

Health Legislation Amendment Bill (No. 2) 2025

Submission No: 1
Submitted by: Queensland Mental Health Commission
Publication:
Attachments:
Submitter Comments:

Health Legislation Amendment Bill (No. 2) 2025



Queensland
Mental Health
Commission

Introduction

The Queensland Mental Health Commission (the Commission) welcomes the opportunity to make a submission on the Health Legislation Amendment Bill (No. 2) 2025 (Qld) (the Bill).

The Commission is an independent statutory agency established under the *Queensland Mental Health Commission Act 2013* (the Act) to drive ongoing system reform towards a more integrated, evidence-based and recovery-oriented mental health, alcohol and other drugs and suicide prevention system in Queensland.

Clauses 51-53 of the Bill would amend the Act sections 21, 23, which defines the circumstances in which the office of the Mental Health Commissioner (the Commissioner) is considered vacant and the mechanism by which an acting Commissioner may be appointed. This submission will consider only the amendments to the Act as all other amendments within the Bill fall outside of the Commission's scope.

Vacancy under the Act

The Act provides that the Minister may appoint a person, other than a member of the Queensland Mental Health and Drug Advisory Council, to act in the office of the Commissioner (the Office) during a vacancy in the Office.¹ The Act specifies 5 circumstances in which the Office becomes vacant:

- (1) *The office of the commissioner becomes vacant if the commissioner—*
 - (a) *resigns office by signed notice to the Minister giving at least 1 month's notice; or*
 - (b) *is convicted of an indictable offence; or*
 - (c) *is a person who is an insolvent under administration; or*
 - (d) *is removed from office by the Governor in Council under subsection (2); or*
 - (e) *is suspended by the Minister under subsection (4).*

The Act is silent on whether the ordinary completion of the Commissioner's term in office would amount to the Office being vacant for the purpose of appointing an acting Commissioner.

The natural meaning of the word 'vacant' would imply that this is the case, however, the *Acts Interpretation Act 1954* (Qld) section 24B(2) does not accommodate this interpretation. Instead, it appears to narrow the circumstances in which an acting appointment takes effect to those expressly listed in the Act:

- (2) *The appointment may be expressed to have effect only in the circumstances specified in the instrument of appointment.*

Therefore, the Commission is of the view that the position in the tabled Explanatory Notes is correct in stating that there is ambiguity in whether the Minister can appoint a person to act in the Office in such a case.²

Commission functions during a vacancy in the Office

The power to exercise the Commission's functions rests with the Commissioner.³ Functions listed in the Act may be delegated by the Commissioner to an appropriately qualified staff member of the Commission.⁴ This mechanism has proven to be sufficient in allowing the Commission to continue performing its functions in cases where the Commissioner has taken short-term leave in the past.

¹ *Queensland Mental Health Commission Act 2013* (Qld) s 23(a)

² Explanatory Notes, Health Legislation Amendment Bill (No. 2) 2025 (Qld) 10

³ *Queensland Mental Health Commission Act 2013* (Qld) s 19(3)

⁴ *Ibid* ss 11, 52(1)

A scenario could be envisioned where the Commissioner, approaching the end of their term, delegates their functions to a senior officer in anticipation of there being a delay in appointing their successor. This scenario presents several issues, including:

- **Issue A:** It relies on the delegation to persist beyond the end of the Commissioner's term; and
- **Issue B:** The Commissioner may be unable to delegate powers, functions, and duties under the *Financial Accountability Act 2009* (Qld) (the FAA).

Issue A

There is ambiguity around whether a delegation persists where no person holds the office from which the power or function is delegated. The *Acts Interpretation Act 1954* (Qld) section 27A(8A) provides that delegations do not cease to exist merely because the person that delegated those functions ceases to hold office:

(8A) If—

- (a) the delegator is a specified officer or the holder of a specified office; and
- (b) the person who was the specified officer or holder of the specified office when the delegation was made ceases to be the officer or holder of the office;

then—

- (c) the delegation continues in force; and
- (d) the person for the time being occupying or acting in the office concerned is taken to be the delegator for the purposes of this section.

It appears that this provision relies on the new office holder being taken as having made the delegation. It is questionable whether the subsection would trigger where there is no person to be taken as the delegator.

Issue B

The Commission is a statutory body for the purposes of the FAA.⁵ Additionally, the Commission consists of the Commissioner and the staff of the Commission.⁶ The FAA prescribes a number of powers, functions, and duties to Commission, including:

61 Functions of accountable officers and statutory bodies

Accountable officers and statutory bodies have the following functions—

- (a) to achieve reasonable value for money by ensuring the operations of the department or statutory body are carried out efficiently, effectively and economically;
- ...
- (c) to establish and keep funds and accounts in compliance with the prescribed requirements;
- ...
- (e) to undertake planning and budgeting for the accountable officer's department or the statutory body that is appropriate to the size of the department or statutory body.

The ability to execute these powers and functions is delegated to the Commissioner and the Commission's senior staff through the Commission's corporate governance structure.

An accountable officer may delegate their functions under the FAA, however, it can be inferred that statutory bodies do not have accountable officers under the FAA.⁷ Instead, the FAA refers to the statutory body itself as an entity holding these functions:

26 Information for preparing consolidated whole-of-government financial statements

... (2) The Treasurer may, by notice given to the accountable officer of a department or to a statutory body, ask the officer or body to give information to the Treasurer.

⁵ *Queensland Mental Health Commission Act 2013* (Qld) s 10(1)(b)

⁶ *Ibid* s 14(1)

⁷ *Financial Accountability Act 2009* (Qld) s 76.

60 Application of ss 61–63

The functions or requirements imposed by section 61, 62 or 63 on accountable officers and statutory bodies are imposed—

- (a) for each accountable officer—in relation to the accountable officer’s department; and*
- (b) for each statutory body—in relation to that statutory body.*

61 Functions of accountable officers and statutory bodies

Accountable officers and statutory bodies have the following functions—

This can be compared to the section that allows the functions under the FAA to be delegated:

Part 5 Provisions applying only to departments

...

76 Delegations by accountable officers

- (1) An accountable officer may delegate the officer’s functions under this Act to an appropriately qualified public service employee or other employee of the State.*

The exclusion of statutory bodies from this section implies that it was not intended for there to be a mechanism for individuals within statutory bodies to delegate the powers, functions, and duties established under the FAA. The effect of this is to limit the exercising of those powers, functions, and duties to those outlined in the Commission’s corporate governance structure and the position descriptions of senior staff.

For example, while the Office is vacant, the Commission would be unable to enter contracts where the Commission’s expenditure exceeds \$250,000.00. It is foreseeable that this could cause operational hinderances should the Commission need to renew the lease for its office tenancy or its contract with the Corporate Administration Agency to provide payroll services, ICT support, and data storage.

It should be noted that the *Public Sector Act 2022* (Qld) section 282(4) allows a chief executive’s functions to be delegated where those functions are performed under another act. If it is the case that the functions under the FAA apply to the Commission as an entity rather than the Office, this section would not allow the Commissioner to delegate those functions.

If the appointment of an acting Commissioner were to fall to the Governor in Council, the delay caused in processing the appointment may require the Commission to rely on the perseverance of existing delegations.

The Commission’s position is that the ambiguity around delegations during a vacant Office present too great a risk to the Commission’s ability to function. It is in the public interest to resolve any ambiguity around the Minister’s authority to expeditiously appoint a person to act in the Office under such circumstances.

The proposed amendments within the Bill

The Bill would amend subsection 21(1) of the Act to the following:

21 Vacancy in office of commissioner

- (1) The office of the commissioner becomes vacant if the commissioner—*
 - (a) completes a term of office and is not reappointed; or*
 - (b) resigns office by signed notice to the Minister giving at least 1 month’s notice; or*
 - (c) is convicted of an indictable offence; or*
 - (d) is a person who is an insolvent under administration; or*
 - (e) is removed from office by the Governor in Council under subsection (2); or*
 - (f) is suspended by the Minister under subsection (4).*

Examining the amended subsection in the context of the scope imparted by the *Acts Interpretation Act* (Qld) section 24B(2), it is clear that the amendment would remove any doubt that the Office would be considered vacant if the Commissioner no longer holds office due to the ordinary completion of their term. This would confirm that the Minister may appoint an acting Commissioner under section 23.

The Bill would amend section 23 of the Act to the following:

23 Acting commissioner

- (1) *This section applies if—*
- (a) *the office of the commissioner is vacant; or*
 - (b) *the commissioner is absent from duty or otherwise unable to perform the commissioner's functions.*
- (2) *The Minister may appoint a person, other than a member of the council, to act as commissioner for a period of not longer than 6 months.*
- (3) *However, the Minister may extend the appointment for a further period of not longer than 6 months.*
- (4) *This section does not limit the Governor in Council's power under the Acts Interpretation Act 1954, section 25(1)(b)(iv) or (v).*

The amended section would function the same as the Act in its present state with one exception. The amendment would limit the term of the acting Commissioner to 6 months in the first instance, and an additional 6 months on extension. This can be contrasted with the Act's current reliance on *Acts Interpretation Act 1954* (Qld) section 24B(5), which allows acting appointments to be made for terms up to one year and extended indefinitely. The amended section better reflects the purpose of an acting appointment, which is to serve as interim measure until a substantive appointment can be made.

Conclusion

The amendments to the Act would be successful in clarifying the Minister's ability to appoint an acting Commissioner when the Office becomes vacant due to the expiry of the Commissioner's term. The appointment of an acting Commissioner is preferred over the reliance on existing or anticipatory delegations made by the departing Commissioner. Therefore, the Commission supports clauses 51-53 of the Bill.

Contacts

Bretine Curtis
Executive Director

Email: [REDACTED]

M: [REDACTED]