

I hereby certify that this PUBLIC BILL has finally passed the Legislative Assembly of Queensland.

Legislative Assembly Chamber,
Brisbane,

The Clerk of the Parliament.

8 March 20 22

In the name and on behalf of the Queen, I assent to this Bill.

Chie Yang

Government House,

Brisbane,

8th March

20 22



Queensland

No. 1 of 2022

A BILL for

An Act to amend the Ambulance Service Act 1991, the Criminal Code, the Environmental Protection Act 1994, the Hospital and Health Boards Act 2011, the Mental Health Act 2016, the Mental Health Regulation 2017, the Public Health (Infection Control for Personal Appearance Services) Act 2003, the Radiation Safety Act 1999, the Termination of Pregnancy Act 2018, the Transplantation and Anatomy Act 1979 and the legislation mentioned in schedule 1 for particular purposes



Queensland

Health and Other Legislation Amendment Bill 2022

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2022

A Bill

for

An Act to amend the *Ambulance Service Act 1991*, the Criminal Code, the *Environmental Protection Act 1994*, the *Hospital and Health Boards Act 2011*, the *Mental Health Act 2016*, the *Mental Health Regulation 2017*, the *Public Health (Infection Control for Personal Appearance Services) Act 2003*, the *Radiation Safety Act 1999*, the *Termination of Pregnancy Act 2018*, the *Transplantation and Anatomy Act 1979* and the legislation mentioned in schedule 1 for particular purposes

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Health and Other Legislation Amendment Act 2022*.

2 Commencement

The following provisions commence on a day to be fixed by proclamation—

- (a) part 3;
- (b) schedule 1, part 2.

Part 2 Amendments commencing on assent

Division 1 Amendment of Ambulance Service Act 1991

3 Act amended

This division amends the *Ambulance Service Act 1991*.

Note—

See also the amendments in part 3, division 1 and schedule 1, part 2.

4 Amendment of s 5 (Disqualification from appointment)

- (1) Section 5(b)—

omit.

- (2) Section 5(c)—
renumber as section 5(b).

Division 2 Amendment of Criminal Code

5 Code amended

This division amends the Criminal Code.

6 Amendment of s 282 (Surgical operations and medical treatment)

Section 282(4), definition *unqualified person*, ‘section 319A(4)’—

omit, insert—

section 319A(3)

7 Amendment of s 319A (Termination of pregnancy performed by unqualified person)

- (1) Section 319A(2)—

insert—

Note—

The *Termination of Pregnancy Act 2018*, section 10 provides that a woman who consents to, assists in, or performs a termination on herself does not commit an offence.

- (2) Section 319A(3)—

omit.

- (3) Section 319A(4)—

insert—

assisting, in the performance of a termination on

[s 7]

a woman—

- (a) includes—
 - (i) dispensing a termination drug for use in the termination; and
 - (ii) supplying, or procuring the supply of, a termination drug for use in the termination; and
 - (iii) administering a termination drug; but
- (b) does not include providing care to the woman before or after the termination is performed.

prescribed health profession means any of the following health professions under the Health Practitioner Regulation National Law—

- (a) Aboriginal and Torres Strait Islander health practice;
- (b) medical;
- (c) midwifery;
- (d) nursing;
- (e) pharmacy;
- (f) another health profession prescribed under the *Termination of Pregnancy Act 2018*, schedule 1, definition *prescribed health profession*, paragraph (f).

prescribed student means a person—

- (a) whose name is entered in a student register, for a prescribed health profession, as being currently registered under the Health Practitioner Regulation National Law; and
- (b) who assists in the performance of a termination on a woman only—
 - (i) under the supervision of—

- (A) a medical practitioner performing the termination; or
 - (B) a prescribed practitioner lawfully assisting in the performance of the termination; or
 - (C) the student's primary clinical supervisor; and
- (ii) to the extent necessary to complete the student's program of study for, or clinical training in, the student's health profession.

primary clinical supervisor, of a prescribed student, means a prescribed practitioner who has primary responsibility for supervising the clinical work performed by the student for the student's program of study for, or clinical training in, the student's health profession.

student register, for a health profession, see the Health Practitioner Regulation National Law.

- (4) Section 319A(4), definition *prescribed practitioner*, from 'any'—

omit, insert—

a prescribed health profession, other than as a student.

- (5) Section 319A(4), definition *unqualified person*, paragraph (b)(ii)—

omit, insert—

- (ii) a prescribed practitioner providing the assistance in the practice of the practitioner's prescribed health profession; or

(iii) a prescribed student.

- (6) Section 319A(4)—

[s 8]

renumber as section 319A(3).

Division 3 Amendment of Environmental Protection Act 1994

8 Act amended

This division amends the *Environmental Protection Act 1994*.

9 Amendment of sch 1 (Exclusions relating to environmental nuisance or environmental harm)

(1) Schedule 1, section 3—

insert—

(fa) development carried out, or the use of premises, under a designation made under the Planning Act by the Minister who administers chapter 2, part 5 of that Act, to the extent the environmental nuisance, or an activity that causes the environmental nuisance, is regulated by a requirement of the designation;

(2) Schedule 1, section 3(fa) to (j)—

renumber as schedule 1, section 3(g) to (k).

Division 3A Amendment of Mental Health Act 2016

9A Act amended

This division amends the *Mental Health Act 2016*.

Note—

See also the amendments in part 3, division 3 and schedule 1, part 2.

9B Insertion of new s 14A

After section 14—

insert—

14A Territory of Norfolk Island taken to be a State

For this Act, the Territory of Norfolk Island is taken to be a State.

Division 3B Amendment of Mental Health Regulation 2017

9C Regulation amended

This division amends the *Mental Health Regulation 2017*.

9D Amendment of sch 1, s 1 (Corresponding laws for provisions of Act relating to transfer of patients or transport of persons)

Schedule 1, section 1(1)—

insert—

- *Mental Health Act 1996* (Norfolk Island)

9E Amendment of sch 1, s 2 (Corresponding laws for Act, s 368(1)(b) and (2))

Schedule 1, section 2—

insert—

- *Mental Health Act 1996* (Norfolk Island)

9F Amendment of sch 1, s 3 (Corresponding laws for Act, s 513, definition *interstate forensic order*)

Schedule 1, section 3—

insert—

[s 9G]

- *Mental Health Act 1996* (Norfolk Island)

9G Amendment of sch 1, s 4 (Corresponding laws for Act, ss 513 and 521, definition *interstate transfer requirements*)

Schedule 1, section 4—

insert—

- *Mental Health Act 1996* (Norfolk Island)

Division 4 Amendment of Termination of Pregnancy Act 2018

10 Act amended

This division amends the *Termination of Pregnancy Act 2018*.

11 Amendment of s 7 (Registered health practitioners who may assist)

(1) Section 7, heading—

omit, insert—

7 Registered health practitioners and students who may assist

(2) Section 7(1) and (2)—

omit, insert—

- (1) A prescribed practitioner may, in the practice of the practitioner's prescribed health profession, assist in the performance of a termination on a woman by a medical practitioner.
- (2) A prescribed student may assist in the performance of a termination on a woman by a medical practitioner if the student provides the assistance only—
 - (a) under the supervision of—

-
- (i) the medical practitioner; or
 - (ii) a prescribed practitioner lawfully assisting in the performance of the termination; or
 - (iii) the student's primary clinical supervisor; and
- (b) to the extent necessary to complete the student's program of study for, or clinical training in, the student's health profession.
- (3) Section 7(3), 'registered health practitioner'—
omit, insert—
prescribed practitioner or prescribed student
- (4) Section 7(4)—
omit.

12 Insertion of new s 8A

After section 8—

insert—

8A Prescribed student with conscientious objection

- (1) This section applies if—
- (a) a relevant person asks a prescribed student to assist in the performance of a termination on a woman; and
 - (b) the student has a conscientious objection to—
 - (i) the performance of the termination; or
 - (ii) assisting in the performance of the termination.
- (2) The student must disclose the student's conscientious objection to the relevant person.

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(3) In this section—

relevant person means—

- (a) a medical practitioner performing the termination; or
- (b) a prescribed practitioner lawfully assisting in the performance of the termination; or
- (c) the student's primary clinical supervisor.

13 Amendment of sch 1 (Dictionary)

(1) Schedule 1, definitions *Aboriginal and Torres Strait Islander health practitioner, midwife, nurse and pharmacist*—
omit.

(2) Schedule 1—

insert—

assisting, in the performance of a termination on a woman—

- (a) includes—
 - (i) dispensing a termination drug for use in the termination; and
 - (ii) supplying, or procuring the supply of, a termination drug for use in the termination; and
 - (iii) administering a termination drug; but
- (b) does not include providing care to the woman before or after the termination is performed.

prescribed health profession means any of the following health professions under the Health Practitioner Regulation National Law—

- (a) Aboriginal and Torres Strait Islander health practice;

- (b) medical;
- (c) midwifery;
- (d) nursing;
- (e) pharmacy;
- (f) another health profession prescribed by regulation.

prescribed practitioner means a registered health practitioner whose health profession is a prescribed health profession.

prescribed student means a person whose name is entered in a student register, for a prescribed health profession, as being currently registered under the Health Practitioner Regulation National Law.

primary clinical supervisor, of a prescribed student, means a registered health practitioner who has primary responsibility for supervising the clinical work performed by the student for the student's program of study for, or clinical training in, the student's health profession.

student register, for a health profession, see the Health Practitioner Regulation National Law.

Part 3 **Amendments commencing by proclamation**

Division 1 **Amendment of Ambulance Service Act 1991**

14 **Act amended**

This division amends the *Ambulance Service Act 1991*.

[s 15]

Note—

See also the amendments in part 2, division 1 and schedule 1, part 2.

15 Amendment of pt 4A, hdg (Root cause analyses)

Part 4A, heading, ‘analyses’—

omit, insert—

analysis

16 Amendment of s 36M (Disclosure of information—RCA team member or relevant person)

(1) Section 36M(1) and (2), penalty, ‘50 penalty units’—

omit, insert—

100 penalty units

(2) Section 36M(3)—

omit.

(3) Section 36M(4)—

renumber as section 36M(3).

17 Amendment of s 36N (Disclosure of information—commissioning authority or relevant person)

(1) Section 36N(1), (3) and (5), penalty, ‘50 penalty units’—

omit, insert—

100 penalty units

(2) Section 36N(9)—

omit.

(3) Section 36N(10) and (11)—

renumber as section 36N(9) and (10).

18 Amendment of s 36P (Giving of copy of RCA report—medical director)

Section 36P(3) and (4), penalty, ‘50 penalty units’—

omit, insert—

100 penalty units

19 Replacement of ss 49 and 49A

Sections 49 and 49A—

omit, insert—

49 Confidential information must not be disclosed by designated officers

- (1) A person who is or was a designated officer must not, directly or indirectly, disclose confidential information to another person unless the disclosure is required or permitted under this Act.

Maximum penalty—100 penalty units.

Note—

See also part 7, division 1 for disclosures of confidential information permitted under this Act.

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

49A Confidential information must not be disclosed by informed person

- (1) This section applies if a person who is or was a designated officer directly or indirectly discloses confidential information to another person (the *informed person*).
- (2) The informed person must not, directly or indirectly, disclose the confidential information to

[s 20]

another person unless the disclosure is required or permitted under this Act or another law.

Maximum penalty—50 penalty units.

- (3) The informed person may disclose the confidential information—
 - (a) to the person to whom the confidential information relates; or
 - (b) for a lawful purpose for which the confidential information was originally disclosed to the informed person; or
 - (c) if an agreement mentioned in section 50L requires or allows the disclosure—under the agreement.
- (4) Subsection (2) applies even if a person who could be identified from the disclosure of the confidential information is deceased.

20 Amendment of s 50D (Definitions for div 1)

- (1) Section 50D, definitions *confidential information* and *designated officer*—
omit.

- (2) Section 50D—
insert—

designated person see the *Hospital and Health Boards Act 2011*, section 139A.

21 Replacement of s 50E (Disclosure required or permitted by law)

Section 50E—
omit, insert—

50E Disclosure required or permitted by law

A designated officer may disclose confidential information if the disclosure is required or permitted by an Act or law.

22 Replacement of s 50F (Disclosure with consent)

Section 50F—

omit, insert—

50F Disclosure to, or with consent of, person to whom confidential information relates

- (1) A designated officer may disclose confidential information if—
 - (a) for confidential information relating to an adult—
 - (i) the disclosure is to the adult; or
 - (ii) the adult consents to the disclosure; or
 - (b) for confidential information relating to a child—
 - (i) the disclosure is to the child or an authorised person for the child; or
 - (ii) the officer is a health professional who reasonably believes the child has capacity to consent and the child consents to the disclosure; or
 - (iii) the officer is a health professional who reasonably believes the disclosure is in the child's best interests; or
 - (iv) an authorised person for the child consents to the disclosure.

- (2) In this section—

authorised person, for a child, means a person who is authorised to consent on the child's behalf

[s 23]

to the disclosure of confidential information relating to the child.

Example—

a parent or guardian of the child

capacity to consent, in relation to a child, means the child is of sufficient age, and mental and emotional maturity, to understand the nature of consenting to the disclosure of confidential information.

23 Replacement of s 50H (Disclosure of confidential information for care or treatment of person)

Section 50H—

omit, insert—

50H Disclosure for care or treatment of person

A designated officer may disclose confidential information if the disclosure is required for the care or treatment of the person to whom the information relates.

24 Insertion of new s 50IA

After section 50I—

insert—

50IA Disclosure for protection, safety or wellbeing of child

A designated officer may disclose confidential information if—

- (a) the disclosure is for the protection, safety or wellbeing of a child; and
- (b) the information relates to someone other than the child.

25 Insertion of new ss 50KA–50KC

After section 50K—

insert—

50KA Disclosure for funding arrangements and public health monitoring

A designated officer may disclose confidential information if—

- (a) the disclosure is to another designated officer or to a designated person; and
- (b) the disclosure and receipt of the confidential information is—
 - (i) for giving effect to or managing a funding arrangement for the service; or
 - (ii) for analysing, monitoring or evaluating public health; and
- (c) the person mentioned in paragraph (a) is authorised in writing by the chief executive to receive the confidential information.

50KB Disclosure for purposes relating to health services

- (1) A designated officer may disclose confidential information if—
 - (a) the disclosure is for evaluating, managing, monitoring or planning a health service, including, for example, an ambulance service; and
 - (b) the disclosure is to—
 - (i) another designated officer; or
 - (ii) a designated person; or
 - (iii) an entity prescribed by regulation.
- (2) In this section—

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health service see the *Hospital and Health Boards Act 2011*, section 15.

50KC Disclosure by chief executive or the commissioner to lawyers

- (1) This section applies to a designated officer who is the chief executive or the commissioner.
- (2) The designated officer may disclose confidential information if—
 - (a) the disclosure is to a lawyer in relation to a matter; and
 - (b) the lawyer is representing the State or the service in relation to the matter.
- (3) The lawyer may disclose the confidential information in a proceeding, before a court or tribunal, relating to the matter.

26 Replacement of s 50L (Disclosure to Commonwealth, another State or Commonwealth or State entity)

Section 50L—

omit, insert—

50L Disclosure to Commonwealth, another State, or Commonwealth or State entity

- (1) A designated officer may disclose confidential information to the Commonwealth or another State, or an entity of the Commonwealth or another State, if—
 - (a) the disclosure is required or permitted under an agreement between the State and the Commonwealth, other State or entity; and
 - (b) the agreement is prescribed by regulation for this paragraph; and

- (c) the chief executive considers the disclosure to be in the public interest; and
 - (d) the chief executive states in writing that the chief executive considers the disclosure to be in the public interest.
- (2) A designated officer may disclose confidential information to an entity of the State if—
- (a) the disclosure is required or permitted under an agreement between the service and the entity; and
 - (b) the agreement is prescribed by regulation for this paragraph; and
 - (c) the chief executive considers the disclosure to be in the public interest; and
 - (d) the chief executive states in writing that the chief executive considers the disclosure to be in the public interest.
- (3) The Commonwealth, a State or an entity that receives confidential information under an agreement mentioned in subsection (1) or (2)—
- (a) must not disclose the information to anyone else unless allowed to do so under the agreement or in writing by the chief executive; and
 - (b) must ensure the information is used only for the purpose for which the information was given under the agreement.
- (4) In this section—
- entity of the Commonwealth*** includes an entity established under an Act of the Commonwealth.
- entity of the State*** includes a department or an entity established under an Act for a public purpose.

[s 27]

27 Amendment of s 50P (Disclosure is authorised by chief executive)

(1) Section 50P(1), ‘is authorised to’—

omit, insert—

may

(2) Section 50P(3)(a), ‘subsection (1)’—

omit, insert—

an authorisation mentioned in subsection (2)(a)

(3) Section 50P(5)—

omit, insert—

(5) Despite section 22 and the *Public Service Act 2008*, section 103, the chief executive—

(a) may delegate the power to give an authorisation mentioned in subsection (2)(a) only to the commissioner; and

(b) must not permit the subdelegation of the power.

28 Amendment of s 50Q (Necessary or incidental disclosure)

Section 50Q, from ‘is authorised’ to ‘designated person’—

omit, insert—

may disclose confidential information if the disclosure

29 Amendment, relocation and renumbering of s 50R (Application of this division to former designated officers)

(1) Section 50R(1) and (2)—

omit, insert—

(1) A relevant provision applies to the disclosure of

confidential information by a former designated officer in the same way as the provision applies to the disclosure of confidential information by a designated officer.

- (2) For subsection (1), a reference in the relevant provision to a designated officer is taken to be a reference to a former designated officer.

- (2) Section 50R(3)—

insert—

relevant provision means section 50E, 50F, 50IA, 50J, 50M, 50O or 50Q.

- (3) Section 50R—

relocate and *renumber* as section 50SA.

30 Insertion of new pt 8, div 9

Part 8—

insert—

Division 9 Transitional provisions for Health and Other Legislation Amendment Act 2022

103 Definition for division

In this division—

new, for a provision of this Act, means the provision as in force on the commencement.

104 Application of new pt 7, div 1

Subject to section 105, new part 7, division 1 applies in relation to confidential information whether the information came into existence

[s 31]

before or after the commencement.

105 Application of s 50L to agreements in force immediately before commencement

- (1) This section applies in relation to an agreement mentioned in former section 50L that was in effect immediately before the commencement.
- (2) New section 50L does not apply in relation to the agreement.
- (3) Despite its repeal, former section 50L continues to apply in relation to the agreement.
- (4) In this section—
former section 50L means section 50L as in force immediately before the commencement.

31 Amendment of sch 1 (Dictionary)

Schedule 1—

insert—

confidential information means information—

- (a) acquired by a person in the person's capacity as a designated officer; and
- (b) from which a person receiving, or who has received, an ambulance service could be identified.

designated officer means each of the following persons—

- (a) the chief executive;
- (b) the commissioner;
- (c) a service officer;
- (d) an honorary ambulance officer;

- (e) a public service employee employed in the service other than as a service officer;
- (f) an agent of the service.

designated person, for part 7, division 1, see section 50D.

health professional, for part 7, division 1, see section 50D.

Division 2 **Amendment of Hospital and Health Boards Act 2011**

32 Act amended

This division amends the *Hospital and Health Boards Act 2011*.

33 Amendment of s 139 (Definitions for pt 7)

(1) Section 139, definitions *prescribed health practitioner* and *relevant health practitioner*—
omit.

(2) Section 139—
insert—

prescribed health professional means—

- (a) a health professional, other than a person mentioned in section 139A(1), who is prescribed by regulation; or
- (b) a person who was a health professional mentioned in paragraph (a).

(3) Section 139, definition *confidential information*, paragraph (b), ‘practitioner’—
omit, insert—

professional

[s 34]

34 Amendment of s 142 (Confidential information must not be disclosed by designated persons)

Section 142(2), ‘practitioner’—

omit, insert—

professional

35 Amendment of s 142A (Confidential information must not be disclosed by prescribed health practitioners)

(1) Section 142A, heading, ‘practitioners’—

omit, insert—

professionals

(2) Section 142A(1) and (2), ‘practitioner’—

omit, insert—

professional

36 Amendment of s 143 (Disclosure required or permitted by law)

Section 143(2)(e) and (3), ‘practitioner’—

omit, insert—

professional

37 Amendment of s 144 (Disclosure with consent)

Section 144, ‘practitioner’—

omit, insert—

professional

38 Amendment of s 145 (Disclosure of confidential information for care or treatment of person)

Section 145, ‘practitioner’—

omit, insert—

professional

39 Amendment of s 146 (Disclosure to person who has sufficient interest in health and welfare of person)

Section 146(1), ‘health practitioner’—

omit, insert—

health professional

40 Amendment of s 147 (Disclosure to lessen or prevent serious risk to life, health or safety)

Section 147, ‘practitioner’—

omit, insert—

professional

41 Amendment of s 148 (Disclosure for the protection, safety or wellbeing of a child)

Section 148(2), ‘practitioner’—

omit, insert—

professional

42 Amendment of s 154 (Disclosure to or by relevant chief executive)

Section 154(1), ‘practitioner’—

omit, insert—

professional

43 Amendment of s 155 (Disclosure to health practitioner registration board)

Section 155, ‘prescribed health practitioner’—

[s 44]

omit, insert—

prescribed health professional

44 Amendment of s 156 (Disclosure to health ombudsman)

Section 156, ‘prescribed health practitioner’—

omit, insert—

prescribed health professional

45 Amendment of s 157 (Disclosure to person performing functions under Coroners Act 2003)

Section 157, ‘practitioner’—

omit, insert—

professional

46 Insertion of new s 157B

Before section 158—

insert—

157B Disclosure to person performing functions under Mental Health Act 2016

A designated person or prescribed health professional may disclose confidential information if the disclosure is to a person who requires the confidential information to perform a function under the *Mental Health Act 2016*, other than for the preparation of an annual report.

Note—

See also the *Mental Health Act 2016*, section 778(3)(a).

47 Amendment of s 159 (Disclosure to Australian Red Cross Society)

Section 159, ‘practitioner’—

omit, insert—

professional

48 Amendment of pt 7, div 4, hdg (Access by prescribed health practitioner to prescribed information system)

Part 7, division 4, heading, ‘practitioner’—

omit, insert—

professional

49 Amendment of s 161C (Prescribed health practitioner may access prescribed information system and particular information)

Section 161C, heading and subsections (1), (2) and (3), ‘practitioner’—

omit, insert—

professional

50 Amendment of sch 2 (Dictionary)

(1) Schedule 2, definitions *prescribed health practitioner* and *relevant health practitioner*—

omit.

(2) Schedule 2—

insert—

prescribed health professional, for part 7, see section 139.

[s 51]

Division 3 Amendment of Mental Health Act 2016

51 Act amended

This division amends the *Mental Health Act 2016*.

Note—

See also the amendments in part 2, division 3A and schedule 1, part 2.

52 Amendment of s 38 (Action before exercising powers)

Section 38(d), after ‘public’—

insert—

sector

53 Amendment of s 116 (Decision about unsoundness of mind and diminished responsibility)

Section 116(2), ‘section 117’—

omit, insert—

sections 117 and 117A

54 Insertion of new s 117A

After section 117—

insert—

117A Substantial dispute about fact relied on in expert report

- (1) The Mental Health Court may not make a decision under section 116(1)(a) or (b) if the court is satisfied there is a substantial dispute about a fact (a *material fact*) that is material to an opinion stated in an expert’s report received in evidence by the court on the reference.
- (2) Without limiting subsection (1), a material fact

may relate to—

- (a) the person's relevant circumstances before, at the time, or after the offence was allegedly committed; or
- (b) an event, act or omission related to the offence, whether the event, act or omission happened before, at the time, or after the offence was allegedly committed.

55 Amendment of s 118 (Decision about fitness for trial)

Section 118(1)(b), after 'section 117'—

insert—

or 117A

56 Insertion of new s 157A

After section 157—

insert—

157A Admissibility of expert's report in proceeding before Magistrates Court

- (1) This section applies if an expert's report is received in evidence by the Mental Health Court on a reference in relation to a person for an offence.
- (2) The report is admissible in a proceeding before a Magistrates Court for the purpose of deciding whether—
 - (a) to dismiss a complaint for the offence under section 172; or
 - (b) to adjourn the hearing of a complaint for the offence under section 173.

[s 57]

57 Insertion of new ch 5, pt 5, div 4, sdiv 1, hdg

Before section 166—

insert—

Subdivision 1 Making forensic orders

58 Replacement of s 167 (Person subject to existing treatment authority or treatment support order)

Section 167—

omit, insert—

166A Person subject to existing treatment support order

- (1) This section applies if the Mental Health Court is required under this chapter to make a forensic order for a person who is already subject to a treatment support order.
- (2) The court may—
 - (a) revoke the treatment support order and make a forensic order for the person; or
 - (b) amend the treatment support order to—
 - (i) convert the treatment support order into a forensic order for the person; and
 - (ii) make other necessary changes to the order.

Note—

If there is an information notice relating to the person, the revocation or amendment of the treatment support order under subsection (2) does not affect the information notice. See section 322.

167 Person subject to existing treatment authority

- (1) This section applies if the Mental Health Court makes a forensic order (mental health) for a

person who is subject to a treatment authority.

- (2) On the making of the forensic order (mental health), the treatment authority ends.
- (3) Nothing in this section prevents the court making a forensic order (disability) for a person who is subject to a treatment authority.
- (4) If a treatment authority for a person is inconsistent with a forensic order (disability) for the person, the forensic order (disability) prevails to the extent of the inconsistency.

Subdivision 2 Making treatment support orders

59 Insertion of new ss 167B and 167C

After section 167A—

insert—

167B Person subject to existing forensic order

- (1) This section applies if the Mental Health Court is required under this chapter to make a treatment support order for a person who is already subject to a forensic order.
- (2) The court may—
 - (a) revoke the forensic order and make a treatment support order for the person; or
 - (b) amend the forensic order to—
 - (i) convert the forensic order into a treatment support order for the person; and
 - (ii) make other necessary changes to the order.

[s 60]

Note—

If there is an information notice relating to the person, the revocation or amendment of the forensic order under subsection (2) does not affect the information notice. See section 322.

167C Person subject to existing treatment authority

- (1) This section applies if the Mental Health Court makes a treatment support order for a person who is already subject to a treatment authority.
- (2) On the making of the treatment support order, the treatment authority ends.

60 Amendment of s 180A (Particular statements not admissible)

Section 180A—

insert—

- (4) Also, subsection (1)(b) does not apply to a proceeding before the Mental Health Court.

61 Amendment of s 223 (Who is a nominated support person)

Section 223(6)(b)—

omit, insert—

- (b) freely and voluntarily make the appointment or revocation; and
- (c) communicate the appointment or revocation.

62 Amendment of s 233 (Requirements for informed consent)

- (1) Section 233(1)(c)—

omit.

(2) Section 233(2)(b)—

omit, insert—

- (b) freely and voluntarily make the decision;
and
- (c) communicate the decision.

63 Amendment of s 236 (Performance of electroconvulsive therapy with consent or tribunal approval)

Section 236(1)(a) to (c)—

omit, insert—

- (a) for a patient who is an adult—
 - (i) if the adult is unable to give informed consent to the treatment or is subject to a treatment authority, forensic order or treatment support order—the tribunal has approved under section 509 the performance of the therapy on the adult; or
 - (ii) otherwise—the adult has given informed consent to the treatment; or
- (b) for a patient who is a minor—the tribunal has approved under section 509 the performance of the therapy on the minor.

64 Amendment of s 288 (Communication about patient with others)

Section 288(3), definition *capacity*, paragraph (b)—

omit, insert—

- (b) freely and voluntarily make the request; and
- (c) communicate the request.

[s 65]

65 Amendment of s 307 (Annual report)

(1) Section 307(2)(b)(viii)—

omit.

(2) Section 307(2)—

insert—

(h) statistical data about information notices given under part 6.

Example of statistical data about information notices—

the number of applications for information notices made

66 Amendment of s 317 (Definitions for pt 6)

(1) Section 317, definition *relevant patient*—

omit.

(2) Section 317—

insert—

relevant day, for a forensic order or treatment support order that has ended, whether by revocation by the tribunal or otherwise, means the later of the following days—

(a) the day the order ended;

(b) if an appeal against the ending of the order may be started under chapter 13, part 3—

(i) the last day on which the notice of appeal may be filed under section 541; or

(ii) if the notice of appeal is filed under section 541—the day the appeal is decided or otherwise discontinued.

relevant patient means a patient of an authorised mental health service who—

- (a) is subject to a forensic order or treatment support order; or
- (b) was subject to a forensic order or treatment support order that has ended, if the relevant day for the order has not passed.

67 Amendment of s 318 (Application)

Section 318—

insert—

- (3) In this section—

forensic order includes a forensic order that has ended if the relevant day for the order has not passed.

treatment support order includes a treatment support order that has ended if the relevant day for the order has not passed.

68 Amendment of s 319 (Decision on application)

- (1) Section 319(2)(d), ‘section 323(1)(b)’—

omit, insert—

section 323(2)(b)

- (2) Section 319(4)—

omit, insert—

- (4) The chief psychiatrist must refuse to approve the application if the chief psychiatrist is satisfied—
 - (a) if the application states that the applicant’s nominee will be entitled to receive information under the notice—the nominee is not suitable to receive the information; or
 - (b) the person in relation to whom the application was made is not, or is no longer, a relevant patient.

[s 69]

(3) Section 319—

insert—

(8) In this section—

forensic order includes a forensic order that has ended if the relevant day for the order has not passed.

treatment support order includes a treatment support order that has ended if the relevant day for the order has not passed.

69 Replacement of ss 322 and 323

Sections 322 and 323—

omit, insert—

322 Duration of information notice

- (1) An information notice relating to a relevant patient ceases to have effect on the earliest of the following days—
- (a) if the relevant patient’s forensic order or treatment support order ends and the patient is not subject to any other forensic order or treatment support order—the relevant day for the forensic order or treatment support order that has ended;
 - (b) if the relevant patient has been transferred under chapter 12, part 10, division 2 to an interstate mental health service or another country—the day the patient leaves Queensland;
 - (c) if the person entitled to receive information under the notice notifies the chief psychiatrist the person no longer wishes to receive the information—the day the person gives the notice;

- (d) if the chief psychiatrist revokes the information notice under section 323—the day the notice is revoked.
- (2) Within 7 days after an information notice ceases to have effect under subsection (1)(a), (b) or (c), the chief psychiatrist must give the person who was entitled to receive information under the notice a written notice stating—
- (a) the information notice has ceased to have effect; and
 - (b) the reason the information notice ceased to have effect; and
 - (c) if the information notice ceased to have effect under subsection (1)(a) or (b)—the person is not entitled to appeal the ceasing of effect of the information notice.
- (3) Despite subsection (1)(b), if the relevant patient returns to Queensland before the patient's forensic order or treatment support order ends under section 528—
- (a) the information notice is reinstated on the day the relevant patient returns to Queensland; and
 - (b) within 7 days after the chief psychiatrist becomes aware the relevant patient has returned to Queensland, the chief psychiatrist must give notice of the reinstatement of the information notice to the person entitled to receive information under the notice.

323 Revocation of information notice

- (1) The chief psychiatrist must revoke an information notice relating to a relevant patient if the chief psychiatrist is satisfied disclosure of information

[s 69]

under the notice is likely to—

- (a) result in serious harm to the relevant patient's health or welfare; or
 - (b) put the safety of the relevant patient or someone else at serious risk.
- (2) The chief psychiatrist may revoke an information notice relating to a relevant patient if—
- (a) the chief psychiatrist is unable, after making reasonable efforts, to locate the person entitled to receive information under the notice; or
 - (b) the person entitled to receive information under the notice has contravened section 326.
- (3) However, before revoking an information notice under subsection (2)(b), the chief psychiatrist must give the person a reasonable opportunity to make a submission to the chief psychiatrist about why the notice should not be revoked.
- (4) Within 7 days after an information notice is revoked under this section, the chief psychiatrist must give the person who was entitled to receive information under the information notice a written notice stating—
- (a) the information notice has been revoked and has ceased to have effect; and
 - (b) the reasons for the decision to revoke the information notice; and
 - (c) that the person may appeal to the tribunal against the decision within 28 days after the person receives the written notice; and
 - (d) how the appeal may be made.

70 Amendment of s 350 (Definition for pt 5)

Section 350, definition *transfer considerations*, paragraphs (c) and (d)—

omit, insert—

- (c) if relevant, security requirements for the person; and
- (d) without limiting paragraphs (a) to (c), whether the transfer is appropriate in the circumstances.

Example of when a transfer under this part may be appropriate—

to allow the person to be in closer proximity to their family, carers or other support persons

71 Amendment of s 351 (Transfer between services by agreement of administrators)

(1) Section 351(3), from ‘regard to’—

omit, insert—

regard to—

- (a) the transfer considerations for the person; and
- (b) to the greatest extent practicable, the views, wishes and preferences of the person.

(2) Section 351(5), from ‘regard to’—

omit, insert—

regard to—

- (a) the transfer considerations for the person; and
- (b) to the greatest extent practicable, the views, wishes and preferences of the person.

[s 72]

72 Amendment of s 352 (Transfer between services by requirement of chief psychiatrist)

Section 352(3), from ‘regard to’—

omit, insert—

regard to—

- (a) the transfer considerations for the person;
and
- (b) to the greatest extent practicable, the views,
wishes and preferences of the person.

73 Amendment of s 353 (Transfer between authorised mental health service and forensic disability service)

Section 353(3)—

insert—

- (c) to the greatest extent practicable, the views,
wishes and preferences of the person.

74 Amendment of s 354 (Transfer of person subject to treatment authority to another State)

(1) Section 354(2)(a) and (b)—

omit, insert—

- (a) appropriate treatment and care is available
for the person at the interstate mental health
service; and
- (b) the transfer is otherwise appropriate in the
circumstances.

*Example of when a transfer under this section may be
appropriate—*

to allow the person to be in closer proximity to their
family, carers or other support persons

(2) Section 354—

insert—

(2A) In deciding whether the transfer is appropriate in the circumstances under subsection (2)(b), the administrator must, to the greatest extent practicable, have regard to the views, wishes and preferences of the person.

- (3) Section 354(2A) and (3)—
renumber as section 354(3) and (4).

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

- (1) Section 355(2)(a)—
omit.

- (2) Section 355(2)—
insert—

(d) the transfer is otherwise appropriate in the circumstances.

Example of when a transfer under this section may be appropriate—

to allow the person to be in closer proximity to their family, carers or other support persons

- (3) Section 355(2)(b) to (d)—
renumber as section 355(2)(a) to (c).

- (4) Section 355—
insert—

(2A) In deciding whether the transfer is appropriate in the circumstances under subsection (2)(c), the administrator must, to the greatest extent practicable, have regard to the views, wishes and preferences of the person.

- (5) Section 355(2A) to (7)—
renumber as section 355(3) to (8).

[s 76]

76 Replacement of s 368 (Apprehension of person absent from interstate mental health service)

Section 368—

omit, insert—

368 Apprehension, detention and transport of person absent from interstate mental health service

- (1) An authorised person may apprehend, in Queensland, a person (the *absent person*)—
 - (a) who is absent without permission from an interstate mental health service; and
 - (b) for whom an apprehension authority has been issued under a corresponding law of the State (the *other State*) in which the interstate mental health service is located.
- (2) The apprehension authority is taken to be a warrant for apprehension of the absent person, by an authorised person, under this Act.
- (3) If the absent person is apprehended under this section, the absent person may be—
 - (a) transported, by an authorised person, to—
 - (i) an interstate mental health service in the other State; or
 - (ii) an authorised mental health service; or
 - (b) detained in an authorised mental health service for the period reasonably necessary to enable the administrator of the service to make arrangements for the absent person to be transported to an interstate mental health service under paragraph (a).
- (4) Before the absent person is detained or transported under this section, an authorised person must explain to the absent person why the absent person is being detained or transported.

- (5) Subsection (6) applies if a corresponding law confers a function or power on a person (an *interstate person*) in relation to the apprehension of the absent person.
- (6) The interstate person may, in Queensland, perform the function, or exercise the power, to the extent necessary to assist in the apprehension, detention or transport, under this section, of the absent person.
- (7) In this section—
apprehension authority, in relation to a person, means a warrant, or another document (however described), that authorises the apprehension of the person.

77 Amendment of s 383 (Purpose of pt 7)

Section 383(b), ‘particular’, second mention—

omit.

78 Amendment of s 427 (Transfer to another authorised mental health service)

Section 427(2)(d)—

omit, insert—

- (d) to the greatest extent practicable, the views, wishes and preferences of the person;
- (e) without limiting paragraphs (a) to (d), whether the transfer is appropriate in the circumstances.

Example of when a transfer under this section may be appropriate—

to allow the person to be in closer proximity to their family, carers or other support persons

[s 79]

79 Amendment of s 435 (Requirement to conduct periodic review suspended)

(1) Section 435(1), after ‘service’—

insert—

or another country

(2) Section 435(2)—

omit, insert—

(2) The tribunal is not required to conduct a periodic review of the forensic order under section 433(1) while the person is out of Queensland because of the person’s transfer under part 10, division 2.

80 Amendment of s 456 (Transfer of responsibility for forensic patient)

Section 456(2)(f)—

omit, insert—

(f) to the greatest extent practicable, the views, wishes and preferences of the person;

(g) without limiting paragraphs (a) to (f), whether the transfer is appropriate in the circumstances.

Example of when a transfer under this section may be appropriate—

to allow the person to be in closer proximity to their family, carers or other support persons

81 Amendment of s 467 (Requirement to conduct periodic review suspended)

(1) Section 467(1), after ‘service’—

insert—

or another country

(2) Section 467(2)—

omit, insert—

- (2) The tribunal is not required to conduct a periodic review of the treatment support order under section 465(1) while the person is out of Queensland because of the person's transfer under part 10, division 2.

82 Amendment of s 479 (Transfer to another authorised mental health service)

Section 479(2)(e)—

omit, insert—

- (e) to the greatest extent practicable, the views, wishes and preferences of the person;
- (f) without limiting paragraphs (a) to (e), whether the transfer is appropriate in the circumstances.

Example of when a transfer under this section may be appropriate—

to allow the person to be in closer proximity to their family, carers or other support persons

83 Amendment of s 507 (Who may apply)

Section 507(a)—

omit, insert—

- (a) the person is an adult who is—
- (i) subject to a treatment authority, forensic order or treatment support order; or
- (ii) unable to give informed consent to the therapy; or

[s 84]

84 Amendment of s 509 (Decision on application)

(1) Section 509(2)(a)—

omit, insert—

(a) if the person is an adult—

- (i) whether the adult is able to give informed consent to the therapy; and
- (ii) to the greatest extent practicable, any views, wishes and preferences the adult has expressed about the therapy, whether in an advance health directive or otherwise; or

(2) Section 509(2)(b), ‘application relates to’—

omit, insert—

person is

(3) Section 509(3)—

omit, insert—

(3) Subject to subsections (4) to (6), the tribunal may give the approval only if the tribunal is satisfied the person is—

- (a) an adult who is not able to give informed consent to the therapy, whether or not the adult is subject to a treatment authority, forensic order or treatment support order; or
- (b) an adult who is—
 - (i) able to give informed consent to the therapy; and
 - (ii) subject to a treatment authority, forensic order or treatment support order; or

(c) a minor.

(3A) If subsection (3)(a) applies, the tribunal must also be satisfied—

- (a) the therapy has clinical merit and is appropriate in the circumstances; and
 - (b) evidence supports the effectiveness of the therapy for the adult's particular mental illness; and
 - (c) if the therapy has previously been performed on the adult—of the effectiveness of the therapy for the adult.
- (3B) If subsection (3)(b) applies, the tribunal must also be satisfied—
- (a) the applicant has given the adult the explanation required under section 234; and
 - (b) the adult has given informed consent to the therapy under chapter 7, part 10.
- (3C) If subsection (3)(c) applies, the tribunal must also be satisfied—
- (a) the therapy has clinical merit and is appropriate in the circumstances; and
 - (b) evidence supports the effectiveness of the therapy for—
 - (i) the minor's particular mental illness; and
 - (ii) persons of the minor's age; and
 - (c) if the therapy has previously been performed on the minor—of the effectiveness of the therapy for the minor; and
 - (d) the performance of the therapy on the minor is in the minor's best interests.
- (4) Section 509(3A) to (4)—
renumber as section 509(4) to (7).

[s 85]

85 Amendment of s 513 (Definitions for div 1)

- (1) Section 513, definition *interstate transfer requirements*—
omit.
- (2) Section 513—
insert—

interstate transfer approval, in relation to a person, means an approval under this division for the transfer of the person from an interstate mental health service to an authorised mental health service or the forensic disability service.

patient seeking transfer means—

- (a) in relation to an interstate transfer approval, the person who is the subject of the approval; or
- (b) in relation to an application for an interstate transfer approval, the person who would be the subject of the approval if the approval were granted.

86 Replacement of s 515 (Requirements for application)

Section 515—

omit, insert—

515 Requirements for application

- (1) The application must—
- (a) state the reasons why the transfer is appropriate in the circumstances; and

Example of when a transfer under this division may be appropriate—

to allow the patient seeking transfer to be in closer proximity to their family, carers or other support persons

- (b) state—

- (i) the authorised mental health service proposed to be responsible for the patient seeking transfer; or
 - (ii) that the forensic disability service is proposed to be responsible for the patient seeking transfer; and
 - (c) include a written statement from the responsible person that complies with subsection (2).
- (2) For subsection (1)(c), the written statement must state the responsible person considers—
- (a) either—
 - (i) if subsection (1)(b)(i) applies—appropriate treatment and care is available for the patient seeking transfer at the authorised mental health service; or
 - (ii) if subsection (1)(b)(ii) applies—appropriate care is available for the patient seeking transfer at the forensic disability service; and
 - (b) the arrangements for the transfer are adequate to protect the safety of the community.
- (3) In this section—
- responsible person*** means—
- (a) if an authorised mental health service is proposed to be responsible for the patient seeking transfer—the chief psychiatrist; or
 - (b) if the forensic disability service is proposed to be responsible for the patient seeking transfer—the director of forensic disability.

[s 87]

87 Amendment of s 516 (Notice of hearing)

Section 516(1)(a) and (b), ‘the person’—

omit, insert—

the patient seeking transfer

88 Amendment of s 517 (Decision on application)

Section 517(1) and (2)—

omit, insert—

(1) In deciding the application, the tribunal must—

(a) to the greatest extent practicable, have regard to the views, wishes and preferences of the patient seeking transfer; and

(b) approve, or refuse to approve, the transfer.

(2) The tribunal may approve the transfer only if satisfied—

(a) the transfer is appropriate in the circumstances; and

Example of when a transfer under this division may be appropriate—

to allow the patient seeking transfer to be in closer proximity to their family, carers or other support persons

(b) either—

(i) if an authorised mental health service is stated in the application—appropriate treatment and care is available for the patient seeking transfer at the authorised mental health service; or

(ii) if the forensic disability service is stated in the application—appropriate care is available for the patient seeking transfer at the forensic disability service; and

- (c) a forensic order (mental health) or forensic order (disability) is necessary, because of the mental condition of the patient seeking transfer, to protect the safety of the community, including, for example, from the risk of serious harm to other persons or property; and
- (d) the arrangements for the transfer are adequate to protect the safety of the community.

89 Amendment of s 518 (Making of forensic order)

- (1) Section 518(1), (2) and (3), ‘the person’—

omit, insert—

the patient seeking transfer

- (2) Section 518(2)(b), ‘the person’s’—

omit, insert—

the patient’s

- (3) Section 518(4)(b), ‘the person subject to the interstate forensic order’—

omit, insert—

the patient seeking transfer

90 Replacement of ss 519 and 520

Sections 519 and 520—

omit, insert—

519 When interstate transfer approval takes effect

An interstate transfer approval takes effect—

- (a) if the tribunal imposes 1 or more conditions on the approval that must be satisfied before

[s 90]

the approval takes effect—when all of the conditions are satisfied; or

(b) otherwise—on the granting of the approval.

520 Transport of patient seeking transfer under interstate transfer approval

(1) This section applies if an interstate transfer approval is in effect.

(2) The patient seeking transfer may be transported under the approval by—

(a) if the approval states that a particular entity may transport the patient seeking transfer under the approval—the stated entity; or

(b) otherwise—

(i) an authorised person; or

Note—

For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.

(ii) if the patient seeking transfer is to be transported to the forensic disability service—an authorised practitioner under the Forensic Disability Act; or

(iii) a person who is authorised under a corresponding law to transport the patient seeking transfer from an interstate mental health service to an authorised mental health service or the forensic disability service.

(3) As soon as practicable after the approval takes effect, the administrator of the responsible service for the patient seeking transfer must arrange for the patient to be transported to the responsible service by an entity authorised under subsection (2).

(4) In this section—

responsible service, for a patient seeking transfer under an interstate transfer approval, means—

- (a) if an authorised mental health service is stated in the approval—the authorised mental health service; or
- (b) if the forensic disability service is stated in the approval—the forensic disability service.

91 Replacement of s 521 (Definition for div 2)

Section 521—

omit, insert—

521 Definitions for division

In this division—

international transfer approval, in relation to a person, means an approval under this division for the transfer of the person from an authorised mental health service, or the forensic disability service, to another country.

interstate transfer approval, in relation to a person, means an approval under this division for the transfer of the person from an authorised mental health service, or the forensic disability service, to an interstate mental health service.

patient seeking transfer means—

- (a) in relation to an international transfer approval or interstate transfer approval, the person who is the subject of the approval; or
- (b) in relation to an application for an international transfer approval or interstate transfer approval, the person who would be the subject of the approval if the approval were granted.

[s 92]

responsible service, for a patient seeking transfer, means—

- (a) if an authorised mental health service is responsible for the patient seeking transfer before the patient is transferred under this division—the authorised mental health service; or
- (b) if the forensic disability service is responsible for the patient seeking transfer before the patient is transferred under this division—the forensic disability service.

92 Amendment of s 522 (Who may apply)

Section 522(1), from ‘authorised mental health service’—
omit, insert—

authorised mental health service, or the forensic disability service, to—

- (a) a stated interstate mental health service; or
- (b) a stated country.

93 Replacement of s 523 (Requirements for application)

Section 523—
omit, insert—

523 Requirements for application

- (1) The application must—
 - (a) state the reasons why the transfer is appropriate in the circumstances; and

Example of when a transfer under this division may be appropriate—

to allow the patient seeking transfer to be in closer proximity to their family, carers or other support persons

- (b) include a written statement from the responsible person that complies with subsection (2).
- (2) For subsection (1)(b), the written statement must state the responsible person considers—
 - (a) either—
 - (i) if an authorised mental health service is responsible for the patient seeking transfer—
 - (A) for an application for an interstate transfer approval—appropriate treatment and care is available for the patient seeking transfer at the interstate mental health service stated in the application; or
 - (B) for an application for an international transfer approval—appropriate treatment and care is available for the patient seeking transfer in the country stated in the application; or
 - (ii) if the forensic disability service is responsible for the patient seeking transfer—
 - (A) for an application for an interstate transfer approval—appropriate care is available for the patient seeking transfer at the interstate mental health service stated in the application; or
 - (B) for an application for an international transfer approval—appropriate care is available for the patient seeking

[s 94]

transfer in the country stated in the application; and

- (b) the arrangements for the transfer are adequate to protect the safety of the community; and
 - (c) for an application for an interstate transfer approval—the transfer is, or may be, permitted under a law of the State in which the interstate mental health service stated in the application is located.
- (3) In this section—
- responsible person*** means—
- (a) if an authorised mental health service is responsible for the patient seeking transfer—the chief psychiatrist; or
 - (b) if the forensic disability service is responsible for the patient seeking transfer—the director of forensic disability.

94 Amendment of s 524 (Notice of hearing)

Section 524(1)(a) to (d), ‘the person’—

omit, insert—

the patient seeking transfer

95 Amendment of s 525 (Decision on application)

Section 525(1) and (2)—

omit, insert—

- (1) In deciding the application, the tribunal must—
 - (a) to the greatest extent practicable, have regard to the views, wishes and preferences of the patient seeking transfer; and
 - (b) approve, or refuse to approve, the transfer.

(2) The tribunal may approve the transfer only if satisfied—

(a) the transfer is appropriate in the circumstances; and

Example of when a transfer under this division may be appropriate—

to allow the patient seeking transfer to be in closer proximity to their family, carers or other support persons

(b) either—

(i) if an authorised mental health service is responsible for the patient seeking transfer—

(A) for an application for an interstate transfer approval—appropriate treatment and care is available for the patient seeking transfer at the interstate mental health service stated in the application; or

(B) for an application for an international transfer approval—appropriate treatment and care is available for the patient seeking transfer in the country stated in the application; or

(ii) if the forensic disability service is responsible for the patient seeking transfer—

(A) for an application for an interstate transfer approval—appropriate care is available for the patient seeking transfer at the interstate mental health service stated in the application; or

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- (B) for an application for an international transfer approval—appropriate care is available for the patient seeking transfer in the country stated in the application; and
- (c) the arrangements for the transfer are adequate to protect the safety of the community; and
- (d) for an application for an interstate transfer approval—the transfer is, or may be, permitted under a law of the State in which the interstate mental health service stated in the application is located.

96 Replacement of ss 526–528

Sections 526 to 528—

omit, insert—

526 When interstate transfer approval or international transfer approval takes effect

An interstate transfer approval or international transfer approval takes effect—

- (a) if the tribunal imposes 1 or more conditions on the approval that must be satisfied before the approval takes effect—when all of the conditions are satisfied; or
- (b) otherwise—on the granting of the approval.

527 Transport of patient seeking transfer under interstate transfer approval

- (1) This section applies if an interstate transfer approval is in effect.
- (2) The patient seeking transfer may be transported under the approval by—

-
- (a) if the approval states that a particular entity may transport the patient seeking transfer under the approval—the stated entity; or
 - (b) otherwise—
 - (i) an authorised person; or

Note—

For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.

- (ii) if the patient seeking transfer is to be transported from the forensic disability service—an authorised practitioner under the Forensic Disability Act; or
 - (iii) a person who is authorised under a corresponding law to transport the patient seeking transfer from the responsible service for the patient to the interstate mental health service stated in the approval.
- (3) As soon as practicable after the approval takes effect, the administrator of the responsible service for the patient seeking transfer must arrange for the patient to be transported to the interstate mental health service stated in the approval by an entity authorised under subsection (2).

527A Transport of patient seeking transfer under international transfer approval

- (1) This section applies if an international transfer approval is in effect.
- (2) The patient seeking transfer may be transported under the approval by—
 - (a) if the approval states that a particular entity may transport the patient seeking transfer under the approval—the stated entity; or

- (b) otherwise—
 - (i) an authorised person; or
 - Note—*

For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.
 - (ii) if the patient seeking transfer is to be transported from the forensic disability service—an authorised practitioner under the Forensic Disability Act.
- (3) As soon as practicable after the approval takes effect, the administrator of the responsible service for the patient seeking transfer must arrange for the patient to be transported to the country stated in the approval by an entity authorised under subsection (2).

528 Effect on order

- (1) This section applies to a forensic order (mental health), forensic order (disability) or treatment support order to which a patient seeking transfer is subject when the patient is transferred under an interstate transfer approval or an international transfer approval.
- (2) The order has effect only if the patient seeking transfer returns to Queensland and while the patient is in Queensland.
- (3) Also, the order ends—
 - (a) on the last day of any non-revocation period for the order if, on that day, the patient seeking transfer has been out of Queensland for a continuous period of at least 3 years; or
 - (b) if paragraph (a) does not apply—if the patient seeking transfer is out of Queensland for a continuous period of 3 years.

(4) In this section—

out of Queensland, in relation to a patient seeking transfer, means out of Queensland because of the transfer of the patient under an interstate transfer approval or international transfer approval.

97 Amendment of s 532 (Definitions for pt 2)

Section 532, definition *decision notice*, ‘, 322(3)’—
omit.

98 Amendment of s 740 (Appointment of representative)

Section 740(5), from ‘ability to understand’—
omit, insert—

ability to—

- (a) understand the nature and effect of the decision to waive the right; and
- (b) freely and voluntarily make the decision to waive the right; and
- (c) communicate the decision to waive the right.

99 Amendment of s 776 (Definitions for ch 17)

Section 776—
insert—

relevant person means each of the following persons—

- (a) the chief psychiatrist;
- (b) the administrator of an authorised mental health service;
- (c) the director of forensic disability;

[s 100]

- (d) the administrator of the forensic disability service;
- (e) an authorised doctor;
- (f) an authorised mental health practitioner;
- (g) a member of the tribunal;
- (h) a member of the staff of the tribunal or registry;
- (i) an assisting clinician;
- (j) a person representing another person at the hearing of a proceeding in the tribunal;
- (k) a member of a person's support network accompanying the person under section 739 at the hearing of a proceeding in the tribunal;
- (l) an examining practitioner conducting an examination under a court examination order or an order mentioned in section 721(1);
- (m) a designated person performing a function under this Act;
- (n) an independent patient rights adviser;
- (o) an inspector;
- (p) an authorised person.

100 Replacement of ss 778 and 779

Sections 778 and 779—

omit, insert—

778 Offence to use or disclose personal information

- (1) This section applies to a person who—
 - (a) is, or has been, a relevant person; and

- (b) acquires, or acquired, personal information in the person's capacity as a relevant person.
- (2) The person must not use the personal information or disclose the information to anyone else.

Maximum penalty—100 penalty units.

- (3) However, the person may use or disclose the personal information—
 - (a) to the extent necessary to allow—
 - (i) the person to perform the person's functions under this Act; or
 - (ii) another relevant person to perform the other person's functions under this Act; or
 - (b) if the use or disclosure is permitted under part 3 or is otherwise required or permitted by law; or

Note—

See also the *Hospital and Health Boards Act 2011*, part 7 in relation to use and disclosure of confidential information, under section 139 of that Act, by designated persons.

- (c) if the person to whom the information relates consents to the use or disclosure.

101 Amendment of s 781 (Disclosure to identify and offer support to victims)

Section 781(2), from 'information'—

omit, insert—

information—

- (a) to offer support services to a person who is, or may be, a victim; or

[s 102]

- (b) to assist in the identification of a person mentioned in paragraph (a) for the purpose mentioned in that paragraph.

102 Amendment of s 797 (Protection of official from liability)

- (1) Section 797(4), definition *official*, after paragraph (a)—
insert—
 - (aa) the chief psychiatrist; or
 - (ab) the director of forensic disability; or
- (2) Section 797(4), definition *official*, paragraph (g), ‘(f)’—
omit, insert—
 - (h)
- (3) Section 797(4), definition *official*, paragraphs (aa) to (g)—
renumber as paragraphs (b) to (i).

103 Replacement of ch 21, hdg (Transitional provision for Hospital Foundations Act 2018)

Chapter 21, heading—
omit, insert—

Chapter 21 Other transitional provisions

Part 1 Transitional provision for Hospital Foundations Act 2018

104 Insertion of new ch 21, pt 2

Chapter 21—

insert—

Part 2 Transitional provisions for Health and Other Legislation Amendment Act 2022

865 Definitions for part

In this part—

former, for a provision of this Act, means the provision as in force from time to time before the commencement.

new, for a provision of this Act, means the provision as in force on the commencement.

866 Application of new s 117A to reference made before commencement

- (1) This section applies if—
 - (a) before the commencement, a reference in relation to a person was made to the Mental Health Court; and
 - (b) immediately before the commencement, the reference had not been decided by the court.
- (2) This section also applies if—
 - (a) after the commencement, a reference in relation to a person is made to the Mental Health Court; and
 - (b) the offence in relation to the reference was allegedly committed before the commencement.
- (3) New section 117A applies in relation to the reference.

867 Application of new s 157A to reference made before commencement

- (1) This section applies if—
 - (a) before the commencement, a reference in relation to a person was made to the Mental Health Court; and
 - (b) immediately before the commencement, the reference had not been decided by the court.
- (2) This section also applies if—
 - (a) after the commencement, a reference in relation to a person is made to the Mental Health Court; and
 - (b) the offence in relation to the reference was allegedly committed before the commencement.
- (3) New section 157A applies in relation to the reference.

868 Application of new ss 317, 322 and 323

New sections 317, 322 and 323 apply in relation to an information notice in effect under chapter 10, part 6 from the commencement, whether the notice was made before or after the commencement.

869 Apprehension and transport of persons

New section 368 applies in relation to the apprehension and transport of a person from the commencement, whether the apprehension authority was issued before or after the commencement.

870 Application of new s 509

- (1) Subsection (2) applies if—
 - (a) before the commencement, an application for an approval was made under former section 507; and
 - (b) immediately before the commencement, the application had not been decided.
- (2) New section 509 applies in relation to the application.

871 Application of new ch 12, pt 10

- (1) Subsection (2) applies if—
 - (a) before the commencement, an application for an approval was made under former chapter 12, part 10; and
 - (b) immediately before the commencement, the application had not been decided.
- (2) New chapter 12, part 10 applies in relation to the application.
- (3) If the application does not include information required under new section 515—
 - (a) the tribunal must give the applicant a written request for the information; and
 - (b) if the applicant complies with the request within any period stated in the request—the application is taken to comply, and to always have complied, with new section 515, but only to the extent the application would have complied with new section 515 if the information were included in the application when it was made.
- (4) Also, new chapter 12, part 10 applies in relation to a person who is subject to an interstate forensic order, forensic order (mental health), forensic

[s 105]

order (disability) or treatment support order, whether the order was made before or after the commencement.

872 Application of new s 778

New section 778 applies to a person mentioned in section 778(1) whether the person acquired or acquires the personal information before or after the commencement.

105 Amendment of sch 3 (Dictionary)

(1) Schedule 3, definitions *interstate transfer requirements* and *relevant person*—

omit.

(2) Schedule 3—

insert—

international transfer approval, in relation to a person, for chapter 12, part 10, division 2, see section 521.

interstate transfer approval, in relation to a person—

(a) for chapter 12, part 10, division 1, see section 513; or

(b) for chapter 12, part 10, division 2, see section 521.

patient seeking transfer—

(a) for chapter 12, part 10, division 1, see section 513; or

(b) for chapter 12, part 10, division 2, see section 521.

relevant day, for a forensic order or treatment support order that has ended, for chapter 10, part

6, see section 317.

relevant person—

(a) for chapter 16, part 2, division 6, subdivision 2, see section 728(1)(a) and (2)(a); or

(b) for chapter 17, see section 776.

responsible service, for a patient seeking transfer, for chapter 12, part 10, division 2, see section 521.

(3) Schedule 3, definition *interested person*, paragraph (a), ‘supported’—

omit, insert—

support

Division 4 Amendment of Public Health (Infection Control for Personal Appearance Services) Act 2003

106 Act amended

This division amends the *Public Health (Infection Control for Personal Appearance Services) Act 2003*.

Note—

See also the amendments in schedule 1, part 2.

107 Amendment of s 44 (Applications for renewal of licence)

(1) Section 44(2), ‘at least 1 month’—

omit, insert—

within 60 days

(2) Section 44(5)(a)—

omit, insert—

[s 108]

- (a) whether, under section 35, the applicant is a suitable person to hold the licence; and
 - (aa) whether, under section 36, the premises at which higher risk personal appearance services are to be provided under the licence, if the application is granted, are suitable for providing the services; and
- (3) Section 44(5)(aa) and (b)—
renumber as section 44(5)(b) and (c).

108 Amendment of s 46 (Licence taken to be in force while application for renewal is considered)

Section 46(1), from ‘until the application’—
omit, insert—

until the application is—

- (a) decided under section 44; or
- (b) taken to have been withdrawn under section 45(2); or
- (c) otherwise withdrawn.

109 Insertion of new pt 4, div 2A

Part 4—
insert—

Division 2A Restoration of licences

46A Applications for restoration of licence

- (1) If a person’s licence expires, the person may apply to the local government that issued the licence for the restoration of the licence.
- (2) The application must be made within 30 days after the licence expires.

- (3) The application must comply with section 58.
- (4) The local government must consider the application and decide to—
 - (a) restore the licence; or
 - (b) restore the licence subject to conditions; or
 - (c) refuse to restore the licence.
- (5) In deciding whether to grant the application, the local government may have regard to—
 - (a) whether, under section 35, the applicant is a suitable person to hold the licence; and
 - (b) whether, under section 36, the premises at which higher risk personal appearance services are to be provided under the licence, if the application is granted, are suitable for providing the services; and
 - (c) the results of inspections to monitor compliance with this Act during the term of the licence that ended on the expiry of the licence.
- (6) If the local government decides to restore the licence, with or without conditions—
 - (a) the local government must give the applicant notice of the decision; and
 - (b) the licence continues in force for the period of up to 3 years stated in the licence, or in the notice mentioned in paragraph (a), starting on the day the licence would have expired but for section 46C.
- (7) The local government must immediately give the applicant an information notice for the following decisions—
 - (a) a decision to restore the licence subject to conditions;

[s 109]

- (b) a decision to refuse to restore the licence.
- (8) An expired licence may be restored, with or without conditions, by—
 - (a) endorsing the expired licence with details of the restoration; or
 - (b) issuing another licence.

46B Inquiries into application for restoration of licence

- (1) Before deciding the application, the local government may, by notice given to the applicant, require the applicant to give the local government, within a reasonable period of at least 40 days stated in the notice, further information or a document the local government reasonably requires to decide the application.
- (2) The applicant is taken to have withdrawn the application if, within the stated period, the applicant does not comply with the requirement.

46C Expired licence taken to be in force while application for restoration is considered

- (1) If an application is made under section 46A, the expired licence is taken to be in force—
 - (a) from the day after the day on which the licence would otherwise have expired; and
 - (b) until the application is—
 - (i) decided under section 46A; or
 - (ii) taken to have been withdrawn under section 46B(2); or
 - (iii) otherwise withdrawn.
- (2) However, if the application is refused, the expired licence continues in force until the information

notice for the decision is given to the applicant.

- (3) This section does not apply if the licence is earlier suspended or cancelled.

110 Amendment of s 58 (Applications)

- (1) Section 58(1)—

insert—

(ba) an application for the restoration of a licence under section 46A;

- (2) Section 58(1)(ba) to (d)—

renumber as section 58(1)(c) to (e).

111 Insertion of new pt 10, div 1, hdg

Before section 149—

insert—

**Division 1 Transitional provisions for
Act No. 81 of 2003**

112 Insertion of new pt 10, div 2

Part 10—

insert—

**Division 2 Transitional provisions for
Health and Other
Legislation Amendment
Act 2022**

161 Continuing application of former pt 4, div 2

- (1) This section applies if—

[s 112]

- (a) before the commencement, a person made an application under former section 44; and
- (b) immediately before the commencement, the application—
 - (i) had not been decided under former section 44; and
 - (ii) was not taken to have been withdrawn under section 45(2); and
 - (iii) had not been otherwise withdrawn.
- (2) Former part 4, division 2 continues to apply in relation to the application as if the *Health and Other Legislation Amendment Act 2022* had not commenced.
- (3) In this section—
former, for a provision of this Act, means the provision as in force from time to time before the commencement.

162 Application of pt 4, div 2A

- (1) This section applies if—
 - (a) a person's licence expired before the commencement; and
 - (b) on the commencement, the period under section 46A(2), for making an application for restoration of the licence, has not expired.
- (2) Part 4, division 2A applies in relation to the licence.

Division 5 Amendment of Radiation Safety Act 1999

113 Act amended

This division amends the *Radiation Safety Act 1999*.

Note—

See also the amendments in schedule 1, part 2.

114 Amendment of s 51 (Procedural requirements for applications)

(1) Section 51(1)(c)(ii) and (iii)—

omit.

(2) Section 51(1)(c)(iv)—

renumber as section 51(1)(c)(ii).

(3) Section 51—

insert—

(1A) If the application is for an Act instrument prescribed by regulation for this subsection, the application must also be accompanied by—

(a) if the applicant is an individual—proof, to the satisfaction of the chief executive, of the individual's identity; or

(b) if the applicant is required to appoint a nominated person—proof, to the satisfaction of the chief executive, of the nominated person's identity.

(4) Section 51(6), 'subsection (5)(b)'—

omit, insert—

subsection (6)(b)

(5) Section 51(1A) to (8)—

renumber as section 51(2) to (9).

[s 115]

Division 6 **Amendment of Transplantation and Anatomy Act 1979**

115 Act amended

This division amends the *Transplantation and Anatomy Act 1979*.

116 Amendment of s 4 (Interpretation)

Section 4, definition *tissue*—

omit, insert—

tissue—

- (a) means—
 - (i) an organ, blood or part of—
 - (A) a human body; or
 - (B) a human foetus; or
 - (ii) a substance extracted from an organ, blood or part of—
 - (A) a human body; or
 - (B) a human foetus; but
- (b) does not include—
 - (i) immunoglobulins; or
 - (ii) laboratory reagents, or reference and control materials, derived wholly or in part from pooled human plasma; or
 - (iii) human milk.

Part 4 **Minor and consequential amendments**

117 **Acts amended**

Schedule 1 amends the Acts it mentions.

Schedule 1 Minor and consequential amendments

section 117

Part 1 Amendments commencing on assent

Corrective Services Act 2006

1 Section 306A, definition *targeted substance*—

omit, insert—

targeted substance means a substance, other than a dangerous drug, that may impair a person's physical or mental capacity.

Water Supply (Safety and Reliability) Act 2008

1 Section 399F(1)(h)—

omit, insert—

(h) the *Medicines and Poisons Act 2019*, to the extent it applies to a pest control activity within the meaning of that Act;

Part 2 Amendments commencing by proclamation

Ambulance Service Act 1991

- 1 Sections 50G(1), 50I(1), 50J(1), 50K, 50M(1) and (2), 50N, 50O and 50S(1), ‘is authorised to’—

omit, insert—

may

Mental Health Act 2016

- 1 Sections 11(c), 200(b) and 237(1)(b), section 243, definition *relevant patient*, paragraph (b), and section 632(1)(b), ‘section 368(4)’—

omit, insert—

section 368(3)(b)

Public Health (Infection Control for Personal Appearance Services) Act 2003

- 1 Section 49(5), editor’s note—

omit, insert—

Notes—

- 1 See section 35 in relation to the matters a local government may have regard to in deciding whether a person is a suitable person to hold a licence.

- 2 See section 36 in relation to the matters a local government may have regard to in deciding whether premises at which higher risk personal appearance services are to be provided are suitable for providing the services.

2 Section 51(2), editor's note—

omit, insert—

Note—

See section 35 in relation to the matters a local government may have regard to in deciding whether a person is a suitable person to hold a licence.

3 Section 88(1), editor's note—

omit, insert—

Note—

See section 115 in relation to false or misleading statements.

Radiation Safety Act 1999

1 Section 29(2), editor's note—

omit, insert—

Note—

Under section 51(3) and (4)(a), an application for a possession licence must be accompanied by the proposed radiation safety and protection plan for the radiation practice for which the applicant wants to possess a radiation source.

2 Section 34B(3), note, 'section 51(3)(b)'—

omit, insert—

section 51(4)(b)

3 Section 53(1)(b), editor's note—

omit, insert—

Note—

Justification is a radiation safety, protection and security principle under section 5.

4 Section 53(1)(c), editor's note—

omit, insert—

Note—

Under section 51(3) and (4)(a), an application for a possession licence must be accompanied by the proposed radiation safety and protection plan for the radiation practice for which the applicant wants to possess a radiation source.

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