

Health and Other Legislation Amendment Bill 2022

Submission No: 13
Submitted by: Australian Workers' Union of Employees, Queensland (AWUEQ)
Publication:
Attachments:
Submitter Comments:

Friday, 13 January 2023

Submission: Health and Other Legislation Amendment Bill 2022

The Australian Workers' Union of Employees, Queensland (AWUEQ) welcomes the opportunity to provide feedback regarding the *Health and Other Legislations Amendment Bill 2022*, under consideration by the Health and Environment Committee of the Queensland Parliament.

About AWUEQ

The AWUEQ is the nation's oldest and largest blue-collar trade union representing tens of thousands of working men and women and their families. We have a diverse membership in an array of industries, including but not limited to public health, youth justice, disability services and local government.

We represent thousands of members employed by Queensland Health working in all 16 Hospital and Health Services and the Department of Health in numerous operational roles such as cleaning, patient care and support, theatre assistants, food services, security, grounds and maintenance, linen services, stores, and distribution centres.

As a union representing public health workers, our interest in the changes proposed via the *Health and Other Legislation Amendment Bill 2022* ("the Bill") primarily concerns their impact on working conditions for our members, and ensuring our members' health, safety and wellbeing is fully protected in their workplaces. No worker deserves to be harmed as a consequence of performing their duties.

Consultation

We note with concern that the Australian Workers' Union of Employees, Queensland, is not listed on page 28 of the Explanatory Memorandum as a stakeholder given the opportunity to provide feedback on the Bill in September and October 2022.

Secretary/Branch Secretary: Stacey Schinnerl

We also refer to the below passage contained within the “consultation” section of the Explanatory Memorandum (page 28).

Stakeholders were generally supportive of, or raised no concerns about, the Bill.

This is incorrect, as is demonstrated by Appendix 1 to this submission, being the AWUEQs feedback on the Bill dated 21 October 2022 outlining in detail our significant concerns that the proposed amendments in the Bill do not go far enough.

Attached as Appendix 2 is the response we received to our feedback on the Bill, dated 1 December 2022.

This misrepresentation, whether deliberate or an oversight is concerning to the AWUEQ.

The Bill

As our interest in the changes proposed via the *Health and Other Legislation Amendment Bill* pertains to the employment of our members, our submission is focused exclusively on the portions of the Bill that propose amendments to the *Hospital and Health Boards Act 2011* (“the HHB Act”).

The AWUEQ supports measures that will strengthen the protection of the health, safety and wellbeing of our members. Regrettably, the amendments as currently drafted do not go far enough. This is discussed below.

Health, Safety and Wellbeing Amendments – Hospital and Health Boards Act 2011 (“HHB Act”)

The AWUEQ notes that the objective of the proposed amendments is to:

“strengthen protections for the wellbeing of workers in Queensland, public health services, including clinical, administrative and operational staff.”

“Wellbeing”, in the Explanatory Notes to the Bill is said to refer to:

“the concepts of health, safety and wellbeing. This includes both physical and psychological health, safety and wellbeing, as well as emotional wellbeing and cultural safety.”

The Explanatory Memorandum to the Bill states that the proposed amendments will require Hospital and Health Services to “proactively consider ways of supporting the wellbeing of staff in Queensland’s public sector health facilities” and that “this requirement is intended to

complement and contribute to compliance activities required under existing work health and safety legislation”.

It is entirely unclear how the proposed amendments will meet this objective without including explicit references to the existence of the *Work Health and Safety Act 2011 (Qld)* (“WHS”), the *Work Health and Safety Regulation 2011* (“WHS Regulation”), and the *Work Health and Safety (Codes of Practice) Notice 2022* (“WHS Codes of Practice”).

It appears that the rationale for not including references to existing work health and safety legislation is that it is not necessary to do so as the amendments in the Bill do not impact the obligations held by Hospital and Health Services and Hospital and Health Boards under other legislation. This is inconsistent with other provisions within the HHB Act. For example, there are at least 10 references to the *Industrial Relations Act 2016(Qld)*¹ including at section 66 – conditions of employment.

To properly strengthen protections for the health, safety and wellbeing of Queensland public health sector workers, we submit that section 66 of the HHB Act be amended to refer to the WHS Act, WHS Regulation, and WHS Codes of Practice.

In addition to the reasons listed above, amending the HHB Act to include explicit reference to the WHS Act, the WHS Regulation and the WHS Codes of Practice is necessary as there are concerns that there are various arrangements in place at the Hospital and Health Service level whereby:

- work health, safety and wellbeing matters are considered by committees that are not established pursuant to s. 75 of the WHS Act; and
- the role of health and safety representatives (HSRs) under the WHS are being circumvented by the role of unelected “health champions”.

We further submit that should these proposed amendments become law, clarification ought to be provided within the HHB Act as to who has primary duty of care and obligations in respect to due diligence as a senior officer as defined within the WHS Act.

Clarifying the power to direct persons to leave public health facilities - *Hospital and Health Boards Act 2011* (“HHB Act”)

Clarification of the role, obligations and responsibilities of Security Officers is welcomed, albeit overdue.

¹ See ss 10(3), 51AA(4), 66(1)(b), 66(2)(b), 66(3)(b), 69A, 75(1), 282(7)(b)(ii), 282(8) and Schedule 2.

AWUEQ

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More work is needed in this area to clarify the obligations and responsibilities of Security Officers in discharging their duties given the need to balance the health and safety needs of hospitals and other health facilities, patients and staff with the need to provide healthcare to those who need treatment.

The comments made within the Explanatory Memorandum that *“often healthcare staff have already engaged with a person before requesting security assistance, and therefore medical needs have been considered before the person is directed to leave”* is not reflective of the lived experience of our members.

We note that it is clear within the Explanatory Memorandum that Security Officers will not be responsible for making clinical decisions about the urgency and seriousness of health care, and that this responsibility will remain with clinical staff. However, this is not explicitly clear in the amendment proposed by the Bill to s. 183 of the HHB Act. We submit that this amendment be changed to state *“if the person has been assessed by a clinician as requiring emergency medical treatment...”*

We further submit that a full implementation plan that includes but is not limited to the development and rollout of fit for purpose training be provided to Security Officers (and clinicians) in the lead up to the commencement of this new provision.

[REDACTED]
Stacey Schinnerl

Secretary

Australian Workers' Union of Employees, Queensland

21 October 2022

[REDACTED]
[REDACTED]
[REDACTED]

Queensland Health

Sent by email: [REDACTED]

Dear [REDACTED],

AWU Feedback – Health and Other Legislation Amendment Bill 2022

The Australian Workers' Union of Employees, Queensland (AWUEQ) has reviewed the Health and Other Legislation Amendment Bill 2022 (HOLA Bill 2022) and associated Consultation Paper dated October 2022.

The AWUEQ provides the following feedback in respect to the proposed amendments to the *Hospital and Health Boards Act 2011* ("the HHB Act").

Staff wellbeing amendments:

The AWUEQ notes that the rationale provided in the "overview of proposed changes" is to:

"strengthen protections for workers in public health services by inserting new obligations for Hospital and Health Boards and Hospital and Health Services to promote a workforce culture and implement measures to support staff health, safety and wellbeing"

Amending the HHB Act to ensure that Hospital and Health Services and Hospital and Health Boards are required to have regard to the need to promote a culture and implement measures to support the health, safety and wellbeing of staff in public health services is supported, however, we hold concerns that the amendments proposed may not be effective in achieving the objective outlined above.

As is stated in the Consultation Paper, the wellbeing of Queensland's public health workforce is already dealt with in Queensland legislation. Specifically, it is the *Work Health and Safety Act 2011 (Qld)* ("WHS Act") that protects workers against harm to their health, safety and welfare from hazards and risks arising from work.

To achieve the objective of strengthening protection for workers, we submit that the proposed amendments need to be expanded to include explicit reference to the *Work Health and Safety Act*

Secretary/Branch Secretary: Stacey Schinnerl

2011 (Qld), the *Work Health and Safety Regulation 2011* ("WHS Regulation"), and the *Work Health and Safety (Codes of Practice) Notice 2022* ("WHS Codes of Practice").

Further, we submit that s. 66 of the HHB Act (conditions of employment for health service employees) ought to be amended to include the WHS Act, the WHS Regulation and the WHS Codes of Practice.

In addition to the reasons listed above, amending the HHB Act to include explicit reference to the WHS Act, the WHS Regulation and the WHS Codes of Practice is necessary as there are concerns that there are various arrangements in place at the Hospital and Health Service level whereby:

- work health, safety and wellbeing matters are considered by committees that are not established pursuant to s. 75 of the WHS Act; and
- the role of health and safety representatives (HSRs) under the WHS are being circumvented by the role of unelected "health champions".

In the Consultation Paper, it is asserted that the proposed amendments are consistent with amendments made in August 2021 in South Australia in their analogous legislation, the *Health Care Act 2008 (SA)*. In reviewing this legislation and the amendments made in August 2021, it is apparent that those amendments went further than what is currently contemplated by the Health and Other Legislation Amendment Bill 2022.

In particular, pursuant to s. 7 of the *Health Care Act 2008 (SA)*, the Chief Executive's functions in connection with the operation of that Act include "to develop and issue policies on workforce harassment and bullying". The AWUEQ is of the view that inclusion of a similar provision in the HHB Act is necessary given the stated aim of requiring Hospital and Health Boards and Hospital and Health Services to proactively consider ways of supporting both physical and psychosocial wellbeing.

Security officer powers and compliance with human rights

Clarification of the role, obligations and responsibilities of Security Officers is welcomed, albeit overdue.

More work is needed in this area to clarify the obligations and responsibilities of Security Officers in discharging their duties given the need to balance the health and safety needs of hospitals and other health facilities, patients, and staff with the need to provide healthcare to those who need treatment.

We note that it is clear within the Consultation Paper that Security Officers will not be responsible for making clinical decisions about the urgency and seriousness of health care, and that this responsibility will remain with clinical staff. However, this is not explicitly clear in the amendment proposed by the HOLA Bill 2022 to s. 183 of the HHB Act.

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ABN 54 942 536 069 (AWUEQ) ABN 28 853 022 982 (AWU)

We further submit that a full implementation plan that includes but is not limited to the development and rollout of fit for purpose training be provided to Security Officers (and clinicians) in the lead up to the commencement of this new provision.

Kind regards,

[Redacted signature]

Ms Stacey Schinnerl

Secretary

The Australian Workers' Union of Employees, Queensland

Secretary/Branch Secretary: Stacey Schinnerl

Subject:

Appendix 2 - AWUEQ HOLA Subs

From: Legislation [REDACTED]
Sent: Thursday, 1 December 2022 4:56 PM
To: Secretary AWU Queensland Branch [REDACTED]
Cc: [REDACTED]
Subject: RE: Updated documents -- Seeking feedback: Health and Other Legislation Amendment Bill 2022

Good afternoon

Thank you for the Australian Workers' Union Employees, Queensland's (AWUEQ) feedback on the draft Health and Other Legislation Amendment Bill 2022. We appreciate you taking the time to respond.

I am writing to advise that on 29 November 2022, the Minister for Health and Ambulance Services introduced the Bill into Parliament. The Bill has been referred to the Health and Environment Committee for consideration. The final Bill is available here: <https://www.legislation.qld.gov.au/view/html/bill.first/bill-2022-022>. More information about the Committee's inquiry will become available here: <https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=169>.

I wanted to respond to your comments about the amendments to the *Hospital and Health Boards Act 2011*.

Proactive consideration of staff health, safety and wellbeing

The Bill inserts a new requirement into the Hospital and Health Boards Act for Hospital and Health Boards (HHBs) and Hospital and Health Services (HHSs) to proactively consider the health, safety and wellbeing of staff in public sector health services.

The amendments will strengthen supports for staff health, safety and wellbeing by making consideration of these matters mandatory for HHSs and HHBs. Queensland Health will work with HHSs and HHBs to identify strategies that will support them to meet the new obligations.

I note your suggestion that the staff wellbeing provisions of the Bill and section 66 of the *Hospital and Health Boards Act 2011* should reference the *Work Health and Safety Act 2011* and its subordinate legislation. The amendments do not impact the application of the *Work Health and Safety Act 2011* and subordinate legislation. The explanatory notes for the Bill make it clear that this legislation continues to apply.

I also note your recommendation that the Bill should include a provision that requires the chief executive of Queensland Health to develop and issue policies on workforce harassment and bullying in line with the *Health Care Act 2008* (SA). The chief executive already has the power to issue binding health service directives under the Queensland Hospital and Health Boards Act. If required, health service directives could be issued to support a coordinated approach to certain staff health, safety and wellbeing matters. If the amendments are passed by Parliament, Queensland Health will monitor how they are implemented to determine whether a health service directive is required.

Power of security officers to direct persons to leave

The Bill clarifies when health security officers can direct persons to leave public healthcare premises. I acknowledge your concerns that the Bill does not make it clear that security officers will not be responsible for making clinical decisions about patient care when determining whether or not to direct a person to leave HHS land.

The explanatory notes for the Bill make clear that medical need will continue to be determined based on clinical advice and that security officers are not responsible for making clinical decisions about patient care. This is line with well-established existing practice.

I further note your recommendation that the amendment be supported by a full implementation plan, including training for security officers and clinicians, before it commences. As the amendment will simply reinforce existing practice, it will not require extensive implementation. Hospital and Health Services have been consulted on the amendment and have not raised any concerns about implementing it in practice. However, an implementation period of up to 12 months will be available before the amendment takes effect to ensure it is well understood by HHSs and security officers.

Other suggestions

I note that AWUEQ provided additional feedback in relation to workplace health and safety arrangements in HHSs. This feedback is outside the scope of the Bill. We have provided it to the relevant team within Queensland Health for consideration.

I hope this information is useful and helps to address AWUEQ's feedback on the Bill.

Regards



[Redacted]
[Redacted]
[Redacted]
[Redacted] | Queensland Health

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From: [Redacted]

Sent: Friday, 21 October 2022 12:58 PM

To: Legislation [Redacted]

Cc: [Redacted]

Subject: Re: Updated documents -- Seeking feedback: Health and Other Legislation Amendment Bill 2022

This email originated from outside Queensland Health. DO NOT click on any links or open attachments unless you recognise the sender and know the content is safe.

Good afternoon [REDACTED]

Please find **attached** to this email our feedback on the Health and Other Legislation Amendment Bill 2022.

We are happy to meet with HR representatives to discuss the issues raised in this correspondence.

Kind regards,

[REDACTED]
Industrial Advocate

The Australian Workers' Union Queensland



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Stacey Schinnerl
Secretary, Queensland AWU
GPO Box 88
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From: Legislation [REDACTED]

Sent: Monday, 10 October 2022 10:50 AM

To: Legislation [REDACTED]

Subject: RE: Updated documents -- Seeking feedback: Health and Other Legislation Amendment Bill 2022

Good morning

It has come to our attention that there is an error with the headings in the updated consultation paper that was attached to the email below.

The draft Bill and the consultation paper (with the headings corrected) are re-attached. Apologies for this inconvenience.

Regards



[REDACTED]

[REDACTED]

[REDACTED]

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From: Legislation
Sent: Thursday, 6 October 2022 12:33 PM
Subject: Updated documents -- Seeking feedback: Health and Other Legislation Amendment Bill 2022

Good afternoon

Further to the below email, please find attached **updated** copies of the draft **Health and Other Legislation Amendment Bill 2022** and the accompanying consultation paper. Please note that these documents remain **confidential**.

The documents have been updated to correct an inadvertent omission of an amendment proposed to the *Hospital and Health Boards Act 2011*. As per clause 7 of the revised draft Bill, and pages 4-5 of the revised consultation paper, it is proposed to amend the power for health security officers to direct persons to leave health services land. The power will be adjusted to align with current practice that persons must not be directed to leave if they require emergency medical treatment.

No other revisions have been made to the documents. I apologise for any inconvenience caused by the above update.

Please provide any feedback on the revised documents by email to [REDACTED] by **COB Friday 21 October 2022**.

Thank you for your understanding.

Regards

[REDACTED]



[REDACTED]
[REDACTED]
[REDACTED]
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From: Legislation
Sent: Friday, 30 September 2022 11:53 AM
Subject: Seeking feedback: Health and Other Legislation Amendment Bill 2022

Good morning

I am writing to invite your organisation to comment on the attached **confidential draft** of the **Health and Other Legislation Amendment Bill 2022**.

The draft Bill proposes to amend the *Hospital and Health Boards Act 2011*, *Medicines and Poisons Act 2019*, *Recording of Evidence Act 1962*, *Mental Health Act 2016*, *Public Health Act 2005*, *Radiation Safety Act 1999*, *Transplantation and Anatomy Act 1979* and the *Water Fluoridation Act 2008*.

The attached consultation paper provides more detail on the proposed changes. Queensland Health would appreciate your feedback. Please provide any feedback by email to [redacted] by **COB Friday 21 October 2022**.

At this stage, the proposals are not approved Government policy and the consultation paper and draft Bill are provided to you on a confidential basis. Please do not distribute the paper or Bill further without contacting us first.

The views of your organisation are valuable and may be referred to in material provided to Government in considering the proposals and, if legislative amendments are progressed, Explanatory Notes for the Bill or material provided to a Parliamentary Committee.

Recognising the tight timeframes involved, Queensland Health would be pleased to meet with you to discuss the draft Bill and any feedback you may have. If this would be helpful, please contact [redacted] (email: [redacted]; phone: [redacted] in our team to arrange a suitable time.

We look forward to hearing from you. In the meantime, if you have any questions, please reply to this email and a member of the team will be in touch.

Regards
[redacted]



[redacted]

[redacted]

[redacted]

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