Health and Other Legislation Amendment Bill 2021

Explanatory Notes

Short title

The short title of the Bill is the Health and Other Legislation Amendment Bill 2021 (Bill).

Policy objectives and the reasons for them

The Bill amends the following Acts to improve the operation of health portfolio legislation and support the provision of health services in Queensland:

- *Ambulance Service Act 1991* to ensure the framework for managing confidential information is robust, clear and aligned with the *Hospital and Health Boards Act 2011* and to remove the requirement for the Queensland Ambulance Service Commissioner to be no older than 65 years of age;
- *Environmental Protection Act 1994* to provide that development carried out or use of premises that causes environmental nuisance, is not an offence under the Environmental Protection Act to the extent it has been assessed and is explicitly regulated by a requirement of an infrastructure designation by the Planning Minister under the *Planning Act 2016*;
- Hospital and Health Boards Act to enable allied health professionals to access The Viewer to achieve better health outcomes for patients, and allow designated persons and prescribed health professionals to disclose confidential information to a person performing functions under the *Mental Health Act 2016*;
- Mental Health Act to:
  - clarify how the Mental Health Court can proceed if there is a dispute of facts on which an expert has based their opinion;
  - improve the process for approving electroconvulsive therapy (ECT) by providing additional protections and ensuring patients' views, wishes and preferences are taken into account to the greatest extent practicable;
  - ensure the provisions about apprehension and transfer of absent patients are effective and align with least restrictive practice;
  - clarify the requirements for the interstate transfer of patients who have been placed under a forensic or treatment support order;
  - promote a stronger rights-based approach for decisions about patient transfers between services;
  - allow the Mental Health Review Tribunal (MHRT) to approve requests for international transfers of patients who have been placed under a forensic or treatment support order;
  - strengthen the confidentiality provisions to ensure the obligations for all people performing functions under the Mental Health Act are clear and consistent;

  - extend the duty of confidentiality to experts engaged to provide reports to the Mental Health Court or MHRT;
  - improve support for victims of unlawful acts; and
  - make other minor amendments to improve the operation of the Mental Health Act;
- *Public Health (Infection Control for Personal Appearance Services) Act 2003* to improve the operation of the Act in relation to the restoration and renewal of business licences;
- *Radiation Safety Act 1999* to remove the requirement to prescribe identity verification documents by regulation for particular applications, with identity requirements to be included in departmental policies, informed by the *National Identity Proofing Guidelines*;
- *Termination of Pregnancy Act 2018* and the *Criminal Code Act 1899* to allow students registered under the Health Practitioner Regulation National Law (National Law) who are undertaking a clinical placement with a health service to assist in a termination of pregnancy;
- *Transplantation and Anatomy Act 1979* to exclude human milk from the definition of *tissue* in the Act, to ensure sick and pre-term infants can be efficiently provided donated human milk to prevent or treat serious health conditions; and
- *Corrective Services Act 2006* and *Water Supply (Safety and Reliability) Act 2008* to make consequential amendments to remove references to the repealed *Health Act 1937* and the *Pest Management Act 2001* following the commencement of the *Medicines and Poisons Act 2019.*

Amendments to the *Ambulance Service Act 1991*

Aligning and strengthening confidentiality and information-sharing provisions

The objectives of the amendments to the Ambulance Service Act are to strengthen safeguards around the disclosure of confidential information and reduce confusion about the interaction of confidentiality provisions in the Ambulance Service Act with those in the Hospital and Health Boards Act.

On 13 October 2013, the Queensland Ambulance Service (QAS) was amalgamated with Queensland Health. The Ambulance Service Act is administered by Queensland Health. Prior to the amalgamation, the confidentiality provisions that applied to QAS were in the Ambulance Service Act. After the amalgamation, QAS became subject to the confidentiality provisions in both the Ambulance Service Act and the Hospital and Health Boards Act.

There are several differences in definitions, wording, scope, offences and authorisations for the disclosure of confidential information between the two Acts. These differences create confusion for QAS officers about whether they are authorised to disclose information, and which Act they are subject to.

Under the Ambulance Service Act, the chief executive (Director-General of Queensland Health) has the power to authorise a designated officer (for example, an ambulance officer) to disclose confidential information if it is:

- necessary to assist in averting a serious risk to the life, health or safety of a person;
- in the public interest; or

- made for the purpose of research which has the approval of an appropriate ethics committee.

Under the Ambulance Service Act, this power cannot be delegated. This means that the QAS Commissioner cannot authorise their own designated officers to disclose confidential information, even if the Commissioner is satisfied it is in the public interest, or would assist in averting a serious risk to the life, health or safety of a person. This is inconsistent with the operation of QAS, where the Commissioner, rather than the Director-General of Queensland Health, has oversight and direction of most of QAS's operations. In accordance with the QAS Commissioner's role, the Bill aims to allow the QAS Commissioner to authorise QAS officers to disclose confidential information in limited, important circumstances.

Removal of age restriction for Commissioner of the Queensland Ambulance Service

The Ambulance Service Act states that a person is disqualified from being appointed, or from continuing in the role as the Commissioner of QAS where the person is or attains the age of 65 years. As age is not relevant to the role of the Commissioner, it is proposed to remove this age restriction from the Act.

Amendments to the *Environmental Protection Act 1994*

The principal objective of the proposed amendment is to provide that development carried out or use of premises that causes environmental nuisance, is not an offence under the Environmental Protection Act to the extent it has been assessed and is explicitly regulated by a requirement of an infrastructure designation by the Planning Minister under the Planning Act.

The Environmental Protection Act regulates activities that cause environmental harm, including environmental nuisance, and prescribes when an activity that causes serious or material environmental harm, environmental nuisance or that contravenes a noise standard will be unlawful.

The Environmental Protection Act also provides for where certain types of environmental nuisance are excluded from being an offence. These exclusions apply where environmental nuisance is better managed in another way, for example, via appropriate conditioning of development approvals under the Planning Act.

However, the exclusions do not currently apply to infrastructure designations under the Planning Act.

An infrastructure designation is made under Chapter 2, Part 5 of the Planning Act and used to strategically identify and protect land for essential community infrastructure. The types of infrastructure that may be designated are set out in Schedule 5 of the *Planning Regulation 2017*, including private and public infrastructure, such as satellite hospitals, schools, and emergency facilities.

Infrastructure designations proposals must undergo a process of environmental assessment and public consultation as required under the Planning Act. A designation may also include requirements about the works for the infrastructure and use of premises that act in a similar way to conditions under a development approval.

The Environmental Protection Act sets default noise standards for various activities, including building works. The default noise standard for building works prevents the carrying out of

works that create noise that can be clearly heard by the occupier of an affected building outside the hours of 6.30 to 18.30 on a business day or Saturday.

These building works hours may be varied via various mechanisms, including a local law, a development condition of a development approval under the Planning Act, and certain types of activities are exempt from being considered environmental nuisance under the Environmental Protection Act by virtue of schedule 1 of the Act.

These exemptions include, for example, where the nuisance is regulated under another law (such as the *Transport Infrastructure Act 1994*) or is managed in another way and not appropriate for regulation under the Environmental Protection Act (such as noise from roads or aircraft, and environmental nuisance from maintaining public infrastructure).

However, there is no similar exemption available for infrastructure designations made by the Planning Minister or a local government under the Planning Act. This means that, while the Planning Minister has the power to set requirements on an infrastructure designation that vary building work hours, these requirements would currently not be included as they would be inconsistent with the provisions of the Environmental Protection Act.

Amendments to the *Hospital and Health Boards Act 2011*

The Hospital and Health Boards Act authorises a prescribed health practitioner to access information in a prescribed information system. The *Hospital and Health Boards Regulation 2012* prescribes The Viewer as a *prescribed information system*. The Viewer is Queensland Health's read-only web-based application that displays a consolidated view of patients' clinical and demographic information from a variety of Queensland Health clinical and administrative systems. Relevant health practitioners can access The Viewer through a read-only secure access portal known as the Health Provider Portal. The definition of *relevant health practitioner* in section 139 of the Hospital and Health Boards Act only allows practitioners registered under the National Law to access The Viewer. This limits the ability of allied health professionals who are not registered under the National Law to access The Viewer.

The transfer of patient care between the acute and community settings is not just between a hospital and a general practitioner or other registered health practitioners. Allied health professionals provide essential health care and support as part of a multidisciplinary health care team to people of all ages, and their families and carers, across a multitude of settings including hospitals, primary health care and care at home. Like doctors and nurses, allied health professionals provide holistic management across the continuum of care, including prevention, diagnosis and treatment of a range of conditions and illness, in order to help people achieve the best health outcomes possible.

The information available in The Viewer complements information provided in a patient's hospital discharge summary, for example, radiology and pathology results, emergency department discharge summaries, medications and alerts, outpatient appointments, as well as instructions for a patient's follow up treatment.

Therefore, to improve the transfer of patients from acute care to the community care setting, and to achieve better health outcomes, it is proposed to expand access to The Viewer under the Hospital and Health Boards Act to include health professionals who are not registered under the National Law. This will enable allied health professionals who are not registered but are regulated in other ways to have a better understanding of the care a patient has received, determine appropriate continuity of care and achieve better health outcomes.

Amendments to the *Mental Health Act 2016*

Mental Health Court decisions regarding expert opinions and disputes of fact

When a person is charged with a serious or indictable offence, the issue of their mental state when the offence was committed or their fitness for trial may be referred to the Mental Health Court. The Court's role is to make a finding as to a person's mental state, make orders for a person's treatment or care, or refer the matter back to the criminal courts. Matters are referred to, and decided by, the Mental Health Court on the basis that they are undisputed, although the facts remain untested. It is an established rule that the Mental Health Court does not test the facts of a matter. The Mental Health Court can only refer a matter back to the criminal courts if a person is found fit for trial.

Section 269 of the repealed *Mental Health Act 2000* prohibited the Mental Health Court from making a decision about unsoundness of mind or diminished responsibility if the court was satisfied that a fact that was substantially material to the opinion of an expert was so in dispute that it would be unsafe to make the decision.

A similar provision does not exist under the current Act. This means the Mental Health Court may be required to determine whether a person was of unsound mind or diminished responsibility where the facts on which expert witnesses have based their opinions are disputed. This may result in an unsafe finding by the Mental Health Court and infringe upon a person's right to a fair trial and equality before the law. Providing a person is fit for trial, it is preferable that such a matter is returned to the criminal court for the disputed facts to be determined.

The Bill aims to safeguard the rights of individuals by inserting a provision into the Mental Health Act which will allow the Mental Health Court to return a matter to the criminal courts when there is a substantial dispute about a fact an expert has relied upon in formulating their opinion about the person subject to the proceedings and the person is fit for trial.

Compliance of regulated treatments with the Human Rights Act 2019

Electroconvulsive therapy (ECT) is a regulated treatment that can be effective for some types of mental illness, including severe depressive illness. It involves the application of a minimal electric current to specific areas of a patient's head to produce changes in the brain's electrical activity. As a regulated treatment under the Mental Health Act, the MHRT must approve its use for all minors or for adults who are unable to give informed consent. While existing ECT approval processes have been assessed as compliant with the *Human Rights Act 2019*, the Bill aims to introduce additional safeguards for the rights of people with a mental illness.

Criteria for approving the performance of ECT

The Mental Health Act provides that a medical practitioner requires the MHRT's approval to perform ECT on an adult who is unable to give informed consent to the treatment. Before approving the performance of ECT, the MHRT must:

- consider the views, wishes and preferences expressed by the person about the therapy in an Advance Health Directive, and
- be satisfied:
  - the therapy is in the person's best interests;

- there is evidence supporting the effectiveness of the therapy for the person's particular mental illness; and
- if the therapy has previously been performed on the person, the therapy has been effective for the person.

The current test does not require the MHRT to take into account the views, wishes and preferences of an adult who is unable to give informed consent to the treatment unless they are expressed in an Advance Health Directive. It also does not require the MHRT to specifically consider the adult's capacity to provide informed consent to the therapy. Additionally, the 'best interests' test is considered a less rights-based approach which may not promote a person's participation in making decisions about their treatment compared with other approaches that require consideration of the person's views, wishes and preferences together with an 'appropriateness' element such as a 'clinical merit' test.

The current provisions in the Mental Health Act in relation to the MHRT's consideration of ECT applications could be enhanced to better support decision-making compatible with the Human Rights Act. Through requiring the MHRT to specifically consider a person's capacity to provide informed consent, the Bill introduces a safeguard that is independent of the assessment of a treating medical practitioner as a further protection against a person potentially being provided involuntary medical treatment in inappropriate circumstances.

The objective of the Bill is to enhance protections for persons with mental illness who cannot consent to ECT or who may have specific vulnerabilities in relation to providing consent which warrants additional oversight. It is proposed to amend the test applied by the MHRT to adopt a more rights-based approach, including by removing the 'best interests' test for adults and specifically requiring consideration of an adult's capacity to provide informed consent, where relevant. This will also better support decision makers in complying with their obligations under the Human Rights Act.

<u>Mental Health Review Tribunal approval for the performance of ECT on persons subject to certain orders or a treatment authority</u>

The Mental Health Act provides that an authorised doctor can only make a treatment authority if, together with other criteria, they are satisfied that the person does not have capacity to consent to the treatment they require. However, the Act also recognises a person's capacity may fluctuate and provides for the continuance of a person's treatment authority if an authorised doctor does not consider that the person's capacity is stable.

The test for capacity applied to regulated treatments, including ECT, is decision and time specific and is distinct from the test for capacity that applies to involuntary treatment provided under a treatment authority. Therefore, a person under a treatment authority may be assessed as having capacity to consent to ECT even though they may be assessed, at the same time, as not having capacity to consent to other non-regulated treatments, such as psychotropic medications.

The Mental Health Act provides that a person may be placed on a forensic order or treatment support order by the Mental Health Court following an unlawful act, on the basis the order is necessary to protect the safety of the community. A forensic order or treatment support order provides for, among other things, the involuntary treatment and care of a person with a mental illness. While persons on these orders may lack capacity, this is not a particular consideration of the Court when making the order.

Although patients on forensic orders or treatment support orders may therefore have capacity to make treatment decisions, including decisions about ECT, the high level of monitoring and specific requirements attached to the treatment provided under their orders may make them susceptible to providing consent under the mistaken belief they are required to undergo ECT as a condition of their order.

To provide additional protection to people subject to involuntary orders, and improve safeguards for the rights of individuals under the Human Rights Act, it is proposed that for persons subject to a treatment authority, forensic order or treatment support order, the MHRT should be satisfied that the person has both been given appropriate information about ECT and has given informed consent.

If a person under an involuntary order has the capacity to provide informed consent and declines to undergo ECT, the MHRT will be required to respect their decision. If a person on an involuntary order does not have capacity, the test for approving the performance of ECT will be the same for other adults who do not have capacity to provide informed consent.

The amended approval process will continue to respect the autonomy of people with capacity to make their own treatment decisions, even when they are subject to an involuntary order, while at the same time providing additional protection for a uniquely vulnerable cohort.

Apprehension of a person who is absent from an interstate mental health service

Under the Mental Health Act, a person who is absent from an interstate mental health service can be apprehended in Queensland when a warrant has been issued under a corresponding law in the state in which the interstate service is located. The requirement for a warrant to allow for a person's apprehension in Queensland is problematic as not all corresponding interstate laws require the making of a warrant to authorise the apprehension and transport of a person. Instead, another relevant legal document requiring the person's return may be issued. For example, section 109 of the *Mental Health (Forensic Provisions) Act 1990* (NSW) requires the making of an order for apprehension by the President of the NSW Mental Health Review Tribunal to authorise the apprehension of a person who is subject to a forensic order. The Bill aims to recognise these types of relevant documents to allow for a greater ability to respond to a person in Queensland who is absent from an interstate mental health service.

Authorised persons who can apprehend or transport a person who is absent from an interstate mental health service

Currently under the Mental Health Act, only police officers can apprehend or transport a person who is absent from an interstate mental health service while that person is in Queensland. This prevents other authorised persons, including Queensland Health practitioners and ambulance officers from transporting absent persons, including in circumstances where it is more appropriate to provide a clinical response. This results in instances where police must apprehend or transport a person even when their level of risk does not warrant police involvement. Consistent with the objectives of the Mental Health Act to provide less restrictive alternatives, it is considered that greater flexibility is required so that it can be determined, having regard to the circumstance of each individual case, which authorised person is the most appropriate to apprehend and/or transport the person from an interstate mental health service. The amendments proposed by the Bill will not prevent the use of police officers in apprehension and/or transportation where it is necessary and appropriate having regard to the level of risk at the relevant time.

Interstate authorised officers seeking to return an absent person to an interstate mental health service from Queensland

The Mental Health Act does not permit an interstate officer to exercise their powers in Queensland to manage the return of an absent person to an interstate mental health service. As a result, interstate officers who may know a person and their relevant history, and be best placed to transport the person, are not able to transport an absent person back to their interstate mental health service from Queensland. The objective of the Bill is to provide more flexibility by recognising the powers and functions of interstate officers to manage the return of an absent person, so the most appropriate action can be taken considering that individual's needs and circumstances.

Interstate transfers of persons subject to forensic orders and treatment support orders

Under the Mental Health Act, an application for approval of the transfer by the MHRT of a person subject to a forensic order (mental health), forensic order (disability), or a treatment support order, or its interstate equivalent, into or out of Queensland can only be made if supported by a written statement from the relevant person (either the Chief Psychiatrist or Director of Forensic Disability) confirming that interstate transfer requirements may be satisfied. Interstate transfer requirements are the requirements, under the corresponding law of another state, for the person's transfer into or out of that state.

An application for transfer cannot be made if the person is seeking transfer to or from another state that does not have legislation recognised by Queensland as a corresponding law for the purposes of interstate transfer requirements. The other state's laws may not be recognised as a corresponding law by Queensland because their legislation does not specifically provide for transfer, or because the interstate transfer requirements are not consistent enough with Queensland's transfer requirements to allow recognition. This is currently the case for South Australia and Western Australia. To address this problem, the Bill will amend the Mental Health Act to allow a person to apply for approval by the MHRT of an interstate transfer if appropriate safeguards have been met. Rather than the written statement from the relevant person addressing issues of legislative compatibility, the relevant person will be required to provide a written statement to the MHRT regarding, among other factors, the clinical suitability and safety of the proposed transfer.

Rights-based approach for patient transfers

The Mental Health Act allows for the transfer of particular patients between authorised mental health services in Queensland, the Forensic Disability Service, and interstate authorised mental health services. For example, under chapter 11, part 5 of the Mental Health Act, the administrator of one authorised mental health service may agree with the administrator of another authorised mental health service to transfer the responsibility for an involuntary patient to the other service. The MHRT can also review or make transfer decisions in certain circumstances, for example, for an interstate transfer as explained above.

The Mental Health Act requires a decision-maker for any transfer of a person to consider whether the transfer is in the 'best interests' of the person.

Application of a 'best interests' test is a less rights-based approach than other available approaches and may not promote a person's participation in decision-making about their treatment. The Bill will replace the 'best interests' consideration for patient transfers with an

approach that better supports the rights of individuals by requiring consideration of whether the transfer is appropriate in a person's circumstances and the person's views, wishes and preferences regarding transfer.

International patient transfer

People who are subject to a forensic order (mental health), forensic order (disability) or treatment support order can apply to the MHRT for approval to transfer to another state or territory in Australia. However, there is no equivalent provision allowing the MHRT to approve an international transfer.

The inability of these patients to seek approval to transfer internationally can prohibit a person accessing supports, for example, family and carer networks, which may be vital to the person's recovery from mental illness or their continued care in relation to an intellectual disability. This undermines the key principles for administration of the Act which seek to support a person's continued participation in their community and their personal relationships.

Confidentiality provisions

The confidentiality framework established by the Mental Health Act does not provide a consistent approach with the Hospital and Health Boards Act in relation to protecting confidential information and governing when it can be used or disclosed. Differing requirements apply to different people performing functions under the Mental Health Act. This can cause confusion for persons performing functions under, or administering, the Act, particularly Queensland Health employees who may be subject to both the Hospital and Health Boards Act and the Mental Health Act. There is also no provision in the Mental Health Act prohibiting the use or disclosure of personal information obtained by the Director of Forensic Disability or an examining practitioner engaged by the Mental Health Court or MHRT. It is intended to strengthen the confidentiality provisions to ensure the obligations for all people performing functions under the Mental Health Act are clear and consistent.

Information and support for victims of unlawful acts

The Mental Health Act recognises it is beneficial for victims to receive timely information about relevant proceedings and treatment requirements relating to a person who has committed an unlawful act against them. Under section 318 of the Mental Health Act, a victim of an unlawful act, a close relative of the victim, or another individual who suffered harm, or who has a sufficient personal interest may apply for an information notice about a person who has committed an unlawful act and is subject to a forensic order or treatment support order. The provisions relating to information notices require the Chief Psychiatrist to communicate critical information regarding proceedings and decisions about a person's order to victims. The information notice may contain information about reviews, transfer applications, tribunal decisions, appeals and other information about the relevant patient.

Under section 322 of the Act, an information notice must be revoked by the Chief Psychiatrist if a patient's order has been revoked and the information notice holder must be advised of appeal rights in relation to the revocation. The current operation of section 322 results in situations where information notice holders are provided with advice about their appeal options, even when there is no prospect of a successful appeal because a patient's order has been revoked.

To provide greater clarity to victims of unlawful acts, amendments to the Mental Health Act are required to reframe the mandatory revocation requirements for information notices under section 322 of the Mental Health Act and ensure information notice holders are provided with clearer and more transparent information about why a notice has ended.

Use and disclosure of personal information for the purposes of providing ongoing support to victims

Section 781 of the Mental Health Act allows a government entity to use or disclose personal information to assist in the initial identification of a person who is, or may be, a victim for the purpose of providing support services. However, this section does not recognise that the use or disclosure of personal information may also be needed to continue to ensure that ongoing support can be provided to a victim. Disclosing personal information in an ongoing manner may be necessary, for example, to assist in preparing a victim impact statement, to help prepare for a Mental Health Court hearing, or provide specialised counselling.

Annual reporting on information notices

The Mental Health Act provides that the Chief Psychiatrist's annual report must include statistical data about the number of information notices given by each authorised mental health service in Queensland. However, the making and administration of information notices is exclusively a function of the Chief Psychiatrist, rather than of administrators of authorised mental health services. Therefore, amendments to the Mental Health Act are necessary to accurately reflect the function of the Chief Psychiatrist and require the annual report to include statistical data about the number of information notices made by the Chief Psychiatrist.

Protection from civil liability for the Chief Psychiatrist and the Director of Forensic Disability

The Mental Health Act protects certain officials from civil liability when performing a function under the Act. The Chief Psychiatrist and the Director of Forensic Disability are not included in the list of officials, which means they are required to apply for indemnity on a case-by-case basis in relation to functions performed as part of their roles.

The *Queensland Government Indemnity Guideline* provides that public officers should, when acting within the scope of their duties and functions, be entitled to protection from civil liability in relation to any legal proceeding taken against them. While the Chief Psychiatrist and Director of Forensic Disability may apply for indemnity when required, the process can be cumbersome. The Bill will remove these procedural indemnity requirements by prescribing that the Chief Psychiatrist and the Director of Forensic Disability are protected from civil liability when performing a function under the Mental Health Act.

Use of expert reports by the Magistrates Court

Section 157 of the Mental Health Act provides for when an expert's report, received in evidence by the Mental Health Court, is admissible in a person's criminal trial. Use of such reports is limited in criminal proceedings to issues of unsoundness of mind or fitness for trial under the Criminal Code and sentencing proceedings. Persons charged with serious offences may elect to have them dealt with summarily in the Magistrates Court and may wish to use evidence that was before the Mental Health Court in those proceedings. However, section 157 may not allow the Magistrates Court to use an expert report received in evidence by the Mental Health Court for the purpose of determining a person's unsoundness of mind under section 172 or a person's fitness for trial under section 173 of the Mental Health Act. To address this, the Bill will clarify

that a Magistrates Court can use an expert report for the purposes of making a decision under section 172 or section 173.

Use of reports to support Magistrates Court

Section 180A of the Mental Health Act prevents a report about a person prepared for the purposes of a Magistrates Court making a decision about a person's unsoundness of mind under section 172 or a person's fitness for trial under section 173 from being admitted in evidence against the person in any civil or criminal proceedings. The intention of section 180A is to prevent statements made by a person during an assessment related to their mental health or mental capacity from being used against them in subsequent criminal or civil proceedings.

However, section 180A of the Mental Health Act may be interpreted as preventing the Mental Health Court from using a report prepared for this purpose to inform itself in proceedings, despite the Mental Health Court also considering a person's unsoundness of mind and fitness for trial. As a result, the Mental Health Court may be unable to inform itself with all relevant available evidence. It is therefore proposed to amend the Act to clarify that statements made by a person to a health practitioner preparing a report to assist a Magistrate Court determine matters under section 172 and 173 are also admissible in Mental Health Court proceedings.

Ending an existing treatment authority when a treatment support order is made

Under section 167 of the Mental Health Act, when a forensic order (mental health) is made, any treatment authority or treatment support order a person is subject to automatically ends. By contrast, the Mental Health Act does not provide a mechanism to end a treatment authority when the Mental Health Court makes a treatment support order for a person. This means a person can be subject to two orders that both provide for involuntary mental health treatment. The Bill aims to provide clarity in these situations by providing that a treatment authority ends when a treatment support order is made, preventing a person from being unnecessarily subject to two orders that provide for involuntary treatment.

Increased flexibility for Mental Health Court to amend existing forensic orders or treatment support orders

Sections 166 and 167A of the Mental Health Act provide that the Mental Health Court can amend or revoke an existing forensic order or existing treatment support order when making a new order of the same nature. Section 167 provides for scenarios where the Mental Health Court makes a forensic order for a person who is already subject to a treatment authority or a treatment support order and, in the Court doing so, provides that the treatment authority or treatment support order automatically ends.

When the Mental Health Court makes an order for a person that is of a different type (for example, the Court makes a forensic order for a person on a treatment support order or vice versa), the current provisions in the Act mean that the first order ends and a whole new order needs to be made. This can result in the unintended situation where a patient's forensic history from a pre-existing order is not reflected in the new order and, as a consequence, is not necessarily considered in decisions regarding a patient's treatment and care. It also results in victim information notice entitlements attached to the pre-existing order being discontinued.

The Bill will provide the Mental Health Court with flexibility to amend an existing order and change the order type (for example, from forensic order to treatment support order or vice versa) when making a new order of a different type for a person who has a pre-existing order

in place. This provides a mechanism to ensure that relevant unlawful acts are reflected in the person's most recent order, even when the new order is of a different type to the pre-existing order. This recognises that a person's treatment and risk management needs may change over time and will support the person being provided appropriate treatment and care under the new order. Additionally, where appropriate, the rights of victims of unlawful acts to receive information will be able to continue.

Amendments to the *Public Health (Infection Control for Personal Appearance Services) Act 2003*

The Public Health (Infection Control for Personal Appearance Services) Act seeks to minimise the risks of infection that may result from the provision of higher risk personal appearance services in Queensland. The Public Health (Infection Control for Personal Appearance Services) Act provides for a two-tier licensing scheme for businesses that provide personal appearance services. Businesses providing higher risk services require a licence to operate while non-higher risk businesses do not. Examples of higher-risk personal appearance services include body piercing and tattoo services, while non-higher-risk services include hairdressing and waxing services.

The requirements relating to licensing and enforcement of the Public Health (Infection Control for Personal Appearance Services) Act are administered by local governments. Part 4 of the Public Health (Infection Control for Personal Appearance Services) Act requires a person to apply for a licence to carry out a business providing higher risk personal appearance services and to apply for the renewal, amendment and transfer of the licence. Licences are most often granted for a term of one year, although the Act provides for a term of up to three years.

Under the Public Health (Infection Control for Personal Appearance Services) Act, a person may only apply for a renewal of their licence one month before the licence expires. This limitation creates timeframes that are onerous for local governments and businesses. The Act also does not currently provide for a licence holder to apply for the restoration of an expired licence, which is also a burden on the existing licensing scheme because a business must re-apply for a whole new licence.

To improve the operation of the Public Health (Infection Control for Personal Appearance Services) Act, it is proposed to amend the Act to extend the timeframe within which a person may apply for a renewal of a licence and to allow licence holders to apply for the restoration of a licence.

Amendments to the *Radiation Safety Act 1999*

Under the Radiation Safety Act, a person who applies for an Act instrument, such as a radiation possession licence, must provide evidence of their identity or, for certain applications where the applicant is a corporation, a nominated person's identity. Currently, the *Radiation Safety Regulation 2021* must prescribe the types of identity documents that are accepted as evidence of an applicant's identity. The requirement to prescribe the relevant identity documents by regulation creates an administrative and procedural burden because the regulation must be updated every time the department wishes to rely on new and improved forms of identification.

To allow for greater efficiency in the verification of a person's identity during the application process for an Act instrument, it is proposed to remove the requirement to prescribe types of identity documents by regulation.

The Bill also amends the Radiation Safety Act to provide a clear head of power to allow a regulation to prescribe the types of Act instruments for which proof of identity is required. This amendment was identified as being necessary due to the remake of the *Radiation Safety Regulation 2021*. The change will ensure a regulation can prescribe, for example, that proof of identity documents are not required for an approval to acquire or relocate a radiation source. A person applying for these approvals must already hold a possession licence under the Act and has to prove their identity as part of the application process for the licence. Therefore, the person does not need to provide identity documents again. This will ensure requirements for proof of identity that previously applied under the *Radiation Safety Regulation 2010* can continue. Consequential amendments will be made to the Radiation Safety Regulation if the Bill is passed and enacted.

Amendments to the *Termination of Pregnancy Act 2018* and Criminal Code

In December 2018, the Termination of Pregnancy Act commenced to enable reasonable and safe access by women to termination of pregnancy. The Termination of Pregnancy Act regulates the conduct of registered health practitioners in relation to terminations by authorising who may perform a termination and who may assist.

The Termination of Pregnancy Act does not permit students registered in a health profession under the Health Practitioner Regulation National Law to assist in the performance of terminations. This has led to implementation challenges for hospitals as students on clinical placements must be excluded from any activities relating to terminations. This in turn limits the ability for students to learn and gain experience in performing terminations.

To enable this important training, the Bill seeks to allow students to assist in the performance of a termination of a pregnancy. As with prescribed practitioners, prescribed students will also be afforded the right to have a conscientious objection to assisting in the termination of pregnancy. This recognises that students have, and may exercise, the right to freedom of thought, conscience and religion similarly to other health practitioners. It will also give a supervising practitioner the opportunity, in these circumstances, to request assistance from another registered student or other health practitioner.

Amendments to the *Transplantation and Anatomy Act 1979*

The Transplantation and Anatomy Act prohibits trading in human tissue, such as buying tissue or advertising relating to buying and selling tissue. The prohibition on the trade in tissue is intended to prevent trafficking in human organs and tissue for transplantation. However, the current definition of *tissue* in the Transplantation and Anatomy Act does not clearly exclude human milk. This has led to uncertainty about the application of the Act to the legitimate use of human milk.

Human milk is a recognised treatment for certain conditions to which pre-term infants are vulnerable. Any delay or hesitancy on the part of hospitals in purchasing human milk could have serious health implications for these infants. Human milk is not intended to be tissue for the purposes of the Transplantation and Anatomy Act and will continue be regulated under the *Food Act 2006*. To put this issue beyond doubt, the Transplantation and Anatomy Act is being amended to specifically exclude human milk from the definition of tissue in the Act.

Achievement of policy objectives

Amendments to the *Ambulance Service Act 1991*

The Bill amends the Ambulance Service Act to ensure the framework for managing confidential information is clear, and will reduce confusion for QAS officers by:

- clarifying all QAS staff are bound by the duty of confidentiality, regardless of whether they are employed under the Ambulance Service Act or the *Public Service Act 2008*;
- making the duty of confidentiality provisions in the Act consistent with the Hospital and Health Boards Act;
- aligning the reasons when confidential information may be disclosed under the Ambulance Service Act with the Hospital and Health Boards Act. For example, the Bill will allow the disclosure of confidential information:
  - for the protection, safety or wellbeing of a child, even if the information is about another person;
  - about an adult or a child with consent;
  - that is necessary or incidental to another permitted disclosure, for example, to arrange a follow-up appointment for a patient or update patient records.

The Bill also allows the Queensland Ambulance Service Commissioner to authorise QAS officers to disclose confidential information if it is in the public interest. In line with the Hospital and Health Boards Act, the Bill provides the chief executive may delegate, to the Commissioner, the power to authorise a designated officer to disclose confidential information if it is:

- necessary to assist in averting a serious risk to the life, health or safety of a person;
- made for the purpose of research which has the approval of an appropriate ethics committee.

This amendment reflects that the Commissioner has oversight and direction of most of QAS's operations and aligns the provisions with the Hospital and Health Boards Act. Disclosures made in the public interest will be required to be included in Queensland Health's annual report.

The Bill will strengthen safeguards around the disclosure of information as:

- it makes clear the duty of confidentiality applies to all current and former employees of QAS;
- the definition of *confidential information* is expanded to include information that 'could' identify a person, even if the person is deceased;
- it provides if an officer discloses confidential information, the person who receives the information will not be permitted to disclose it, unless required or permitted by an Act or law;
- the maximum penalty for unauthorised disclosure is increased to align with the maximum penalty in the Hospital and Health Boards Act (from 50 to 100 penalty units).

The Bill also removes the requirement that the Queensland Ambulance Service Commissioner must be younger than 65 years.

Amendments to the *Environmental Protection Act 1994*

The Bill inserts a new provision in Schedule 1, Part 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 explicitly regulated via a requirement of an infrastructure designation by the Planning Minister under the Planning Act.

Amendments to the *Hospital and Health Boards Act 2011*

The Bill replaces the definition of *prescribed health practitioner* in the Hospital and Health Boards Act with *prescribed health professional*. This will enable allied health professionals who are not registered health practitioners under the National Law to access The Viewer and view patient healthcare information.

It is intended to prescribe audiologists, social workers, dietitians, speech pathologists, exercise physiologists, orthoptists, and orthotists and prosthetists as relevant health professionals. These groups are not registered under the National Law but are regulated through other mechanisms. These types of allied health professionals routinely work with Queensland Health during the transfer of patient care between the acute and community care settings. They provide community-based clinical services and primary health care, including domiciliary care provided by non-government organisations and private practitioners, and non-hospital rehabilitation provided in community care facilities or in private practices.

The Bill will enable allied health professionals to have a better understanding of the care a patient has received in an acute setting, determine appropriate continuity of care and achieve better health outcomes for patients.

For example, an infant born extremely pre-term and diagnosed with cerebral palsy (severe severity level) may access disability services through the Early Childhood Early Intervention stream of the National Disability Insurance Scheme. The Non-Government Organisation social worker working with this family will be able to use the history of inpatient and outpatient encounters provided in The Viewer together with the treating paediatrician’s care plans to help this family manage their grief and loss associated with the diagnosis and to develop realistic short and long-term goals for their child.

A 72-year-old woman who has undergone surgery following laryngectomy for throat cancer may receive private speech pathology once she is discharged from hospital. The amendments in the Bill will mean that the speech pathologist could access the patient’s information in The Viewer and have a better understanding of the details of surgery undertaken and post-surgery devices trialled to support the patient's ongoing respiratory health and communication skills.

If the Bill is passed and enacted, it is intended that the *Hospital and Health Boards Regulation 2012* will be amended to prescribe the types of allied health professionals permitted to access The Viewer, and their qualification requirements.

Strict, existing safeguards will apply to the new group of health professionals allowed to access The Viewer, including that every access to patient records will be recorded. Any unauthorised access by a health professional is an offence, with a maximum penalty of 600 penalty units. Further safeguards are outlined below.

Consistent with the amendments to the confidentiality provisions of the Mental Health Act, the Bill also amends the Hospital and Health Boards Act to allow designated persons to disclose confidential information to assist a person to perform a function under the Mental Health Act.

Amendments to the *Mental Health Act 2016*

Mental Health Court decisions regarding expert opinions and disputes of fact

The Bill amends the Mental Health Act to enable the Mental Health Court to return a matter to the criminal courts when there is a substantial dispute about a fact an expert has relied on in formulating their opinion in relation to whether a person was of unsound mind or diminished responsibility when an offence was allegedly committed.

The amendment is comparable to section 269 of the repealed *Mental Health Act 2000,* and will allow the Mental Health Court to abstain from making a decision about unsoundness of mind or diminished responsibility of a person if the court is satisfied that there is a substantial dispute about a fact that is material to the opinion of an expert. This will safeguard the rights of individuals who are the subject of proceedings and reflects the established rule that the Mental Health Court does not test the facts of a matter.

The amendment will provide that the Mental Health Court can instead return the matter to the criminal courts for the disputed facts to be tested and determined. Consistent with the current provisions of the Mental Health Act, the Mental Health Court will only be able to return a matter relating to a disputed fact back to the criminal courts if the person is fit for trial.

The amendment does not replicate the drafting of section 269 of the repealed *Mental Health Act 2000*. However, it is intended to operate in a similar way and achieve the same outcome as the old section 269. The different wording is a drafting decision to align the amendment with provisions in the current Mental Health Act.

Criteria for approving the performance of ECT

To better safeguard the rights of persons subject to applications for approval to perform ECT, the Bill amends the criteria that the MHRT must apply in considering an application for the performance of ECT on adults and minors who lack capacity to consent to the treatment.

The Bill adopts a more rights-based approach for people with mental illness that will also support decision-makers in complying with their obligations under the Human Rights Act. The Bill inserts new criteria that the MHRT must consider when deciding whether to approve ECT for a person. The Bill sets out that the MHRT may only give approval if satisfied that:

- if the treatment is for an adult, the adult is unable to give informed consent to the therapy; and
- the therapy has clinical merit; and
- the therapy is appropriate for the person in the circumstances; and
- for a minor, evidence supports the effectiveness of the therapy for the minor's particular mental illness, including if it has previously been performed on the minor (this element is being retained from the current Act requirements for adults).

In the case of an adult, the Bill also requires the MHRT to have regard to the views, wishes and preferences of the person about ECT to the greatest extent practicable when deciding whether to give an approval, regardless of how those views, wishes and preferences are expressed.

This approach requires an objective consideration of a person's specific circumstances and promotes self-determination and the personal inviolability of people with mental illness. It achieves an appropriate balance between respecting the dignity of people with mental illness and ensuring that necessary treatment is not withheld from people who lack capacity to consent.

The Bill replaces the 'best interests' test for adults under the current Act with the more rights-based criteria for approving ECT outlined above. However, the 'best interests' test will continue to apply to applications for the approval of ECT on minors in accordance with the *United Nations Convention on the Rights of a Child*.

Mental Health Review Tribunal approval for the performance of ECT on persons subject to certain orders or a treatment authority

The Bill amends the Mental Health Act to require MHRT approval for the performance of ECT on persons who are subject to treatment authorities, forensic orders or treatment support orders, including in circumstances where the person has provided consent to the treatment, such as in an Advance Health Directive. The MHRT will be required to be satisfied that a person who is on an involuntary order and who has capacity to provide consent to ECT, has freely and voluntarily provided informed consent to the treatment. This approach will provide an independent safeguard and oversight mechanism for this vulnerable cohort of patients.

For persons subject to a treatment authority, forensic order or treatment support order, the MHRT will need to be satisfied that the person has provided informed consent, including being given an explanation about ECT as required under the Act.

If a person under an involuntary order has the capacity to provide informed consent and declines to undergo ECT, the MHRT will be required to respect their decision. The approval process will respect the autonomy of people with capacity to make their own treatment decisions while providing additional protection for a uniquely vulnerable cohort, consistent with a human rights framework.

Apprehension and transport of a person who is absent from an interstate mental health service

The Bill expands the types of interstate legal documents made under corresponding laws that can be relied on for the purposes of apprehending and returning an absent person to an interstate mental health service. The Bill provides an 'apprehension authority' that has been issued for an absent person is taken to be a 'warrant' for their apprehension and transport under the Mental Health Act. The amendments recognise that the type of legal documents which are the basis for apprehension may vary between jurisdiction and are designed to improve the processes for apprehending and returning persons who are absent from an interstate mental health service.

Authorised persons who can apprehend or transport a person who is absent from an interstate mental health service

The Bill expands the categories of authorised persons who may apprehend and/or transport a person absent from an interstate mental health service in Queensland. The Bill provides that in addition to police officers, any authorised person, such as a health practitioner or ambulance officer may apprehend and/or transport an absent person from an interstate mental health

service. This supports the least restrictive object of the Mental Health Act by providing greater flexibility to determine which authorised person is the most appropriate to safely transport the person back to the interstate service.

Interstate authorised officers seeking to return an absent person to an interstate mental health service from Queensland

The Bill recognises powers and functions of interstate officers under corresponding interstate laws to allow them to exercise those powers in the apprehension and transportation of a person located in Queensland who is absent from an interstate mental health service.

Interstate transfers of persons subject to forensic orders and treatment support orders

The Bill amends the Mental Health Act to remove the concept of *interstate transfer requirements*. Instead of providing advice regarding issues of legislative compatibility, the relevant person (either the Chief Psychiatrist or Director of Forensic Disability) must instead provide advice to the MHRT regarding:

- whether the relevant person considers appropriate treatment and care is available at the proposed transfer location;
- whether arrangements for transfers are adequate to protect the safety of the community; and
- whether the transfer is, or may be, permitted under the law of the relevant interstate mental health service.

In deciding an application, the Bill provides that the MHRT must consider the views, wishes and preferences of the patient seeking transfer to the greatest extent practicable and must approve a transfer only if satisfied that:

- the transfer is appropriate in the circumstances, for example, to allow a person to be closer to family or other supports;
- appropriate treatment and/or care will be available to the patient seeking transfer;
- the arrangements for transfer are adequate to protect the safety of the community; and
- the transfer is, or may be, permitted under the law of a state to which transfer is proposed.

Rights-based approach for patient transfers

The Bill promotes the rights of individuals by replacing the requirements for the MHRT and administrators of authorised mental health services to consider the ‘best interests’ of a person when making a decision in relation to the transfer of a person to another service in Queensland or interstate.

Instead, the Bill requires a decision-maker to take into account, to the greatest extent practicable, the person’s views, wishes and preferences, together with the appropriateness of the transfer in the person’s circumstances. These changes represent a stronger rights-based approach than the current ‘best interests’ test and will better support a person to participate in decisions about their potential transfer.

International patient transfer

The Bill provides the MHRT with the ability to approve the international transfer of people subject to forensic or treatment support orders.

The Bill requires that applications to the MHRT for international transfers include a statement from the Chief Psychiatrist or Director of Forensic Disability that advises:

- appropriate treatment and care is available for the patient seeking transfer in the country stated in the application; and
- arrangements for the transfer are adequate to protect the safety of the community.

In considering an application, the Bill provides that the MHRT must, to the greatest extent practicable, take into account the views, wishes and preferences of the patient seeking to be transferred. Approval is subject to the MHRT being satisfied that:

- the transfer is appropriate in the circumstances, for example, because the person will be closer to family, carers and other support persons;
- appropriate treatment and care is available to the person in the receiving country; and
- the arrangements for the transfer are adequate to protect the safety of the community.

International transfers are exceptionally rare. In other states and territories in Australia, a forensic patient may be made subject to an order for a fixed term and generally will be able to return to their country of origin once they are no longer a forensic patient. Queensland orders are not time limited and continue while the criteria for the order are satisfied, which is why an international transfer may occasionally be warranted. If the person returns to Queensland within three years of transfer, or before the end of any non-revocation period, the person's order automatically has immediate effect in Queensland, enabling the continuation of treatment and care as required.

Confidentiality provisions

The Bill strengthens and clarifies the confidentiality provisions in the Mental Health Act by aligning the confidentiality obligations for all people performing functions under the Act and improving consistency with the Hospital and Health Boards Act. The Bill clarifies that the offence of inappropriately accessing, using or disclosing confidential information acquired under the Act applies to all persons captured by confidentiality provisions in the Mental Health Act.

The Bill also extends the confidentiality obligations to the Director of Forensic Disability and examining practitioners engaged by the Mental Health Court or MHRT. The maximum penalty for breaching the provision is 100 penalty units, which is consistent with the existing penalty under section 779 of the Mental Health Act and section 142 of the Hospital and Health Boards Act.

Information and support for victims of unlawful acts

The Bill will provide clarity for victims of unlawful acts by improving the framework for the revocation and contents of information notices.

The Bill removes the requirement for the Chief Psychiatrist to revoke an information notice from section 322 of the Mental Health Act and reframes this section as specifying when an

information notice will come to an end. The Bill provides the information notice will be deemed to come to an end if:

- a forensic order or treatment support order is revoked, and related periods for appeal for the order have expired or any related appeal has been decided;
- the person entitled to receive the information notice no longer wishes to receive information notices; or
- the patient is transferred out of Queensland.

The Bill:

- provides for an information notice to come to an end by operation of law in these circumstances, rather than requiring the Chief Psychiatrist to take administrative action to revoke the order;
- enhances the support provided to victims by ensuring information notice holders have accurate and transparent information provided to them, including by requiring the Chief Psychiatrist to give a person a written notice within seven days with reasons why the information notice ended;
- provides clarity for information notice holders about when and how an information notice can end; and
- ensures notice holders are only provided with relevant information regarding their appeal rights where an appeal of the Chief Psychiatrist's decision could result in reinstatement of their information notice. In these circumstances, the Chief Psychiatrist will continue to be required to give a person entitled to receive information the opportunity to make a submission about why an information notice should not be revoked.

The Bill retains an appropriate level of safeguards, powers and discretion for the Chief Psychiatrist to revoke an information notice outside of the circumstances in new section 322 of the Act. For example, in accordance with the current provisions in the Mental Health Act, the Chief Psychiatrist must revoke an information notice if the disclosure of information would likely result in serious harm to the relevant patient's health or welfare.

Use and disclosure of personal information for the purposes of providing ongoing support to victims

To improve the support for victims of unlawful acts, the Bill clarifies that employees of the department, a Hospital and Health Service or another government entity may use and disclose personal information for both the initial identification of victims and on an ongoing basis where it is necessary to provide them with ongoing support services. Disclosing personal information may be necessary, for example: to provide assistance in preparing a victim impact statement, to help prepare for a Mental Health Court hearing, or provide specialised counselling, support and information. Existing safeguards related to privacy will continue to apply. It will continue to be an offence under the Act for employees to use or disclose personal information unless the disclosure is necessary to perform their functions or is required or permitted by law.

Annual reporting on information notices

The Bill removes the requirement for the Chief Psychiatrist to report on the number of information notices for each authorised mental health service and replaces it with a requirement for the report to include state-wide data about the number of information notices made and administered by the Chief Psychiatrist.

Protection from civil liability for the Chief Psychiatrist and the Director of Forensic Disability

The Bill extends the protection from civil liability to the Chief Psychiatrist and the Director of Forensic Disability while they are carrying out their duties and functions under the Mental Health Act to ensure they are appropriately protected. The amendment aligns with the *Queensland Government Indemnity Guideline*.

Use of expert reports by the Magistrates Court

The Bill makes it clear, by inserting a new section 157A into the Mental Health Act, that an expert report received in evidence by the Mental Health Court is admissible and can be used by the Magistrates Court for the purpose of making a decision about whether a person was of unsound mind when they committed an offence, or is unfit for trial. This will ensure that persons who elect to have serious offences dealt with summarily in a Magistrates Court may use evidence which was before the Mental Health Court in those proceedings.

Use of reports to support Magistrates Courts

The Bill amends section 180A of the Mental Health Act to clarify that reports about a person prepared for the purposes of assisting a Magistrate Court determine a matter under section 172 or 173 of the Mental Health Act can be used in Mental Health Court proceedings.

Ending an existing treatment authority when a treatment support order is made

The Bill clarifies a treatment authority for a person ends when a treatment support order is made by the Mental Health Court. The amendment will prevent a person being unnecessarily subject to two orders which provide for involuntary treatment.

Increased flexibility for Mental Health Court to amend existing forensic orders or treatment support orders

The Bill inserts new sections 167B and 167C to ensure that if the Mental Health Court makes an order of a different type for a person on an existing order (such as making a forensic order for a person on a treatment support order, or vice versa), the Court may amend the existing order, including by changing the order type.

The amendments provide more flexibility for the Mental Health Court and will ensure that where relevant to a person's ongoing treatment and risk management, the forensic history of the person, and any pre-existing victim notification entitlements (see section 322), will continue despite the Court making a new order of a different type. The amendments recognise that treatment needs and risk levels for a person can change over time necessitating movement between differing types of orders.

Consistent with existing provisions in the Mental Health Act, the Bill also makes it clear that if the Court considers it is appropriate to revoke an existing order and make a new order, regardless of the type of new order made, pre-existing victim notification entitlements will continue.

Amendments to the *Public Health (Infection Control for Personal Appearance Services) Act 2003*

The Bill provides greater flexibility in the licensing of higher-risk personal appearance services by:

- extending the timeframe within which local governments can receive applications for the renewal of a licence from one month to within 60 days;
- allowing a person to apply for the restoration of a licence within 30 days after the date that their existing licence expired; and
- enabling a licence to continue while an application for restoration of a licence is being considered by the relevant local government.

The amendments will reduce the financial and administrative burden on both businesses and local governments and ensure that businesses are not adversely impacted because of delays in the licensing process.

Amendments to the *Radiation Safety Act 1999*

The Bill removes the requirement for the types of identity documents that must accompany an application for an Act instrument to be prescribed by the Radiation Safety Regulation. Instead, an applicant for an Act instrument will be required to prove their, or their nominated person's, identity to the satisfaction of the chief executive. The amendments will provide greater flexibility by enabling new forms of identity documents to be relied on to prove a person's identity, without an amendment having to be made to the regulation.

If the amendments in the Bill are passed and enacted, high standards of identity assessment will remain. The chief executive will publish guidance on the Queensland Health website to assist applicants in identifying which documents may be accepted to prove their identity or the identity of a nominated person. This guidance material will be informed by the *National Identity Proofing Guidelines* (NIPGs) published by the Commonwealth Department of Home Affairs. The NIPGs set out the minimum identity proofing requirements based on a risk-based approach to identity proofing commensurate to the level of risk associated with the licensed activity. For example, the NIPGs set out the minimum evidentiary requirements that should be accepted to confirm the legitimacy of a person's identity, such as a birth certificate, Australian Passport, or other immigration record or document. The NIPGs are used by other Queensland agencies as part of their application processes for consistency and proof of identity requirements to be based on a risk management approach.

Subject to passage of the Bill, the *Radiation Safety Regulation 2021* will also be amended to prescribe the types of Act instruments for which proof of identity is required. The regulation may prescribe, for example, that proof of identity documents are not required for an approval to acquire or relocate a radiation source, as these persons have already proved their identity when obtaining a possession licence.

Amendments to the *Termination of Pregnancy Act 2018* and Criminal Code

The Bill allows students registered under the National Law to assist in the performance of a termination of pregnancy. The amendments make it clear that:

- students must be subject to appropriate supervision;

- the assistance provided is limited to the extent it is necessary to fulfil the requirements of the student's clinical placement;
- a student with a conscientious objection must disclose it to the person who requests their assistance.

Under the *Criminal Code Act 1899*, it is an offence for an *unqualified person* to perform a termination of pregnancy, or to assist in a termination. The Bill makes consequential amendments to the Criminal Code to ensure students who are authorised to assist with a termination of a pregnancy are not captured by the Criminal Code offence.

Amendments to the *Transplantation and Anatomy Act 1979*

The Bill excludes human milk from the definition of *tissue* under the Transplantation and Anatomy Act to clarify that hospitals can use human milk to treat vulnerable infants. The regulation of human milk will continue under the *Food Act 2006*. Private Human Milk Donor Banks operating in Queensland are currently subject to regulatory oversight via the licensing provisions under the Food Act. The two operating milk banks will not be impacted by the amendment as it will merely clarify the application of the Transplantation and Anatomy Act.

Amendments to the *Corrective Services Act 2006 and Water Supply (Safety and Reliability) Act 2008*

The Bill makes consequential amendments to the Corrective Services Act and the Water Supply (Safety and Reliability) Act to remove the references to the Health Act and Pest Management Act which were repealed when the Medicines and Poisons Act commenced. These amendments were identified during the drafting of the regulations supporting the Medicines and Poisons Act.

Alternative ways of achieving policy objectives

With the exception of the Environmental Protection Act amendments, there are no alternative ways of achieving the policy objectives.

In relation to the amendments to the Environmental Protection Act, an alternative approach would be for proponents of essential community infrastructure to lodge development applications with the respective local governments. However, to facilitate the timely delivery of essential community infrastructure, the Planning Act provides a dedicated assessment pathway which ensures certainty and consistency across the state.

Estimated cost for government implementation

The amendments in the Bill to require MHRT approval of the performance of ECT on persons subject to a treatment authority, forensic order or treatment support order, regardless of their ability to provide informed consent, will result in an increase in applications being heard by the MHRT. It is anticipated that the amendments will result in an estimated 90 additional MHRT hearings per year and extra costs to government. However, this additional demand will be met within existing staffing levels and resources.

The Bill will also result in extra costs associated with the significant increase in the number of health professionals who will be able to access The Viewer and the processes used to allow

practitioners access to the system. However, these costs will be absorbed into existing budget allocations.

Costs to implement amendments to the Environmental Protection Act will be met within existing resources. Any other costs associated with the amendments included in the Bill will be minimal and met from existing budget allocations.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles in the *Legislative Standards Act 1992*.

Amendments to the *Ambulance Service Act 1991*

Whether the legislation has sufficient regard to the rights and liberties of individuals (*Legislative Standards Act 1992*, s 4(2)(a))

Section 4(3)(a) of the Legislative Standards Act states that whether legislation has sufficient regard to rights and liberties of individuals depends on whether the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review. The right to privacy, the disclosure of private or confidential information, and privacy and confidentiality issues have also generally been identified by the former Scrutiny of Legislation Committee as relevant to consideration of whether legislation has sufficient regard to individuals' rights and liberties.

The Bill contains provisions that may be seen to infringe upon right and liberties of individuals, specifically the privacy of individuals. Most of these amendments relate to the collection, storage and disclosure of confidential information under the Ambulance Service Act. The Bill amends provisions in the Ambulance Service Act to permit the disclosure of confidential information in appropriate circumstances. These provisions are necessary to make it clear that information that has become known to officers employed by the QAS while performing their functions must be kept confidential and only disclosed in permitted circumstances. The Bill also expands the definition of *confidential information* in the Ambulance Service Act to cover information with 'the potential to identify a person' in place of the existing definition that refers to information 'that identifies a person'.

Any potential breach of fundamental legislative principles is justified because the amendments aim to provide consistency and clarity for individuals employed by the QAS about their obligations. This will help to ensure confidential information is appropriately managed. Achieving this objective, along with expanding the safeguards around confidential information in the Ambulance Service Act, will improve the security of personal information by minimising the potential for inappropriate disclosures.

Whether the legislation has sufficient regard to the institution of Parliament (*Legislative Standards Act 1992*, s 4(2)(b))

Section 4(4)(a) of the Legislative Standards Act states that whether a Bill has sufficient regard to the institution of Parliament depends on whether the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons.

The Bill amends the Ambulance Service Act to provide a power for the chief executive to delegate their authority to the Queensland Ambulance Service Commissioner to allow

designated officers to disclose confidential information to avert a serious risk to life, health, safety, if necessary for approved research, or if it is in the public interest. The new provision that allows this power to be delegated may be considered to infringe on the fundamental legislative principle about whether the Bill has sufficient regard to the institution of Parliament.

Allowing these powers to be delegated to the Queensland Ambulance Service Commissioner is considered justified as it will allow the Commissioner to more effectively perform their role and support confidential information, subject to the requirements of the Ambulance Service Act, to be disclosed by QAS officers in important situations.

A number of safeguards are included in the Bill to provide transparency and to prevent any misuse, or perception of misuse, arising in relation to this delegation, including that the delegation may only be made to the Commissioner; and sub-delegation of the power is not permitted. The Ambulance Service Act will continue to require that all instances of confidential information that is disclosed in the public interest, and the nature of the information, be included in Queensland Health's annual report.

Other rights and liberties not specified in the *Legislative Standards Act 1992*

The Bill includes various safeguards against unauthorised disclosure of personal information, including increasing the maximum penalty in section 49 of the Ambulance Service Act from 50 to 100 penalty units. This aligns with the maximum penalty for unauthorised disclosure of confidential information in the Hospital and Health Boards Act. The increase in penalty is justified because unauthorised disclosure of confidential information is equally serious regardless of which Act applies and should therefore be subject to the same maximum penalty.

Amendments to the *Hospital and Health Boards Act 2011*

Whether the legislation has sufficient regard to the rights and liberties of individuals (*Legislative Standards Act 1992*, s 4(2)(a))

Section 4(3)(a) of the Legislative Standards Act states that whether legislation has sufficient regard to rights and liberties of individuals depends on whether the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review. The right to privacy, the disclosure of private or confidential information, and privacy and confidentiality issues have also generally been identified by the former Scrutiny of Legislation Committee as relevant to consideration of whether legislation has sufficient regard to individuals' rights and liberties.

The amendments to the Hospital and Health Boards Act to expand access to The Viewer to health professionals who are not registered under the National Law may be viewed as breaching fundamental legislative principles as they expand the potential for the access to and disclosure of personal information.

Transfer of patient care between the acute and community setting is not just a transfer between a hospital and a general practitioner but also occurs between the hospital and other health practitioners, community services or aged care facilities. Providing health professionals in the community care setting with access to The Viewer would provide these health professionals with a greater ability to understand the care that has been provided to a patient and assess their future care requirements, which will improve the health outcomes for patients.

There are legislative and operational safeguards in place that protect personal information from being inappropriately accessed. For example, each person is required to prove their identity to obtain system access to The Viewer and a person must provide their credentials on each log in to The Viewer. Every user's access to and activity on The Viewer is recorded in audit files, allowing for regular usage checks by Queensland Health. Currently, health practitioners can only access The Viewer through a read-only secure access portal known as the Health Provider Portal. Health practitioners must go through a stringent registration process to register for the Health Provider Portal. This process will be maintained for the additional allied health professionals under the Bill. This will include confirmation of personal identity information, qualifications, and professional registrations. 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 practitioner in a healthcare context, before their information can be accessed.

Under the Hospital and Health Boards Act, it is an offence for a practitioner to inappropriately access information in The Viewer that is not directly related to the provision of care or treatment to the person. The maximum penalty for breaching this requirement is 600 penalty units. Queensland Health conducts audits to ensure patient information is being used appropriately and investigates and acts on any inappropriate use of information. Any privacy breaches would also be dealt with under the *Information Privacy Act 2009*.

The potential breach of fundamental legislative principles is considered justified as the expansion of access to The Viewer is for the purpose of providing appropriate treatment to an individual in a community care setting. This objective is balanced with the safeguards outlined above that prevent any instances of inappropriate access or inadvertent disclosure of confidential information.

Whether the legislation has sufficient regard to the institution of Parliament (*Legislative Standards Act 1992*, s 4(2)(b))

The Bill amends the Hospital and Health Boards Act to enable allied health professionals, who are not registered health practitioners under the Health Practitioner Regulation National Law, to be prescribed by regulation, so they can access The Viewer and view patient healthcare information. This may be a departure from the fundamental legislative principle that sufficient regard be given to the institution of Parliament, as the exact groups of health professionals allowed to access the Viewer will be prescribed by regulation rather than in the Act.

Section 4(4)(a) of the Legislative Standards Act states that whether a Bill has sufficient regard to the institution of Parliament depends on whether the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons.

It is intended to prescribe audiologists, social workers, dietitians, speech pathologists, exercise physiologists, orthoptists, and orthotists and prosthetists as relevant health professionals if the Bill is passed.

The departure is considered justified as it will enable allied health professionals to have a better understanding of the care a patient has received in an acute setting, determine appropriate continuity of care and achieve better health outcomes for patients. The approach is appropriate as it aligns with the existing approach under the Act and the *Hospital and Health Boards Regulation 2012* for prescribed health practitioners. Qualification requirements will need to be outlined for the relevant allied health professionals, and it is considered these are more appropriately contained within subordinate legislation than in the Act.

Amendments to the *Mental Health Act 2016*

Whether legislation makes rights and liberties dependent on administrative power (Legislative Standards Act 1992, s 4(3)(a)

Section 4(3)(a) of the Legislative Standards Act states that whether the legislation has sufficient regard to rights and liberties of individuals depends on whether the legislation makes rights and liberties dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

The amendments to sections 236 and 509 of the Mental Health Act set out new requirements for when a doctor must seek MHRT approval to perform ECT and revises the matters that the MHRT must take into account when considering an application to approve the performance of ECT on a person. The MHRT acts in an administrative capacity when it decides applications for the performance of ECT under section 509 of the Mental Health Act. If the MHRT approves the use of ECT, this affects a person's rights and liberties as the MHRT has approved medical treatment without the person's consent.

The Bill contains safeguards by clearly defining the MHRT's power to approve the performance of ECT and setting out the matters the MHRT must consider and be satisfied of before approving the treatment. These safeguards in the Bill strengthen the current Act as they reflect a more rights-based approach and will comply more closely with the Human Rights Act. They ensure that:

- the voice of the person subject to the application is heard in the proceeding;
- persons who have capacity to consent and decline the treatment will not be subject to the treatment; and
- ECT is only approved for people who lack capacity to provide consent, or for people subject to a treatment authority, forensic order or treatment support order who have provided informed consent, where:
    - the treatment has clinical merit;
    - evidence supports the effectiveness of the therapy for the person's particular mental illness;
    - evidence of effectiveness in any past application of the therapy is considered; and
    - the therapy is appropriate for the person in the circumstances.

In addition, decisions to approve ECT can be appealed under the Mental Health Act and subject to appropriate review by the Mental Health Court. The amendments are therefore considered to have sufficient regard to the rights and liberties of individuals.

Whether legislation confers immunity from proceeding or prosecution (Legislative Standards Act 1992, s 4(3)(h)

Section 4(3)(h) of the Legislative Standards Act provides legislation has sufficient regard to the rights and liberties of individuals when the legislation confers immunity from proceedings or prosecution with adequate justification.

The Bill extends the protection from civil liability under the Mental Health Act to the Chief Psychiatrist and the Director of Forensic Disability. The Bill provides consistent immunity

provisions to statutory officers conducting functions and powers under an Act, such as the immunity from proceedings provided to the Director of Forensic Disability when performing functions and exercising powers under the *Forensic Disability Act 2011*.

This conferral of immunity from civil liability is justified on the basis the immunity only applies for acts done, or omissions made, honestly and without negligence under the Act. In addition, if immunity is granted, the liability attaches instead to the State so a person's right to take action are not extinguished by the conferral of immunity from proceedings.

Other rights and liberties not specified in the *Legislative Standards Act 1992*

The Bill extends the offence for the unauthorised disclosure of confidential information under section 778 of the Mental Health Act to the Director of Forensic Disability and examining practitioners for the Mental Health Court and the MHRT. The maximum penalty for a breach of section 778 of the Mental Health Act is 100 penalty units.

The extension of the offence is necessary and justified to protect the confidentiality of patient information and to improve the consistency of obligations on all persons providing functions under the Act. The misuse or inappropriate disclosure of personal information is inconsistent with the principle of privacy and confidentiality under section 5 of the Mental Health Act and may be harmful to a person's health or wellbeing. Given the private and personal nature of information acquired under the Mental Health Act, it is essential the Act contains adequate protections to prohibit the misuse of that information.

Amendments to the *Radiation Safety Act 1999*

Whether the legislation has sufficient regard to the institution of Parliament (*Legislative Standards Act 1992*, s 4(2)(b))

Section 4(4)(a) of the Legislative Standards Act states that whether a Bill has sufficient regard to the institution of Parliament depends on whether the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons.

The proposal to remove the requirement for the relevant proof of identity documents from being prescribed by regulation may be considered to impact on the institution of Parliament. By removing the requirement to prescribe identity documents in the Radiation Safety Regulation, the list of identity documents that are considered suitable to prove a person's identity will no longer be set out in the subordinate legislation. Instead, the Radiation Safety Act will require an applicant for an Act instrument to provide documents to prove their identity to the satisfaction of the chief executive.

Reducing the regulatory requirement provides benefits as when new identity verification documents are created, such as a new form of identity issued by the Queensland Government, Commonwealth Government or another interstate jurisdiction, they can be adopted without a requirement to amend the legislative framework. This amendment will also align the requirements for obtaining an Act instrument under the Radiation Safety Act with those used by other licensing schemes in Queensland, such as weapons licensing under the *Weapons Act 1990*.

Removing the requirement to prescribe by regulation does not fundamentally change the existing application processes as the chief executive, or their delegate, will be responsible for determining if an applicant has provided sufficient information and documentation to prove

their identity. If the chief executive is not satisfied with the documents provided by an applicant, the chief executive may rely on their existing powers under the Radiation Safety Act to require an applicant to provide further information or documentation to prove their identity. The prescription of a list of identity documents by regulation does not impact on a person's suitability to hold an Act instrument as this remains solely at the discretion of the chief executive.

Therefore, while the Bill does delegate authority to prescribe identity documents to the chief executive instead of the Parliament or the Governor in Council, the amendments to the Radiation Safety Act are considered appropriately justified as they do not impact on the standard of proof required for a person to prove their identity. In practice, the chief executive will continue to manage the application process for Act instruments under the Radiation Safety Act in accordance with their existing delegated authority under the Act.

Consultation

The Bill has been informed by consultation with stakeholders over a number of years, with the exception of the amendments to the Environmental Protection Act.

In September 2021, targeted consultation was undertaken with key stakeholders on the Bill. Stakeholders consulted included representatives from the medical, nursing, pharmaceutical, mental health and Aboriginal and Torres Strait Islander sectors. At this time, the Bill did not include the amendments to the Environmental Protection Act.

All stakeholder feedback received was carefully considered. Stakeholders were generally supportive of the proposed amendments, including the Queensland Nurses and Midwives' Union, Queensland Mental Health Commission, Queensland Human Rights Commission, Office of the Public Guardian, Royal Australian and New Zealand College of Psychiatrists (Queensland Branch), Queensland Law Society, Children by Choice and the Australian Red Cross Lifeblood Milk Bank.

Amendments to the Hospital and Health Boards Act – The Viewer

Some stakeholders raised concerns about the privacy implications of expanding access to The Viewer to a broader range of allied health professions which are not registered under the National Law. As noted above, there are legislative and operational safeguards in place to protect personal information on The Viewer from being inappropriately accessed. These include stringent identity checking for health professionals accessing The Viewer, monitoring and auditing of access, and limitations on patient searches to ensure the patient is known to the health practitioner in a healthcare context before their information can be accessed. The offence of a health professional inappropriately accessing information in The Viewer that is not necessary to facilitate the care or treatment of an individual carries a maximum penalty of 600 penalty units. In light of these safeguards, the benefits of expanding access to The Viewer to improve healthcare in the community are considered to outweigh any potential impacts on privacy.

Amendments to the Mental Health Act

Some suggestions raised during the consultation process about the Mental Health Act were incorporated into the Bill, such as aligning the Mental Health Act more closely with the Guardianship and Administration Act to ensure a person's views, wishes and preferences are

considered and taken into account to the greatest extent practicable when decisions are made under the Mental Health Act.

Amendments to the Environmental Protection Act 1994

Public consultation was not undertaken for the amendments, as it is not anticipated that every infrastructure designation made by the Planning Minister will include requirements that vary from default noise standards under the Environmental Protection Act.

However, public consultation is required in the making or amending of each infrastructure designation, whereby submissions must be considered and addressed, including making any changes to the infrastructure designation proposal.

The publicly available operational guidance for making or amending a Ministerial Infrastructure Designation will be updated to require that, when undertaking public consultation, information released must include information about proposed timeframes for building work and proposed operational hours.

Consistency with legislation of other jurisdictions

Amendments to the Ambulance Service Act, Hospital and Health Boards Act, Radiation Safety Act and the Transplantation and Anatomy Act are technical amendments to provisions in each Act. These amendments are unique to Queensland legislation.

Amendments to the *Environmental Protection Act 1994*

The amendments are specific to the State of Queensland and are not uniform with the legislation of other jurisdictions.

Amendments to the *Mental Health Act 2016*

All Australian jurisdictions have mental health legislation to safeguard the rights and regulate the treatment of people with mental illness.

The Bill enables the Mental Health Court to return matters to the criminal courts when there is a substantial dispute about a fact an expert has relied on in formulating their opinion in relation to whether a person was of unsound mind or diminished responsibility when an offence was allegedly committed. This provision, and the previous section 269 of the repealed *Mental Health Act 2000* (Qld), are unique to Queensland because of the unique role of Queensland's Mental Health Court. In all other Australian states and territories, decisions regarding unsoundness of mind, fitness for trial and the making of forensic orders are made in the criminal jurisdiction, meaning that facts can be tested within that jurisdiction. Queensland's Mental Health Court has civil jurisdiction necessitating the ability to be able to return a criminal charge to a criminal jurisdiction where there is a substantial dispute about material facts before the court.

Like Queensland, all Australian jurisdictions allow the performance of ECT and provide specific approval or oversight mechanisms for patients who are unable to consent to the therapy. The tests applied across jurisdictions to regulate the performance of ECT are not uniform; however, they produce substantially comparative results. For example, all states and territories require a decision-maker to be satisfied about an individual's capacity to consent to the treatment. The legislation in New South Wales, Tasmania and Western Australia have

oversight provisions regarding the performance of ECT on involuntary patients, requiring that it must have tribunal approval.

The Bill will remove the concept of corresponding 'interstate transfer requirements' for the interstate transfer of forensic patients and patients subject to treatment support orders. All jurisdictions provide for the transfer of these patients. However, the legislative framework may differ from current Queensland provisions, preventing the recognition of the interstate provisions as corresponding interstate transfer requirements. The effect of this is that transfer may not be possible due to legislative incompatibility, rather than clinical unsuitability. While the amendments will remove the concept of corresponding interstate transfer requirements, it will remain a requirement that applications to the MHRT for transfer interstate be accompanied by a written statement from the Chief Psychiatrist or Director of Forensic Disability regarding whether they consider appropriate treatment and care will be available for the person seeking the interstate transfer. The amendments will assist in harmonising the operation of the Mental Health Act with other mental health legislative frameworks in Australia.

Amendments to the *Termination of Pregnancy Act 2018*

The amendments to the Termination of Pregnancy Act will diverge from the approach taken by some other states and territories. For example, the *Abortion Law Reform Act 2019* (NSW), *Abortion Law Reform Act 2008* (Vic), *Termination of Pregnancy Act 2021* (SA), *Termination of Pregnancy Law Reform Act 2017* (NT) align with the current legislation in Queensland by stating that the types of registered health practitioners who are authorised to assist in the performance of a termination do not include students.

The Western Australian Criminal Code and *Health (Miscellaneous Provisions) Act 1911* do not address whether health practitioners other than a medical practitioner are permitted to assist in the performance of a termination.

The *Reproductive Health (Access to Terminations) Act 2013* (Tas) does not specifically include students in the definitions of nurse, midwife or medical practitioner for the purposes of the Act. The *Health Act 1993* (ACT) allows a *person* to assist a doctor in the performance of a termination of a pregnancy, however *person* is not defined.

Notes on provisions

Part 1 Preliminary

Short title

Clause 1 provides that, when enacted, the short title of the Act will be the *Health and Other Legislation Amendment Act 2021*.

Commencement

Clause 2 states that part 3 and schedule 1, part 2 commences on a day to be fixed by proclamation.

Part 2 Amendments commencing on assent

Division 1 Amendment of Ambulance Service Act 1991

Act amended

Clause 3 states that this division amends the *Ambulance Service Act 1991*.

Amendment of s 5 (Disqualification from appointment)

Clause 4 omits section 5(b) which disqualifies a person from being commissioner of the Queensland Ambulance Service where the person appointed is or attains the age of 65 years old. The provision also renumbers the paragraphs in section 5 of the Ambulance Service Act as a result of the omission of paragraph (b).

Division 2 Amendment of Criminal Code

Code amended

Clause 5 states that this division amends the Criminal Code.

Amendment of s 282 (Surgical operations and medical treatment)

Clause 6 amends the definition of *unqualified person* in section 282(4) by replacing the reference to section 319A(4) with section 319A(3). This amendment is required as the definition of *unqualified person* was moved to a new subsection.

Amendment of s 319A (Termination of pregnancy performed by unqualified person)

Clause 7 amends section 319A of the Criminal Code to provide that a prescribed student under the *Termination of Pregnancy Act 2018* is not subject to an offence against the Criminal Code for lawfully assisting in the termination of a pregnancy.

Clause 7(1) inserts a note into section 319A(2) to refer to section 10 of the *Termination of Pregnancy Act 2018*. The note clarifies that under the Termination of Pregnancy Act, a woman who consent to, or assists in, or performs a termination on herself does not commit an offence.

Clause 7(2) omits section 319A(3).

Clause 7(3) inserts into section 319A(4) new definitions for *assisting*, *prescribed health profession*, *prescribed student*, *primary clinical supervisor* and *student register*, which clarify when a person is considered to be assisting in the performance of a termination of a pregnancy.

Clause 7(4) amends the definition of *prescribed practitioner* in section 319A(4) by removing the list of specified health professions and replacing with the phrase 'a prescribed health profession, other than as a student'. A *prescribed health profession* is a new definition inserted by clause 7(2).

Clause 7(5) amends the definition of *unqualified person* in section 319A(4) by replacing paragraph (b)(ii) to remove the specific reference to a prescribed practitioner providing the assistance in the practice of his or her health profession and replacing with '(ii) a prescribed practitioner providing the assistance in the practice of the practitioner's prescribed health profession; or (iii) a prescribed student'. A *prescribed student* is a new definition inserted by cause 7(2).

Clause 7(6) renumbers the subsections in section 319A as a result of the omission of section 319A(3).

Division 3 Amendment of Environmental Protection Act 1994

Act amended

Clause 8 states that this part amends the *Environmental Protection Act 1994*.

Amendment of sch 1 (Exclusions relating to environmental nuisance or environmental harm)

Clause 9 amends Schedule 1, Part 1, section 3 (Nuisance regulated by other laws) to insert new section 3(fa).

Schedule 1 provides for exclusions relating to environmental nuisance or environmental harm under sections 17A, 440 and 440Q in the *Environmental Protection Act 1994*.

Clause 9(1) inserts new section 3(fa) provides that development carried out, or the use of the premises, under an infrastructure designation under the Planning Act by the Minister who administers chapter 2, part 5 of that Act is excluded from the definition of environmental nuisance, to the extent that the environmental nuisance or an activity that causes the environmental nuisance is regulated by a requirement of the infrastructure designation.

The 'requirements' of an infrastructure designation may include requirements about works for the infrastructure and use of premises, acting in a similar way to conditions under a development approval. An infrastructure designation makes the infrastructure 'accepted development' under the Planning Act (other than building work subject to *the Building Act 1975*), subject to compliance with any requirements imposed on the designation.

The intent of new section 3(fa) is to provide an exclusion from environmental nuisance in the circumstances that an infrastructure designation made by the Planning Minister is in force, and a requirement of the infrastructure designation regulates environmental nuisance or an activity that causes the environmental nuisance.

Any enforcement of a requirement of a designation will continue to dealt with by local governments under the provisions of the Planning Act and the relevant local government Act. Consequently, any compliance and enforcement matters about development regulated under a Ministerial infrastructure designation will be referred to and dealt with by the relevant local government.

The proposed amendment also does not affect the need to obtain an environmental authority if the activity is an environmentally relevant activity under the Environmental Protection Act. If an environmental authority includes noise conditions, the proponent must still meet those conditions.

Clause 9(2) renumbers sections 3(fa) to (j) to sections 3(g) to (k).

Division 4 Amendment of Termination of Pregnancy Act 2018

Act amended

Clause 10 states that this division amends the *Termination of Pregnancy Act 2018*.

Amendment of s 7 (Registered health practitioners who may assist)

Clause 11 amends the heading of section 7 to clarify that the provision applies to health practitioners and students, not just health practitioners.

Clause 11(2) omits and replaces sections 7(1) and (2) to include prescribed students as persons who may assist in the termination of a pregnancy, where:

- the prescribed student is acting under the supervision of:
  - the medical practitioner; or
  - a prescribed practitioner lawfully assisting in the performance of the termination; or
  - the student's primary clinical supervisor; and
- the assistance is to the extent necessary to complete the student's program of study for, or clinical training in, the student's health profession.

Clause 11(3) amends section 7(3) to clarify that the provision applies to prescribed practitioners or prescribed students, not registered health practitioners. This means that if a prescribed practitioner or prescribed student knows, or ought to reasonably know, that the medical practitioner is not performing the termination in accordance with the lawful requirements in sections 5 and 6 of the Termination of Pregnancy Act, they are not permitted to assist in the termination of the pregnancy.

Clause 11(4) omits section 7(4).

Insertion of new s 8A

Clause 12 inserts new section 8A (Prescribed student with conscientious objection). Section 8A requires a prescribed student who has a conscientious objection to assisting in the termination of a pregnancy to disclose their objection to a relevant person (a medical practitioner performing a termination of a pregnancy, a prescribed practitioner lawfully assisting in the performance of the termination, or the student's primary clinical supervisor) who requests their assistance. In practice, this section will provide for a prescribed student to notify the relevant person that they have a conscientious objection to assisting so that steps can be taken to address the objection and ensure appropriate assistance is available to the relevant person performing the termination of pregnancy.

Amendment of sch 1 (Dictionary)

Clause 13 omits from schedule 1 (Dictionary) definitions of *Aboriginal and Torres Strait Islander health practitioner*, *midwife*, *nurse* and *pharmacist*. These definitions are no longer required as a result of amendments made by the Bill, which replaces them with new definitions for *prescribed health profession*, *prescribed practitioner*, *prescribed student*, and *student register*. These definitions have the effect of clarifying that persons who are registered to practice in, or whose names are entered into a student register for, a prescribed health profession under the Health Practitioner Regulation National Law may assist in a termination of a pregnancy.

Clause 13(2) inserts into schedule 1 (Dictionary) new definitions for *assisting*, *prescribed health profession*, *prescribed practitioner*, *prescribed student*, *primary clinical supervisor* and *student register*.

Part 3 Amendments commencing by proclamation

Division 1 Amendment of Ambulance Service Act 1991

Act amended

Clause 14 states this division amends the *Ambulance Service Act 1991*.

Amendment of pt 4A, hdg (Root cause analyses)

Clause 15 amends the heading for part 4A (Root cause analyses) by omitting 'analyses' and replacing it with 'analysis'.

Amendment of s 36M (Disclosure of information—RCA team member or relevant person)

Clause 16 amends section 36M(1) and (2) to increase the penalty for an offence relating to unlawful disclosure in relation to a root cause analysis from 50 penalty units to 100 penalty units. The amendments align the penalty for an offence under the Ambulance Service Act with the same offence under the Hospital and Health Boards Act.

Clause 16(2) omits section 36M(3).

Clause 16(3) renumbers the subsections in section 36M as a result of the omission of section 36M(3).

Amendment of s 36N (Disclosure of information—commissioning authority or relevant person)

Clause 17 amends section 36N(1), (3) and (5) to increase the penalty for an offence relating to the disclosure of information in relation to a commission authority or relevant person from 50 penalty units to 100 penalty units. The amendments align the penalty for an offence under the Ambulance Service Act with the same offence under the Hospital and Health Boards Act.

Clause 17(2) omits section 36N(9).

Clause 17(3) renumbers the subsections in section 36N as a result of the omission of section 36N(9).

Amendment of s 36P (Giving a copy of RCA report—medical director)

Clause 18 amends section 36P(3) and (4) to increase the penalty from 50 penalty units to 100 penalty units for the medical director (being the Queensland Ambulance Service officer with the title of 'medical director') breaching their obligations in dealing with a root cause analysis report. The amendments align the penalty for an offence under the Ambulance Service Act with the same offence under the Hospital and Health Boards Act.

Replacement of ss 49 and 49A

Clause 19 replaces sections 49 and 49A with new sections 49 and 49A.

New section 49 (Confidential information must not be disclosed by designated officers) provides that a person who is or was a designated officer must not, directly or indirectly, disclose information to another person unless the disclosure is required or permitted under the Act. The maximum penalty for the offence is 100 penalty units, which is an increase from the existing provision which has a maximum penalty of 50 penalty units. New section 49 also provides that disclosure to another person includes another designated officer and that the offence also applies even when the person who could be identified in the confidential information is deceased.

New section 49A(1) (Confidential information must not be disclosed by informed person) clarifies the obligations of confidentiality where a person who is or was a designated officer directly or indirectly discloses confidential information to another person to whom section 49 does not apply (the *informed person*).

New section 49A(2) provides that the informed person must not, directly or indirectly, disclose the confidential information to another person unless the disclosure is required or permitted under this Act or another law. The maximum penalty for an offence against this section is 50 penalty units.

New section 49A(3) provides that the *informed person* may disclose the confidential information:

- to the person to whom the confidential information relates; or
- for a lawful purpose for which the confidential information was originally disclosed to the informed person; or
- if an agreement mentioned in section 50L requires or allows the disclosure—under the agreement.

New section 49A(4) provides that disclosure to another person and the offence applies even when the person who could be identified in the confidential information is deceased.

Amendment of s 50D (Definitions for div 1)

Clause 20 omits from section 50D the definitions of *confidential information* and *designated officer* for the purposes of part 7, division 1, as these definitions are to be included in schedule 1 (Dictionary).

Clause 20(2) inserts a new definition of *designated person*, which refers to section 139A of the Hospital and Health Boards Act.

Replacement of s 50E (Disclosure required or permitted by law)

Clause 21 replaces section 50E with new section 50E (Disclosure required or permitted by law). New section 50E provides for a designated officer to disclose confidential information if the disclosure is required or permitted by an Act or law.

Replacement of s 50F (Disclosure with consent)

Clause 22 replaces section 50F with new section 50F (Disclosure to, or with consent of, person to whom confidential information relates) to align the Ambulance Services Act and the Hospital and Health Boards Act. New section 50F provides that a designated officer may disclose confidential information if:

- for confidential information relating to an adult—the disclosure is to the adult, or the adult consents to the disclosure; or
- for confidential information relating to a child:
  - the disclosure is to the child or an authorised person for the child (for example, a parent or guardian);
  - the officer is a health professional who reasonably believes the child has capacity to consent and the child consents to the disclosure;
  - the officer is a health professional who reasonably believes the disclosure is in the child's best interests; or
  - an authorised person for the child consents to the disclosure.

Clause 22(2) provides for the purposes of the new section 50F, *authorised person* for a child means a person who is authorised to consent on a child's behalf to the disclosure of confidential information relating to the child (for example, a parent or guardian of the child).

Clause 22(2) also provides that in new section 50F, *capacity to consent* in relation to a child means the child is of sufficient age, and mental and emotional maturity, to understand that nature of consenting to the disclosure of confidential information.

Replacement of s 50H (Disclosure of confidential information for care or treatment of person)

Clause 23 replaces section 50H with new section 50H (Disclosure for care or treatment of person). New section 50H provides that a designated officer may disclose confidential information if the disclosure is required for the care or treatment of the person to whom the information relates. New section 50H removes the limitation on the provision of information which is required for the care or treatment of a person and provides a greater alignment of the authorised disclosures under the Ambulance Service Act and the Hospital and Health Boards Act.

Insertion of new s 50IA

Clause 24 inserts new section 50IA (Disclosure for protection, safety and wellbeing of child). Section 50IA provides that a designated officer may disclose confidential information if the disclosure is for the protection, safety or wellbeing of a child and the information relates to someone other than the child. This new section is modelled on section 148 of the Hospital and Health Boards Act.

Insertion of new ss 50KA-50KC

Clause 25 inserts new sections 50KA to 50KC to provide for several types of disclosure of confidential information in specific circumstances. These new sections align with existing provisions in the Hospital and Health Boards Act.

New section 50KA (Disclosure for funding arrangements and public health monitoring) provides for a designated officer to disclose confidential information if:

- the disclosure is to another designated officer or to a designated person;
- the disclosure and receipt of the confidential information is for giving effect to or managing a funding arrangement for the service or for analysing, monitoring or evaluating public health; and
- the other designated officer or designated person is authorised in writing by the chief executive to receive the confidential information.

New section 50KB (Disclosure for purposes relating to health services) provides for a designated officer to disclose confidential information if the disclosure is for evaluating, managing, monitoring or planning a health service, including, for example, an ambulance service and the disclosure is to another designated officer, a designated person or an entity prescribed by regulation. A *health service* is defined in section 15 of the *Hospital and Health Boards Act 2011*.

New section 50KC (Disclosure by chief executive or the commissioner to lawyers) provides for a designated officer who is the chief executive or the Queensland Ambulance Service Commissioner to disclose confidential information if the disclosure is to a lawyer in relation to a matter and the lawyer is representing the State or Queensland Ambulance Service in relation to the matter. New section 50KC(3) provides that the lawyer may disclose the confidential information in a court or tribunal proceeding relating to the matter.

Replacement of s 50L (Disclosure to Commonwealth, another State, or Commonwealth or State entity)

Clause 26 replaces section 50L with new section 50L (Disclosure to Commonwealth, another State, or Commonwealth or State entity). New section 50L(1) provides that a designated officer may disclose confidential information to the Commonwealth or another State, or an entity of the Commonwealth or another State if:

- the disclosure is required or permitted under an agreement between the State and the Commonwealth, other State or entity;
- the agreement is prescribed by regulation;
- the chief executive considers the disclosure to be in the public interest; and
- the chief executive states in writing that the chief executive considers the disclosure to be in the public interest.

New section 50L(2) provides that a designated officer may disclose confidential information to an entity of the State if:

- the disclosure is required or permitted under an agreement between Queensland Ambulance Service and the entity;
- the agreement is prescribed by regulation; and
- the chief executive considers the disclosure to be in the public interest; and
- the chief executive states in writing that the chief executive considers the disclosure to be in the public interest.

New section 50L(3) requires the Commonwealth, a State or an entity that receives confidential information under an agreement in section 50L(1) or (2) must not disclose the information to anyone else unless allowed to do so under the agreement or in writing by the chief executive and must ensure the information is used only for the purpose for which the information was given under the agreement.

New section 50L(4) provides, for this section, definitions of *entity of the Commonwealth* and *entity of the State*.

Amendment of s 50P (Disclosure is authorised by chief executive)

Clause 27 amends section 50P(1) by omitting 'is authorised to' and replacing it with 'may'. The amendment aligns the Ambulance Service Act and Hospital and Health Boards Act.

Clause 27(2) amends section 50P(3)(a) by omitting 'subsection (1)' and replacing it with 'an authorisation mentioned in subsection (2)(a)'. This amendment clarifies that the department's annual report must include details of the nature of any confidential information disclosed by the chief executive in the public interest.

Clause 27(3) replaces section 50P(5) with new section 50P(5). New section 50P(5) provides that despite section 22 of the Ambulance Service Act (which provides for delegations to be made) and section 103 of the *Public Service Act 2008*, the chief executive may delegate the power to make a disclosure in the public interest only to the commissioner. Under new section 50P(5), the chief executive must not permit subdelegation of the power from the commissioner to another officer.

Amendment of s 50Q (Necessary or incidental disclosure)

Clause 28 amends section 50Q by omitting 'is authorised to disclose confidential information if the disclosure of confidential information by a designated person' and replacing it with 'may disclose confidential information if the disclosure'. The amendment aligns the Ambulance Service Act and Hospital and Health Boards Act.

Amendment, relocation and renumbering of s 50R (Application of this division to former designated officers)

Clause 29 replaces section 50R(1) and (2) with new section 50R(1) and (2) to update the drafting of the provision and align the drafting between the Ambulance Service Act and the Hospital and Health Boards Act. The requirements on former designated officers will remain the same, where the duties of disclosure prescribed in a *relevant provision* apply to a former designated officer in the same way as they apply to the disclosure of information by a designated person.

Clause 29(2) inserts into section 50R(3) a definition of *relevant provision* to clarify the sections that apply to the obligations placed on former designated officers relating to the disclosure of confidential information. The *relevant provisions* are sections 50E, 50F, 50IA, 50J, 50M, 50O or 50Q of the Ambulance Service Act.

Clause 29(3) relocates and renumbers section 50R as section 50SA.

Insertion of new pt 8, div 9

Clause 30 inserts new division 9 (Transitional provisions for Health and Other Legislation Amendment Act 2021) which provides transitional provisions to address the changes made by the Bill.

New section 103 (Definition for division) provides that for this division the definition of *new*, for a provision of this Act, means the provision as in force on the commencement of the Act.

New section 104 (Application of new pt 7, div 1) provides that subject to section 105, new part 7, division 1 applies in relation to confidential information regardless of whether the information came into existence before or after the commencement.

New section 105 (Application of s 50L to agreements in force immediately before commencement) provides that where an agreement mentioned in the former section 50L of the Ambulance Service Act was in force immediately before the commencement, the new section 50L does not apply in relation to the agreement. As a result, any agreements entered into under section 50L of the Ambulance Service Act prior to the amendments commencing will not be affected and the former requirements contained in section 50L will continue to apply.

Amendment of sch 1 (Dictionary)

Clause 31 inserts several new definitions into schedule 1 (Dictionary), such as *confidential information, designated officer, designated person* and *health professional*. The definition of *confidential information* and *designated officer* were previously contained in the Ambulance Service Act but were only applicable to part 7, division 1 of the Act.

Division 2 Amendment of Hospital and Health Boards Act 2011

Act amended

Clause 32 states this division amends the *Hospital and Health Boards Act 2011*.

Amendment of s 139 (Definitions for pt 7)

Clause 33 omits from section 139 the definitions of *prescribed health practitioner* and *relevant health practitioner*.

Clause 33(2) inserts into section 139 a new definition of *prescribed health professional*, which means a health professional, other than a designated person mentioned in section 139A(1), who is prescribed by regulation or a person who was a health professional mentioned in paragraph (a).

Clause 33(3) makes a consequential amendment to paragraph (b) for the definition of *confidential information* by omitting 'practitioner' and replacing it with 'professional'.

Amendment of s 142 (Confidential information must not be disclosed by designated persons)

Clause 34 amends section 142(2) by omitting 'practitioner' and replacing it with 'professional'. This is a consequential amendment arising from the insertion of a new definition of *prescribed health professional* into part 7 of the Hospital and Health Boards Act.

Amendment of s 142A (Confidential information must not be disclosed by prescribed health practitioners)

Clause 35 amends the heading for section 142A by omitting 'practitioner' and replacing it with 'professional'. This is a consequential amendment arising from the insertion of a new definition of *prescribed health professional* into part 7 of the Hospital and Health Boards Act.

Clause 35(2) amends section 142A(1) and (2) by omitting 'practitioner' and replacing it with 'professional'.

Amendment of s 143 (Disclosure required or permitted by law)

Clause 36 amends section 143(2)(e) and (3) by omitting 'practitioner' and replacing it with 'professional'. This is a consequential amendment arising from the insertion of a new definition of *prescribed health professional* into part 7 of the Hospital and Health Boards Act.

Amendment of s 144 (Disclosure with consent)

Clause 37 amends section 144 by omitting 'practitioner' and replacing it with 'professional'. This is a consequential amendment arising from the insertion of a new definition of *prescribed health professional* into part 7 of the Hospital and Health Boards Act.

Amendment of s 145 (Disclosure of confidential information for care or treatment of person)

Clause 38 amends section 145 by omitting 'practitioner' and replacing it with 'professional'. This is a consequential amendment arising from the insertion of a new definition of *prescribed health professional* into part 7 of the Hospital and Health Boards Act.

Amendment of s 146 (Disclosure to person who has sufficient interest in health and welfare of person)

Clause 39 amends section 146(1) by omitting 'practitioner' and replacing it with 'professional'. This is a consequential amendment arising from the insertion of a new definition of *prescribed health professional* into part 7 of the Hospital and Health Boards Act.

Amendment of s 147 (Disclosure to lessen or prevent serious risk to life, health or safety)

Clause 40 amends section 147 by omitting 'practitioner' and replacing it with 'professional'. This is a consequential amendment arising from the insertion of a new definition of *prescribed health professional* into part 7 of the Hospital and Health Boards Act.

Amendment of s 148 (Disclosure for the protection, safety or wellbeing of a child)

Clause 41 amends section 148(2) by omitting 'practitioner' and replacing it with 'professional'. This is a consequential amendment arising from the insertion of a new definition of *prescribed health professional* into part 7 of the Hospital and Health Boards Act.

Amendment of s 154 (Disclosure to or by relevant chief executive)

Clause 42 amends section 154(1) by omitting 'practitioner' and replacing it with 'professional'. This is a consequential amendment arising from the insertion of a new definition of *prescribed health professional* into part 7 of the Hospital and Health Boards Act.

Amendment of s 155 (Disclosure to health practitioner registration board)

Clause 43 amends section 155 by omitting 'prescribed health practitioner' and replacing it with 'prescribed health professional'. This is a consequential amendment arising from the insertion of a new definition of *prescribed health professional* into part 7 of the Hospital and Health Boards Act.

Amendment of s 156 (Disclosure to health ombudsman)

Clause 44 amends section 156 by omitting 'prescribed health practitioner' and replacing it with 'prescribed health professional'. This is a consequential amendment arising from the insertion of a new definition of *prescribed health professional* into part 7 of the Hospital and Health Boards Act.

Amendment of s 157 (Disclosure to person performing functions under Coroners Act 2003)

Clause 45 amends section 157 by omitting 'practitioner' and replacing it with 'professional'. This is a consequential amendment arising from the insertion of a new definition of *prescribed health professional* into part 7 of the Hospital and Health Boards Act.

Insertion of new s 157B

Clause 46 inserts new section 157B (Disclosure to person performing functions under Mental Health Act 2016) which provides that a designated person or prescribed health professional may disclose confidential information if the disclosure is to a person who requires the confidential information to perform a function under the Mental Health Act, other than for the preparation of an annual report.

Amendment of s 159 (Disclosure to Australian Red Cross Society)

Clause 47 amends section 159 by omitting 'practitioner' and replacing it with 'professional'. This is a consequential amendment arising from the insertion of a new definition of *prescribed health professional* into part 7 of the Hospital and Health Boards Act.

Amendment of pt 7, div 4, hdg (Access by prescribed health practitioner to prescribed information system)

Clause 48 amends the heading for part 7, division 4 by omitting 'practitioner' and replacing it with 'professional'. This is a consequential amendment arising from the insertion of a new definition of *prescribed health professional* into part 7 of the Hospital and Health Boards Act.

Amendment of s 161C (Prescribed health practitioner may access prescribed information system and particular information)

Clause 49 amends the heading for section 161 and subsections (1), (2) and (3) by omitting 'practitioner' and replacing it with 'professional'. This is a consequential amendment arising from the insertion of a new definition of *prescribed health professional* into part 7 of the Hospital and Health Boards Act.

Amendment of sch 2 (Dictionary)

Clause 50 amends schedule 2 to omit the definitions of *prescribed health practitioner* and *relevant health practitioner* and insert a new definition of *prescribed health professional.*

The definition of *prescribed health professional* refers to the definition prescribed in section 139 of the Hospital and Health Boards Act. Section 139 of the Act states that a *prescribed health professional* means a health professional, other than a designated person mentioned in section 139A(1), who is prescribed by regulation or a person who was a health professional for the purpose of this section.

Division 3 Amendment of Mental Health Act 2016

Act amended

Clause 51 states this division amends the *Mental Health Act 2016*.

Amendment of s 38 (Action before exercising powers)

Clause 52 amends section 38(d) by inserting 'sector' after 'public'.

Amendment of s 116 (Decision about unsoundness of mind and diminished responsibility)

Clause 53 amends section 116(2) by omitting 'section 117' and replacing it with 'section 117 and 117A'. This is a consequential amendment as the Bill seeks to insert a new section 117A into the Mental Health Act.

Insertion of new s 117A

Clause 54 inserts new section 117A (Substantial dispute about fact relied on in expert report). New section 117A(1) provides that the Mental Health Court may not make a decision under section 116(1)(a) or (b) of the Mental Health Act if the court is satisfied there is a substantial dispute about a fact (*a material fact*) that is material to an opinion stated in an expert's report received in evidence by the court on the reference.

New section 117A(2) provides that without limiting subsection (1), *a material fact* may relate to:

- the person's relevant circumstances before, at the time, or after the offence was allegedly committed; or
- an event, act or omission related to the offence, whether the event, act or omission happened before, at the time, or after the offence was allegedly committed.

Amendment of s 118 (Decision about fitness for trial)

Clause 55 amends section 118(1)(b) to insert 'or 117A' after 'section 117'. This section applies where the Mental Health Court decides the person was not of unsound mind when the offence was allegedly committed or because of section 117 or new section 117A, the court may not decide whether the person was of unsound mind when the offence was allegedly committed.

Insertion of new s 157A

Clause 56 inserts new section 157A (Admissibility of expert's report in proceeding before Magistrates Court). New section 157A(1) provides that this section applies if an expert's report is received in evidence by the Mental Health Court on a reference in relation to a person for an offence.

New section 157A(2) provides that the report is admissible in a proceeding before a Magistrates Court for the purpose of deciding whether to dismiss a complaint for the offence under section 172 or to adjourn the hearing of a complaint for the offence under section 173.

Insertion of new ch 5, pt 5, div 4, sdiv 1, hdg

Clause 57 inserts a new subdivision heading (Subdivision 1 Making forensic orders) into chapter 5, part 5, division 4, subdivision 1 before section 166. The insertion of the subdivision heading is a consequential amendment arising from the insertion of the new sections 166A and 167.

Replacement of s 167 (Person subject to existing treatment authority or treatment support order)

Clause 58 replaces existing section 167 with new sections 166A (Person subject to existing treatment support order) and 167 (Person subject to existing treatment authority).

New section 166A provides that if the Mental Health Court is required under this chapter to make a forensic order for a person who is already subject to a treatment support order, the court may satisfy this requirement by:

- revoking the treatment support order and making a forensic order for the person; or
- amending the treatment support order to convert it into a forensic order, and making any other necessary changes to the order.

New section 167 provides that if the Mental Health Court makes a forensic order (mental health) for a person who is subject to a treatment authority, the treatment authority ends on the making of the forensic order (mental health).

Section 167 also provides that nothing in this provision prevents the Mental Health Court from making a forensic order (disability) for a person who is subject to a treatment authority. If there is any inconsistency between the treatment authority and a forensic order (disability) for the person, the forensic order (disability) prevails to the extent of any inconsistency.

The purpose of this amendment is to allow the Mental Health Court to continue an existing treatment support order by amending that order to change it to a forensic order in circumstances where the Court considers it appropriate for the person's forensic history to be continued. This aligns with the Court's ability to amend existing forensic orders and treatment support orders in sections 166 and 167A of the Mental Health Act and ensures that the Court has the ability to ensure relevant unlawful acts are recognised in an order and that the change of order does not affect the operation of a victim information notice relating to the existing order.

Clause 58 also inserts a new subdivision heading (Subdivision 2 Making treatment support orders) into chapter 5, part 5, division 4, subdivision 2 after section 167. The insertion of the subdivision heading is a consequential amendment arising from the insertion of new sections 167B and 167C.

Insertion of new ss 167B and 167C

Clause 59 inserts new sections 167B (Person subject to existing forensic order) and 167C (Person subject to existing treatment authority).

New section 167B provides that if the Mental Health Court is required under this chapter to make a treatment support order for a person who is already subject to a forensic order, the court may satisfy this requirement by:

- revoking the forensic order and making a treatment support order for the person; or
- amending the forensic order to convert it into a treatment support order, and making any other necessary changes to the order.

The purpose of this amendment is to allow the Mental Health Court the option of continuing an existing forensic order by amending that order to change it to a treatment support order, in circumstances where the Court considers it appropriate to have the person's forensic history continued in the new order. This aligns with the Court's ability to amend existing forensic

orders and treatment support orders in sections 166 and 167A of the Mental Health Act and ensures that the Court has the ability to ensure relevant unlawful acts are recognised in an order and that the change of order does not affect the operation of a victim information notice relating to existing order.

New section 167C provides that if the Mental Health Court makes a treatment support order for a person who is subject to a treatment authority, the treatment authority ends on the making of the treatment support order.

Amendment of s 180A (Particular statements not admissible)

Clause 60 inserts new subsection (4) into section 180A. Section 180A(4) provides that section 180A(1)(b), which states that a statement made by the person to a health practitioner for the purpose of a Magistrates Court making a decision about the person under section 172 or 173 of the Mental Health Act, does not apply to a proceeding before the Mental Health Court.

Amendment of s 223 (Who is a nominated support person)

Clause 61 amends section 223(6)(b) by omitting 'make and communicate' and replacing it with '(b) freely and voluntarily make the appointment or revocation; and (c) communicate the appointment or revocation'. This amendment enables a person who has capacity to make or revoke an appointment of a nominated support person if the person has the ability to understand the nature and effect of the appointment or revocation; and freely and voluntarily make the appointment or revocation; and communicate the appointment or revocation.

The purpose of this, and the following amendment, is to provide clarity about the consent that must be given by a patient prior to receiving a regulated treatment and to align with the consent requirements in equivalent provisions in the *Guardianship and Administration Act 2000* and *Powers of Attorney Act 1998*. Making explicit the requirement of free and voluntary consent further improves the recognition of the patient's human rights in the determination of their treatment and care provided under the Act.

Amendment of s 233 (Requirements for informed consent)

Clause 62 omits section 233(1)(c) and amends section 233(2)(b) by omitting 'make and communicate' and replacing it with '(b) freely and voluntarily make the decision; and (c) communicate the decision'. This amendment enables a person who has capacity, to give informed consent to a regulated treatment if the person has the ability to understand the nature and effect of a decision relating to the treatment; and freely and voluntarily make the decision; and communicate the decision.

Amendment of s 236 (Performance of electroconvulsive therapy with consent or tribunal approval)

Clause 63 replaces sections 236(1)(a) to (c) with new sections 236(1)(a) and (b), which introduce a new framework to support the performance of electroconvulsive therapy with consent or tribunal approval.

New sections 236(1)(a) and (b) allow for a doctor at an authorised mental health service to perform electroconvulsive therapy on a patient in the authorised mental health service if:

- for a patient who is an adult:

  - if the adult is unable to give informed consent to the treatment or is subject to a treatment authority, forensic order or treatment support order—the tribunal has approved, under section 509, the performance of the therapy on the adult; or
  - otherwise—the adult has given informed consent to the treatment; or
- for a patient who is a minor—the tribunal has approved, under section 509, the performance of the therapy on the minor.

Amendment of s 288 (Communication about patient with others)

Clause 64 amends paragraph (b) of the definition of *capacity* in section 288(3) by omitting 'make and communicate' and replacing it with '(b) freely and voluntarily make the request; and (c) communicate the request'. The amendment means the patient – to have capacity to make a request that communication not take place – must have the ability to understand the nature and effect of the request; freely and voluntarily make the request; and communicate the request.

Amendment of s 307 (Annual Report)

Clause 65 omits section 307(2)(b)(viii).

Clause 65(2) inserts new section 307(2)(h) which requires the Annual Report of the Chief Psychiatrist to include statistical data about the information notices given under part 6 of the Mental Health Act, and provides, as an example, the number of applications for information notices made.

The section currently requires statistical data about information notices for each authorised mental health service. However, the information notices provided under part 6 are made by the Chief Psychiatrist and are therefore more appropriately required to be reported by the Chief Psychiatrist in a way that reflects the Chief Psychiatrist's role.

Amendment of s 317 (Definitions for pt 6)

Clause 66 omits from section 317 the definition *of relevant patient* and inserts a definition for *relevant day* and a new definition for *relevant patient*.

Amendment of s 318 (Application)

Clause 67 inserts new section 318(3) which provides for this section definitions of *forensic order* and *treatment support order*.

Amendment of s 319 (Decision on application)

Clause 68 corrects an error in the referencing of the subsection in section 319(2)(d). Section 319(2)(d) should refer to section 323(2)(b), not 323(1)(b), otherwise it would allow the chief executive to consider any applications made by the applicant that had previously been revoked.

Clause 68(2) omits and amends section 319(4) to provide the Chief Psychiatrist must refuse to approve the application for an information notice if the Chief Psychiatrist is satisfied:

- if the application states that the applicant's nominee will be entitled to receive information under the notice – the applicant's nominee is not suitable to receive the information (new section 319(4)(a)); or

- the person in relation to whom the application was made is not, or is no longer, a relevant patient (new section 319(4)(b)). It is noted the scenario in new section 319(4)(b) would be exceptionally rare.

Clause 68(3) inserts new section 319(8) which provides for this section definitions of *forensic order* and *treatment support order*.

Replacement of ss 322 and 323

Clause 69 replaces sections 322 and 323 with new sections 322 (Duration of information notice) and 323 (Revocation of information notice) to remove the mandatory revocation requirements for information notices.

New section 322(1) provides that an information notice relating to a relevant patient ceases to have effect on the earliest of the following days:

- if the relevant patient's forensic order or treatment support order ends and the patient is not subject to any other forensic order or treatment support order—the relevant day for the forensic order or treatment support order that has ended;
- if the relevant patient has been transferred under chapter 12, part 10, division 2 to an interstate mental health service or another country—the day the patient leaves Queensland;
- if the person entitled to receive information under the notice notifies the Chief Psychiatrist the person no longer wishes to receive the information—the day the person gives the notice;
- if the Chief Psychiatrist revokes the information notice under section 323—the day the notice is revoked.

New section 322(2) provides that within seven days after an information notice ceases to have effect under section 322(1)(a), (b) or (c) of the Mental Health Act, the Chief Psychiatrist must give the person who was entitled to receive information under the information notice, a written notice stating:

- the information notice has ceased to have effect; and
- the reason the information notice ceased to have effect; and
- if the information notice ceased to have effect under sections 322(1)(a) or (b) of the Mental Health Act—the person is not entitled to appeal the ceasing of effect of the information notice.

New section 322(3) provides that despite subsection (1)(b), if the relevant patient returns to Queensland before the patient's forensic order or treatment support order ends under section 528:

- the information notice is reinstated on the day the relevant patient returns to Queensland; and
- within seven days after the Chief Psychiatrist becomes aware the relevant patient has returned to Queensland, the Chief Psychiatrist must give notice of the reinstatement of the information notice to the person entitled to receive information under the notice.

New section 323(1) provides that the Chief Psychiatrist must revoke an information notice relating to a relevant patient if the Chief Psychiatrist is satisfied disclosure of information under the notice is likely to:

- result in serious harm to the relevant patient's health or welfare; or
- put the safety of the relevant patient or someone else at serious risk.

New section 323(2) provides that the Chief Psychiatrist may revoke an information notice relating to a relevant patient if—

- the Chief Psychiatrist is unable, after making reasonable efforts, to locate the person entitled to receive information under the notice; or
- the person entitled to receive information under the notice has contravened section 326.

New section 323(3) provides that before revoking an information notice under section 323(2)(b), the Chief Psychiatrist must give the person a reasonable opportunity to make a submission to the Chief Psychiatrist about why the notice should not be revoked.

New section 323(4) provides that within seven days after an information notice is revoked under this section, the Chief Psychiatrist must give the person who was entitled to receive information under the information notice a written notice stating—

- the information notice has been revoked and has ceased to have effect;
- the reasons for the decision to revoke the information notice;
- the person may appeal to the tribunal against the decision within 28 days after the person receives the written notice; and
- how the appeal may be made.

Amendment of s 350 (Definitions for pt 5)

Clause 70 amends the definition of *transfer considerations* for the purposes of chapter 11, part 5 (Transfer of patients). This amendment omits the reference to whether the transfer is in the 'best interests' of the person in section 350(c) and replaces it with a consideration of whether the transfer of the person is 'appropriate in the circumstances'.

The purpose of this amendment, and the following amendments in clauses 71 to 75, 80 and 82 is to remove the 'best interests' test for transfer of patients, as this is considered a less rights-based approach which does not promote a person's participation in making decisions about their treatment. Clauses 70 to 75, 80 and 82 replace the 'best interests' test with an approach that considers the person's views, wishes and preferences together with the appropriateness of the transfer.

Amendment of s 351 (Transfer between services by agreement of administrators)

Clause 71 amends section 351(3) and (5) to insert new considerations that administrators of authorised mental health services must have regard to when agreeing to transfers of involuntary patients, or classified patients (voluntary) from one service to another. The administrators of both services must have regard to the transfer considerations for the person and to the greatest extent possible, the views, wishes and preferences of the person.

Amendment of s 352 (Transfer between services by requirement of chief psychiatrist)

Clause 72 amends section 352(3) to insert new considerations that the Chief Psychiatrist must have regard to in deciding whether to transfer responsibility for an involuntary patient or classified patient (voluntary) from one service to another. The Chief Psychiatrist must have regard to the transfer considerations for the person and to the greatest extent possible, the views, wishes and preferences of the person.

Amendment of s 353 (Transfer between authorised mental health service and forensic disability service)

Clause 73 amends section 353(3) to insert new considerations that the Chief Psychiatrist or the Director of Forensic Disability must have regard to in deciding whether to transfer responsibility for a person subject to a forensic order (disability) between an authorised mental health service and the forensic disability service. The Chief Psychiatrist and the Director of Forensic Disability must have regard to the transfer considerations for the person, the person's intellectual disability and to the greatest extent possible, the views, wishes and preferences of the person.

Amendment of s 354 (Transfer of person subject to treatment authority to another State)

Clause 74 amends section 354(2)(a) to insert new considerations that the administrator of an authorised mental health service must have regard to in deciding whether to transfer responsibility for a person subject to a treatment authority from the authorised mental health service to an interstate mental health service. The administrator must be satisfied appropriate treatment and care is available for the person at the interstate mental health service and the transfer is otherwise appropriate in the circumstances (for example, to allow the person to be in closer proximity to their family, carers or other support persons).

Clause 74(2) inserts new section 354(2A) which provides that in deciding whether the transfer is appropriate in the circumstances, the administrator must, to the greatest extent practicable, have regard to the views, wishes and preferences of the person.

Clause 74(3) renumbers the subsections in section 354 as a result of the inclusion of section 354(2A).

Amendment of s 355 (Transfer of person subject to interstate order from another State)

Clause 75 amends section 355(2) to insert new considerations that the administrator of an authorised mental health service must have regard to in agreeing to the transfer of a person from an interstate mental health service to an authorised mental health service. The administrator must be satisfied the transfer is otherwise appropriate in the circumstances (for example, to allow the person to be in closer proximity to their family, carers or other support persons).

Clause 75(2) inserts new section 355(2A) which provides that in deciding whether the transfer is appropriate in the circumstances, the administrator must, to the greatest extent practicable, have regard to the views, wishes and preferences of the person.

Clause 75(3) renumbers the subsections in section 355 as a result of the inclusion of section 355(2A).

Replacement of s 368 (Apprehension of person absent from interstate mental health service)

Clause 76 replaces section 368 with new section 368 (Apprehension, detention and transport of person absent from interstate mental health service). New section 368(1) provides that an authorised person may apprehend, in Queensland, a person (the *absent person*):

- who is absent without permission from an interstate mental health service; and
- for whom an apprehension authority, being a warrant or another document (however described) that authorises the apprehension of the person, has been issued under a corresponding law of the State (the *other State*) in which the interstate mental health service is located.

New section 368(2) provides that the apprehension authority is taken to be a warrant for apprehension of the absent person, by an authorised person, under this Act.

New section 368(3) provides that if the absent person is apprehended under this section, the absent person may be:

- transported, by an authorised person, to:
  - an interstate mental health service in the other State; or
  - an authorised mental health service; or
- detained in an authorised mental health service for the period reasonably necessary to enable the administrator of the service to make arrangements for the person to be returned to an interstate mental health service in the other State.

New section 368(4) provides that before the absent person is detained or transported under this section, an authorised person must explain to the absent person why the absent person is being detained or transported.

New section 368(5) provides that subsection (6) applies if a corresponding law confers a function or power on a person (an *interstate person*) in relation to the apprehension of the absent person.

New section 368(6) provides that the interstate person may, in Queensland, perform the function, or exercise the power, to the extent necessary to assist in the apprehension, detention or transport, under this section, of the absent person. The expansion of these powers to include interstate persons is designed to further enhance the appropriateness of the apprehension and transport of an absent person as the interstate person may have prior knowledge which may assist in determining the most appropriate way to manage the return of the person to an interstate mental health facility.

New section 368(7) provides for this section the definition of *apprehension authority*.

Amendment of s 383 (Purpose of pt 7)

Clause 77 amends section 383(b) by removing the second mention of ‘particular’. This amendment provides clarity that the purpose of part 7 is to provide for searches of particular

patients in authorised mental health services and public sector health service facilities. By removing the reference to particular public sector health service facilities, there is no limitation on the types of facilities that a particular patient may have records with and the ability to search those records.

Amendment of s 427 (Transfer to another authorised mental health service)

Clause 78 amends section 427(2)(d) to insert new considerations the tribunal must have regard to in deciding whether to order the transfer of a person subject to a treatment authority to another authorised mental health service to provide treatment and care for the person. In deciding whether to order the person's transfer the tribunal must have regard to the person's mental state and psychiatric history, the person's treatment and care needs, the capacity of the authorised mental health service to which the person is to be transferred, to the greatest extent practicable, the views, wishes and preferences of the person and whether the transfer is appropriate in the circumstances (for example, to allow the person to be in closer proximity to their family, carers or other support persons).

Amendment of s 435 (Requirement to conduct periodic review suspended)

Clause 79 amends section 435(1) to insert 'or another country' after 'service' to expand the application of the section to include a person who is subject to a forensic order and who is being transferred to another country.

Clause 79(2) replaces section 435(2) with new section 435(2) which clarifies that the tribunal is not required to conduct a periodic review of the forensic order under section 433(1) while the person is out of Queensland because of the person's transfer under part 10, division 2. These amendments are consistent with the broader amendments made by the Bill to account for the international transfer of patients.

Amendment of s 456 (Transfer of responsibility for forensic patient)

Clause 80 amends section 456(2)(f) to insert new considerations the tribunal must have regard to in deciding whether to make an order that responsibility for the person subject to a forensic order be transferred between authorised mental health services or to, or from, the forensic disability service (if the person is subject to a forensic order (disability)).

In deciding whether to order the person's transfer the tribunal must have regard to the person's mental state and psychiatric history, any intellectual disability of the person, the person's treatment and care needs, the security requirements for the person, the capacity of the authorised mental health service to which the person is to be transferred if responsibility of the person is transferred to an authorised mental health service, to the greatest extent practicable, the views, wishes and preferences of the person and whether the transfer is appropriate in the circumstances (for example, to allow the person to be in closer proximity to their family, carers or other support persons).

Amendment of s 467 (Requirement to conduct periodic review suspended)

Clause 81 amends section 467(1) to insert 'or another country' after 'service' to expand the application of the section to include a person who is subject to a treatment support order who is being transferred to another country.

Clause 81(2) replaces section 467(2) with new section 467(2) which clarifies that the tribunal is not required to conduct a periodic review of the treatment support order under section 465(1) while the person is out of Queensland because of the person's transfer under part 10, division 2. These amendments are consistent with the broader amendments made by the Bill to account for the international transfer of patients.

Amendment of s 479 (Transfer to another authorised mental health service)

Clause 82 amends section 479(2)(e) to insert new considerations that the tribunal must have regard to in deciding whether to order the transfer of a person subject to a treatment support order to another authorised mental health service to provide treatment and care for the person. In deciding whether to order the person's transfer the tribunal must have regard to the person's mental state and psychiatric history, the person's treatment and care needs, the security requirements for the person, the capacity of the authorised mental health service to which the person is to be transferred, to the greatest extent practicable, the views, wishes and preferences of the person and whether the transfer is appropriate in the circumstances (for example, to allow the person to be in closer proximity to their family, carers or other support persons).

Amendment of s 507 (Who may apply)

Clause 83 replaces section 507(a) with new section 507(a) which provides that a doctor may apply to the tribunal for approval to perform electroconvulsive therapy on another person if the doctor is satisfied that the person is an adult who is subject to a treatment authority, forensic order, treatment support order or is unable to give informed consent to the therapy.

Amendment of s 509 (Decision on application)

Clause 84 replaces section 509(2)(a) with new section 509(2)(a) which clarifies that in deciding an application for approval for electroconvulsive therapy, if the person is an adult, the tribunal must have regard to whether the adult is able to give informed consent to the therapy and to the greatest extent practicable, any views, wishes and preferences the adult has expressed about the therapy, whether in an Advance Health Directive or otherwise.

Clause 84(2) amends section 509(2)(b) by omitting 'application relates to' and replacing it with 'person is'.

Clause 84(3) replaces section 509(3) with new section 509(3), (3A), (3B) and (3C). New section 509(3) requires the tribunal to, subject to the criteria outlined in new subsections 509(3A), (3B) and (3C), only give approval for electroconvulsive therapy if satisfied the person is:

- an adult who is not able to give informed consent to the therapy, whether or not the adult is subject to a treatment authority, forensic order or treatment support order; or
- an adult who is able to give informed consent to the therapy and subject to a treatment authority, forensic order or treatment support order; or
- a minor.

New section 509(3A) prescribes the criteria the tribunal must be satisfied of, before approval can be given for a doctor to provide electroconvulsive therapy to a person, if the person is an adult who is not able to give informed consent to the therapy, whether or not the adult is subject

to a treatment authority, forensic order or treatment support order. For these persons, the tribunal must be satisfied the therapy has clinical merit and is appropriate in the circumstances, evidence supports the effectiveness of the therapy for the adult's particular mental illness and if the therapy has previously been performed on the adult—of the effectiveness of the therapy for the adult.

New section 509(3B) prescribes the criteria the tribunal must be satisfied of, before approval can be given for a doctor to provide electroconvulsive therapy to a person, if the person is an adult subject to a treatment authority, forensic order or treatment support order and who is able to give informed consent to the therapy. For these persons, the tribunal must be satisfied the applicant has given the adult the explanation required under section 234 (requirements for informed consent) and the adult has given informed consent to the therapy under chapter 7, part 10.

New section 509(3C) prescribes the criteria that the tribunal must be satisfied of to approve electroconvulsive therapy for a minor. These requirements are the same as for an adult who is unable to provide informed consent, but specifically clarify that the evidence to support the effectiveness of the electroconvulsive therapy must be relevant for the minor's particular mental illness and age. The provision also makes it explicit that the performance of the therapy must be in the minor's best interests.

Clause 84(4) renumbers the subsections in section 509 as a result of the inclusion of subsections 509(3A), (3B) and (3C).

Amendment of s 513 (Definitions for div 1)

Clause 85 amends section 513 to replace the definition of *interstate transfer requirements* with two new definitions for *interstate transfer approval* and *patient seeking transfer*. The amendment provides clarity about what is considered to be an *interstate transfer approval* and who is considered to be a *patient seeking transfer* to improve the operation of the provisions contained in part 10, division 1 of the Mental Health Act.

Replacement of s 515 (Requirements for application)

Clause 86 replaces section 515 with new section 515 to clarify the circumstances where a patient is seeking to transfer into Queensland. New section 515(1) requires the application to:

- state the reasons why the transfer is appropriate in the circumstances; and
- state that:
  - the authorised mental health service proposed to be responsible for the patient seeking transfer; or
  - the forensic disability service is proposed to be responsible for the patient seeking transfer; and
- include a written statement from the responsible person, being the Chief Psychiatrist (for an authorised mental health service) or the Director of Forensic Disability (for the forensic disability service), that complies with subsection (2).

New section 515(2) provides that for subsection (1)(c), the written statement from the responsible person must state that the person considers that appropriate treatment or care is available for the patient seeking transfer at the authorised mental health service or appropriate

care is available for the patient seeking transfer at the forensic disability service and the arrangements for the transfer are adequate to protect the safety of the community.

New section 515(3) provides for this section a definition for *responsible person*.

Amendment of s 516 (Notice of hearing)

Clause 87 amends section 516(1)(a) and (b) by omitting 'the person' and replacing it with 'the patient seeking transfer' to clarify that the tribunal must give written notice of the hearing of the application to the person seeking transfer.

Amendment of s 517 (Decision on application)

Clause 88 replaces section 517(1) and (2) with new section 517(1) and (2). New section 517(1) requires the tribunal, to the greatest extent practicable, to take into account the views, wishes and preferences of the patient seeking transfer, and approve, or refuse to approve, the transfer. This extends the considerations that must be made by the tribunal to include the views, wishes and preferences of the patient.

New section 517(2) states that the tribunal may approve the transfer only if satisfied:

- the transfer is appropriate in the circumstances; and
- either appropriate treatment and care is available for the patient seeking transfer at the authorised mental health service if an authorised mental health service is stated in the application, or appropriate care is available for the patient seeking transfer at the forensic disability service if the forensic disability service is stated in the application; and
- a forensic order (mental health) or forensic order (disability) is necessary, because of the mental condition of the patient seeking transfer, to protect the safety of the community, including, for example, from the risk of serious harm to other persons or property; and
- the arrangements for the transfer are adequate to protect the safety of the community.

The amendments are a shift away from the current requirements under section 517, which focus on the tribunal making a determination about whether the transfer is in the best interests of the person. The amendments do not alter the ability of the tribunal to give an approval subject to conditions that the tribunal considers necessary.

Amendment of s 518 (Making of forensic order)

Clause 89 amends section 518(1), (2) and (3) by omitting 'the person' and replacing it with 'the patient seeking transfer'. It also amends section 518(2)(b) by omitting 'the person's' and replacing it with 'their', and amends section 518(4)(b) by omitting 'the person subject to the interstate forensic order' and replacing it with 'the patient seeking transfer' to clarify that the tribunal must give written notice of the hearing of the application to the person seeking transfer.

Replacement of ss 519 and 520

Clause 90 replaces sections 519 and 520 with new sections 519 (When interstate transfer approval takes effect) and 520 (Transport of patient seeking transfer under interstate transfer approval) to clarify when an interstate transfer approval takes effect and the transport options for patients seeking transfer under an interstate transfer approval.

New section 519 provides that an interstate transfer approval takes effect on the granting of the approval, or if the tribunal imposes 1 or more conditions on the approval that must be satisfied before the approval takes effect—when all of the conditions are satisfied.

New section 520(1) provides that this section applies if an interstate transfer approval is in effect.

New section 520(2) provides that the patient seeking transfer may be transported under the approval by:

- the stated entity, if the approval states that a particular entity may transport the patient seeking transfer under the approval; or
- otherwise:
  - an authorised person; or
  - an authorised practitioner under the Forensic Disability Act, if the patient seeking transfer is to be transported to the forensic disability service;
  - a person who is authorised under a corresponding law to transport the patient seeking transfer from an interstate mental health service to an authorised mental health service or the forensic disability service.

New section 520(3) provides that as soon as practicable after the approval takes effect, the administrator of the responsible service for the patient seeking transfer must arrange for the patient to be transported to the responsible service by an entity authorised to transport the patient under subsection (2).

New section 520(4) provides for this section a definition of *responsible service*.

Replacement of s 521 (Definition for div 2)

Clause 91 replaces section 521 with a new section 521 (Definitions for division) which provides for this division definitions of *international transfer approval*, *interstate transfer approval*, *patient seeking transfer* and *responsible service*.

Amendment of s 522 (Who may apply)

Clause 92 amends section 522(1) by omitting ‘authorised mental health service’ and replacing it with ‘authorised mental health service, or the forensic disability service, to (a) a stated interstate mental health service; or (b) a stated country.’. This will expand the places that a person subject to a forensic order (mental health), forensic order (disability) or treatment support order, or an interested person for the person may apply to transfer to, subject to the approval of the tribunal.

Replacement of s 523 (Requirements for application)

Clause 93 replaces section 523 with new section 523 (Requirements for application) for applications for transfer of patients outside of Queensland.

New section 523(1) provides that the application must state the reasons why the transfer is appropriate in the circumstances and include a written statement from the responsible person.

New section 523(2) provides that for subsection (1)(b), the written statement must state the responsible person considers:

- either:
  - if an authorised mental health service is responsible for the patient seeking transfer:
    - for an application for an interstate transfer approval – appropriate treatment and care is available for the patient seeking transfer at the interstate mental health service stated in the application,; or
    - for an application for an international transfer approval – appropriate treatment and care is available for the patient seeking transfer in the country stated in the application,; or
  - if the forensic disability service is responsible for the patient seeking transfer:
    - for an application for an interstate transfer approval – appropriate care is available for the patient seeking transfer at the interstate mental health service stated in the application,; or
    - for an application for an international transfer approval – appropriate care is available for the patient seeking transfer in the country stated in the application; and
- the arrangements for the transfer are adequate to protect the safety of the community; and
- for an application for an interstate transfer approval – the transfer is, or may be, permitted under a law of the State in which the interstate mental health service stated in the application is located.

New section 523(3) provides for this section a definition of *responsible person*.

Amendment of s 524 (Notice of hearing)

Clause 94 amends section 524(1)(a) to (d) by omitting 'the person' and replacing it with 'the patient seeking transfer' to clarify that the tribunal must give written notice of the hearing of the application to the person seeking transfer.

Amendment of s 525 (Decision on application)

Clause 95 replaces section 525(1) and (2) with new section 525(1) and (2), which provides a new set of criteria that the tribunal must consider when deciding whether to approve a transfer out of Queensland.

New section 525(1) provides that when deciding the application, the tribunal must, to the greatest extent practicable, take into account the views, wishes and preferences of the patient seeking transfer and approve, or refuse to approve, the transfer.

New section 525(2) provides that the tribunal may approve the transfer only if satisfied:

- the transfer is appropriate in the circumstances; and
- either:
  - if an authorised mental health service is responsible for the patient seeking transfer:

    - for an application for an interstate transfer approval – appropriate treatment and care is available for the patient seeking transfer at the interstate mental health service stated in the application; or
    - for an application for an international transfer approval – appropriate treatment and care is available for the patient seeking transfer in the country stated in the application; or
  - if the forensic disability service is responsible for the patient seeking transfer:
    - for an application for an interstate transfer approval – appropriate care is available for the patient seeking transfer at the interstate mental health service stated in the application; or
    - for an application for an interstate transfer approval – appropriate care is available for the patient seeking transfer in the country stated in the application; and
- the arrangements for the transfer are adequate to protect the safety of the community; and
- for an application for an interstate transfer approval – the transfer is, or may be, permitted under a law of the State in which the interstate mental health service stated in the application is located.

Replacement of ss 526-528

Clause 96 replaces sections 526 to 528 with new sections 526 (When interstate transfer approval or international transfer approval takes effect), 527 (Transport of patient seeking transfer under interstate transfer approval), 527A (Transport of patient seeking transfer under international transfer approval) and 528 (Effect on order) to provide clarity about when an interstate transfer approval or an international transfer approval takes effect, the transport arrangements for interstate transfer approvals and international transfer approvals and the effect of an approval on a forensic order (mental health), forensic order (disability) or treatment support order.

New section 526 states that an interstate transfer approval, or an international transfer approval, takes effect on the granting of the approval, or if the tribunal imposes one or more conditions on the approval that must be satisfied before the approval takes effect—when all of the conditions are satisfied.

New section 527(1) states that this section applies if an interstate travel approval is in effect. New section 527(2) provides that the patient seeking transfer may be transported under the approval by the stated entity, if the approval states that a particular entity may transport the patient seeking transfer under the approval, or otherwise:

- an authorised person; or
- an authorised practitioner under the Forensic Disability Act, if the patient seeking transfer is to be transported from the forensic disability service; or
- a person who is authorised under a corresponding law to transport the patient seeking transfer from the responsible service for the patient seeking transfer to the interstate mental health service stated in the approval.

New section 527(3) provides that as soon as practicable after the approval takes effect, the administrator of the responsible service for the patient seeking transfer must arrange for the

patient to be transported to the interstate mental health service stated in the approval by an entity authorised to transport the patient under subsection (2).

New section 527A(1) provides that this section applies if an international transfer approval is in effect. New section 527A(2) provides that the patient seeking transfer may be transported under the approval by the stated entity, if the approval states that a particular entity may transport the patient under the approval, or otherwise:

- an authorised person; or
- an authorised practitioner under the Forensic Disability Act, if the patient seeking transfer is to be transported from the forensic disability services.

New section 527A(3) provides that as soon as practicable after the approval takes effect, the administrator of the responsible service for the patient seeking transfer must arrange for the patient to be transported to the country stated in the approval by an entity authorised to transport the patient under subsection (2).

New section 528(1) provides that this section applies to a forensic order (mental health), forensic order (disability) or treatment support order to which a patient seeking transfer is subject when the patient is transferred under an interstate transfer approval or an international transfer approval.

New section 528(2) provides that the order has effect only if the patient seeking transfer returns to Queensland and while the patient is in Queensland.

New section 528(3) provides that the order ends on the last day of any non-revocation period for the order if, on that day, the transferred patient has been out of Queensland for a continuous period of at least 3 years or, if paragraph (a) does not apply, if the transferred patient has been out of Queensland for a continuous period of 3 years.

New section 528(4) provides for this section a definition of *out of Queensland*.

Amendment of s 532 (Definitions for pt 2)

Clause 97 removes the reference to section 322(3) contained in the definition of *decision notice* in section 532, being an information notice given by the Chief Psychiatrist to a victim of crime, as a decision notice to which chapter 13, part 2 applies.

Amendment of s 740 (Appointment of representative)

Clause 98 amends section 740(5) by omitting ‘ability to understand the nature and effect of a decision to waive the right, and the ability to make and communicate the decision’ and replacing it with ‘ability to (a) understand the nature and effect of the decision to waive the right; and (b) freely and voluntarily make, and communicate, the decision to waive the right.’. This amendment is intended to clarify the rights and liberties of a person to waive their rights to appointed representation.

Amendment of s 776 (Definitions for ch 17)

Clause 99 inserts into section 776 a definition of a *relevant person* for the purposes of chapter 17.

Replacement of ss 778 and 779

Clause 100 replaces sections 778 and 779 with new section 778 (Offence to use or disclose personal information), which updates the drafting of the offence provision for the inappropriate use or disclosure of personal information.

New section 778(1) provides that this section applies to a person who is, or has been, a relevant person and acquires, or acquired, personal information in the person's capacity as a relevant person.

New section 778(2) provides it is an offence for the person to use the personal information or disclose the information to anyone else. The maximum penalty for an offence against this section is 100 penalty units.

New section 778(3) provides that the relevant person may use or disclose personal information:

- to the extent necessary to allow the person to perform the person's functions under this Act or another relevant person to perform the other person's functions under this Act; or
- if the use or disclosure if permitted under part 3 or is otherwise required or permitted by law; or
- if the person to whom the information relates consents to the use or disclosure.

Amendment of s 781 (Disclosure to identify and offer support to victims)

Clause 101 amends section 781(2) by omitting 'information to assist in the identification of a person who is, or may be, a victim for the purpose of offering support services to the person' and replacing it with 'information (a) to offer support services to a person who is, or may be, a victim; or (b) to assist in the identification of a person mentioned in paragraph (a) for the purpose mentioned in that paragraph '. This is to clarify that an employee of the department, a Hospital and Health Service or another government entity may use or disclose personal information to assist in the identification of a person who is, or may be, a victim for the purpose of offering support services to the person, or for the purpose of offering support services to a person who is, or may be, a victim on an ongoing basis where necessary.

Amendment of s 797 (Protection of official from liability)

Clause 102 amends the definition of *official* in section 797(4) by:

- inserting after paragraph (a) '(aa) the chief psychiatrist; or (ab) the director of forensic disability; or';
- by omitting from paragraph (g) the reference to paragraph '(f)' and replacing it with a reference to paragraph '(h)'; and
- renumbering paragraphs (aa) to (g) as paragraphs (b) to (i).

The insertion of the two statutory positions into section 797 will remove the requirement for the Chief Psychiatrist and the Director of Forensic Disability to apply for individual indemnities for any civil liability that may arise while they perform a function or exercising a power under the Act.

Replacement of ch 21, hdg (Transitional provision for Hospital Foundations Act 2018)

Clause 103 replaces the heading of chapter 21 with new chapter 21, part 1 heading (Transitional provision for Hospital Foundations Act 2018).

Insertion of new ch 21, pt 2

Clause 104 inserts a new chapter 21, part 2 (Transitional provisions for Health and Other Legislation Amendment Act 2021) which consists of sections 865 (Definitions for part), 866 (Application of new s 117A to reference made before commencement), 867 (Application of new s 157A to reference made before commencement), 868 (Application of new ss 317, 322 and 323), 869 (Apprehension and transport of persons), 870 (Application of new s 509), 871 (Application of new ch 12, pt 10) and 872 (Application of new s 778), which provide for various transitional matters which are required as a result of the amendments made by the Bill.

New section 865 provides for this part definitions of *former* and *new*.

New section 866 provides that this section applies if before the commencement, a reference in relation to a person was made to the Mental Health Court and immediately before the commencement the reference had not been decided by the court. This section also applies if after the commencement, a reference in relation to a person was made to the Mental Health Court and the offence in relation to the reference was allegedly committed before the commencement. In these circumstances, new section 117A applies in relation to the reference.

In practice, if a matter has not been determined by the Mental Health Court, the Court may not make a decision under section 116(1)(a) or (b) of the Mental Health Act if the court is satisfied there is a substantial dispute about a fact that is material to an opinion stated in an expert's report received in evidence by the court on the reference.

New section 867 provides that this section applies if before the commencement, a reference in relation to a person was made to the Mental Health Court and immediately before the commencement the reference had not been decided by the court. This section also applies if after the commencement, a reference in relation to a person was made to the Mental Health Court and the offence in relation to the reference was allegedly committed before the commencement. In these circumstances, new section 157A applies in relation to the reference. New section 157A will allow an expert report received in evidence by the Mental Health Court to be admissible in a proceeding before the Magistrates Court in dealing with a complaint for a simple offence.

New section 868 provides that new sections 317, 322 and 323 (inserting new requirements for information notices) apply in relation to an information notice in effect under chapter 10, part 6 from the commencement, whether the notice was made before or after the commencement.

New section 869 provides that new section 368 applies in relation to the apprehension and transport of a person from the commencement, whether the apprehension authority was issued before or after the commencement. New section 368 allows a broader range of authorised persons than just interstate police officers to apprehend a person who is absent from an interstate mental health service.

New section 870 provides that new section 509 applies in relation to the application if before commencement, an application for an approval was made under former section 507 and

immediately before the commencement, the application had not been decided. New section 509 sets out the matters the tribunal must consider in deciding an application for approval for electroconvulsive therapy.

New section 871 provides that new chapter 12, part 10 (interstate or international transfer of patient) applies in relation to the application if before the commencement, an application for an approval was made under former section 507 and immediately before the commencement, the application had not been decided. New section 871(3) provides that if the application does not include information required under new section 515, the tribunal must give the applicant a written request for the information, and if the applicant complies with the request within any period stated in the request the tribunal must not refuse the application merely because the application did not include the information when it was made. New section 871(4) provides that new chapter 12, part 10 also applies in relation to a person who is subject to an interstate forensic order, forensic order (mental health), forensic order (disability) or treatment support order, whether the order was made before or after commencement.

New section 872 provides that new section 778 (which applies the provisions about unauthorised disclosure of personal information to a broader range of persons) applies to a person mentioned in section 778(1) whether the person acquired or acquires the personal information before or after the commencement.

Amendment of sch 3 (Dictionary)

Clause 105 amends schedule 3 to:

- omit the definitions of *interstate transfer requirements* and *relevant person*;
- insert new definitions of *international transfer approval*, *interstate transfer approval*, *patient seeking transfer*, *relevant day*, *relevant person* and *responsible service* to support the new or amended provisions in relation to interstate and international transfers; and
- amend paragraph (a) of the definition of *interested person* by omitting ‘supported’ and replacing with ‘support’.

Division 4 Amendment of Public Health (Infection Control for Personal Appearance Services) Act 2003

Act amended

Clause 106 states this division amends the *Public Health (Infection Control for Personal Appearance Services) Act 2003*.

Amendment of s 44 (Applications for renewal of licence)

Clause 107 amends section 44(2) by omitting ‘at least 1 month’ and replacing it with ‘within 60 days’ to increase the timeframes for when a person can apply for a renewal of a licence prior to expiry. This is intended to support applicants applying for a renewal earlier to allow local governments, who assess the applications, to have more time to consider the application and make a decision before the licence expires. The timeframe of ‘within 60 days’ aligns with other licensing schemes administered by local governments, such as under the *Food Act 2006*.

Clause 107(2) replaces section 44(5)(a) with new sections 44(5)(a) and 44(5)(aa). New section 44(5)(a) clarifies that the local government may have regard to a person’s suitability to hold a

licence under section 35 of the Act. New section 44(5)(aa) clarifies that the local government may have regard to whether the premises, at which high risk personal appearance services are to be provided, is suitable for providing the service under section 36 of the Act.

Clause 107(3) renumbers the subsections in 44(5) as a result of the insertion of the new subsections (a) and (aa).

Amendment of s 46 (Licence taken to be in force while application for renewal is considered)

Clause 108 amends section 46(1) by omitting 'until the application is decided under section 44 or taken to have been withdrawn under section 45(2)' and replacing it with 'until the application is (a) decided under section 44; or (b) taken to have been withdrawn under section 45(2); or (c) otherwise withdrawn.'. The amendment is intended to clarify a licence will continue where the applicant has applied for a renewal, but a decision has not yet been made by the local government or the application is withdrawn.

Insertion of new pt 4, div 2A

Clause 109 inserts new part 4, division 2A (Restoration of licences), which consists of new sections 46A (Applications for restoration of licence), 46B (Inquiries into application for restoration of licence) and 46C (Expired licence taken to be in force while application for restoration is considered).

New section 46A(1), (2) and (3) provides that if a person's licence expires, the person may apply to the local government that issued the licence for the restoration of the licence. The application must comply with section 58 and be made within 30 days after the licence expires.

New section 46A(4) provides that the local government must consider the application and decide to restore the licence, restore the licence subject to conditions or refuse to restore the licence.

New section 46A(5) provides that in deciding whether to grant the application, the local government may have regard to:

- whether, under section 35, the applicant is a suitable person to hold the licence; and
- whether, under section 36, the premises at which higher risk personal appearance services are to be provided under the licence are suitable for providing the services; and
- the results of inspections to monitor compliance with this Act during the term of the licence that ended on the expiry of the licence.

New section 46A(6) provides that if the local government decides to restore the licence, with or without conditions:

- the local government must give the applicant notice of the decision; and
- the licence continues in force for the period of up to three years stated in the licence, or in the notice mentioned given to the applicant by the local government, starting on the day the licence would have expired but for new section 46C.

New section 46A(7) provides that the local government must immediately give the applicant an information notice for the following decisions:

- a decision to restore the licence subject to conditions; or
- a decision to refuse to restore the licence.

New section 46A(8) provides that an expired licence may be restored, with or without conditions, by endorsing the expired licence with details of the restoration or issuing another licence.

New section 46B provides that, before deciding the application, the local government may, by notice given to the applicant, require the applicant to give the local government further information or a document the local government reasonably requires to decide the application. The notice must provide the applicant with at least 40 days to address the requirements for the further information or documents stated in the notice. The applicant is taken to have withdrawn the application if the applicant does not comply with the stated requirement within the stated period.

New section 46C provides that if an application is made under section 46A, the expired licence is taken to be in force from the day after the licence would otherwise have expired and until the application is decided under section 46A, taken to have been withdrawn under section 46(B(2) or otherwise withdrawn. If the application is refused, the expired licence continues in force until the information notice for the decision is given to the applicant. This section does not apply if the licence is earlier suspended or cancelled.

Amendment of s 58 (Applications)

Clause 110 inserts new paragraph 58(1)(ba) which makes a consequential amendment to include an application for a restoration of a licence under section 46A. This will require any application for the restoration of a licence to be in the approved form, be signed by, or for, the applicant and be accompanied by the fee for the application.

Clause 110(2) renumbers section 58(1)(ba) to (d) to section 58(1)(c) to (e).

Insertion of new pt 10, div 1, hdg

Clause 111 inserts a new division heading (Division 1 Transitional provisions for Act No. 81 of 2003) into part 10, division 1, before section 149.

Insertion of new pt 10, div 2

Clause 112 inserts a new division heading (Division 2 Transitional provisions for Health and Other Legislation Amendment Act 2021) into part 10, division 2, which consists of new sections 161 (Continuing application of former pt 4, div 2) and 162 (Application of pt 4, div 2A).

New section 161 provides that this section applies if before the commencement, a person made an application under former section 44 and immediately before the commencement, the application had not been decided under former section 44, was not taken to have been withdrawn under section 45(2), or had not been not otherwise withdrawn. Former part 4, division 2 continues to apply in relation to the application as if the Health and Other Legislation Amendment Act 2021 had not commenced.

New section 162 provides that this section applies if a person's licence expired before the commencement and on the commencement, the period under section 46A(2), for making an

application for restoration of the licence, had not expired. Part 4, division 2A applies in relation to the licence.

Division 5 Amendment of Radiation Safety Act 1999

Act amended

Clause 113 states this division amends the *Radiation Safety Act 1999*.

Amendment of s 51 (Procedural requirements for applications)

Clause 114 omits section 51(1)(c)(ii) and (iii) and renumbers section 51(1)(c)(iv), as a result of the omission, to section 51(1)(c)(ii).

Clause 114(3) inserts new section 51(1A) which provides that if the application is for an Act instrument, the application must also be accompanied by proof, to the satisfaction of the chief executive, of the individual's identity if the applicant is an individual, or proof, to the satisfaction of the chief executive, of the nominated person's identity if the applicant is required to appoint a nominated person.

As the administrating agency for the Radiation Safety Act, Queensland Health will publish information on its website to inform applicants about what is considered by the chief executive to be acceptable forms of identification, such as an Australian Driver's Licence or other forms of identification.

Clause 114(4) omits from section 51(6) the reference to subsection (5)(b) and replaces with a reference to subsection (6)(b).

Clause 114(5) renumbers the subsections in section 51 as a result of the inclusion of subsection (1A).

Division 6 Amendment of Transplantation and Anatomy Act 1979

Act amended

Clause 115 states this division amends the *Transplantation and Anatomy Act 1979*.

Amendment of s 4 (Interpretation)

Clause 116 replaces the definition of *tissue* in section 4 to specifically exclude human milk. Human milk will not be regulated in Queensland as tissue under the Transplantation and Anatomy Act but will continue to be regulated under the requirements of the *Food Act 2006*.

Part 4 Minor and consequential amendments

Acts amended

Clause 117 provides that schedule 1 amends the Acts it mentions.

Schedule 1 Minor and consequential amendments

Part 1 Amendments commencing on assent

Corrective Services Act 2006

Clause 1 amends paragraph (a) of the definition of *targeted substance* in section 306A. This amendment is required as the current definition references the *Health Act 1937*, which was repealed and replaced by the *Medicines and Poisons Act 2019*. The Medicines and Poisons Act commenced on 27 September 2021.

Water Supply (Safety and Reliability) Act 2008

Clause 1 replaces section 399F(1)(h) by replacing the reference to the '*Pest Management Act 2001*' and replacing it with a reference to the '*Medicines and Poisons Act 2019*, to the extent it applies to a pest control activity as defined under that Act'. This amendment is required as the Pest Management Act was repealed and replaced by the Medicines and Poisons Act, which commenced on 27 September 2021.

Part 2 Amendments commencing by proclamation

Ambulance Service Act 1991

Clause 1 omits 'is authorised to' and replaces it with the word 'may' in sections 50G(1), 50I(1), 50J(1), 50K, 50M(1) and (2), 50N, 50O and 50S(1). This is to align the wording of the confidentiality provisions in the Act with those in the Hospital and Health Boards Act 2011.

Mental Health Act 2016

Clause 1 omits the reference to section 368(4) of the Act and replaces it with a reference to section 368(3)(b) in sections 11(c), 200(b), 237(1)(b), 243 (definition of *relevant patient*, paragraph (b)) and 632(1)(b) as a result of the amendment to section 368.

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

Clause 1 replaces the editor's note with a standard note in section 49(5) which provides that sections 35 and 36 state the matters a local government may have regard to in deciding whether a person is a suitable person to hold a licence or whether premises at which higher risk personal appearance services are to be provided are suitable for providing the services.

Clause 2 replaces the editor's note with a standard note in section 51(2) which provides that section 35 states the matters a local government may have regard to in deciding whether a person is a suitable person to hold a licence.

Clause 3 replaces the editor's note with a standard note in section 88(1) which provides that section 115 relates to false or misleading statements.

Radiation Safety Act 1999

Clause 1 replaces the editor's note with a standard note in section 29(2) which provides that under section 51(3) and (4)(a), an application for a possession licence must be accompanied by

the proposed radiation safety and protection plan for the radiation practice for which the applicant wants to possess a radiation source.

Clause 2 amends the note in section 34B(3) to replace the reference to 51(3)(b) with a reference to section 51(4)(b).

Clause 3 replaces the editor's note with a standard note in section 53(1)(b) which provides that justification is a radiation safety, protection and security principle under section 5.

Clause 4 replaces the editor's note with a standard note in section 53(1)(c) which provides that under section 51(3) and (4)(a), an application for a possession licence must be accompanied by the proposed radiation safety and protection plan for the radiation practice for which the applicant wants to possess a radiation source.