

Health Legislation Amendment Bill (No. 2) 2025

Explanatory Notes

For

Amendments to be moved during consideration in detail by the Honourable Tim Nicholls MP, Minister for Health and Ambulance Services

Title of the Bill

The title of the Bill is the Health Legislation Amendment Bill (No. 2) 2025.

Objectives of the Amendments

Amendments to the *Medicines and Poisons Act 2019*

The Crisafulli Government has a zero-tolerance approach to illicit drugs. The Government's policy position is there is no safe way to take drugs and that drug checking services may send the wrong message to Queenslanders.

The objective of the amendments to be moved during consideration in detail of the Health Legislation Amendment Bill 2025 (Bill) is to amend the *Medicines and Poisons Act 2019* to give legislative effect to the Government's policy position.

Amendments to the *Fire Services Act 1990*

Rural fire brigades support communities to prepare for, respond to and recover from a range of non-fire events, including for severe weather events. As part of debriefs from recent events, the Queensland Fire Department identified the need for further clarity in the *Fire Services Act 1990* to set out the circumstances in which rural fire brigades could help communities and other entities during these types of events, including in circumstances where severe weather impacts communications.

Achievement of the Objectives

Amendments to the *Medicines and Poisons Act 2019*

The purposes of the Medicines and Poisons Act are to:

- ensure particular substances, including medicines and poisons, are dealt with in an appropriate, effective and safe way;
- ensure health risks arising from the use of substances are appropriately managed; and
- ensure persons who are authorised to carry out activities using the substances have the necessary competencies to carry out the activities safely.

These purposes are achieved, in part, by authorising persons to carry out certain activities with regulated substances by way of substance authorities. A substance authority is a licence or general approval issued under the Medicines and Poisons Act that allows a person or entity to carry out a regulated activity with a regulated substance in an authorised way.

The Medicines and Poisons Act does not currently prohibit substance authorities from being issued or renewed in relation to drug checking services. Drug checking, also known as pill testing, allows people to provide samples of illicit drugs for analysis, testing the chemical make-up of the drugs to find out what is in them. Drug checking can be done with pills, capsules, powders, crystals and liquids, and for drugs such as ecstasy, ketamine, fentanyl and cocaine.

State-funded drug checking services were trialled in Queensland by the former Government from March 2024 to April 2025. Two providers were funded under service agreements with Queensland Health to deliver drug checking services at fixed sites and festivals, and granted substance authorities to deal with relevant substances.

In accordance with the Government's policy position, no subsequent contractual agreements have been made or funded by Queensland Health. However, the Medicines and Poisons Act does not allow the chief executive of Queensland Health to refuse to grant substance authorities for the purposes of drug checking services based on the Government's policy position outlined above. Similarly, the Medicines and Poisons Act does not permit the chief executive to discontinue an existing substance authority granted for the purposes of drug checking based on the Government's position. This means that privately funded drug checking can currently occur in Queensland if the service provider obtains or already holds a substance authority under the Medicines and Poisons Act.

The amendments to the Medicines and Poisons Act will give effect to the Government's policy position that there is no safe way to take drugs by:

- preventing the chief executive of Queensland Health from granting an initial application, amendment application or renewal application for a substance authority for the purpose of drug checking;
- discontinuing current substance authorities to the extent that they were granted for the purpose of drug checking; and
- clarifying that compensation is not payable, and any fees paid are not refundable, in relation to the above changes.

The amendments also make a clarifying change to provide that the main purposes of the Medicines and Poisons Act are to be achieved, in part, by providing a scheme to authorise additional activities using particular substances under approvals or licences and to restrict the grant of approvals or licences for inappropriate purposes.

Amendments to the *Fire Services Act 1990*

The amendments to the Fire Services Act achieve the policy objectives by clarifying the functions of a rural fire brigade in helping a community or another entity in relation to an event or a disaster. The amendments provide that a brigade may carry out activities at the direction of the commissioner, in response to a request for help by the community or other entity, or on its own initiative, whether caused by fire or other events such as flooding and severe weather.

These activities may include, for example, blocking a road to isolate an area in the vicinity of a fallen powerline, directing traffic away from a flooded creek, or using a chainsaw to remove a fallen tree on a property that is causing a hazard.

Therefore, the amendments clarify the ability of brigades to respond, including on their own initiative, to help communities in situations where severe weather may have impacted communications. In this way the amendments respond to learnings from previous severe weather events by providing greater clarity for brigades in supporting their communities.

Alternative Ways of Achieving Policy Objectives

Amendments to the *Medicines and Poisons Act 2019*

There are no other ways of giving effect to the Government's policy position that there is no safe way to take drugs and that drug checking services may send the wrong message to Queenslanders.

If the legislative amendments are not made, privately funded drug checking services will be able to continue to operate in Queensland.

Amendments to the *Fire Services Act 1990*

There are no alternative ways of achieving the policy objectives other than by legislative reform.

Estimated Cost for Government Implementation

There is no cost to Government to implement the amendments to the Medicines and Poisons Act or the Fire Services Act.

Consistency with Fundamental Legislative Principles

Amendments to the *Medicines and Poisons Act 2019*

The Government's policy position is that there is no safe way to take drugs. Authorising drug checking services may send the wrong message to Queenslanders. The objective of the

amendments to Medicines and Poisons Act is to give effect to the Government's policy position by ensuring that drug checking service providers cannot operate in Queensland.

The amendments potentially depart from some fundamental legislative principles to ensure that the objective of the amendments is met. These potential departures are discussed in more detail below.

Does the legislation make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review?

Section 4(3)(a) of the *Legislative Standards Act 1992* states that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

The amendments provide that the chief executive must not grant an application for a substance authority if it would allow a person to deal with a regulated substance for drug checking. This creates a non-discretionary power to be exercised by the chief executive. It applies only in relation to applications for substance authorities which relate to drug checking. *Drug checking* is defined to capture the relevant activity, with a number of exclusions to ensure that testing for other purposes is not included. Applications for substance authorities for all other purposes will continue to be decided having regard to the existing criteria in the Medicines and Poisons Act. The discontinuation of existing authorities authorising drug checking applies automatically under the transitional provisions and therefore is not an administrative power.

Where the chief executive refuses an application for a substance authority for the purpose of drug checking, the refusal is subject to internal and external review. However, given that the amendments specifically require refusal of an application relating to these purposes, review would only result in a different outcome if the original decision maker mistakenly considered that the substance authority was for the purpose of drug checking when it was not for that purpose.

Given the above, the powers created by the amendments are sufficiently defined and subject to appropriate review and therefore do not breach the above fundamental legislative principle.

Is the legislation consistent with principles of natural justice?

Section 4(3)(b) of the *Legislative Standards Act* states that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation is consistent with the principles of natural justice. The three key principles of natural justice are that: a person should have a right to be heard if they are to be deprived of a right, interest or legitimate expectation of a benefit; a decision-maker must be unbiased; and procedural fairness should be afforded to the person.

The amendments prohibit the chief executive from granting substance authorities for drug checking. However, the chief executive's refusal of an application is subject to internal and external review rights as discussed above, providing natural justice.

The amendments also automatically discontinue substance authorities authorising drug checking. In doing so, the amendments deprive current substance authority holders of a right,

interest or legitimate expectation of a benefit (the continuance of the existing authority), without giving them the ability to present their case. However, this discontinuation occurs by operation of law. To the extent that it results in a breach of fundamental legislative principles, it is justified, as allowing known drug checking services to challenge the discontinuation and operate would be inconsistent with the Government's policy position.

Amendments to the *Fire Services Act 1990*

The amendments to the Fire Services Act are consistent with the fundamental legislative principles set out in the Legislative Standards Act.

Consultation

No community or government consultation was undertaken in relation to the amendments.

The amendments to the Medicines and Poisons Act reflect the Government's policy position.

The amendments to the Fire Services Act are of a clarifying nature.

Consistency with legislation of other jurisdictions

Amendments to the *Medicines and Poisons Act 2019*

Drug checking services are available in Victoria, New South Wales and the Australian Capital Territory. Victoria is the only jurisdiction to explicitly authorise drug checking services in the *Drugs Poisons and Controlled Substances Act 1981*. The New South Wales government commenced a twelve-month festival drug checking trial in early 2025, however, the trial has not been supported by legislation change. The Australian Capital Territory has a fixed site drug checking service funded to run until June 2027.

Amendments to the *Fire Services Act 1990*

The amendments to the Fire Services Act are specific to the State of Queensland and are not uniform with, or complementary to, the legislation of the Commonwealth or any other State.

Notes on provisions

After clause 1

Amendment 1 inserts part 1A, titled ‘Amendment of the Fire Services Act 1990’ in the Health Legislation Amendment Bill (No. 2) 2025 (Bill), after clause 1 of the Bill.

Act amended

Clause 1A states that part 1A amends the Fire Services Act.

Insertion of new s 139A (Helping communities or other entities)

Clause 1B inserts new section 139A titled ‘Helping communities or other entities’. New section 139A relates to the functions of a rural fire brigade under section 139(1)(c) to carry out other activities to help communities or other entities prepare for, respond to, and enhance resilience to, an event or a disaster. It provides that a rural fire brigade may carry out these activities at the direction of the commissioner, in response to a request for help by the community or other entity, or on its own initiative.

Examples of activities a brigade may undertake in performing this function include blocking a road to isolate an area in the vicinity of a fallen powerline, directing traffic away from a flooded creek, or using a chainsaw to remove a fallen tree on a property that is causing a hazard.

New section 139A(2) provides that if the rural fire brigade carries out activities in response to a request for help by the community or other entity, or on its own initiative, the first officer of the brigade must notify the commissioner at the first opportunity of any activities carried out, or to be carried out, by the brigade in relation to the event or disaster.

For the purposes of the new section, ‘first officer’ has the meaning in section 140(4) which provides that a reference to first officer includes, where the first officer of a rural fire brigade is unavailable to act, the next senior officer of the brigade who is available.

New section 139A is not intended to affect the ability of a brigade or first officer to otherwise be delegated, directed or authorised to use powers under any other provision of the Fire Services Act or any other Act.

After clause 1

Amendment 2 inserts part 1B, titled ‘Amendment of Medicines and Poisons Act 2019’ in the Bill.

Part 1B consists of new clauses 1C to 1F.

Act amended

Clause 1C states that part 1B amends the Medicines and Poisons Act.

Amendment of s 4 (How main purposes are to be achieved)

Clause 1D omits section 4(c) of the Medicines and Poisons Act and inserts a new subsection (c) to refer to the provision of a scheme to authorise additional activities using the substances under approvals or licences, and to restrict the grant of approvals or licences for inappropriate purposes.

Insertion of new ch 3, pt 3, div 4, sdiv 1A

Clause 1E inserts a new subdivision 1A into chapter 3, part 3, division 4 of the Medicine and Poisons Act, which is titled ‘Restrictions on granting applications’. This subdivision includes new section 86A.

New section 86A is titled ‘Authorisation for drug checking not permitted’. This section states that, despite another provision of the part, the chief executive must not grant an application to the extent it would authorise a person to deal with a regulated substance for the purpose of drug checking.

Drug checking is defined to mean analysing a regulated substance to identify its ingredients if the substance has been manufactured or possessed unlawfully or contains unknown ingredients, and is provided for analysis by a member of the public. The amendment includes an example of pill testing at a music festival. The definition excludes analysing a regulated substance to exercise a power or perform a function under an Act, to detect, investigate, prevent or prosecute an offence, to monitor compliance with a condition of employment or the rules of a sporting or racing competition, to provide therapeutic treatment to a person or treat an animal, to detect a biosecurity risk or an environmental contaminant, to undertake general research, or to carry out another activity prescribed by regulation.

General research is defined to mean research about a matter relating to a regulated substance that has been manufactured or possessed unlawfully or contains unknown ingredients. It does not include research that involves directly advising a particular person about the ingredients of, or risks associated with, a particular regulated substance possessed by the person.

Insertion of new ch 8, pt 4

Clause 1F inserts new part 4 into chapter 8 of the Medicines and Poisons Act, titled ‘Transitional provisions for Health Legislation Amendment Act (No. 2) 2025’. This part includes new sections 283 to 286.

New section 283, with the heading ‘Definition for part’, adopts the definition of drug checking from new section 86A(2) for the purposes of the part.

New section 284 is titled ‘End of authorisation for drug checking under existing substance authorities’.

Subsection (1) of new section 284 states that this section applies to a substance authority granted before commencement that, immediately before commencement, authorised a dealing with a regulated substance for the purpose of drug checking.

Subsection (2) of new section 284 states that on commencement, the substance authority referred to in subsection (1) ends to the extent it authorises the dealing.

Subsection (3) of new section 284 states that for a 30-day period, subsection (2) does not affect the authorisation under the substance authority where it is for the possession or disposal of the regulated substance.

Subsection (4) of new section 284 defines *30-day period* to mean the period starting on the day of commencement and ending on the day that is 30 days after the day of commencement.

New section 285, with the heading ‘Existing applications to authorise drug checking’ states that section 86A, as in force on commencement, applies in relation to an initial application, an amendment application or a renewal application made, but not decided, before commencement.

New section 286, titled ‘No compensation or refund payable’ clarifies that no compensation or refund of any fee paid under the Medicines and Poisons Act, is payable because of the ending of an authorisation under section 284 or the operation of section 285.

Long title

Amendment 3 amends the long title of the Bill to insert reference to the Fire Services Act and the Medicines and Poisons Act.