Mental Health Amendment Bill 2016

Explanatory Notes

Short title

The short title of the Bill is the Mental Health Amendment Bill 2016.

Policy objectives and the reasons for them

The Bill amends two Health portfolio Acts to address issues identified during implementation planning for the *Mental Health Act 2016* (Mental Health Act). In particular, the Bill amends the Mental Health Act to:

- provide a framework for people undergoing mental health assessments and examinations to do so without risk of self-incrimination; and
- make other clarifying and technical amendments to improve the intended operation of the Mental Health Act upon its commencement on 5 March 2017.

Following the enactment of the Mental Health Act, implementation work has been proceeding in a range of forums including the Court Liaison Service (CLS) Steering Committee. The CLS steering committee was set up to implement the Mental Health Act and is made up of representatives from the Queensland Magistrates Court, Queensland Mental Health Commission, Office of the Director of Public Prosecutions, Legal Aid Queensland, Aboriginal and Torres Strait Islander Legal Service, Queensland Law Society, Queensland Bar Association, Police Prosecutions, the Public Guardian.

As part of the implementation work, the CLS steering committee has raised concerns about the admissibility of statements made during mental health assessments and examinations, and has recommended amendments to the Mental Health Act. These proposed amendments were formally supported in a letter from the Chief Magistrate to the Minister dated 1 September 2016.

All of the agencies that now make up the CLS steering committee had an opportunity to comment on the Draft Bill which was publicly released by the Government. However, none of these agencies raised these concerns prior to its enactment. The Government has agreed to act on the recommendation of the CLS steering committee and make the proposed amendments. The Government has agreed to this in line with the written advice from the Chief Magistrate on behalf of the members of the CLS steering committee.

The Bill also makes clarifying and technical amendments to the *Public Health Act 2005* (Public Health Act) to ensure the provisions of that Act inserted by the Mental Health Act operate as intended.

The Bill also consequentially amends the *Coroners Act 2003*.

Admissibility of statements made during assessment or examination

Mental Health Act

The Mental Health Act received assent on 4 March 2016 and is scheduled to commence on 5 March 2017. On commencement, it will replace the *Mental Health Act 2000*. The Mental Health Act provides a regulatory framework for the management of people who do not have the capacity to make decisions about their own treatment and care, balancing treatment needs with the protection of the community.

Under the Mental Health Act, if a person is charged with a simple offence and a Magistrates Court is reasonably satisfied the person was of unsound mind at the time of the offence, or is unfit to stand trial, the Magistrates Court may dismiss the charge or adjourn the hearing of the charge. In deciding issues relating to the person's mental state, the Magistrates Court will be supported by the CLS in Queensland Health. The CLS consists of senior health practitioners who will assess the person's mental health and provide an assessment report to the Magistrates Court.

If a Magistrates Court has dismissed a charge due to a finding of unsound mind or unfitness for trial, or adjourned a hearing because the person is temporarily unfit for trial, the Magistrate may make an examination order in relation to the person. Alternatively, the Magistrate may make an examination order on the basis that it would benefit the person, even without dismissing or adjourning the charge. In making the order, the Magistrate must be reasonably satisfied the person has a mental health illness or must be unable to decide whether the person has a mental health illness or another mental health condition. Under an examination order, the person may be temporarily detained for examination by an authorised doctor in an authorised mental health service (AMHS) or public sector health service facility (PSHSF). The authorised doctor must prepare an examination report, including details of the examination.

Legal stakeholders involved in the implementation of the Mental Health Act, including the Chief Magistrate, have raised concerns that the Act may allow statements made by a person during a mental health assessment or examination to be admitted in evidence against the interests of the person.

Mental Health Assessments

Mental health assessments will be conducted by the CLS to assist the Magistrates Court to determine a person's soundness of mind at the time of the alleged offence or fitness to stand trial. The Magistrates Court may dismiss the charge or adjourn the hearing of the charge on the basis the person was of unsound mind at the time of the alleged offence or is unfit for trial.

While it is intended that assessments will be brief in nature, legal stakeholders are concerned they could include statements made by the person about the circumstances of the alleged offence. These statements may be admissible as evidence in criminal or civil proceedings, which is contrary to the purpose for which the information is collected. This may deter individuals from being frank about the circumstances of the alleged offence and compromise the assessment process, to the person's detriment.

Mental Health Examinations

Mental health examinations will be conducted by an authorised doctor pursuant to a Magistrates Court's examination order. The examination is intended to inform clinical decision-making about the person's mental health care and treatment. It is not intended to inform the Magistrates Court's decision about the person's criminal responsibility or fitness to stand trial.

Section 180 of the Mental Health Act provides that examination reports are admissible in proceedings against the person in which the examination order is made or any future proceeding against the person to which the examination report is relevant. This provision was intended to ensure that the examining doctor could provide the examination report to the Magistrates Court without breaching the confidentiality provisions of the *Hospital and Health Boards Act 2011*. The report may assist the Magistrates Court to decide whether to make another examination order or refer a matter to the Mental Health Court.

Legal stakeholders involved in implementation of the Mental Health Act are concerned the person may make statements during the examination relating to the circumstances of the alleged offence, which may be later admitted in evidence against the person's interests. This is contrary to the purpose of the examination and may impede effective clinical examination and treatment of the person.

The Bill amends the Mental Health Act to clarify that oral or written statements made by a person:

- during an assessment regarding unsoundness of mind or fitness for trial are not admissible in evidence against the person in any criminal or civil proceeding; and
- during an examination conducted pursuant to a Magistrates Court's examination order are not admissible in evidence against the person in any criminal or civil proceeding.

Clarifying and technical amendments to the Mental Health Act and Public Health Act

The Bill makes a number of clarifying and technical amendments to the Mental Health Act and the Public Health Act to address issues identified during preparation for implementation of the Mental Health Act. These amendments will ensure the Mental Health Act and relevant provisions in the Public Health Act operate as intended.

Achievement of policy objectives

Admissibility of statements made during assessment or examination

The Bill achieves the policy objective of providing an environment for people to undergo mental health assessments without risk of self-incrimination by creating new section 180A, which ensures that statements made:

- during assessments conducted for the purposes of assisting a Magistrate decide whether or not to dismiss or adjourn a matter because a person is unfit for trial or of unsound mind are not admissible in any civil or criminal proceeding; and

- during examinations conducted according to an examination order are not admissible in any civil or criminal proceeding.

New section 180B also allows examination reports and statements made during assessments conducted for the purpose of assisting a Magistrate determine issues of fitness for trial or soundness of mind to be provided to an AMHS or forensic disability service so that appropriate treatment and care can be given to a person.

Clarifying and technical amendments to the Mental Health Act and Public Health Act

The Bill achieves the policy objective of ensuring the Mental Health Act operates as intended by making clarifying and technical amendments which:

- more accurately identify the start of certain periods during which a person may be detained in an AMHS or a PSHSF for examination, assessment or review;
- make adjustments to the way certain information is to be recorded, the matters of which notice must or may be given and how that notice is to be given, the approved forms to be used for particular purposes, and the officers who may exercise particular powers and functions under the Act;
- provide that the chief psychiatrist can request and receive a copy of the brief of evidence against a person for the purpose of facilitating the preparation of a psychiatrist report regarding that person;
- support the efficient operation of court processes, including by clarifying the Mental Health Court's ability to make a treatment support order for a person subject to an existing order, and by clarifying the circumstances in which the suspension of a criminal proceeding ends;
- confirm that persons subject to custodial provisions of another Act who are detained in an AMHS are able to access on-grounds escorted leave in appropriate circumstances;
- clarify the maximum time periods that a relevant patient may be kept in seclusion or have a mechanical restraint applied;
- correct the inadvertent omission of a power for the administrator of a private AMHS to delegate their functions to an appropriately qualified employee (this power is unintentionally restricted to the administrators of public AMHSs, despite both public and private facilities performing the same functions under the Mental Health Act);
- improve the operation of provisions dealing with the transport of persons to whom the Act applies, including by expanding the purposes for which a corrective services officer or youth detention employee is an 'authorised person' under the Act, and permitting delegation by the person in charge of a PSHSF of their power to authorise or request the return of an absent person;
- enhance certain Mental Health Review Tribunal (MHRT) processes, including by inserting a head of power to enable the MHRT to dismiss frivolous or vexatious appeals, confirming the confidential nature of certain processes and decisions, and clarifying the periods within which certain matters must be reviewed;
- provide that only those temporarily unfit persons who have not been found fit for trial and whose criminal proceedings have not been discontinued are prevented from applying to

transfer interstate;

- clarify that the purpose of an examination authority is to encourage a person to seek voluntary examination, rather than voluntary treatment;
- clarify that the Queensland Civil and Administrative Tribunal (QCAT) may disclose information about an administrator appointed under the *Guardianship and Administration Act 2000* to an employee of a Hospital and Health Service or the executive officer of the MHRT; and
- provide a power for the Rules Committee established under the *Supreme Court Act 1991* to approve the forms needed for those Supreme Court, District Court and Magistrates Court processes relating to the operation of the Mental Health Act.

The Bill achieves the policy objective of ensuring the provisions inserted into the Public Health Act by the Mental Health Act operate as intended by making clarifying technical amendments to the Public Health Act, to:

- remove redundant references to 'authorised mental health services' and the 'administrator of an authorised mental health service';
- improve the inserted provisions' operation, including by ensuring ambulance officers may transport absent persons, adjusting the approved forms to be used for particular purposes, and correcting a reference to the category of health practitioner who may authorise a person's transport from a PSHSF;
- more accurately identify the start of the period during which a person may be detained under an emergency examination order; and
- permit the person in charge of a PSHSF to delegate their power to authorise or request the return of an absent person to an appropriately qualified health service employee (this will reflect the power to delegate the corresponding power under the Mental Health Act).

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives of the Bill.

Estimated cost for government implementation

The costs to government associated with implementation of the Bill will be met from existing budget allocations.

Consistency with fundamental legislative principles

The Bill is consistent with fundamental legislative principles.

Consultation

The Bill has undergone consultation through an established CLS Steering Committee consisting of representatives from Queensland Health, Queensland Magistrates Court, Queensland Mental Health Commission, Office of the Director of Public Prosecutions, Legal Aid Queensland, Aboriginal and Torres Strait Islander Legal Service, Department of

Communities, Child Safety and Disability Services, Queensland Law Society, Queensland Bar Association, Police Prosecutions, and the Public Guardian.

On 1 September 2016, the Chief Magistrate wrote to the Minister for Health and Minister for Ambulance Services confirming his support for the proposed amendments in relation to the admissibility of statements made during assessment by the CLS Steering Committee or examination by an authorised doctor. The legal members of the CLS Steering Committee also support these amendments.

Consistency with legislation of other jurisdictions

Mental Health Act 2016

Legislative approaches differ marginally between jurisdictions. New South Wales and South Australia's legislative frameworks do not expressly limit the admissibility of statements made during a mental health assessment or examination in civil and criminal proceedings, instead these frameworks limit the decision maker's ability to consider the statement.

All other Australian states and territories have equivalent provisions which provide that statements made by a person during a mental health assessment or examination are not admissible in a way that is detrimental to the people interests in relation to findings of criminal guilt. The amendment to Queensland's legislation further supports the policy objectives of the Mental Health Act which is to improve and maintain the health and wellbeing of persons who have mental health illnesses while at the same time safeguarding their rights.

Public Health Act 2005

The amendments to the Public Health Act addresses issues specific to the state of Queensland.

Notes on provisions

Part 1 Preliminary

Short title

Clause 1 provides that, when enacted, the short title of the Act will be the *Mental Health Amendment Act 2016*.

Act amended

Clause 2 provides that the Act amends the *Mental Health Act 2016*.

Part 2 Principal provisions

Amendment of s 32 (Powers of doctor or authorised mental health practitioner)

Clause 3 amends section 32 of the *Mental Health Act 2016* (Mental Health Act) to strengthen individual rights and protect personal liberty by specifying the maximum timeframes a person may be detained for the purposes of an examination to decide whether the person should be further assessed, rather than relying on "the period reasonably necessary for the examination".

The amendment places an upper limit of one hour on the length of time a person may be detained under an examination authority in a place that is not an authorised mental health service (AMHS) or public sector health service facility (PSHSF) (for example a community space or their own home). This recognises that it is unduly restrictive and invasive to detain persons in places other than an AMHS or a PSHSF for any extended length of time.

It is considered that an upper limit of one hour is appropriate in these circumstances. This time would be sufficient to gain the person's consent, or for alternative arrangements to be made for the person to be transferred to an AMHS or PSHSF if required. If the doctor or authorised mental health practitioner carrying out the examination needs longer than an hour, the person should always be transferred to an AMHS or a PSHSF.

The clause also sets an upper time limit on the cumulative period a person may be detained for examination at an AMHS or PSHF. A person may be detained in an AMHS or PSHSF under an examination authority for up to six hours, with the ability to extend this to a period of up to 12 hours if necessary to carry out or finish the examination. There is no provision for any further extension of detention time even if the examination cannot be completed in the maximum 12 hour timeframe. In this case, the doctor or authorised mental health practitioner completing the examination would need to note the reasons why the examination was not able to be completed.

The amendment aligns with the maximum period a person may be detained under an emergency examination authority under section 157E of the *Public Health Act 2005* (Public Health Act), which is also capped at six hours with the possibility of extension to 12 hours.

Amendment of s 45 (Detention for assessment)

Clause 4 amends section 45 to better reflect the processes which occur when a person is taken to an AMHS or a PSHSF for a mental health assessment. That section currently permits the person to be detained for assessment at the AMHS or PSHSF for a period of 24 hours from the time when the person is admitted to the AMHS or PSHSF. However, the person may not necessarily be admitted as a patient of the service or facility. The amendment therefore ensures the period during which the person may be detained for assessment begins when the person first attends at the AMHS or PSHSF for the assessment.

Amendment of s 46 (Start of assessment period to be noted)

Clause 5 amends section 46(2) to provide that the obligation under that section to record the start of an assessment period in relation to a person who attends an AMHS or PSHSF under a recommendation for assessment may be discharged by an employee of the AMHS or PSHSF (rather than a health service employee, as is currently the case). A *health service employee* is a public sector employee appointed under the *Hospital and Health Boards Act 2011*, and does not include an employee of a private AMHS.

This amendment reflects that an assessment may take place at a private mental health facility gazetted as an AMHS for the purpose of the Mental Health Act, and not just at a public facility staffed by health service employees.

Amendment of s 50 (Form of treatment authority)

Clause 6 amends section 50 to provide that information about the treatment and care to be provided to a person under a treatment authority is not required to be recorded in the treatment authority itself. That information is already required to be recorded in the patient's health records under section 202(2). The patient's health records are updated and changed in accordance with clinical practice, if and when the person's treatment and care changes. There is no additional benefit in requiring this information to be duplicated in the patient's treatment authority.

Replacement of s 53 (Nature and extent of treatment and care)

Clause 7 replaces section 53 with a new provision making explicit that, in making a treatment authority for a person, an authorised doctor must decide the nature and extent of the treatment and care to be provided under that treatment authority. In reaching this decision, replacement section 53 requires the authorised doctor to discuss the proposed treatment and care with the person and to have regard to the person's views, wishes and preferences.

Amendment of s 56 (Review of treatment authority if not made by psychiatrist)

Clause 8 amends section 56 to better reflect the processes which occur when a treatment authority made for a person by an authorised doctor who is not a psychiatrist is reviewed by an authorised psychiatrist. That section currently permits the person to be detained at an AMHS or a PSHSF for the purposes of the review for up to six hours from the time they are admitted. However, the person may not necessarily be admitted as a patient of the service or facility. The amendment therefore provides that the period during which the person may be detained begins when the person attends at the AMHS or PSHSF for the review.

Amendment of s 96 (Information from prosecuting authority)

Clause 9 amends section 96 to permit the chief psychiatrist, in addition to an administrator or authorised psychiatrist, to request and receive from a prosecuting authority a copy of the brief of evidence in relation to a person who is the subject of a psychiatrist report being prepared under chapter 4, part 2 or 3 of the Mental Health Act. *Brief of evidence* is defined under schedule 3. This information forms part of the collateral information considered by an authorised psychiatrist for the purposes of preparing a psychiatrist report which must include, amongst other things, information about the person's mental state at the time a serious offence was allegedly committed.

Amendment of s 101 (Reference by chief psychiatrist to Mental Health Court)

Clause 10 amends section 101 to provide that, where a psychiatrist report has been prepared at the request of the person to whom it relates or another person under section 90, a second psychiatrist report has not been directed under section 100, and the chief psychiatrist is satisfied the person's mental state should be referred to the Mental Health Court, that reference must be made within 28 days of a copy of the report being given to a person under section 102(1) or (2). This includes, as at present, where the report is given to the person who made the request under section 90.

However, if the chief psychiatrist is satisfied that giving the report to the person may adversely affect the person's health and wellbeing, section 102(2) provides that the copy of the report may instead be given to another person who has sufficient interest in the person's health and wellbeing. This may be the person's nominated support person, a lawyer acting for the person or the person's personal guardian.

Section 101 as amended therefore provides that the 28 day time period also commences if the report is given to another person under section 102(2). This amendment ensures the timeframes for the chief psychiatrist managing psychiatrist reports are very clear, including for cases where the report is not given to the person to whom it relates due to concerns about that person's health and wellbeing.

Amendment of s 102 (Copies of reports)

Under section 102 a copy of a report must be given to the person the subject of the report. However, if the chief psychiatrist is satisfied that giving the report to the person may adversely affect the person's health and wellbeing, the copy of the report may be given to another person who has sufficient interest in the person's health and wellbeing.

This discretion for the chief psychiatrist to give a copy of the report to someone other than the person the subject of the report is expressed to only exempt the requirement to give a copy of the report to that person, and not the requirement to give a copy to a person who requested the report's preparation. This has the unintended effect that, where the person the subject of the report is also the person who requested it, the person will be given a copy even if it may adversely affect the person's health and wellbeing.

Clause 11, subclause (1) therefore amends section 102 to provide that the chief psychiatrist's discretion under section 102(2) to withhold a copy of the report from the person the subject of

the report is equally applicable where that person is also the person who requested the report's preparation.

Subclause (2) inserts a new subsection (4A) requiring the administrator of a person's treatment AMHS to place a copy of the report on the person's health records. The Mental Health Act makes explicit at a number of places the requirement that particular information be recorded in a person's health records. For clarity, and to ensure consistency across the Act, it is proposed to make explicit this standard requirement in relation to a psychiatrist report.

Insertion of new s 167A

Section 166 provides that, where the Mental Health Court is required to make a forensic order in relation to a person already the subject of an existing forensic order, it may do so by amending the existing forensic order or revoking and replacing it with another order. This ensures only a single forensic order is in place for a person at any given time. However, the Mental Health Act does not deal with the related circumstance where the Mental Health Court is required to make a treatment support order.

Clause 12 therefore inserts a new section 167A to provide that, where the Mental Health Court is required to make a treatment support order in relation to a person already the subject of an existing treatment support order, it may do so by amending the existing order or revoking and replacing it with another order. Any information notice relating to the person is unaffected by the revocation of the existing treatment support order under this section.

Amendment of s 177 (Power to make examination order for person charged with simple offence)

Section 177 provides that, under an examination order made by a Magistrates Court, a person may be transported by an authorised person, including an ambulance or police officer, to an AMHS for examination.

AMHSs encompass both hospital and community settings. In hospital settings, the emergency department is also generally declared to be part of the AMHS.

Operationally, hospital admission processes for mental health services are determined by the Hospital and Health Service. Admissions of persons to whom the Mental Health Act applies may be managed directly through the inpatient mental health unit, but also may initially involve medical clearance through the emergency department. Also, in some services, a dedicated psychiatric emergency department operates within the emergency department to undertake mental health examinations and assessments.

In recognition of this wide set of circumstances in which a person may be admitted for examination, *clause 13* amends section 177 to remove the requirement that an examination order must direct the authorised person to transport the person the subject of the order to the 'inpatient mental health unit' of an AMHS. This will ensure that preliminary or initial processes, such as may be undertaken in emergency departments, are not inadvertently bypassed by the legislation. Enabling a person to be taken to an AMHS (rather than specifying an inpatient unit), ensures that the service is able to respond to the order more

efficiently, for example by undertaking the examination in the emergency department. This may also assist with ensuring the examination takes place within the required timeframe.

Amendment of s 178 (Examination of person)

Clause 14 amends section 178 to better reflect the processes that happen when a person is taken to an AMHS for examination under an examination order. That section currently permits the person to be detained in the AMHS for a period of up to six hours from the time the person is first transported and admitted to the service. However, the person may not necessarily be admitted as a patient of the service. The amendment therefore ensures the period during which the person may be detained begins when the person first arrives at the AMHS for the examination.

Replacement of s 180 (Admissibility of examination report)

Clause 15 replaces section 180, which currently provides that an examination report is admissible in any current or future proceeding against the person to whom the report relates. Legal stakeholders involved in the implementation of the Mental Health Act, including the Chief Magistrate, have raised concerns that this may allow statements made by a person during a mental health assessment or examination to be admitted in evidence against the interests of the person.

The replacement of section 180 limits the circumstances in which an examination report may be admitted at the person’s trial. Examination reports will only be admissible to allow a Magistrate to decide whether to make another examination order and whether to refer the person to the Mental Health Court.

The clause also inserts a new section 180A to ensure that statements made:

- during assessments conducted for the purposes of assisting a Magistrate decide whether or not to dismiss or adjourn a matter because a person is unfit for trial or of unsound mind are not admissible in any civil or criminal proceeding; and
- during examinations conducted according to an examination order are not admissible in any civil or criminal proceeding.

This includes both oral and written statements. However, it does not preclude a statement being used in relation to a charge of contempt of court or a charge under chapter 16 of *The Criminal Code* in relation to an offence relating to the administration of justice.

The clause also inserts a new section 180B, which allows examination reports and statements made during assessments conducted for the purpose of assisting a Magistrate determine issues of fitness for trial or soundness of mind to be provided to an AMHS or forensic disability service so that appropriate treatment and care can be given to a person. An administrator who receives a report under section 180B must ensure it is included in the person’s health records.

Where a report or statement has been received in evidence by the Magistrates Court, section 180B further provides it may be given to, and used by, another person only with the court’s leave and on the conditions the court considers appropriate.

Amendment of s 199 (Relationship between this Act and custodial status of particular patients)

The Mental Health Act provides a framework to enable a person who is also subject to a custodial status under another law (e.g. a prisoner or detainee) to receive treatment and care for a mental health illness in an inpatient setting. For example, a person may be transported from police or corrective services custody to receive inpatient treatment as a classified patient. In recognition of this, section 199 provides that a decision about a patient's authority or order, including whether they may access limited community treatment, is subject to the custodial requirements of any other Act.

However, an important element of treatment and care provided under the Mental Health Act is access to treatment in the community, where safe and appropriate. It is therefore the intention of the Mental Health Act that these patients may still access escorted on-ground limited community treatment. Access to treatment in the community is managed through a sufficiently comprehensive framework for mitigating any potential risks associated with this, including that the leave is limited to the grounds and building of the AMHS, the person must be escorted by an employee of the service at all times, and the community access must be approved by the Chief Psychiatrist. To this end, chapter 7, part 6 provides that judicial order patients (that is, patients subject to any of a range of court orders requiring or permitting their detention in an AMHS) and classified patients may access on-ground limited community treatment with the approval of the chief psychiatrist.

Clause 16 clarifies this legislative intent by amending subsections 199(2) and (3) to specify that those provisions affect the interaction between decision making under the Mental Health Act about a patient's treatment in the community and the custodial requirements of another Act.

It is intended that judicial order patients be able to access on-ground escorted leave in the same circumstances as classified patients, despite any criminal justice laws which may also apply to the person. However, section 199(4), which provides that a decision about a patient's treatment in the community is not subject to a custodial requirement under another Act, currently only applies to classified patients.

The clause therefore amends section 199(4) to also apply to judicial order patients, making chapter 7, part 6 applicable to this cohort. Enabling judicial order patients to access on-ground limited community treatment in the same way as other patients supports the objectives of the Mental Health Act, which include improving the wellbeing of persons with mental health illnesses while providing a framework for managing potential risks to the community.

Amendment of s 219 (Authorisation of limited community treatment)

Section 219 provides for classified and judicial order patients to receive on-grounds escorted leave in certain circumstances. *Clause 17* amends section 219 to require that the patient remain in the physical presence of an employee of the AMHS (rather than in the physical presence of a health service employee). The intended effect of this amendment is to ensure that a classified or judicial order patient receiving care and treatment at a private facility gazetted as an AMHS is equally subject to physical supervision during any period of on-ground escorted leave as a patient at a public AMHS staffed by health service employees.

Amendment of s 220 (Patient's obligations to be recorded and explained)

Section 220 applies where involuntary patients receive treatment in the community outside an AMHS. *Clause 18* amends section 220 to provide that *escorted day leave* for the purpose of that section involves the person remaining in the physical presence of an employee of their treating AMHS (rather than in the physical presence of a health service employee). The intended effect of this amendment is to equally ensure patients receiving care and treatment at a private facility gazetted as an AMHS who receive escorted day leave are appropriately accompanied.

Amendment of s 227 (Requirement to give notice—matters relating to advance health directive)

Clause 19 amends section 227 to clarify the circumstances in which notice must be given to the administrator of an AMHS of the resignation of an attorney appointed to exercise power for a personal matter under the *Powers of Attorney Act 1998*. The clause also specifies that the person who made the directive or power of attorney appointing the attorney must give this notice.

Amendment of s 231 (Obligation to notify public guardian)

Section 231 creates an obligation for the public guardian to be notified if a minor is admitted to a high security unit or an inpatient unit of an AMHS that is not a child and adolescent inpatient unit.

In operationalising this provision, it has become evident that the Mental Health Act needs to be more specific and limit this reporting requirement to where the minor is admitted to an inpatient *mental health* unit. The provision inadvertently applies where a minor is admitted to a medical ward which is part of a hospital which is declared to be an AMHS.

Clause 20 therefore amends section 231 to specify that the reporting requirement under this section only relates to admission to inpatient mental health units, as opposed to any other inpatient ward or unit.

Amendment of s 250 (Authorisation of use of mechanical restraint by authorised doctor)

Clause 21 amends section 250 to clarify that an authorised doctor must not authorise the use of mechanical restraint for a patient if the total period for which restraint may be used under that authorisation, when taken together with any actual period of restraint used for the patient under previous authorisations, amounts to more than nine hours in a 24 hour period.

This makes clear that it is only the actual periods during which restraint was used, rather than the periods for which restraint was authorised but was not in fact used, that are to be taken into account when determining whether the maximum period has been reached.

For example, where three periods of restraint of three hours each have been authorised over the course of a day but the patient has only been restrained for eight of those hours, a further period of restraint of one hour may be authorised during that day.

Amendment of s 258 (Authorisation of seclusion by authorised doctor)

Clause 22 amends section 258 to clarify that an authorised doctor must not authorise the use of seclusion for a patient if the total period for which seclusion may be used under that authorisation, when taken together with any actual period of seclusion used for the patient under previous authorisations amounts to more than nine hours in a 24 hour period.

As with the use of restraint under section 250, it is only the actual periods during which seclusion was used, rather than the periods for which seclusion was authorised but was not in fact used, that is to be taken into account in determining whether the maximum period has been reached.

For example, where three periods of seclusion of three hours each have been authorised over the course of a day but the patient has only been secluded for eight of those hours, a further period of seclusion of one hour may be authorised during that day.

Amendment of s 259 (Extension of period of seclusion)

Clause 23, subclause (1) amends section 259 to omit a reference to section 258(1)(d) as one of the matters of which an authorised doctor must be satisfied before authorising the extension of a period of seclusion. Section 258(1)(d), which relates to whether seclusion of a patient complies with a Reduction and Elimination Plan for the patient, is not relevant to deciding if an extension of a period of seclusion should be authorised. That is because an extension of a period of seclusion may only be authorised if the authorised doctor is satisfied that is has not been reasonably practicable for a Reduction and Elimination Plan to be developed.

Subclause (2) amends section 259 to replace a reference to the ‘senior medical administrator’ as the officer whose written approval is required to extend the period a patient may be kept in seclusion with a reference to the ‘clinical director’. Clinical directors of AMHSs have general clinical responsibility for patients within the relevant mental health service. The clinical director of an AMHS is a senior medical position who has specific knowledge regarding the treatment and care of patients with mental health illness.

It is appropriate that the senior medical position with clinical responsibility for patients in an AMHS is vested with responsibility for ensuring seclusion is appropriately used within that AMHS. By empowering the clinical director with the authority to extend seclusion, the use of seclusion can be more appropriately monitored at the service level.

For similar reasons, subclause (3) replaces a reference to the ‘senior medical administrator’ as the officer who must take particular steps following the extension of a period of seclusion with a reference to the ‘authorised doctor’.

Subclause (4) omits subsection (5) to remove the restriction that the power to authorise the extension of a period of seclusion may only be used once for each occasion the patient receives treatment and care.

It is more appropriate to manage the use of seclusion through policy made by the Chief Psychiatrist rather than legislation, due to a range of operational and implementation issues.

There are a number of clinical complexities associated with admissions to mental health services that require more flexibility than this current legislative restriction allows.

Amendment of s 278 (Giving statement of rights to patients and others)

Clause 24 amends section 278 to provide that the administrator of an AMHS must *ensure* the statement of rights is explained to a patient and a copy given to the patient and any support person, rather than requiring the administrator to actually *do* the explaining and giving. While it is appropriate that responsibility to ensure this occurs continues to rest with the administrator, the amendment enables performance of this function to be carried out by either AMHS staff or independent patient rights advisers employed by non-government organisations.

Amendment of s 322 (Mandatory revocation)

Clause 25 makes a consequential amendment to section 322 to add a reference to inserted section 167A.

Amendment of s 337 (Delegation)

Clause 26 amends section 337 to provide that the administrator of an AMHS may delegate their functions under the Mental Health Act to an appropriately qualified employee. This may be either an appropriately qualified health service employee of a public AMHS or an appropriately qualified employee of a private AMHS.

By expressly only permitting delegation to appropriate qualified health service employees (that is, public sector employees appointed under section 67 of the *Hospital and Health Boards Act 2011*), section 337 inadvertently precludes delegation to appropriately qualified employees by the administrators of private services gazetted as AMHSs under section 329. These private facilities are intended to be subject to the Mental Health Act in the same way as public AMHSs, requiring that their administrators have access to the same power of delegation.

Amendment of s 355 (Transfer of person subject to interstate order from another State)

Clause 27 amends section 355 to better reflect the processes which occur when a person is transferred to an AMHS from an interstate mental health service. Subsection (3) currently requires that the person be assessed by an authorised doctor on their admission to the AMHS and subsection (4) permits a person transferred from interstate to be detained for assessment for up to six hours from the time of their admission to the AMHS. However, the person may not necessarily be admitted as a patient of the service. The amendment therefore ensures the period during which the person may be assessed and detained begins when the person first arrives at the AMHS at the facility.

Amendment of s 358 (Notice to tribunal)

Section 358 provides that the Mental Health Review Tribunal (the MHRT) must be notified if responsibility for a person is being transferred from an AMHS or a forensic disability service

to another entity. This notification must be given by the administrator of the AMHS or forensic disability service.

The intention is that notice is only required where the MHRT has jurisdiction in relation to the person to whom the notice relates. As the MHRT does not have any jurisdiction to review recommendations for assessment, *clause 28* amends section 358 to expressly exclude the requirement to give notice of the transfer of patients who are only subject to a recommendation for an assessment.

Amendment of s 359 (Who is an authorised person)

Clause 29, subclause (1) replaces references to 'an authorised doctor' and 'an authorised mental health practitioner' in section 359 with a reference to 'a health practitioner'. To ensure a wider range of health professionals involved in the care and treatment of persons subject to the Mental Health Act are *authorised persons* and can transport those persons when necessary.

Under section 359, a corrective services officer or a youth detention employee is an *authorised person* for the purpose of transporting a person to or from a corrective services facility or youth detention centre. However, these classes of officer are not authorised persons for the purposes of transporting a person to or from a court which is one of the reasons these officers may need to transport a person under the Mental Health Act. Subclauses (3), (4) and (5) therefore further amend section 359 to define corrective services officers as authorised persons for the purpose of transporting persons to or from a corrective services facility or a court, and youth detention employees as authorised persons for the purpose of transporting persons to or from a youth detention centre or a court.

Subclause (6) amends section 359(3) to provide that an administrator of an AMHS may appoint an employee (rather than a health service employee) as an *authorised person*. This reflects that an appointment may equally be made by the administrator of a private AMHS which may not be staffed by health service employees, as defined.

Amendment of s 360 (Transport within authorised mental health service)

Clause 30 replaces two references to 'authorised doctor' in section 360 with references to 'health practitioner'. This will permit a wider range of health professionals involved in the care and treatment of persons subject to the Mental Health Act to transport those persons within AMHSs, or to authorise others to do so.

Amendment of s 364 (Administrator or person in charge may require return of absent person)

Clause 31, subclauses (1) to (3) amend section 364 to allow authorised doctors and authorised mental health practitioners to authorise an authorised person or police officer to return a person absent from an AMHS or PSHSF. Currently only the administrator of an AMHS or the person in charge of a PSHSF may authorise an absent person's return. In practice, authorised doctors and authorised mental health practitioners are more readily available to exercise powers regarding transport to return absent persons to AMHSs or PSHSRs.

Subclause (4) also amends section 364 to permit the person in charge of a PSHSF to delegate their power to authorise an authorised person or police officer to return an absent person's return to an appropriately qualified health service employee. The power of an administrator of an AMHS under section 364(1) is able to be delegated under section 337, but the corresponding power of a person in charge of a PSHSF is not. The absence of a power of delegation is an issue in emergency situations, such as the return of a person who has absconded or failed to attend or return to a PSHSF as required under an authority or order.

Amendment of s 366 (Authorised person may transport absent person)

Clause 32, subclause (1) is a clarifying amendment. As section 366 does not apply to a police officer transporting an absent person under a request made under section 364(1)(b), subclause (1) amends section 366(1) to make explicit that that section only applies to an authorised person transporting an absent person under an authorisation given under section 364(1)(a).

Section 366 permits an authorised person who has been authorised under section 364(1)(a) to transport an absent person to request a police officer, under section 16 of the *Police Powers and Responsibilities Act 2000,* for assistance in doing so. In this case, the police officer works collaboratively with the authorised officer to transport the absent person. This is distinct from a request under section 364(1)(b), under which the police officer may act alone in transporting the absent person.

A request under section 366 is currently required to be made in the same approved form as is used under section 364(2) to authorise an authorised person or request a police officer to transport an absent person. However, it is operationally preferable to have separate forms which clearly distinguish between the types of action they authorise – that is, the authority for an authorised person or police officer to act alone should be clearly distinguished from an authority which enables an authorised person to act with police assistance.

Subclause (2) therefore replaces section 366(3) and (4) by removing the reference to using the approved form under section 364(2)(a), and replacing this reference with a requirement to use a new form approved under that section.

Amendment of s 367 (Effect on assessment period)

Clause 33 amends section 367 to better reflect the processes that happen when a person is transported to an AMHS or PSHSF after absconding while they were subject to a recommendation for assessment. Paragraph (b) currently provides that the assessment period for the person starts when the person is admitted to the service or facility after being transported there. However, the person may not necessarily be admitted as a patient of the service or facility. The amendment therefore provides that the assessment period for the person begins again (excluding any time the person was absconded) when the person arrives at the service or facility after being transported there.

Paragraph (c) currently requires a health service employee to note the assessment period's start time on the recommendation for assessment. In recognition that an assessment may be carried out at a private AMHS not staffed by health service employees, the clause amends that subparagraph to instead impose this obligation on an employee of the service or facility to which the person has been transported under the recommendation for assessment.

Amendment of s 369 (Transport of person in Queensland to interstate mental health service)

Clause 34 amends section 369 to remove an unnecessary reference to an AMHS. That section applies to a person who may be detained and transported to a PSHSF under the Public Health Act, which includes an AMHS for the purposes of that Act.

Amendment of s 384 (Definitions for pt 7)

Clause 35 amends the definition of *authorised security officer* in section 384 for the purposes of part 7 by replacing a reference to an appropriately qualified ‘health service employee’ of an AMHS with a reference to an appropriately qualified ‘employee’. This reflects that part 7 applies equally to private AMHSs, which are not staffed by health service employees.

Amendment of s 420 (Administrator to provide report)

Section 420 requires that, where a treatment authority for a person who does not have a personal guardian is being periodically reviewed by the MHRT, the administrator of the person’s treating AMHS must give the MHRT a report about whether the appointment of a personal guardian could allow the person to receive less restrictive care and treatment. While a person may have different types of guardians for different matters, the intended purpose of a report under this section is to focus on the impact of only that guardian whose functions would be relevant to the person’s care and treatment.

Clause 36 therefore amends section 420 to define a *personal guardian* for the purpose of that section as a guardian for a health matter appointed by QCAT under the *Guardianship and Administration Act 2000*. A *health matter* is also defined by reference to that Act.

Amendment of s 451 (Making of treatment authority or no further order)

Section 451 permits the MHRT, on review of a person’s forensic order, to make a treatment authority for the person if it considers neither a forensic order nor a treatment support order are necessary, because of the person’s mental health condition, to protect community safety. The MHRT must act on the recommendation of an authorised psychiatrist in making the treatment authority, with the treatment authority taken under subsection (8) to have been made by the authorised psychiatrist.

A treatment authority must be periodically reviewed by the MHRT under section 413(1). To ensure the decision to make the authority is subject to appropriate oversight, the first periodic review must take place within 28 days of its making. As a treatment authority made under section 451 is made by the MHRT itself, this initial review is not required. *Clause 37* therefore inserts timeframes for the MHRT’s periodic review of an authority made under section 451 which omit the initial 28 day review but otherwise replicate the timeframes in section 413(1).

Amendment of s 483 (Making of treatment authority or no further order)

Section 483 permits the MHRT, on revoking a person’s treatment support order, to make a treatment authority for the person if recommended by an authorised psychiatrist. The

treatment authority is taken under subsection (7) to have been made by the authorised psychiatrist.

As with a treatment authority made under section 451, the initial decision to make the authority, having been made by the MHRT, does not require initial review by the MHRT under section 413(1). *Clause 38* therefore inserts timeframes for the MHRT's periodic review of an authority made under section 483 which omit the initial 28 day review but otherwise replicate the timeframes in section 413(1).

Amendment of s 502 (Application for examination authority)

Section 502 provides that a person who has received advice from a doctor or authorised mental health practitioner about clinical matters for a person who is to be the subject of an application for an examination authority, may apply to the MHRT for an examination authority for that person. The *clinical matters* for the person include how the person might be encouraged to seek voluntary treatment and care.

The purpose of an examination authority is not to engage a person in treatment and care, but to provide for their examination to determine whether they should be engaged in treatment and care. How the person could be encouraged to be voluntarily examined in relation to their mental health illness, rather than how they could be encouraged to seek voluntary treatment and care, is the more relevant consideration for an application for an examination authority. *Clause 39* amends section 502 accordingly.

Amendment of s 504 (Decision on application)

Clause 40 amends section 504 consequentially to the amendment of section 502 by replacing a reference to a person being encouraged to be treated voluntarily for the person's mental health illness with a reference to the person being encouraged to have a voluntary examination relating to the person's mental health illness.

Amendment of s 522 (Who may apply)

Section 522 prevents temporarily unfit persons charged with serious offences from applying to be transferred interstate, to ensure these persons can be brought back before a criminal court if they are found by the MHRT to have become fit to stand trial.

This rationale for preventing a temporarily unfit person's interstate transfer does not arise where the criminal proceeding in relation to the person has been discontinued, either by the Director of Public Prosecutions under section 490 or automatically at the end of the prescribed period under section 491. However, as currently drafted, section 522 continues to prevent these persons from applying to transfer interstate even though their proceeding has been discontinued.

Clause 41 therefore amends section 522 to provide that only those temporarily unfit persons who have not been found fit for trial and whose criminal proceedings have not been discontinued are prevented from applying to transfer interstate.

Insertion of new s 534A

Clause 42 inserts a new section 534A to permit the MHRT to dismiss an appeal without a hearing if satisfied that the appeal is frivolous or vexatious. This mirrors the existing power of the Mental Health Court to dismiss frivolous or vexatious appeals.

Appeals may be made to the MHRT for a limited number of decisions. Namely, decisions by an administrator to exclude a visitor, decisions by the chief psychiatrist to suspend limited community treatment or refuse an information notice, and comparable decisions of the director of forensic disability.

A frivolous or vexatious appeal could arise if, for example, a visitor who had unsuccessfully appealed an administrator's decision to exclude them from an AMHS continued to make applications to the MHRT to overturn the administrator's original decision. If no new grounds for appeal were raised, the MHRT may consider the further appeal a frivolous use of its resources.

Amendment of s 618 (Ending of suspension)

Clause 43 amends section 618 to insert a new paragraph (ab) providing that a further ground which must be satisfied for the suspension of a proceeding under section 616 to end is that a direction given by the chief psychiatrist for the preparation of a psychiatrist report in relation to the person the subject of the proceeding has been revoked.

Section 616(1)(b) and (3) prescribes the grounds on which a proceeding may be suspended. These include that the chief psychiatrist has given a direction under either section 91 or section 93 that a psychiatrist report be prepared in relation to the person the subject of the proceeding. Section 618 then provides for the ending of a suspension under section 616 where the grounds for that suspension under section 616 are no longer applicable.

However, section 618 does not currently recognise that a chief psychiatrist direction that a psychiatrist report be prepared may be revoked. The amendment therefore provides that the suspension of a proceeding that happened because the chief psychiatrist gave a direction that a psychiatrist report be prepared ends when that direction is revoked.

Amendment of s 630 (Detention of person in public sector health service facility with use of reasonable force)

Section 630 provides for the use of reasonable force to detain a person in a PSHSF other than an AMHS. *Clause 44* amends section 630 to remove the reference to an AMHS. This is consequential to the amendment of the definition of *public sector health service facility* by clause 51, which amends schedule 3 to provide that a PSHSF for the purposes of the Mental Health Act does not include an AMHS.

Amendment of s 730 (Adjournment of hearing)

Clause 45 amends section 730 to give the MHRT the discretion to decide whether to adjourn a scheduled review of a person's treatment authority or treatment support order if the person due to attend for the review cannot be located. That section currently provides for the adjournment to occur automatically in these circumstances.

The MHRT will consider the reasons and circumstances for the absence when making the decision. If the patient has been advised of the hearing, yet still chooses to wilfully absent themselves from the process, it may be appropriate that the MHRT be able to proceed with the hearing in their absence. The reasons why proceeding with the hearing may be appropriate include the following:

- It may be preferable for the MHRT to review without delay the level of community treatment a person who has chosen to wilfully absent themselves is receiving. The MHRT may consider that immediately revoking community treatment is necessary to ensure risks to the patient and others are appropriately managed. Allowing the MHRT to proceed without the person who has chosen to be wilfully absent would ensure this consideration can occur in a timely manner.

- MHRT hearings are organised at the AMHS up to six weeks in advance of the hearing. This requires booking hospital rooms, scheduling (and paying for) the attendance of MHRT members and engaging legal representatives for patients at the cost of the MHRT. Automatically adjourning a MHRT hearing if a patient knowingly absents themselves imposes a significant resourcing cost on the MHRT. This resourcing is better allocated to other clinical and MHRT services (such as clinical reviews in hospital rooms and no-cost legal representation for patients).

Amendment of s 731 (Hearing of scheduled review to be conducted on relevant person's return)

Section 731 provides for the rescheduling of an MHRT review adjourned as a result of the absence of the person the subject of the review. *Clause 46* amends section 731 as a consequence of the amendment to section 730 by clause 45. The amendment to section 731 reflects that it is only where it has exercised its discretion to adjourn under section 730 as amended, the MHRT may be required to reschedule under section 731.

Amendment of s 736 (Right to appear)

Section 736(3)(a) provides that the administrator of an AMHS does not have a right to appear at a hearing in relation to a hearing by the MHRT. *Clause 47* amends section 736 so this does not apply where a hearing is in relation to an application for an examination authority made by the administrator themselves. It further provides that the exclusion effected by subsection (3)(a) does not apply in relation to a person authorised in writing by an administrator in these circumstances.

It is generally appropriate that administrators do not have a right to appear at MHRT hearings, given the MHRT's independent role in reviewing the treatment and care provided by the AMHSs for which administrators are responsible. However, under section 502, an administrator may make an application to the MHRT for an examination authority. In order for the MHRT to be appropriately informed in its hearing in relation to such an application, it may be necessary for the administrator (or a person authorised in writing by the administrator) to be a party to the hearing. The amendment therefore creates the required exception to the general exclusion of administrators from MHRT hearings.

Amendment of s 756 (Written reasons for decision)

Section 756 requires the MHRT to give written reasons for its decision to any person entitled to be informed of that decision (subject to certain confidentiality requirements). *Clause 48* amends section 756 to provide that, where those written reasons relate to a decision about an application for an examination by a person who has received advice about the clinical matters for the person the subject of the application, the reasons may not disclose the person's contact details or any matters about their health or health care which they have not themselves chosen to disclose to the MHRT.

This is the only instance where an applicant to the MHRT, if they are not acting on behalf of the person the subject of the application, may be a member of the public. Additionally, the applicant may have a history of conflict with the person the subject of the application. It is appropriate in this circumstance to protect the privacy of the person the subject of the application by limiting the disclosure of their personal and confidential information without their consent.

Amendment of s 796 (Disclosure by QCAT of information about personal guardian)

Clause 49 amends section 796 to allow information about administrators appointed by QCAT to be disclosed to the executive officer of the MHRT or to an employee of a Hospital and Health Service involved in the administration of the Mental Health Act, where requested by the executive officer or employee.

It may be necessary from time to time for details of an administrator (appointed by QCAT under chapter 3 of the *Guardianship and Administration Act 2000* to make decisions about financial matters for a stated individual) to be disclosed to the MHRT executive officer or a Hospital and Health Service employee for the health and wellbeing of a patient. The amendment will ensure employees of Hospital and Health Services and the executive officer of the MHRT are aware of who may need to be involved or included when they are discharging their legal responsibilities under the Mental Health Act.

Subclause (2) clarifies it is the executive officer of the MHRT to whom information requested by that officer may be disclosed under section 796.

Amendment of s 798 (Approved forms)

Clause 50 inserts a new subsection into section 798 to permit the Rules Committee (established by the Chief Justice under section 89 of the *Supreme Court of Queensland Act 1991*) to approve the forms needed for those Supreme Court, District Court and Magistrates Court processes which relate to the operation of the Mental Health Act.

Amendment of sch 3 (Dictionary)

Clause 51 inserts a definition of *employee* of a public sector AMHS for the purposes of the Mental Health Act as a health service employee of that AMHS. A *health service employee* is itself defined by reference to schedule 2 to the *Hospital and Health Boards Act 2011*, which in turn defines a *health service employee* as a person appointed as such under section 67 of that Act.

The clause also amends the definition of *public sector health service facility* in schedule 3 to expressly exclude AMHSs from that definition. AMHSs are otherwise captured within the wide definition of *public sector health service facility* contained in schedule 2 to the *Hospital and Health Boards Act 2011* and applied by schedule 3 to the Mental Health Act.

While the inclusion of AMHSs in this wide definition is appropriate for the purposes of the *Hospital and Health Boards Act 2011*, the Mental Health Act authorises a significantly wider range of activities at an AMHS than at a PSHSF. A clear distinction between these two types of facilities is therefore required for the purposes of the Mental Health Act.

Part 3 Provisions amending Public Health Act 2005

Amendment of s 921 (Insertion of new ch 4A)

From commencement, section 921 of the Mental Health Act inserts a new chapter 4A into the Public Health Act. New chapter 4A provides a mechanism for transporting person with a major disturbance in their mental capacity to a place of treatment or care.

Clause 52 makes the following amendments to section 921 of the Mental Health Act, which in turn amends various sections of inserted chapter 4A of the Public Health Act:

- References to ‘authorised mental health service’ are removed from various inserted provisions. The Public Health Act provisions apply to the general health system, not the mental health system, and therefore the references to AMHS are redundant
- Similarly, references to ‘administrator of an authorised mental health service’ are removed from various inserted provisions relevant to the functions which may be performed by either administrators of AMHSs or persons in charge of PSHSFs. Only the person in charge of the PSHSFs is relevant for the Public Health Act provisions.
- Subclause (3) ensures an ambulance officer may perform transport functions under inserted chapter 4A by including ‘ambulance officer’ within the definition of *authorised person* in inserted section 157A.
- Subclause (11) replaces a reference in inserted section 157E(1) to an emergency examination authority being made with a reference to the authority being given to a health service employee under inserted section 157D(4). This more accurately reflects the process which occurs when a person is transported to a PSHSF under an emergency examination authority, with the power to detain the person at the facility under section 157E commencing on the authority being given to an employee at the PSHSF rather than when it is made.
- Subclause (22) inserts a head of power for the person in charge of a PSHSF to delegate a function, or their power to, authorise the return of an absent person. The subclause also clarifies that an authorised person (other than a police officer) is a *public official* for the purposes of the *Police Powers and Responsibilities Act 2000* while performing functions in relation to the return of an absent person.
- Subclause (24) replaces existing inserted subsections 157J(3) and (4), which require the same approved form to be used to ask a police officer to help an authorised person

transport an absent person as is to be used to request a police officer to transport the person themselves. It is operationally preferable to have separate forms which clearly distinguish between the types of action they authorise. As with the amendment to section 366 of the Mental Health Act by clause 32, the amendment effected by subclause (23) provides for a separate form to be used for a request under inserted section 157H(1)(a) as is required to be used for a request under inserted section 157H(1)(b).

- Subclause (27) replaces a reference to 'authorised mental health practitioner' in inserted section 157M, which permits the practitioner to authorise the transfer of a person subject to an emergency examination order between treatment or care places, with a reference to 'health practitioner'. As these processes occur outside of the mental health system, it is not appropriate to limit these practitioners to only authorised mental health practitioners. Rather, referring to 'health practitioner' recognises that these provisions apply within the general health system and enable a wider range of health practitioners able to authorise the transfer.

Amendment of s 922 (Amendment of sch 2 (Dictionary))

Clause 53 amends section 922(2), which in turn inserts definitions into schedule 2 of the Public Health Act, to omit the inserted definitions of *administrator*, *authorised mental health practitioner* and *authorised mental health service*. For the same reason as references to 'authorised mental health service' and 'administrator of an authorised mental health service' are to be removed from inserted chapter 4A of the Public Health Act by clause 52, these definitions are redundant and may also be removed.

Part 4 Provisions amending Coroners Act 2003

Amendment of sch 4 (Minor or consequential amendments of particular legislation)

This amendment is consequential to the removal of references to 'authorised mental health service' from inserted chapter 4A of the Public Health Act by clause 52, *clause 54* removes a redundant reference to 'or authorised mental health service' to be inserted into section 9(1)(b) of the *Coroners Act 2003* by amendment 3 of schedule 4 to the Mental Health Act.

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