

Health and Other Legislation Amendment Bill 2022

Submission No: 3
Submitted by: Queensland Law Society
Publication:
Attachments:
Submitter Comments:

21 December 2022

Our ref: BT-MC

Committee Secretary
Health and Environment Committee
Parliament House
George Street
Brisbane QLD 4000

By email: HEC@parliament.qld.gov.au

Dear Committee Secretary

Health and Other Legislation Amendment Bill 2022

Thank you for the opportunity to provide feedback on the Health and Other Legislation Amendment Bill 2022 (**Bill**). The Queensland Law Society (**QLS**) appreciates being consulted on this important piece of legislation.

This response has been compiled by the QLS Health & Disability Law Committee, whose members have substantial expertise in the various legislative frameworks being amended by the Bill.

At the outset, we thank Queensland Health for the manner in which they engaged and consulted with stakeholders in the formation of the Bill. This thoughtful process has led to a workable piece of legislation which addresses the substantive policy intent of the desired reforms. To strengthen the safeguards provided in the Bill, we recommend:

- the Bill include a specific legislative requirement for the Mental Health Review Tribunal (**MHRT**) to electronically record proceedings, unless there are exceptional circumstances to justify doing otherwise; and
- consideration be given to updating the *Recording of Evidence Act 1962* (**RE Act**) to bring it into line with the contemporary use of modern technologies.

Amendment of the *Recording of Evidence Act 1962*

QLS considers electronic recording and the availability of transcripts to relevant parties across all Queensland courts and tribunals to be a fundamental element of conducting contemporary proceedings. We have consistently advocated for the introduction of a system of electronic recording and transcripts in the MHRT. As such, we welcome the Bill's intention to facilitate the MHRT implementing electronic recording and appropriately sharing recordings and transcripts.

Clause 35 of the Bill inserts a new section 6 (Legal proceedings in prescribed tribunals) to the RE Act, which applies to a legal proceeding before a tribunal, other than the Queensland Civil and Administrative Tribunal (**QCAT**), prescribed by regulation. Under subsection 6(2), the judicial person prescribed by regulation may arrange for: (a) the recording of a relevant matter

in the legal proceeding; or, (b) the transcription of a record under the RE Act of the legal proceeding.

This subsection gives the judicial person discretion as to whether a recording or transcription is produced, providing the continuing ability to record proceedings other than by electronic means (that is, by way of Tribunal Member notes). While we acknowledge the MHRT has particular requirements and does not often sit in a regular, controlled premises such as a court room, we maintain our position there should not be a discretion to record a proceeding by way of electronic recording or notetaking. Rather, there should be a specific legislative requirement for the MHRT to electronically record proceedings, unless there are exceptional circumstances (for example, where a patient experiences significant distress in relation to recording devices).

This could be achieved by amendment to proposed new s 6(2) (cl 35 of the Bill) as follows:

- (2) The judicial person prescribed by regulation for the tribunal must, unless there are exceptional circumstances to justify doing otherwise, arrange for—
- (a) the electronic recording of relevant matter in the legal proceeding under section 5; or
 - (b) the transcription of a record under this Act for the legal proceeding.

Further, we recommend consideration be given to updating the RE Act to bring it into line with the contemporary use of modern technologies (for example, by amending section 5(1) of the RE Act to remove the example of recording 'in shorthand', and removing references to 'typewriting' etc.).

Recommendations

1. New s 6(2) of the RE Act (cl 35 of the Bill) should be amended to provide that the judicial person must, unless there are exceptional circumstances to justify doing otherwise, arrange for: '(a) the electronic recording of a relevant matter in the legal proceeding ...'
2. Consideration should also be given to updating the RE Act to bring it into line with the contemporary use of modern technologies (for example, by amending s 5(1) to remove the example of recording 'in shorthand', and removing references to 'typewriting' etc.).

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [REDACTED] or by phone on [REDACTED].

Yours faithfully



Kara Thomson
President