

Health and Other Legislation Amendment Bill 2022

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Health and other Legislation Amendment Bill 2022

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Introduction	3
Recommendations	4
Requiring Hospital and Health Boards and Hospital and Health Services to proactively consider ways to support staff health, safety and wellbeing (<i>Hospital and Health Boards Act 2011</i>).....	4
Allowing disclosure of information about individuals working with medicines or poisons, if in the public interest (<i>Medicines and Poisons Act 2019</i>)	7
Enabling Qld Health to disclose confidential medicines and poisons information for regulation, safety and compliance purposes (<i>Medicines and Poisons Act 2019</i>).....	8
Clarifying the meanings of fumigation activity, pest control activity and the definition of primary producer, in relation to authorisation for use of fumigants and pesticides (<i>Medicines and Poisons Act 2019</i>)	9
Establishing a statutory framework for recording tribunal proceedings and providing access to records and transcripts (<i>Recording of Evidence Act 1962</i>)	9
Clarifying and restricting access to copies of records or transcriptions of Mental Health Review Tribunal (MHRT) proceedings (<i>Mental Health Act 2016</i>)	10
Changing requirements for adults waiving the right to representation in Mental Health Review Tribunal proceedings (<i>Mental Health Act 2016</i>)	10
Authorising schools to disclose student information to Qld Health’s vision screening health service (<i>Public Health Act 2005</i>)	11
Extending notification requirements for the Queensland Cancer Register and enabling additional data to be collected (<i>Public Health Act 2005</i>)	11
Creating a new offence for failure to ensure a person does not receive greater than a specified dose of ionising radiation (<i>Radiation Safety Act 1999</i>)	11
Enabling low risk radioactive material to be exempted from requirements (eg disposal requirements) (<i>Radiation Safety Act 1999</i>)	12
Changing requirements for doctors to purchase human tissue products approved by the Therapeutic Goods Administration’s ‘Special Access Scheme’ (<i>Transplantation and Anatomy Act 1979</i>)	12
Ensuring consistent consent processes for human tissue and organ donation across public and private hospitals (<i>Transplantation and Anatomy Act 1979</i>).....	13
Removing the requirement for print newspaper publication of water fluoridation decision and implementation notices (<i>Water Fluoridation Act 2008</i>).	13
References	14

Introduction

The Queensland Nurses and Midwives' Union (QNMU) thanks the Queensland Government for the opportunity to comment on the *Health and other Legislation Amendment Bill 2022*.

Nursing and midwifery is the largest occupational group in Queensland Health and one of the largest across the Queensland government. The QNMU is the principal health union in Queensland covering all classifications of workers that make up the nursing and midwifery workforce including registered nurses (RN), midwives, nurse practitioners (NP) enrolled nurses (EN) and assistants in nursing (AIN) who are employed in the public, private and not-for-profit health sectors including aged care.

Our more than 67,000 members work across a variety of settings from single person operations to large health and non-health institutions, and in a full range of classifications from students and early career clinicians to senior management. The vast majority of nurses and midwives in Queensland are members of the QNMU. As the Queensland state branch of the Australian Nursing and Midwifery Federation, the QNMU is the peak professional body for nurses and midwives in Queensland.

Through our submissions and other initiatives, the QNMU expresses our commitment to working in partnership with Aboriginal and Torres Strait Islander peoples to achieve health equity and ensure the voices of Aboriginal and Torres Strait Islander nurses and midwives are heard. The QNMU supports the Uluru Statement from the Heart and the call for a First Nations Voice enshrined in our Constitution. The QNMU acknowledges the lands on which we work and meet always was, and always will be, Aboriginal and Torres Strait Islander land.

This submission responds to 14 proposed amendments in the *Health and other Legislation Amendment Bill 2022* (the Bill). While these are all aimed at updating and modernising the approach to health issues in making such changes the impact both direct and unintended of any change must be considered. Further, as can be seen from comments relating to the first proposed amendment, which requires:

Hospital and Health Boards (HHBs) and Hospital and Health Services (HHSs) to proactively consider ways to support staff health, safety and wellbeing (*Hospital and Health Boards Act 2011*).

The concern is around whether the amendment fully addresses the need to which it responds – in this case the health and safety of healthcare workers.

It is noted that in making these responses, many changes do relate to the management of personal information through information systems. The QNMU does stress the importance of treating all personal information with care.

Recommendations

The QNMU recommends:

- (*Hospital and Health Boards Act 2011*) Flexible approaches are explored for the development of publicly reported staff wellbeing plans, that align with Positive Practice Environment (PPE) Standards, which set out targets, strategies, implementation, and evaluation elements.

This Bill is framed around the objective of updating and modernising aspects of current legislation. For example, the final provision regarding the requirement for the public communication of fluoride treatment to be communicated in the local newspaper, will under the amendment, be communicated in the public domain by an appropriate method. This recognises the changing access and use of local newspapers. There are, however, several amendments, which are less simple. Updating legislation still needs consideration for the environment in which they update, and there can be possible perverse incentives for undesired behaviours created, contrary to the intent that need to be recognised. These issues are discussed in the below response.

The following response addresses the QNMU's position on each of the 14 amendments included in the Bill. The overview comments, includes, for efficiency, wording from the Explanatory notes in describing the change.

Requiring Hospital and Health Boards and Hospital and Health Services to proactively consider ways to support staff health, safety and wellbeing (*Hospital and Health Boards Act 2011*)

Wellbeing of health staff

This Amendment addresses a previous concern raised by the QNMU regarding the wellbeing of health staff, concern associated with significant and ongoing member feedback.

QNMU regularly runs a membership survey identifying key areas of concern by members. Over recent years workplace violence has featured with rates around and above 50% (46% (2007), 45% (2010), 53% (2016) and 52% (2020)). In the most recent 2022 survey, 78% (n= 5,050) of respondents cited Dangerous Workloads, and 76% (n=4903) Moral Distress and Fatigue as key issues. This level of distress clearly will not only impact on staff, on prospective staff but also the patients in our health system and highlights why the QNMU sees the move for a formal, enforceable approach to the introduction of wellbeing plans for staff as of the highest priority.

The broad issue of staff wellbeing is already under consideration by Queensland Health, with work currently being progressed in response to the 2020 Government Election Commitments. This includes the development of a Queensland Health nursing and midwifery report card (the report card) as a temperature check on the status of nurses and midwives' work environment and the expansion of nursing and midwifery minimum safe staffing ratios in the Emergency Department, Operating Theatre, Maternity and Prison areas. These initiatives are expected to be completed mid-2023, with a possible recommendation going to the Director General to support the report card survey in 2024, with the results being publicly available on the Queensland Health website.

In the QNMU submission regarding the Bill (QNMU, 2022) the QNMU recommended a more proactive response to ways to promote staff wellbeing with the recommendation including the proposal that this be a publicly released report. This recommendation was based on the recognition of substantial evidence of nurses and midwives experiencing burnout, fatigue, and moral distress prior to the COVID-19 pandemic, but has since significantly worsened as healthcare professionals face increasingly untenable working conditions and demanding workloads (Mannix, 2021).

It is acknowledged that while this Amendment has a wellbeing focus, it is felt that a stronger step is needed to achieve important change. As previously argued, any plan must be publicly available to enable appropriate accountability with regular reporting against the goals. Adopting a S.M.A.R.T. approach to the development of such goals is recommended

A Positive Practice Environment

The QNMU feels that an important element in achieving enhanced wellbeing will be the achievement of a Positive Practice Environment (PPE).

A PPE has been promoted by the QNMU over recent years through various strategies. In 2020 the QNMU launched the Ratios Saves Lives and Money Phase 3 campaign in March 2020 to strengthen and expand the care guarantee that ratios provide. A significant aspect of this campaign is the PPE Standards, recognised by Queensland Health in the *Nurses and Midwives (Queensland Health and Department of Education) Certified Agreement (EB11) 2022* (EB11). These Standards, underpinning the achievement of a PPE for nursing and midwifery, include the need for:

- safe workloads.
- a physically, psychologically and culturally safe environment.
- an environment that promotes autonomous and collaborative practice.
- active inclusion in organisational governance and decision-making.
- Involvement in research and innovation.
- Recognition of nursing and midwifery leadership at all levels.

International, national and state nursing research outcomes have consistently identified that a PPE in the workplace promotes safety and quality. There is a dependent relationship between a nurse and midwife's work environment and patient/woman outcomes, such as improved safety, workforce retention, decrease in missed nursing care, near misses and adverse outcomes, improved fatigue management and collaborative clinical relationships. For example, in a cross-sectional survey of 7,000 acute care hospital nurses in the United States, Hessels et al., (2015) found that: "The key finding is that good nursing practice environments, adequate staffing, and sufficient resources for the provision of nursing care are crucial as they have a strong impact on the delivery of quality care".

Work progressed between Queensland Health and the QNMU offers a pathway to this.

Flexibility vs publicly reported commitments

It is recognised that the broad wording of this amendment is designed to give HHB and HHS flexibility in how the address the issue of address the wellbeing of health staff – that a one size fits all approach is not appropriate. Further, it is understood that Queensland Health is planning to further develop a framework within which actions under this provision could align with legislative requirements, for example under the *Workplace Health and Safety Act 2011 (Qld)* and *Workplace Health and Safety Regulations 2011 (Qld)*.

The need for flexibility is fully supported, however, the recommendation that formal plans are developed with identified targets, and these approaches are publicly communicated, should not constrain the flexibility of individual services.

The direction detailed above regarding the PPE Standards identifies one publicly promoted strategy via the Queensland Health nursing and midwifery scorecard. The approach of transparency and accountability also aligns with Queensland Health's position as promoted in the *Health Transparency Act, 2019*. This provides a transparent evidenced based framework to support the provision of quality health care. This framework is then publicly presented in the Inform my Care website. The scorecard could also be presented on other Queensland Health publicly facing databases. The QNMU would argue that to ensure that nurses and midwives are providing high quality patient care, strategies that focus on staff health and wellbeing are vital.

Security Guards

The second element in the amendment to the *Hospital and Health Boards Act 2011*, relates to security guards:

However, the security officer must not give a direction under subsection (2) 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 aspect relates to risk to health professionals. Given the increasing presence of security staff in emergency facilities it is important that there are clear guidelines on roles and decisions. This measure does provide a clarification and is echoing a similar wording in Section 37(2) of the *Human Rights Act 2019 (Qld)*.

This Amendment recognises that patients in emergency departments can present with very complex issues. The Amendment extends from current practice to address provisions under human rights provisions. However, while this does formalise the need for a security guard to ensure they are not removed from the premises if they are facing any critical medical issues, this doesn't place the responsibility on the security guard to determine this. As is currently the situation under the Amendment the clinical assessment would always be undertaken by clinical staff, with the security staff acting on their direction.

This reinforces operational practice that Healthcare staff are the ones most appropriate to make the judgement on urgency and seriousness of healthcare needed. And thus, any final decision regarding leaving the premises would come after communication between Healthcare staff with security officers based on the assessment made by Healthcare staff.

(Hospital and Health Boards Act 2011). The QNMU recommends that flexible approaches are explored for the development of publicly reported staff wellbeing plans, aligned with Positive Practice Environment (PPE) Standards, with mandated components setting out targets, strategies, implementation, and evaluation elements to support accountability.

Allowing disclosure of information about individuals working with medicines or poisons, if in the public interest (*Medicines and Poisons Act 2019*)

The issue raised in this Amendment is one that has previously been raised with Queensland Health regarding protections of staff. There currently is a regulatory environment around the disclosure of information in the administrative action register. Disclosures of such information could have long term impacts on the careers of staff.

The objective of the Bill is to protect the health of the Queensland community by ensuring that the chief executive can appropriately disclose information from the registers by providing information from the registers directly to a person where it is in the public interest, and by publishing information from the substance authority register online.

In response to the previous identification of issues, the change to this amendment does not provide the ability for the chief executive to publish the administrative action register on

Queensland Health's website from the *Medicines and Poisons Act 2019 (Qld)*. From previous Departmental advice it is understood that:

Under this Amendment the chief executive will have the ability to disclose information from the administrative action register on a case-by-case basis to an individual who makes an enquiry with Queensland Health, where it is in the public interest to disclose the information. This approach will enable Queensland Health to provide discrete information to a person who makes an enquiry, for example, where a person calls the department to check whether a particular practitioner is authorised to prescribe a medicine. Providing this advice to members of the public is within the portfolio responsibility of Queensland Health as the agency responsible for administering the *Medicines and Poisons Act 2019 (Qld)*.

The public interest test is a high threshold that will continue to afford protection to practitioners. Queensland Health officers with a delegation from the chief executive to disclose information will be provided with guidance and training on applying the public interest test. This case-by-case approach will enable Queensland Health to protect public safety while limiting the information provided.

The QNMU appreciates the intent of this step is to provide the chief executive with a balance between public interest and the protection of staff interests. However, the QNMU continues to express concern at the disclosure of information. The QNMU particularly stresses the importance of treating personal information with care, also recognising the issue of redress should such a release of information ultimately be shown to have been inappropriate and detrimental to the individual.

The QNMU supports this amendment.

Enabling Qld Health to disclose confidential medicines and poisons information for regulation, safety and compliance purposes (Medicines and Poisons Act 2019)

This proposal extends from the above amendment, regarding the disclosure of confidential information. This relates to the sharing of information regarding registrants. Thus (from the Explanatory Notes)

The Veterinary Surgeons Board of Queensland (VSBQ) and Hospital and Health Services are not included in this list of entities. However, it is appropriate to share certain information with them. For example, it is relevant to disclose to the VSBQ that a veterinarian's authority to deal with medicines is suspended, and to disclose to a Hospital and Health Service that Queensland Health is investigating a report of lost or stolen medicines and the involvement of a staff.

Whilst there is some distinction between those obligations required under the Health Practitioners Regulation National Law (Qld) Act (2009) and those proposed in this amendment, the QNMU wishes to reiterate our previous position on matters that affect disclosure or mandatory reporting of health practitioners (Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2019, Report No. 17, February 2019). The QNMU continues to support similar exemption models that mirror Western Australia (Health Practitioner Regulation National Law (WA) Act (2010) particularly where the practitioner is engaged in and compliant with treatment.

The QNMU supports this amendment. However, as in the previous amendment, the QNMU continues to express concern at the disclosure of information and the implications of those disclosures on the health practitioner. The QNMU stresses the importance of treating personal information with care, recognising also the issue of redress should such a release of information ultimately be shown to have been inappropriate and detrimental to the individual.

The QNMU supports this amendment.

Clarifying the meanings of fumigation activity, pest control activity and the definition of primary producer, in relation to authorisation for use of fumigants and pesticides (Medicines and Poisons Act 2019)

This amendment includes several changes adding clarifications.

- definition of fumigant and pesticide
- meaning of pest management
- definition of primary producer

QNMU recommends that any step to clarify definitions particularly in the use of chemicals is of value. It therefore supports this amendment.
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Establishing a statutory framework for recording tribunal proceedings and providing access to records and transcripts (*Recording of Evidence Act 1962*)

Currently, the Veterinary Surgeons Board of Queensland (VSBQ) and HHSs are not included in this list of entities. However, it is appropriate to share certain information with them. For example, it is relevant to disclose to the VSBQ that a veterinarian's authority to deal with medicines is suspended, and to disclose to a Hospital and Health Service that Queensland Health is investigating a report of lost or stolen medicines and the involvement of a staff member is suspected. The objective of the Bill is to ensure there is no barrier to information

being shared with VSBQ and Hospital and Health Services for regulation, safety and compliance purposes. (Explanatory notes)

The QNMU supports this amendment.

Clarifying and restricting access to copies of records or transcriptions of Mental Health Review Tribunal (MHRT) proceedings (*Mental Health Act 2016*)

The objective of the amendments to the Mental Health Act 2016 (Qld) is to ensure that there are no operational barriers, such as restrictions on disclosing information, to the MHRT recording proceedings, including electronically, and sharing records in an appropriate way. The Bill aims to ensure that persons subject to proceedings and relevant entities such as their mental health service and courts can request and obtain accurate records of hearings. Accurate records of hearings can assist a person, and their treating team, who has had a hearing to recall and understand the MHRT's decision, and, if needed, support them to seek advice. Accurate records also support the Mental Health Court where a person before the Court has had a relevant MHRT matter. The MHRT intends to transition to electronically recording its proceedings in line with contemporary recording practices of courts and tribunals. (Explanatory notes)

The QNMU supports this amendment.

Changing requirements for adults waiving the right to representation in Mental Health Review Tribunal proceedings (*Mental Health Act 2016*)

The objective of this amendment is to provide flexible options for patients to exercise their rights – in this case to choose to waive their right to representation at the MHRT. Currently this requires a written document.

Under the Amendment, a person will have flexibility in how they communicate that they wish to waive that right. Currently they are required to only do so in writing. Given the importance of the right to representation, under the amendment current safeguards will continue regarding waiving rights to representation.

In the Departmental Briefing on the Amendment, it was made clear that this Amendment relates specifically to the form of the waiver, with this provision providing a broader base on which this can be made, rather than a formal written statement. The broader process in which this waiver is made continues.

The QNMU supports this amendment.

Authorising schools to disclose student information to Qld Health's vision screening health service (Public Health Act 2005)

The Queensland Health Primary School Nurse Health Readiness Program (Vision Screening) is one the QNMU has actively supported and continues to have an ongoing interest in. This program provides vision screening for primary school students.

Currently there is a significant administrative load for both school staff and the nurses undertaking the screening as currently information sharing is not provided. This amendment would address this administrative load, through the sharing of information on children to facilitate contact with parents and ensure early identification and treatment of preventable vision loss in children. This Amendment extends current approaches for screening to include the vision screening service.

The QNMU supports this amendment.

Extending notification requirements for the Queensland Cancer Register and enabling additional data to be collected (Public Health Act 2005)

Findings from the recent Australian Burden of Disease Study showed that cancer as a disease group was the leading cause of burden in Australia in 2018, accounting for 18% of the total disease burden (AIHW, 2022). The QNMU strongly supports the use of evidence-based decision making in addressing health issues. This amendment aims to take steps to modernise the Queensland Cancer Register regarding information of the incidence of cancer and details regarding cancer related treatments.

The QNMU supports this amendment.

Creating a new offence for failure to ensure a person does not receive greater than a specified dose of ionising radiation (Radiation Safety Act 1999)

The amendment creates a new offence into the Radiation Safety Act 1999 (Qld) for a person to fail to ensure that another person does not receive more than a specific radiation dose from radioactive materials that are not radioactive substances. It sets a maximum penalty of 100 penalty units.

This amendment is one that addresses the use of the most appropriate legislative instrument. The provision moves the offence for ‘failure to ensure’ from the regulations to this Act, and also increases the penalty from 20 penalty points in the Radiation Safety Regulation 2021 (Qld) (the Regulations) to 100 penalty points in this Act. This is more in line with similar offences that have a penalty of the order of 200-500 points. Under the Regulations the penalty is capped at 20 penalty points.

The QNMU supports this amendment.

Enabling low risk radioactive material to be exempted from requirements (eg disposal requirements) (*Radiation Safety Act 1999*)

This Amendment enables the more efficient management of low-level radioactive material, in particular disposal. Under this Amendment where a person has been administered a radioactive substance as part of a diagnostic or therapeutic procedure, and the person’s bodily waste contains radioactive material, the person’s bodily waste is exempt from the requirements of this Act.

In supporting this amendment it also is stressed that strategies provided to clinicians on radiation safety and cytotoxic waste management should always be considered given the inherent risk of exposure to bodily waste (e.g. urine, stools, blood, sweat). Whilst these may be deemed low-level exposure, it is a risk clinicians are required to mitigate through the course of their clinical care (e.g. using cytotoxic specific rubbish bags, wearing specific gloves or double gloves, impervious gowns etc).

The QNMU supports this Amendment.

Changing requirements for doctors to purchase human tissue products approved by the Therapeutic Goods Administration’s ‘Special Access Scheme’ (*Transplantation and Anatomy Act 1979*)

This Amendment will remove the requirement for doctors to apply to Queensland Health for a Ministerial permit to be able to purchase products for patients after they have received approval under the Therapeutic Goods Administration Special Access Scheme.

The QNMU supports this Amendment.

Ensuring consistent consent processes for human tissue and organ donation across public and private hospitals (Transplantation and Anatomy Act 1979)

As explained in the Explanatory notes this Amendment will also amend the definition of hospital so that it does not require private hospitals to be prescribed by the Transplantation and Anatomy Regulation 2017 (Qld). It will define hospital as private hospitals under *Private Health Facilities Act 1999* (Qld). This will ensure that all private hospitals under that Act have the same consent process for families to consent to removal of tissue as is the process in public hospitals. It will also avoid the need to amend regulations in the future to account for private hospitals changing names, new licenses being granted, or private hospitals that are no longer operating.

The QNMU has previously recommended that the government actively promote the expansion of organ donation programs in private hospitals. This amendment will assist in ensuring that there is greater consistency between private and public hospitals on this issue.

The QNMU supports this amendment.

Removing the requirement for print newspaper publication of water fluoridation decision and implementation notices (*Water Fluoridation Act 2008*).

The Bill will amend the *Water Fluoridation Act 2008* (Qld) to remove the requirement that water fluoridation notices be published in a print newspaper and replace it with a requirement that notices be published in a publicly accessible way. This will still allow newspaper notification where appropriate, while authorising other forms of notification such as publishing the information on the local government's website. These requirements will apply to both local governments and public potable water suppliers. (Explanatory notes)

This change reflects the changing way in which people source information, including the loss in many cases of small community newspapers. The QNMU support the decision, as long as the communication of information is widely accessible in the public domain.

From the Queensland Health briefing on this issue, it was indicated that 28% of Queenslanders do not have access to fluoridated water. The reasons for this would include both the decisions of individual local governments but also the practicalities of the water supply facilities in individual local government areas.

The QNMU supports the amendment. However, we further note that given the public health nature of this issue, it would seem appropriate for it to be managed at the state level, rather than local government
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