

# Health and Other Legislation Amendment Bill 2022

## Statement of Compatibility

### Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, Yvette D'Ath MP, Minister for Health and Ambulance Services and Leader of the House make this statement of compatibility with respect to the Health and Other Legislation Amendment Bill 2022.

In my opinion, the Health and Other Legislation Amendment Bill 2022 is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

## Overview of the Bill

The Health and Other Legislation Amendment Bill 2022 (Bill) will make amendments to support the wellbeing of the public health workforce and facilitate policy initiatives to improve and protect Queenslanders' health. The amendments will ensure that health portfolio and related legislation operates effectively and enables policies and practices that advance the health of Queenslanders. The Bill will also establish a legislative framework for recording the proceedings of prescribed tribunals and for providing access to records or transcriptions of the proceedings.

The Bill amends the:

- *Hospital and Health Boards Act 2011* to:
  - strengthen protections for the physical and psychological wellbeing of the public health workforce by requiring Hospital and Health Boards and Hospital and Health Services to proactively consider the health, safety and wellbeing of staff of public sector health service facilities; and
  - clarify that a direction to leave health services land cannot be given to a person by a security officer under section 183 of the Act if the person requires emergency medical treatment that is immediately necessary to save their life or prevent serious impairment;
- *Medicines and Poisons Act 2019* to:
  - support the disclosure of confidential medicines and poisons information to Hospital and Health Services, Veterinary Surgeons Board of Queensland (VSBQ) and law enforcement agencies for regulation, safety and compliance purposes;
  - clarify when confidential information can be disclosed from the administrative action register and the substance authority register to enable verification that persons working with medicines and poisons hold the appropriate authority; and
  - make operational and technical amendments to ensure that regulatory requirements for certain pest management activities are clear;
- *Recording of Evidence Act 1962* to establish a legislative framework for recording the proceedings of prescribed tribunals and for providing access to copies of records or transcriptions of the proceedings;

- *Mental Health Act 2016* to:
  - support transparency of proceedings in the Mental Health Review Tribunal (MHRT) by ensuring there are no operational barriers to the MHRT implementing electronic recording and appropriately sharing records; and
  - reduce delays in MHRT hearings, and barriers to individuals exercising their rights in a timely manner, by allowing adults who wish to waive the right to be legally represented to do so by any means, not just in writing;
- *Public Health Act 2005* to:
  - maximise resources for the screening of children for preventable vision loss by authorising the disclosure of student information from schools and their governing bodies to the Primary School Nurse Health Readiness Program; and
  - modernise the Queensland Cancer Register to reflect the incidence of cancer more accurately, by extending notification requirements to diagnostic imaging practices and requiring additional data from existing notifiers;
- *Radiation Safety Act 1999* to make operational and technical improvements, including to improve the interaction between the Act and the *Radiation Safety Regulation 2021*;
- *Transplantation and Anatomy Act 1979* to support efficient and consistent processes for the supply of human tissue products and donation of tissue for essential health purposes; and
- *Water Fluoridation Act 2008* to recognise a changing media landscape by removing requirements for fluoridation decisions to be notified in print newspapers.

## Human Rights Issues

### **Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)**

In my opinion, the human rights that are relevant to the Bill are:

- right to life (section 16);
- property rights (section 24);
- privacy and reputation (section 25);
- fair hearing (section 31); and
- right to health services (section 37).

For the reasons outlined below, I am of the view that the Bill protects and promotes the following human rights. An analysis of human rights that are limited by the Bill is also provided below.

### **Human rights promoted by the Bill**

#### ***Amendments to the *Hospital and Health Boards Act 2011****

*Right to life (section 16, Human Rights Act) and right to health services (section 37, Human Rights Act)*

The right to life imposes substantive and procedural obligations on the State to take appropriate steps and adopt positive measures to protect life. The protective obligation extends to requiring authorities to put in place measures that would protect an individual from real and immediate

risks to their life. The right to health services provides that every person has the right to access health services without discrimination. It also provides that a person must not be refused necessary emergency medical treatment (section 37(2) of the Human Rights Act).

Clause 7 of the Bill promotes the right to life and right to health services by clarifying that a healthcare security officer must not direct a person to leave health services land under section 183 of the *Hospital and Health Boards Act 2011* if the person requires emergency medical treatment that is immediately necessary to save the person's life or to prevent serious impairment to the person. This amendment reflects existing operational practice for healthcare security officers to communicate with healthcare staff about a person's healthcare needs before providing a direction to leave. It reinforces the importance of the right to access health services, which cannot be limited, by replicating the requirement in section 37(2) of the Human Rights Act in the Hospital and Health Boards Act.

### **Amendments to the *Transplantation and Anatomy Act 1979***

#### *Right to life (section 16, Human Rights Act)*

The right to life is also promoted by the amendments to the *Transplantation and Anatomy Act 1979*, as the Bill will allow for more efficient processes for the supply of human tissue products to persons requiring them for essential healthcare purposes. Clause 39 of the Bill removes the requirement for Queensland doctors seeking to purchase products that are already approved by the Therapeutic Goods Administration's 'Special Access Scheme' to apply for a Ministerial permit to access these products and aligns the consent processes for the donation of human tissue, such as organ donation after death, between public and private hospitals.

#### *Supply of human tissue products under the TGA 'Special Access Scheme'*

The Therapeutic Goods Administration (TGA) administers the 'Special Access Scheme' to allow the supply of certain therapeutic goods, including human tissue products, that are not listed on the Australian Register of Therapeutic Goods. This option is available if a doctor has a specific clinical need for such a product and there is no suitable alternative for the patient. Goods accessed under the scheme are required for essential health purposes, including life-saving treatment. The Bill will remove the requirement for doctors seeking to purchase goods approved under the TGA Special Access Scheme to also obtain a Ministerial permit. This amendment will promote the right to life by reducing delays in the provision of important healthcare by removing the duplicative process of a doctor having to apply for a Ministerial permit.

#### *Consent to organ donation in private hospitals*

The Bill also seeks to streamline the process for family members to consent to tissue being removed from a deceased person in a private hospital, for example for organ donation, by aligning it with the consent processes applicable in public hospitals (see clauses 37 and 38). In public hospitals, the next of kin may provide verbal consent for the removal of tissue if it is not practical in the circumstances to obtain written consent. If a person is in a private hospital, only written consent from the senior available next of kin is permitted.

The Bill promotes the right to life by reducing potential delays in clinicians being able to remove tissue from the deceased by allowing the senior available next of kin to provide verbal consent in private hospitals. Human tissue donation after death is extremely time critical and this amendment will help to ensure lifesaving human tissue may be provided to a person who requires it without delay.

**If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 Human Rights Act 2019)**

**Amendments to the Medicines and Poisons Act 2019**

*Privacy and reputation (section 25, Human Rights Act)*

(a) the nature of the right

The right to privacy protects the individual from interferences and attacks on their privacy, family, home, correspondence (written and verbal) and reputation. The scope of the right to privacy is very broad. It protects privacy in the sense of personal information, data collection and correspondence, but also extends to an individual's private life more generally.

The right to privacy is engaged by the amendments to the Medicines and Poisons Act as they allow confidential information that has become known to a Queensland Health officer to be disclosed to Hospital and Health Services, VSBQ and law enforcement agencies.

Clauses 12 and 13 of the Bill allow information, including confidential information, to be disclosed from registers containing information about a person's approval to deal with medicines and poisons (the substance authority register), and administrative action taken against them (administrative action register), if it is in the public interest. The right to privacy is subject to an internal limitation in that it applies only to interferences with privacy that are 'unlawful' or 'arbitrary'. The Bill only allows disclosure if the information is relevant to the functions of the relevant entities, or if public interest factors support disclosure. It is therefore considered that any limitation of the right to privacy is not unlawful or arbitrary.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of disclosing confidential information to Hospital and Health Services, VSBQ and law enforcement agencies is to ensure that these entities have access to information about potentially unsafe use of medicines that is relevant to their regulatory oversight of employment of health staff and veterinary workers, and enforcement of offences to protect public safety. The purpose of disclosing information from the substance authority register and the administrative action register is to minimise health risks associated with unapproved persons working with medicines or poisons, as well as future risks to persons who have previously used medicines or poisons inappropriately. These purposes are consistent with a free and democratic society and are balanced by limits to the disclosure of information.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Clause 12 of the Bill amends the list of entities to which confidential information can be disclosed for regulation, safety and compliance purposes. The amendments will ensure that Hospital and Health Services, VSBQ and law enforcement agencies have information that is relevant to their ability to manage the safety of health and veterinary services, as well as the safety of patients and staff within these services.

In relation to the disclosure of information from the administrative registers, the amendments in clause 13 of the Bill will ensure that members of the public or wholesalers who are engaging with someone who is working with, or is proposing to work with medicines or poisons, can obtain information about the person's approvals and, subject to that information, either be satisfied that the person is able to safely do the work or decide not to proceed with engaging with that person. Allowing the disclosure of information from relevant registers will assist members of the public, health practitioners or wholesalers who have a concern about a person's suitability to work with medicines and poisons to avoid health risks, including potentially serious health risks, for themselves and the broader community.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no reasonably available, less restrictive alternatives to ensuring that information can be appropriately shared. Section 221 of the Medicines and Poisons Act makes it clear that information can only be disclosed to Hospital and Health Services and VSBQ if it is reasonably necessary for the entity to exercise its functions and if there are protections against unjustified intrusion on privacy. The Bill also only allows disclosure to law enforcement entities in relation to offences regarding regulated substances, not offences under the law generally.

In relation to disclosing confidential information from the registers, clause 13 of the Bill makes it clear that confidential information can only be disclosed if it is in the public interest. The chief executive therefore must assess public interest factors, including factors relating to harm, in determining whether it is appropriate to provide the information. Queensland Health intends to have internal guidance on the public interest test, the process for assessing requests for disclosure and considerations regarding the extent of information to disclose. In addition, the Bill ensures that confidential information from the administrative action register, which contains more sensitive information than the substance authority register, can only be disclosed to persons seeking information, and cannot be published. Narrowing the circumstances of information disclosure further would not achieve the purpose of the limitation.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Information sharing will be subject to the information being connected to functions of Hospital and Health Services and VSBQ. In the case of a law enforcement agency, it will need to be for the purposes of detecting, investigating, preventing or prosecuting an offence in relation to a regulated substance. Disclosure of information from the registers will also only be able to occur if it is in the public interest. These safeguards protect against unreasonable, unnecessary or disproportionate information sharing, and ensure the limitations on the right to privacy and reputation are lawful and not arbitrary. Ensuring the safety of health and veterinary work is an important purpose that promotes the right to life and, on balance, outweighs the limitations on the right to privacy.

## **Amendments to the *Recording of Evidence Act 1962***

### *Privacy and reputation (section 25, Human Rights Act)*

(a) the nature of the right

The right to privacy protects individuals against unlawful or arbitrary interference with their privacy, family, home, or correspondence (written and verbal). Privacy is generally understood to comprise of freedom from unwarranted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy. The concept of lawfulness in the context of the right to privacy means that no interference can take place except in cases envisaged by the law, while the concept of arbitrariness extends to interferences that may be lawful but that are capricious, unpredictable, unreasonable, and disproportionate.

Clauses 30 to 35 of the Bill provide for the recording proceedings of prescribed tribunals and allow access to copies of records or transcriptions of those proceedings. These clauses will limit the right to privacy of parties to the proceedings and others who may have given evidence, such as a victim or alleged victim of a crime.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The framework under the Bill for recording the proceedings of prescribed tribunals and providing access to copies of records or transcriptions of the proceedings is considered to strike an appropriate balance between competing rights, limiting some rights to protect other rights.

The purpose of the limitation on the right to privacy, by recording proceedings of prescribed tribunals and allowing access to copies of records or transcriptions of those proceedings, is to ensure accountability and transparency in all proceedings to protect the right to a fair hearing.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation on the right to privacy will achieve its purpose of protecting the right to a fair hearing by facilitating the making of complete and accurate records of all proceedings, ensuring accountability and transparency in proceedings, and allowing appropriate persons to access copies of records or transcriptions of proceedings.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no reasonably available, less restrictive alternatives to achieve the identified purpose.

The amendments to establish a statutory framework for recording the proceedings of prescribed tribunals and for providing access to copies of records or transcriptions of the proceedings are reasonably adapted to ameliorate the impacts on the right to privacy as much as possible, by balancing the competing rights.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The amendments in the Bill relating to recording the proceedings of prescribed tribunals and providing access to copies of records or transcriptions of the proceedings strike a balance between competing rights that is reasonable and demonstrably justifiable in a free and democratic society.

The limitation on the right to privacy will be authorised by law and is appropriate to protect the parties' right to a fair hearing. The impact on the right to privacy is ameliorated by providing that access to copies of recordings or transcriptions may be restricted under the Recording of Evidence Act or another Act, or by an order of a court (including a tribunal) or judicial person.

*Right to a fair hearing (section 31, Human Rights Act)*

- (a) the nature of the right

The right to a fair hearing affirms the right of all individuals to procedural fairness and natural justice when coming before a court or tribunal. It applies to both criminal and civil proceedings and guarantees that matters are heard and decided by a competent, impartial, and independent court or tribunal after a fair and public hearing, and that judgements or decisions are publicly available. What constitutes a 'fair' hearing depends on the facts of the case and requires the weighing of a number of public interest factors including the rights of the parties.

Broadly, this right ensures parties have a reasonable opportunity to put their case in conditions that do not place them at a substantial disadvantage compared to the other party, and also embraces principles of unimpeded access to courts, and a justice system that operates in a way that is predictable to the parties. The right is concerned with matters of procedural fairness, rather than substantive fairness in relation to the merits of a particular decision.

Clause 36 of the Bill restricts who may access copies of records or transcriptions of proceedings and will limit the right to a fair hearing.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The framework under the Bill for recording the proceedings of prescribed tribunals and allowing access to copies of records or transcriptions of the proceedings is considered to strike an appropriate balance by limiting some rights to protect other rights.

The purpose of the limitation on the right to a fair hearing, by restricting access to copies of records or transcriptions of proceedings, is to protect the right to privacy of parties to the proceeding and others who may have given evidence, such as a victim or alleged victim of a crime.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation on the right to a fair hearing will achieve its purpose of protecting the right to privacy of parties and others who have given evidence, by providing that access to copies of

records or transcriptions may be restricted under the Recording of Evidence Act or another Act, or by order or an order of a court (including a tribunal) or judicial person.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no reasonably available, less restrictive alternatives to achieve the identified purpose.

The amendments to establish a statutory framework for recording the proceedings of prescribed tribunals and for providing access to copies of records or transcriptions of the proceedings are reasonably adapted to ameliorate the impacts on the right to a fair hearing as much as possible, by balancing the competing rights.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The amendments in the Bill relating to recording the proceedings of prescribed tribunals and providing access to copies of records or transcriptions of the proceedings strike an appropriate balance between the competing rights that is reasonable and demonstrably justifiable in a free and democratic society.

The limitation on the right to a fair hearing is appropriate to protect the right to privacy of parties to the proceeding and others who may have given evidence, such as a victim or alleged victim of a crime.

### **Amendments to the *Mental Health Act 2016***

#### *Right to a fair hearing (section 31, Human Rights Act)*

(a) the nature of the right

The right to a fair hearing affirms the right of all individuals to procedural fairness and natural justice before a court or tribunal. It applies to both criminal and civil proceedings and guarantees that matters are heard and decided by a competent, impartial, and independent court or tribunal after a fair and public hearing, and that judgements or decisions are publicly available. What constitutes a 'fair' hearing depends on the facts of the case and requires the weighing of a number of public interest factors including the rights of the parties.

Broadly, this right ensures parties have a reasonable opportunity to put their case in conditions that do not place them at a substantial disadvantage compared to the other party, and also embraces principles of unimpeded access to courts and a justice system that operates in a way that is predictable to the parties. The right is concerned with matters of procedural fairness, rather than substantive fairness in relation to the merits of a particular decision.

The Bill limits this right as:

- clause 15 amends section 740 of the Mental Health Act to remove the requirement that adults with capacity who waive the right to representation must do so specifically in writing and allows the MHRT to accept a verbal waiver in certain circumstances; and
- clause 16 of the Bill inserts new section 793A, restricting access to records of MHRT proceedings.

Clause 15 limits the right to a fair hearing as it may make it more likely that people will be unrepresented before the MHRT, which may place them at a disadvantage.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The primary purpose of the limitation to remove the requirement that adults with capacity must waive the right to legal representation in writing is to allow a person to provide a verbal waiver to representation, if they wish to waive the right but do not wish to do so in writing. This will allow a person who refuses to sign a written waiver to still have their wishes for their representation respected which is consistent with a free and democratic society based on human dignity, equality and freedom.

The primary purpose of the limitation to restrict access to records of MHRT proceedings is to protect the right to privacy of patients with matters heard by the MHRT. It is important to note that the MHRT deals with matters regarding a person's treatment and healthcare, often in circumstances where the person is not suspected of having committed a crime. In recognition of the personal nature of these proceedings and the risk to privacy and reputation were these records to be freely viewed, access to records of MHRT decisions is restricted to limited categories of persons. The purpose of the limitation, in protecting a person's right to privacy and reputation, is consistent with a free and democratic society.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation on the right to a fair hearing by expanding opportunities for a person to waive their right to legal representation will achieve the purpose of protecting a patient's right to be heard in the MHRT in the manner of their choosing, promoting their human dignity, equality and freedom.

The limitation on the right to a fair hearing by restricting access to MHRT records will achieve the purpose of protecting a patient's right to privacy by ensuring that discussion of their healthcare cannot be freely accessed.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive ways to achieve the purpose of allowing for more flexibility in the way in which a person can waive their right to representation. There are appropriate safeguards in place to ensure that a person has access to a fair hearing in that a verbal or other non-written waiver can only be accepted if the MHRT is satisfied that the method of waiver would not cause injustice to the person.

There is no less restrictive way to achieve the purpose of restricting access to MHRT records, as a person's right to privacy as it pertains to their MHRT matters can only be protected by restricting access to the records of that discussion.

However, it is noted that access to records plays a critical role in ensuring procedural fairness, and that parties to proceedings would be placed at a substantial disadvantage were they to be denied access to records. The limitation on the right to fair hearing is minimised by ensuring that persons with a legitimate interest in a proceeding are able to access records. Persons able to access records under the Bill include the person the subject of the relevant proceedings, the

applicant, the administrator of an authorised mental health service responsible for the person, and the Chief Psychiatrist and other appointed inspectors. Lawyers, personal guardians and nominated support persons for persons subject to proceedings, and, in some cases, family, carers and other support persons, can also access records. It should be noted that access to records differs between types of proceedings. This approach aligns with the current approach in the Mental Health Act in relation to access to statements of reasons, which are the current record of decision for MHRT matters.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The amendments in the Bill relating to access to records of MHRT proceedings and the waiver of the right to legal representation strike an appropriate balance between the competing rights that is reasonable and demonstrably justifiable in a free and democratic society.

The limitation on the right to a fair hearing by allowing for more flexibility in how a person can waive their right to legal representation is appropriate to allow a person to be empowered to participate in a hearing about their orders and treatment in the manner of their choosing.

The limitation on the right to a fair hearing by restricting access to MHRT records is appropriate to protect the right to privacy of persons subject to MHRT proceedings.

*Privacy and reputation (section 25, Human Rights Act)*

- (a) the nature of the right

Section 25(1) of the Human Rights Act states that a person has the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with. Any disclosure of information sharing that is unreasonable, unnecessary or disproportionate would limit the right to privacy and reputation.

Clause 17 of the Bill amends the Mental Health Act to clarify how the Recording of Evidence Act applies to the MHRT. The Bill places limits on the provision of copies of records and transcriptions, and amends confidentiality provisions to ensure that records can be provided when appropriate without breaching confidentiality requirements. These amendments potentially limit the right to privacy and reputation.

- (b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of ensuring that the MHRT can share records of proceedings is to ensure that accurate records of proceedings can be given to relevant parties such as parties to proceedings and their representatives, and to meet community expectations about transparency.

Contemporary practice in courts and tribunals is to record proceedings electronically and the MHRT intends to implement electronic recording. While the Mental Health Act applies to all records, the amendments will clarify that the MHRT does not breach confidentiality requirements in the Mental Health Act when appropriately sharing records, including to

transcription services, and will ensure there are no barriers to the MHRT implementing its new processes.

While the amendments allow information to be disclosed, the purpose of the amendments is consistent with a free and democratic society because they limit the persons to whom records can be disclosed.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

By clarifying that the MHRT does not breach the confidentiality obligations in the Mental Health Act when it provides copies of records of proceedings to relevant parties and arranges transcription services, the MHRT will be supported to implement electronic recording and provide accurate and transparent records to relevant parties.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no reasonably available, less restrictive alternatives to ensuring that information can be appropriately shared. To remove any doubt as to how confidentiality provisions apply to the MHRT's implementation of electronic recording, legislative change is required. The amendments to authorise the sharing of records of proceedings are balanced by the requirement that records can only be shared with a judicial person, the registrar of the Mental Health Court, the Chief Psychiatrist, an inspector under the Mental Health Act or a person entitled to receive written notice of the decision. The entitlement of the Chief Psychiatrist and inspectors under the Mental Health Act to obtain copies of records and transcriptions is also limited to the performance of their functions and the exercise of their powers under the Mental Health Act. In addition, if a person entitled to written notice of a decision regarding an application for an examination authority is not the administrator of an authorised mental health service or authorised by one in writing, the records must not include the contact details of the person subject to the application or details about their health or health care.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

As the sharing of records or transcriptions will be authorised by the Recording of Evidence Act and the Mental Health Act limits the parties who can request copies of records of transcription, as well as the disclosure of certain information, any interference with privacy is not considered to be unreasonable, unnecessary or disproportionate, and is authorised by the internal limitation to the right to privacy allowing interference that is not arbitrary. However, if the right is limited, on balance, ensuring that accurate and transparent records of proceedings can be provided to relevant parties outweighs any limitations on human rights.

### **Amendments to the *Public Health Act 2005***

#### *Privacy and reputation (section 25, Human Rights Act)*

(a) the nature of the right

Every person has the right to their privacy, family, home and correspondence and must not be unlawfully or arbitrarily interfered with. The right to privacy is subject to an internal limitation in that it applies only to interferences with privacy that are 'unlawful' or 'arbitrary,' including

interferences that are unreasonable, unnecessary or disproportionate. Further, the right to privacy can be limited if it is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The amendments to the Public Health Act about the vision screening program and the Queensland Cancer Register in part 5 of the Bill engage the right to privacy. They will allow information about school students (and their parents or guardians) and patients receiving healthcare that requires a cancer notification to be provided to the vision screening program and the Queensland Cancer Register.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the amendments to allow student data to be shared with the vision screening program is to maximise resources to screen the greatest number of students possible for preventable vision loss, remove barriers to learning and improve education outcomes for students. The purpose of the amendments to extend the requirements for notifications to the Queensland Cancer Register is to collect more accurate data on the incidence, prevalence and treatment of cancer, so better cancer-related outcomes can be achieved in the broader community.

Protecting the health of the public is a fundamental responsibility of government. In addition, these amendments promote the right to life and right to education. The purpose of the limitation on the right to privacy to promote better health outcomes for Queensland children and Queenslanders diagnosed with cancer is consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The amendments allowing student data to be shared with the vision screening program will enable schools and Queensland Health to move away from the current follow-up arrangements and to share information more efficiently. Currently, the vision screening program cannot access information about students whose families have not completed a consent form to indicate whether they consent to the student participating in the program. The program must liaise with schools for school support in following up families and must manually enter any paper forms that schools pass on from families into the program database. The Bill will enable the vision screening program to be provided with specific student information so that program staff can make appropriate contact with families who have not completed a consent form, answer their questions directly and, if they would like to provide consent, discuss whether any support is required to complete an electronic consent form. The limitation on a person's right to privacy will help to achieve the purpose of the amendment as it will increase the number of children screened for vision loss.

The amendments to expand notification requirements for the Queensland Cancer Register will result in better collection of cancer data, which will support more accurate knowledge on the incidence and treatment of cancer, which will in turn guide strategies to reduce the significant burden of cancer. The limitation on a person's right to privacy will help to achieve the purpose of the amendment as it will enable better outcomes for cancer patients.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

A less restrictive option for the sharing of student information to support vision screening assessments would be to increase staffing in schools and the vision screening program. However, this is not a reasonably available alternative due to the extent of resources that would be required to screen enough students to obtain population-level outcomes. In addition, the proposal adopts an information sharing framework that already applies to school dental and immunisation programs. Children are also only screened for vision loss if a parent or guardian consents.

There are no alternatives to population-based cancer registration that can provide complete and accurate epidemiologic assessments of cancer for an entire population. A less restrictive scheme would be a voluntary notification system; however, this would not provide the Queensland Cancer Register with sufficient information to support its population-level objectives.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The amendments will be subject to provisions in the Public Health Act on the purpose of information sharing and when information may be shared. The *Information Privacy Act 2009* applies to information obtained by the vision screening program (including if contracted providers are involved) and the Queensland Cancer Register, and there are offences for the unauthorised disclosure of information. These measures ensure that the sharing of information is governed by law and is not unreasonable, unnecessary or disproportionate.

The public health benefits and population-level improvements in health that can be achieved from vision loss screening and properly authorised use of cancer information promote the right to education (section 36) and the attainment of better health outcomes for the community. These benefits, and this promotion of fundamental human rights, outweigh any limitations on a person's right to privacy. Any impacts on human rights are only to the extent that are reasonable and demonstrably justifiable in accordance with the Human Rights Act.

**Amendments to the *Radiation Safety Act 1999***

*Property rights (section 25, Human Rights Act)*

(a) the nature of the right

The right to property protects the right of all persons to own property and provides that people have a right to not be arbitrarily deprived of their property (including money). In a human rights context, 'arbitrary' means capricious, unpredictable, unjust or unreasonable in the sense of not being proportionate to a legitimate aim sought.

The right to property may be considered limited by the amendment to the Radiation Safety Act in clause 28 of the Bill that increases the penalty for the offence of causing ionising radiation exposure from particular radioactive material because it results in a deprivation of property in the form of money.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the amendment is to ensure the penalty reflects the seriousness of the risk to human health from being exposed to radioactive material, as well as balancing the higher maximum penalties of similar offences (sections 41, 42 and 47A) in the Act, with the lower risk associated with exposure to radioactive material that is not a radioactive substance. This ensures that the deterrent and punishment effect of the penalty is maintained. This promotes community safety which is important in a free and democratic society.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The amendment will achieve its purpose by ensuring there is a clear head of power for section 60 of the Radiation Safety Regulation, which prescribes dose limits for mineral substances and for any dose limits that may need to be prescribed in the future. It will also align the penalty for this offence with the other offence provisions in the Act. By increasing the penalty to align with other similar offences in the Act, the limitation on property rights ensures that the penalty represents an appropriate punishment for the offence.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive options to achieve the purpose of the amendment. Without an amendment, the penalty for this offence will continue to be significantly less than the other offence provisions in the Act and will not appropriately reflect the serious nature of the offence.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Any deprivation of property in the form of money as a result of the increase in the penalty for this offence is considered to be proportionate and not arbitrary, particularly given the increase will align the penalty with other offence provisions in the Act.

## Conclusion

In my opinion, the Health and Other Legislation Amendment Bill 2022 is compatible with human rights under the Human Rights Act because it limits the identified human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Act.

**YVETTE D'ATH MP**  
MINISTER FOR HEALTH and AMBULANCE SERVICES  
and LEADER OF THE HOUSE