health profession board.

Clause 129. Secrecy– The Bill provides a general restriction on the unauthorised divulging or recording of information. A breach of confidentiality and proper use of information may place at risk both an individuals privacy and public confidence in the operation of the legislation.

The Bill prohibits an informed person from directly or indirectly making a record of, or divulging, communicating or producing to anyone, protected information about another person where the informed person has acquired the information because they are an informed person.

The Bill provides that the above prohibitions do not apply if the informed person makes the record or divulges or communicates the information in the exercise of a function of the person under this Act or law of the ACT.

An informed person may also divulge or communicate protected information -

1. with the consent of the person from whom the information was obtained from; or
2. to a person administering or enforcing corresponding law in a local jurisdiction; or
3. to a law enforcement authority.

The Bill further provides that an informed person need not divulge or communicate protected information to a court or produce a document that contains protected information to a court, unless it is necessary to do so for this Act or another Act.

PART 14 MISCELLANEOUS

Clause 130. Exemptions from Act-The Minister may exempt individuals from a provision of this Act if satisfied that public interest is served by doing so.

Clause 131. Cost of supervising protective action – The Bill provides that a Board may charge a health professional a fee or require the health professional to pay reasonable costs associated with monitoring compliance with a condition or requirement on their registration.

Clause 132. Determination of fees by board – The Bill permits a health profession board to determine and apply fees to certain of its activities. Fees established by a health profession board apply only to the health profession the board regulates. A health board is required to notify under the *Legislation Act 2001* any fee determination. A fee determination may be disallowed by the Legislative Assembly.

Clause 133. Determination of fees by Minister - The Minister may determine fees for this Act excluding fees in relation to a health professional board. The Minister’s fee determinations must be notified and the notice is a notifiable instrument.

Clause 134. Regulation-making power – The Bill provides for the Executive to have a general regulation making power in relation to the Act. This regulation power includes the making of regulations that impose conditions, including restrictions, on the practice of a health professional. Regulations may also apply, adopt or incorporate an instrument such that it may be applied in full or in part in the ACT. Before making such regulations the Executive is to be satisfied that the conditions are necessary to protect the public or are in the public interest.

PART 15 TRANSITIONAL PROVISIONS

Transitional provisions are provided under this Part to facilitate the orderly and lawful transfer of powers and obligations from existing health professional legislation to the revised legislation.

Clause 135. Definition for pt 15 – To interpret this part certain terms need to be understood. These terms are –

board means a board established under a former act.

commencement day means the day the former Act that related to a profession is repealed.

Repealed act means an Act repealed under clause 147.

Clause 136. Repeals - The individual Acts that applied to specific health professions are repealed by the introduction of this Bill. Acts that applied to Health Profession Board activities are also repealed by this act. The repealed Acts are –

- *Chiropractors and Osteopaths Act 1983* A1983-28
- *Dental Technicians and dental Prosthetists Registration Act 1988* A1988-85
- *Dentists Act 1931* A1931-8
- *Health Professions Boards (Elections) Act 1980* A1980-45
- *Health professions Boards (Procedures) Act 1981* A1981-46
- *Medical Practitioners Act 1930* A1930-13
- *Nurses Act 1988* A1988-61
- *Optometrist Act 1956* A1956-54
- *Pharmacy Act 1931* A1931-10

- *Physiotherapist Act 1977 A1977-60*
- *Podiatrist Act 1994 A1994-82*
- *Psychologist Act 1994 A1994-87*

Clause 137. Professions to be regulated - The Bill provides that health professions that were regulated under an Act set out in clause 137 will continue to be registered under the revised Act. This Executive decision to continue to regulate these professions under these transitional provisions is not a decision that may be disallowed.

Clause 138. What happens to registration under repealed Acts? – If a person was registered as a health professional under a former Act immediately before this Act was commenced then they are taken to be registered under this Act. Unless a person's registration is cancelled or otherwise ends earlier their registration continues to the date of expiry that applied under the relevant repealed Act.

Clause 139. Conditional registration – If a person was registered under a former Act and their registration was subject to conditions these conditions continue to apply under this Act. The conditions apply till registration ends for the first time under this Act or the condition is amended or removed under this Act. This section applies in circumstances even where the condition could not be imposed under this Act.

Clause 140. What about unfinished board inquiry under repealed Acts? – Where a board has an inquiry in progress immediately before the commencement of this Act and the inquiry is not finished the inquiry is to be treated as a report under this Act.

Clause 141. What about board orders under repealed Acts?- If a board ordered a person to do something and the order is not completed prior to the commencement date the person is required to complete the order under this Act. Failure of a person to complete the order is to be taken as a contravention of this Act.

Clause 142. What about suspensions under repealed Acts? – If a person's registration was suspended immediately before the commencement day the suspension continues under this Act. The suspension continues in force for the period established under the former Act. Such a suspension cannot be extended however a health board may take action to suspend a person's registration under this Act.

Clause 143. Suspension or cancellation under repealed Acts – If a person's registration has been cancelled or suspended by a board this cancellation or suspension may be considered if the person submits an application for registration or re-registration under this Act.

Clause 144. What about current board fines under repealed Acts? – If a person has not paid a fine imposed under a former act prior to the commencement of this Act the person is required to pay the fine within the time period that was previously established. Failure to pay the fine within the time stated is taken as a contravention of this Act.

Clause 145. What about past board fines under repealed Acts? – The Bill provides that a person is to be taken as being in breach of this Act if they do not pay a fine imposed under a former Act where the fine expires not longer than one month before commencement day.

Clause 146. What about appeals from board decision? – If a person had a right to appeal a board decision immediately before the commencement day this right is not affected by the repeal of the former Act. If the body that hears the appeal refers the matter back to the decision-maker then the referral is to the relevant health profession board.

Clause 147. Vesting of assets and liabilities of Territory in health profession board? – The Bill empowers the Minister to make a declaration by which specified assets, rights or liabilities may be vested to particular health professions. This provision facilitates the orderly transfer of matters and assets that the Territory has nominally owned on behalf of the boards. Under the revised legislation the entities known as health profession boards may be given sole responsibility for the assets, rights or liabilities. Any declaration under this section is a notifiable instrument.

Clause 148. Registration of changes in title to certain assets – This provision supports the vesting of assets under Clause 149. The responsible representative of the Territory is required to register the transfer of assets to a health profession board.

Clause 149. Proceedings and evidence in relation to vested assets and liabilities – The Bill provides that if an action could or had begun in relation to a vested asset or liability prior to its transfer to a health professions board the board subsequently becomes a party to proceedings instead of the Territory. Proceedings in relation to a vested asset or liability are subject to the *Limitations Act 1985*.

Clause 150. Prerequisites for appointment to health profession board – Transitional provisions are provided to recognise a person's length of registration under a repealed Act as part of a determination of a person's eligibility for membership of a health profession board.

Clause 151. Transitional regulations – The regulations may prescribe savings or transitional matters because of the enactment of this Bill.

Clause 152. Modification of pt 15's operation – The Bill provides that the regulations may modify the operation of this part.

Clause 153. Expiry of part 15 – The Bill specifies that the transitional arrangements established under Part 15 expire two years after commencement day.

DICTIONARY

The dictionary sets out the meaning of words used in the Bill.