

**State Development and Regional Industries Committee  
Health and Other Legislation Amendment Bill 2021**

**Briefing from Queensland Health**

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### Briefing from Queensland Health

On 1 December 2021, the Health and Other Legislation Amendment Bill 2021 (Bill) was introduced into the Legislative Assembly. The State Development and Regional Industries Committee has requested Queensland Health provide a written briefing about the Bill. This briefing follows an oral briefing by Queensland Health, the Department of Environment and Science and the Department of State Development, Infrastructure, Local Government and Planning to the Committee on 14 December 2021.

#### Background

The Bill amends the following 10 Acts to improve the practical operation of Queensland's health portfolio legislation:

- *Ambulance Service Act 1991*
- *Hospital and Health Boards Act 2011*
- *Mental Health Act 2016*
- *Public Health (Infection Control for Personal Appearance Services) Act 2003*
- *Radiation Safety Act 1999*
- *Termination of Pregnancy Act 2018 and Criminal Code Act 1899*
- *Transplantation and Anatomy Act 1979*
- *Corrective Services Act 2006 and Water Supply (Safety and Reliability) Act 2008.*

The health portfolio amendments in the Bill have been informed by both long-term and targeted consultation with the medical, nursing, pharmaceutical, allied health, mental health, Aboriginal and Torres Strait Islander health and legal sectors.

The Bill also amends the *Environmental Protection Act 1994* to provide that essential community infrastructure such as satellite hospitals, schools and emergency facilities may be constructed and operate outside the environmental nuisance limits under the Environmental Protection Act, provided it is regulated by an infrastructure designation made by the Planning Minister under the *Planning Act 2016*.

#### Amendments and policy objectives

This Bill aims to improve the operation of health portfolio legislation and support the provision of health services in Queensland. Specific objectives and benefits of the amendments are listed by Act below.

##### Ambulance Service Act 1991

The Bill makes two key changes to the Ambulance Service Act. The first ensures that the framework for the management of confidential information by the Queensland Ambulance Service (QAS) is robust and clear. Since 2013, QAS has been subject to confidentiality provisions in both the Ambulance Service Act and the Hospital and Health Boards Act. However, differences between the Acts – such as in relation to when personal information can be disclosed and how confidential information is defined – create uncertainty for QAS officers about which Act applies, whether they are authorised to disclose information in any presenting situation, and what information they can disclose. This raises a risk of officers unintentionally disclosing confidential information without proper authority.

The Bill addresses this by aligning the disclosure of confidential information under the Ambulance Service Act with the Hospital and Health Boards Act. This provides clarity and creates consistency with the day-to-day operations of QAS. The alignment of the two Acts also strengthens the framework for managing confidential information within the Ambulance Service Act by increasing the maximum penalty for unauthorised disclosure, expanding the definition of confidential information and extending obligations to apply to all former and present staff of QAS.

The Bill also amends the Ambulance Service Act to remove the requirement for the QAS Commissioner to be no older than 65 years, because age is not relevant to the Commissioner's ability to perform the role.

### Hospital and Health Boards Act 2011

The Bill amends the Hospital and Health Boards Act to enable more allied health professionals to be given access to health records on a system called The Viewer. This will improve patient care. The Viewer is Queensland Health's read-only web-based application that securely displays consolidated clinical and demographic information about patients from Queensland Health clinical and administrative systems.

The Viewer enables continuity of care when transferring patients from acute care to community care settings. However, The Viewer is currently only accessible by health practitioners registered under the Health Practitioner Regulation National Law, such as doctors, physiotherapists, psychologists, and optometrists. It cannot be accessed by allied health professionals who are not registered health practitioners.

The Bill allows for prescribed health professionals to access The Viewer. If the Bill is passed and enacted, it is intended to prescribe by regulation professionals such as audiologists, social workers, dieticians, speech pathologists, orthotists (who specialise in clinical services for splints and braces), prosthetists (who specialise in clinical services for artificial limbs) and orthoptists (who specialise in eye disorders).

The Bill maintains strict safeguards to protect the privacy of patients. All access to patient records is recorded. Patient searches can only be undertaken in The Viewer based on a set of unique patient identifiers, ensuring the patient is known to the health professional in a healthcare context, before their information can be accessed. Any unauthorised access or disclosure is an offence with a maximum penalty of 600 penalty units (currently \$82,710). Allied health professionals are also subject to legal, professional and ethical obligations that cover confidentiality and privacy. Patients can also opt out of having their information on The Viewer accessible to non-Queensland Health professionals. The process for opting out is to contact 13HEALTH and Queensland Health will work with Health Consumers Queensland during the implementation of these amendments to ensure consumers are aware of their choice to opt-out.

The following case studies demonstrate the positive impact that increased access to The Viewer could contribute to patients, their families and an efficient health system. Without access to The Viewer, the health professionals would have to go through manual, paper-based processes for requesting documents, which are time consuming and create delays in treatment and care.

#### *Case study 1: Dietician*

An elderly woman is admitted to a private palliative care facility following surgery, radiation and chemotherapy for stage four breast cancer. She is finding maintaining her oral food intake challenging and is becoming malnourished. She sees a dietician who works at the facility. The dietitian looks at The Viewer to check prescribed medications and results of pathology investigations to help determine the best way to manage the woman's nutritional requirements.

#### *Case study 2: Speech pathologist*

A young child is taken by their family to see a speech pathologist who is employed in private practice. The speech pathologist suspects childhood apraxia of speech (CAS). The child's family reports that the child was previously assessed by a speech pathologist, but the family disengaged before receiving the results. The speech pathologist looks at The Viewer for child development service encounters and discovers that the child already has a provisional diagnosis of CAS pending further assessment. They also learn that an application for the childhood intervention stream of the National Disability Insurance Scheme (NDIS) was started but is incomplete. The speech pathologist completes the assessment required to confirm the diagnosis. They also progress the application for NDIS funding and support the family with interim strategies.

### *Example 3: Exercise physiologist*

A man has an acquired brain injury associated with tumour removal, and moves into a private rehabilitation service after being discharged from hospital. Soon after, he suffers a fall, fractures his tibia and attends emergency and a fracture clinic. An exercise physiologist working for the rehabilitation service looks at The Viewer to clarify the recent encounters and x-ray results to ensure their interventions aimed at reconditioning are appropriate and safe.

## Mental Health Act 2016

The Bill makes several amendments to the Mental Health Act to improve processes for patients and continue to deliver rights-based approaches in mental health care in Queensland.

### *Mental Health Court matters*

The Mental Health Court is an inquisitorial court and does not test the facts of a matter. Its primary role is to make findings about whether a person was of unsound mind or of diminished responsibility when an offence was allegedly committed, make findings about current fitness for trial, and make orders for their treatment or care.

Under the current Act, the Court may determine unsoundness of mind or diminished responsibility even where the facts on which an expert witness, such as a psychiatrist, have based their opinion, are disputed.

The Bill inserts a provision into the Mental Health Act that prevents the Court from making a decision about whether a person was of unsound mind or of diminished responsibility where there is a substantial dispute about a fact that an expert has relied on in formulating their opinion. The Bill allows the Mental Health Court to return a matter to the criminal courts if the person is fit for trial. If the matter is returned to the criminal courts, the disputed facts can be tested and determined.

The amendment is comparable to section 269 of the repealed *Mental Health Act 2000*.

### *Process for approving electroconvulsive therapy (ECT)*

ECT is an evidence-based treatment that can be effective for some types of mental illness, such as severe depressive illness. Its use is supported by the Royal Australian and New Zealand College of Psychiatrists. Use of ECT is regulated by the Mental Health Act, however the majority of patients who receive ECT do so voluntarily.

Some patients are unable to give informed consent to the use of ECT. In these cases, the Mental Health Review Tribunal (MHRT) must approve the use of ECT in accordance with the criteria under the Mental Health Act. While this process has been assessed as compatible with the *Human Rights Act 2019*, the Bill introduces additional safeguards to promote the rights of people with mental illness, and better supports decision makers to comply with human rights obligations. It does this by inserting new rights-based criteria, requiring specific consideration of whether adults are able to give informed consent and requiring that regard be had to the views, wishes and preferences of adults to the greatest extent practicable.

The Bill also inserts new safeguards for people on treatment authorities, forensic orders or treatment support orders who are consenting to ECT by requiring the MHRT to be satisfied that the person has provided informed consent prior to the person accessing the treatment voluntarily. This is a new requirement and an important independent safeguard for these patients.

### *Apprehension and transfer of patients*

The Bill ensures that provisions about apprehension and transfer of patients absent from a mental health service are effective and align with least restrictive practice. It clarifies the requirements for the interstate transfer of patients who have been placed under a forensic or treatment support order. The Bill promotes a stronger rights-based approach for decisions about patient transfers between services, and allows the MHRT to approve requests for international transfers of patients who have been placed under a forensic or treatment support order.

## *Other amendments*

The Bill also:

- strengthens the confidentiality provisions and ensures the confidentiality obligations for all people performing functions under the Mental Health Act are clear and consistent;
- improves support for victims of unlawful acts; and
- makes other technical amendments to improve the operation of the Mental Health Act.

### Public Health (Infection Control for Personal Appearance Services) Act 2003

The Bill amends the Public Health (Infection Control for Personal Appearance Services) Act to extend the timeframe within which a person may apply for renewal of a licence for a business providing higher risk personal appearance services (such as body piercing and tattoo services), and to allow expired licences to be restored. The amendments will increase flexibility and efficiency in the licensing process for both businesses and local governments. The infection control requirements for these businesses are not changing and they will still be required to comply with the same standards.

### Radiation Safety Act 1999

Under the Radiation Safety Act, a person who applies for an Act instrument, such as a licence to possess a radiation source, must provide evidence of their identity or, for certain applications where the applicant is a corporation, a nominated person's identity. The chief executive must consider the application and either grant or refuse the application.

Under the existing provisions of the Act, an application must be accompanied by proof of identity documents prescribed under the *Radiation Safety Regulation 2021* (for example, a passport and a bank statement). The Bill removes the requirement for proof of identity documents to be prescribed in regulation. Instead, an applicant will be required to prove their, or their nominated person's, identity to the satisfaction of the chief executive.

If the amendments in the Bill are passed and enacted, high standards of identity assessment will remain. An applicant will still be required to prove their identity when they apply. The chief executive will publish guidance on the Queensland Health website to advise applicants which documents may be accepted to prove their identity or the identity of a nominated person. This will be informed by the *National Identity Proofing Guidelines*, which are published by the Australian Government Department of Home Affairs.

### Termination of Pregnancy Act 2018 and Criminal Code Act 1899

The Bill amends the Termination of Pregnancy Act and the Criminal Code to allow students on a clinical placement to assist with terminations. The Bill provides that in order to lawfully assist with a termination, a student must be registered under the Health Practitioner Regulation National Law, be under the supervision of a medical practitioner, another prescribed practitioner assisting lawfully, or the student's primary clinical supervisor, and assist only to the extent necessary to complete their program of study for, or clinical training in, the student's health profession. In practice, a student would observe the process for a termination and would not physically assist in the procedure.

The amendments will ensure students have lawful opportunities to gain knowledge and training in terminations in preparation for their entry to the professional workforce. The Bill will support capacity building and safe access to terminations in regional and rural areas. As is already the case for practitioners authorised to assist with terminations, no student will be required to assist if they have a conscientious objection to doing so. In other words, it will not be compulsory for students to assist with or observe terminations to complete their qualifications.

Queensland Health maintains comprehensive resources on termination of pregnancy for health practitioners and health services, including about how to raise conscientious objection. Available materials include clinical guidelines, documents in support of the guidelines, information about legal obligations and educational tools. There will be further engagement with stakeholders if the Bill passes, and implementation activities to update Queensland Health resources on student involvement and their right to conscientiously object.

#### Transplantation and Anatomy Act 1979

In Queensland, two human milk banks supply pasteurised human milk to neonatal intensive care units in Queensland hospitals. Human milk banks collect, screen, process, and distribute donated human milk. Sick and pre-term infants in hospital are sometimes provided donated human milk to prevent or treat serious health conditions. One of the banks also provides donated human milk to mothers in the community who are unable to breastfeed and who have vulnerable infants.

The Bill amends the Transplantation and Anatomy Act to clarify that human milk is excluded from the definition of tissue in the Act. This will make it abundantly clear that restrictions in the Transplantation and Anatomy Act on buying and selling tissue – intended to prevent trafficking in human organs and tissue for transplantation – do not apply to donated human milk. This will remove any doubt that hospitals can purchase human milk to provide essential treatment to unwell or pre-term infants and reduce the risk of any delays in doing so. Donated milk will continue to be regulated by the *Food Act 2006*.

#### Corrective Services Act 2006 and Water Supply (Safety and Reliability Act) Act 2008

The Bill makes minor amendments to these Acts to reflect commencement of the *Medicines and Poisons Act 2019* and remove references to repealed legislation.

#### Environmental Protection Act 1994

The amendment adds a new exemption to schedule 1 of the Environmental Protection Act to provide an exclusion to environmental nuisance that applies to the extent that the nuisance has been assessed and is specifically regulated by a requirement of an infrastructure designation by the Planning Minister under the Planning Act (Ministerial infrastructure designations).

Ministerial infrastructure designation proposals must undergo a process of environmental assessment and public consultation. The Planning Minister sets requirements on the Ministerial infrastructure designation about the works for the infrastructure and use of premises that act in a similar way to conditions under a development approval.

The process for assessment is set out in the statutory instrument known as the Minister's Rules and Guidelines. The proposed amendment will not change these obligations. Assessment of an infrastructure designation requires having regard to all the matters an assessment manager would be required to assess a development application against or have regard to (for example, planning instruments, State Development Assessment Provisions, public submissions).

Where the Planning Minister's requirements, imposed through an infrastructure designation, vary from those required by the Environmental Protection Act, the proposed amendment ensures that environmental nuisance provisions of the Environmental Protection Act do not apply.