Parliamentary Committees



Health and Other Legislation Amendment Bill 2022

Report No. 29, 57th Parliament
Health and Environment Committee
February 2023

Health and Environment Committee

Chair	Mr Aaron Harper MP, Member for Thuringowa
Deputy Chair	Mr Robert (Rob) Molhoek MP, Member for Southport
Members	Mr Stephen (Steve) Andrew MP, Member for Mirani
	Ms Ali King MP, Member for Pumicestone
	Mr Samuel (Sam) O'Connor MP, Member for Bonney
	Ms Joan Pease MP, Member for Lytton

Committee Secretariat

Telephone	+61 7 3553 6626
Email	hec@parliament.qld.gov.au
Technical Scrutiny Secretariat	+61 7 3553 6601
Committee webpage	www.parliament.qld.gov.au/HEC

Acknowledgements

The committee acknowledges the assistance provided by Queensland Health and the Department of Justice and Attorney-General.

All web address references are current at the time of publishing.

Contents

Chair's foreword

On behalf of the Health and Environment Committee, I present this report on the committee's examination of the Health and Other Legislation Amendment Bill 2022.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

This report summarises the committee's examination of the Bill, including the views expressed in submissions and by witnesses at the committee's public hearing.

On behalf of the committee, I thank those who made written submissions to the inquiry into the Bill and provided evidence at the public hearing. I also thank officers from Queensland Health and the Department of Justice and Attorney-General, and our Parliamentary Service staff.

I commend this report to the House.

Aaron Harper MP
Chair

Recommendations

Executive Summary

The stated objectives of the Bill are to 'facilitate initiatives that promote Queenslanders' health, to support the provision of health services in Queensland and to improve the operation of health portfolio and related legislation'. The Bill proposes amendments to 8 Acts in respect of the following:

- *Hospital and Health Boards Act 2011* – staff health, safety and wellbeing measures; and security guard powers at health facilities
- *Medicines and Poisons Act 2019* – disclosures of confidential information about persons working with medicines and poisons; clarifying terms used in pest control/fumigation activities
- *Recording of Evidence Act 1962* – recording of tribunal proceedings and access to transcripts
- *Mental Health Act 2016* – Mental Health Review Tribunal - representation and access to records
- *Public Health Act 2005* – school vision screening program; Cancer Register notifications and data
- *Radiation Safety Act 1999* – disposal exemptions for low risk radioactive material; new offence of failure to ensure a person does not receive greater than a specified dose of ionising radiation
- *Transplantation and Anatomy Act 1979* – changed requirements for doctors to purchase TGA approved human tissue products; consistent consent processes for tissue and organ donation across public and private hospitals
- *Water Fluoridation Act 2008* – change to water fluoridation decision notification requirements.

The Health and Environment Committee (the committee) received 12 submissions to its inquiry. Submitters were concerned mainly with the Bill's proposed amendments to the *Hospital and Health Boards Act 2011*, and to the *Recording of Evidence Act 1962* and the *Mental Health Act 2016*.

Submitters were supportive of the proposal to require Hospital and Health Services and Hospital and Health Boards to promote cultures and implement measures to support the health, safety and wellbeing of public sector health service staff.

The changes to the *Recording of Evidence Act 1962* proposed by the Bill to facilitate the electronic recording of evidence before tribunals were supported by submitters as fundamental to the contemporary administration of justice. In particular there was support for the Mental Health Review Tribunal's transition to electronic recording of its proceedings, although submitters raised issues about the implementation of the proposed requirements.

Stakeholders also submitted in regard to the Bill's proposed amendments to the *Medicines and Poisons Act 2019* to allow the chief executive to disclose information on the administrative action and substance authority registers where it is in the public interest to do so.

The committee identified and considered issues of fundamental legislative principle in the Bill and is satisfied that sufficient regard has been given to the rights and liberties of individuals and the institution of Parliament, and that any potential breaches of fundamental legislative principle are justified. The committee also identified and considered human rights issues engaged by the Bill. Having considered the issues and the explanations provided in the statement of compatibility the committee is satisfied that the Bill is compatible with the *Human Rights Act 2019*.

The committee has recommended that the Bill be passed.

The committee has also made 4 recommendations which relate to:

- Hospital and Health Services and Hospital and Health Boards reporting on their wellbeing plans
- further information about the proposals relating to the disclosure of information on the administrative action register under the *Medicines and Poisons Act 2019*
- implementation of the amendments to ensure there are no barriers to the Mental Health Review Tribunal's ability to record its proceedings and share records of hearings
- expanding the list of notifiable cancers in future Public Health Regulation 2018 amendments.

1 Introduction

1.1 Policy objectives of the Bill

The objectives of the Bill are to 'facilitate initiatives that promote Queenslanders' health, to support the provision of health services in Queensland and to improve the operation of health portfolio and related legislation'.[1] The Bill proposes amendments to 8 Acts including:

- requiring Hospital and Health Boards and Hospital and Health Services to proactively consider ways to support staff health, safety and wellbeing – *Hospital and Health Boards Act 2011* (HHBA)
- allowing disclosure of information about individuals working with medicines or poisons, if in the public interest – *Medicines and Poisons Act 2019* (MPA)
- enabling Qld Health to disclose confidential medicines and poisons information for regulation, safety and compliance purposes – MPA
- clarifying the meanings of fumigation activity, pest control activity and the definition of primary producer, in relation to authorisation for use of fumigants and pesticides – MPA
- establishing a statutory framework for recording tribunal proceedings and providing access to records and transcripts – *Recording of Evidence Act 1962* (REA)
- clarifying and restricting access to copies of records or transcriptions of Mental Health Review Tribunal proceedings – *Mental Health Act 2016* (MHA)
- changing requirements for adults waiving the right to representation in Mental Health Review Tribunal proceedings – MHA
- authorising schools to disclose student information to Queensland Health (QH's) vision screening health service – *Public Health Act 2005* (PHA)
- extending notification requirements for the Queensland Cancer Register and enabling additional data to be collected – PHA
- creating a new offence for failure to ensure a person does not receive greater than a specified dose of ionising radiation – *Radiation Safety Act 1999* (RSA)
- enabling low risk radioactive material to be exempted from requirements (e.g. disposal requirements) – RSA
- changing requirements for doctors to purchase human tissue products approved by the Therapeutic Goods Administration's 'Special Access Scheme' – *Transplantation and Anatomy Act 1979* (TAA)
- ensuring consistent consent processes for human tissue and organ donation across public and private hospitals – TAA
- removing the requirement for print newspaper publication of water fluoridation decision and implementation notices – *Water Fluoridation Act 2008* (WFA).

1.2 Should the Bill be passed?

The committee is required to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends the Health and Other Legislation Amendment Bill 2022 be passed.

[1] Explanatory notes, p 1.

2 Examination of the Bill

This section discusses key issues raised during the committee's examination of the Bill. It does not discuss all consequential, minor or technical amendments.

Our deliberations included assessing whether or not the Bill complies with the Parliament's requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* (LSA) and the *Human Rights Act 2019* (HRA). Issues related to fundamental legislative principles and our assessment of the Bill's compliance with the LSA are discussed in section 2.8. Our assessment of the Bill's compatibility with the HRA is included in section 2.9 of this report.

2.1 *Hospital and Health Boards Act 2011*

- The Bill amends the *Hospital and Health Boards Act 2011* (HHBA) to:
  - strengthen protections for the physical and psychological wellbeing of the public health workforce by requiring Hospital and Health Boards (HHBs) and Hospital and Health Services (HHSs) to proactively consider the health, safety and wellbeing of staff of public sector health service facilities.
  - reinforce the right to access health services under the *Human Rights Act 2019* by clarifying when healthcare security officers can direct persons to leave public healthcare premises.

2.1.1 Staff wellbeing

- While there are various work health and safety obligations imposed under Queensland and Commonwealth legislation to protect staff wellbeing in workplaces generally, there are no protections specific to the public health workforce.[2]
- The submission from the Queensland Nurses and Midwives' Union (QNMU) to the inquiry noted the results of their own membership surveys that have identified workplace violence, demanding and dangerous workloads, moral distress and fatigue/burnout as key wellbeing issues for their members.[3]
- Similarly, the Australian Medical Association Queensland (AMA Queensland) observed that a survey it sends to its members working in HHSs (the 'resident hospital health check') has consistently revealed feedback from a significant number of doctors saying that they have experienced workplace bullying or harassment and feelings of stress, with incidents of suicide amongst doctors also being reported. AMA Queensland passes the survey feedback onto the HHSs to keep them informed about staff wellbeing concerns.[4]

2.1.1.1 Wellbeing measures – Bill reforms

- Recognising that the public health workforce operates in what is often a high-pressure, challenging environment, the Bill aims to strengthen protections for the wellbeing of workers in Queensland's public health services, including clinical, administrative and operational staff.
- The term 'wellbeing', for the HHBA, refers to health, safety and wellbeing, including physical and psychological health, safety and wellbeing, emotional wellbeing and cultural safety.
- The Bill requires HHSs (which provide public health services) and HHBs (which govern HHSs) to proactively consider ways of supporting staff wellbeing in Queensland's public sector health service facilities, including staff performing community or home-based work. The requirement

2 Explanatory notes, p 2.

3 Submission 12, p 4.

4 Public hearing transcript, Brisbane, 31 January 2023, pp 3-4.

is intended to complement and contribute to broader compliance activities required under existing work health and safety legislation.[5]

- Section 19 of the HHBA sets out the functions of HHSs, including the matters to which HHSs must have regard in the performance of their functions. Section 22 of the HHBA sets out the matters that HHBs must consider in their role of controlling HHSs.
- The Bill amends ss 19 and 22 to insert one new factor, which is to require the 16 HHSs and corresponding HHBs to proactively consider the wellbeing of staff of public sector health service facilities, and to have regard to promoting a culture, and implementing measures, that support the wellbeing of their staff.
- The amendments make staff wellbeing a visible consideration for planning and service delivery for Queensland's public health services, although, to accommodate the diverse communities and operating contexts of the various HHSs and HHBs across Queensland, the Bill allows flexibility in how HHSs and HHBs may meet the new staff wellbeing requirements. It does not compel specific actions.
- As noted by Queensland Health (QH), wellbeing 'activities' can be varied, including things like:
  - wellbeing check-ins
  - wellbeing monitoring programs
  - peer support programs
  - nutritional food options
  - flexible work arrangements
  - interventions for prominent health risks like fatigue, vicarious trauma and occupational violence
  - designing healthy workplaces
  - promoting staff consultation measures
  - providing details of how staff wellbeing issues have been taken into account.[6]

2.1.1.2 Submitter feedback

- The QNMU submitted its recommendation that formal plans be developed with identified targets and publicly communicated. At the public hearing QNMU reiterated its view that any wellbeing plan should be made publicly available to enable appropriate accountability with regular reporting against the goals.[7]
- Similarly, AMA Queensland welcomed the wellbeing amendments, advocating for independent evaluation of all measures implemented by each HHS in support of the amendments, and that these evaluations be made public on an annual basis.[8]
- The Australian Workers' Union of Employees, Queensland (AWUEQ) submitted that, in its view, it is unclear how the proposed amendments will meet their objectives without including explicit references to the existence of other work health and safety legislation (Acts, regulations and codes of practice), submitting that s 66 of the HHBA ('conditions of employment') should be amended to refer to that other relevant work health and safety legislation. They reiterated this concern at the public hearing.[9]

---

5 Queensland Health, correspondence, 12 December 2022, p 1.

6 Public briefing transcript, Brisbane, 31 January 2023, p 3.

7 Submission 12, p 5; public hearing transcript, Brisbane, 31 January 2023, p 5.

8 Submission 6, p 2 (attachment).

9 Submission 13, p 3; public hearing transcript, Brisbane, 31 January 2023, p 9.

- QH addressed the AWUEQ's concerns at the public briefing, advising:

> Clauses 5 and 6 of the bill make staff wellbeing a mandatory consideration for HHSs and boards as they go about their functions. References to the work health and safety framework are not required to ensure there is proactive consideration of staff wellbeing. The bill as drafted already does this and work health and safety references will not make the obligations any stronger.
>
> The bill does not refer to the work health and safety framework because, as a matter of statutory interpretation and drafting practice, all aspects of that framework exist and apply independently of the bill. Cross-references are not required. The explanatory notes for the bill are very clear about this. The staff wellbeing obligations still complement work health and safety laws without specific reference to those laws because it is open for the obligations to be complied with through activities that are also relevant to work health and safety requirements. However, it is important to note that the staff wellbeing obligations are also broader than this and can be complied with in other ways, such as the ones I mentioned earlier.
>
> Referring to work health and safety legislation may hamper innovative thinking about good staff wellbeing practices, which is certainly not what we want. Those are the key reasons why the bill will achieve what it is setting out to achieve in relation to staff wellbeing, why there are no specific references to work health and safety legislation and why that is not a concern.[10]

- In respect of the other concerns raised, QH has advised that the amendments 'are not intended to create specific new compliance measures'[11] nor were they intended to be onerous.[12]
- QH noted that compliance measures and other specific accountability mechanisms are the remit of the work health and safety framework which will continue to apply (e.g. the requirement to identify and manage psychosocial hazards).[13] QH also noted that compliance with the new wellbeing obligations 'can complement and contribute to compliance with the work health and safety legislation'.[14]

Committee comment

Establishing a legislated requirement for HHSs and HHBs to promote cultures and implement measures to support the health, safety and wellbeing of staff working in Queensland's public sector health service facilities is a worthwhile and positive step, not only for this vital workforce but for the patients they treat.

In order to monitor progress and assess the utility of measures implemented, the committee recommends that HHSs and HHBs regularly report on their progress on supporting staff health, safety and wellbeing, at a minimum in their annual reports.

Recommendation 2

The committee recommends that Hospital and Health Services and Hospital and Health Boards regularly report on their progress on supporting staff health, safety and wellbeing, at a minimum in their annual reports.

10 Public briefing transcript, Brisbane, 31 January 2023, pp 3-4.

11 Public briefing transcript, Brisbane, 31 January 2023, p 3.

12 Public briefing transcript, Brisbane, 16 December 2022, p 4.

13 Public briefing transcript, Brisbane, 31 January 2023, p 3.

14 Public briefing transcript, Brisbane, 16 December 2022, p 2.

2.1.2 Power to direct persons to leave public health facilities

- The second key amendment to the HHBA aims to emphasise the right to access health services under the HRA by clarifying when healthcare security officers (security officers) can direct persons to leave public health premises.
- Security officers are appointed by HHS chief executives under the HHBA to exercise security powers in respect of health service land.
- Section 183 of the HHBA currently authorises security officers to direct a person to leave HHS land, or part of the land, if they are causing a public nuisance by being disorderly or creating a disturbance.
- Security officers may also direct a person to leave in related circumstances, including where an officer reasonably believes or suspects that a person has just caused a public nuisance, a person may pose a threat to the safety of anyone else on the land, or a person has no lawful justification or excuse to be on the land.
- The power to be able to direct a person to leave a health facility engages human rights considerations, particularly s 37 of the HRA which provides in subsection (1) a right to access health services without discrimination, and in subsection (2) that a person must not be refused emergency medical treatment that is immediately necessary to save their life or to prevent serious impairment to them.
- The explanatory notes advise that often healthcare staff have already engaged with a person and considered medical needs before security assistance is requested and the person directed to leave. In its submission, the AWUEQ asserted that its members have recounted a different lived experience around this issue to that outlined in the explanatory notes.[15]
- The explanatory notes advise that where medical need is not already apparent/clear, it is operational practice for security officers to contact clinical staff to ensure that directing the person to leave is appropriate.[16]

2.1.2.1 Power to direct persons to leave public health facilities – Bill reforms

- The Bill inserts a new requirement into s 183 of the HHBA that reflects s 37(2) of the HRA, echoing its guarantee that a person must not be refused emergency medical treatment that is immediately necessary to save their life or to prevent serious impairment. The amendments to s 183 will provide that a security officer must not direct a person to leave health services land, or part of the land, if the person requires emergency medical treatment that is immediately necessary to save their life or to prevent serious impairment.
- A person's medical need for emergency care is an objective determination that will continue to be based on clinical advice, with security officers acting on the clinical assessments and direction of clinical staff. Security officers will not be responsible for making clinical decisions about patient care.[17]
- The explanatory notes advise that 'this objective requirement reinforces [existing] operational practice for healthcare security officers to communicate with healthcare staff about a person's medical needs. Healthcare staff will therefore remain responsible for making clinical decisions about the urgency and seriousness of health care before a person is given a direction to leave Hospital and Health Service land'.[18]

---

15 Submission 13, p 4.

16 Explanatory notes, pp 3, 11.

17 Public briefing transcript, Brisbane, 16 December 2022, pp 5-6.

18 Explanatory notes, p 11; see also Queensland Health, correspondence, 12 December 2022, p 2.

- The submission from the AWUEQ acknowledged the explanatory notes' advice that clinical decisions about urgency and seriousness of health care will remain the responsibility of clinical staff, and not security officers, but expressed concern that this was not explicit in the proposed amendment to s 183. They contended that the wording should be changed to state [that a security officer must not direct a person to leave] if the person 'has been assessed by a clinician as requiring' emergency medical treatment.
- The response from QH reiterated that medical need will continue to be determined based on clinical advice, with security officers not responsible for making clinical care decisions.[19] As QH noted at the committee's public briefing:

> The bill is clear that if emergency medical treatment is required the person cannot be directed to leave. It is not relevant whether a security officer reasonably believes, or thinks in good faith, that a person does not need help. The question is objectively: does the person require emergency medical treatment? Security officers cannot answer this question, so the responsibility remains with clinical staff.[20]

2.2 *Medicines and Poisons Act 2019*

- The Bill amends the MPA in 3 key ways by:
  - enabling disclosure of information about approvals for persons working with medicines and poisons, or administrative action taken against persons who have improperly dealt with medicines and poisons, if disclosure is in the public interest
  - ensuring QH can disclose confidential medicines and poisons information to a HHS, Veterinary Surgeons Board of Queensland (VSBQ), and law enforcement agencies for regulation, safety and compliance purposes
  - making operational and technical amendments to clarify the requirements and exemptions for certain pest management activities.

2.2.1 Current – disclosure of information from administrative action and substance authority registers

- QH is required to maintain an administrative action register and a substance authority register under ss 228 – 230 of the MPA.
- The administrative action register records details of administrative action taken against persons who have inappropriately dealt with medicines and poisons, such as a change of conditions on an authority, suspension of an authority, or cancellation of a licence or approval. One example would be action taken to remove the authority for a doctor to prescribe particular medications.
- The substance authority register contains information about licences and authorities granted to persons or businesses that deal with medicines and poisons.
- The registers were intended to be an information source from which someone could confirm that a person has appropriate approvals to deal with medicines or poisons. There are myriad circumstances under which someone might seek, or benefit from, such information, including – councils investigating suspected illegal/unapproved baiting activity; a contractor checking that a wholesale poisons supplier they are purchasing from is licensed; or a resident verifying the credentials of an in-home pest treatment service to ensure that they have the correct approvals for the work they are being engaged to do.[21]

---

19 Queensland Health, correspondence, 20 January 2023, p 2.

20 Public briefing transcript, Brisbane, 31 January 2023, p 4.

21 Explanatory notes, p 4.

- Two key barriers have been identified to the registers being able to fulfil their purpose, being that, although the MPA permits the chief executive of QH to publish the registers on QH's website:
  - there is no provision for information from the registers to be directly provided or disclosed in answer to a query made to QH
  - there are limitations on disclosing confidential information (e.g. identity information).[22]
- Section 231(2) of the MPA prohibits the chief executive from including confidential information on a public register unless satisfied that the inclusion is 'reasonably necessary to avoid a health risk' and that the inclusion 'will not place a person at risk of harm'. The 'harm' for the threshold test is unspecified by type or severity. As the chief executive cannot satisfy themselves that publication of confidential information will not cause *any* risk of harm to *any* person, the registers have not been published online.[23]
- The explanatory notes acknowledge that publishing the registers without including confidential identifying information is futile, as identifying information is needed to resolve enquiries/concerns about a particular person's authority to work with medicines or poisons.[24]

2.2.2 Proposed – disclosure of information from administrative action and substance authority registers

- The Bill aims to protect the community by allowing the chief executive to 'appropriately disclose' information from the registers, both by directly providing it to a person where it is in the public interest, and by publishing information from the substance authority register online.[25]
- The Bill replaces the current s 231(2) prohibition on publication of confidential information from the registers (outlined above) with giving the chief executive authority to disclose information from the registers directly to a person who makes an enquiry, if it is in the public interest. Departmental officers with a delegation from the chief executive will be given QH guidance materials to enable them to assess what is in the public interest and how to verify the legitimacy of requests for information from the registers.
- Concerns were raised about the MPA amendments by AMA Queensland and the QNMU during consultation on the draft Bill. Their concerns were about the right to natural justice for health practitioners in respect of (potentially publishing) information from the administrative action register. To address those concerns the Bill now only permits information on the administrative action register to be disclosed to individuals on a case-by-case basis where it is in the public interest, but the ability for the administrative action register to be published on the QH website has been removed.[26]
- The chief executive will still be permitted to publish the substance authority register, or information from the register, to the QH website, where it is in the public interest,[27] noting that this register 'contains practical information about the status of authorities that, unlike administrative action information, is generally not sensitive'.[28]

22 Explanatory notes, pp 4-5.

23 Explanatory notes, p 4.

24 Explanatory notes, p 4.

25 Explanatory notes, p 4.

26 Queensland Health, correspondence, 12 December 2022, p 2.

27 Public briefing transcript, Brisbane, 16 December 2022, p 3.

28 Queensland Health, correspondence, 12 December 2022, p 2.

- QH has acknowledged that 'the public [interest] test is a high bar that affords protection to health practitioners, primary producers and others with substance authorities while ensuring that public health risks can be avoided or mitigated'.[29] QH also stated that the public interest test enables consideration of a range of factors, including any likely impact on an authority holder, in determining whether it is appropriate to disclose information,[30] and that being able to disclose this information when necessary balances rights of practitioners and the safety of the public.[31]

Committee comment

Given that the factors the chief executive (or delegate) would take into account in determining whether a particular disclosure is in the public interest are not set out in legislation, the committee asks that the Minister outline in her second reading speech the process for assessing any requests for disclosure of information on the administrative action register, and how the chief executive will determine whether it is in the public interest to disclose information.

Recommendation 3

The committee recommends that the Minister outline in her second reading speech the process for assessing any requests for disclosure of information on the administrative action register, as proposed by clause 13 of the Bill, and how the chief executive will determine whether it is in the public interest to disclose information.

2.2.3 Current – disclosure of information to other entities

- Section 221 of the MPA allows QH to disclose confidential medicines and poisons information obtained in the course of their duties to certain entities if the information is reasonably necessary for the entity to exercise its functions relating to regulation, safety and compliance.
- The VSBQ and HHSs are not included in this list of entities, despite it being appropriate to share certain information with them (e.g. disclosing to the VSBQ when a veterinarian's authority to deal with medicines is suspended, and disclosing to a HHS that QH is investigating a report of lost or stolen medicines and there is suspected involvement of a HHS staff member).[32]
- QH also obtains confidential medicines and poisons information that can be relevant to disclose to the Queensland Police Service, Australian Federal Police, police services of other states and territories, and non-police agencies that perform law enforcement functions. It may be beneficial in some cases for this information to be disclosed proactively (before disclosure is compelled by law) to assist the other agency/entity to detect, investigate, prevent or prosecute an offence in relation to a substance regulated under the MPA.
- Currently s 221(d) of the MPA permits disclosure to a 'law enforcement agency', but does not provide certainty about whether a 'law enforcement agency' includes police agencies from other jurisdictions, or non-police agencies with other relevant law enforcement functions.

2.2.4 Proposed – disclosure of information to other entities

- To ensure there is no barrier to information sharing with VSBQ and HHSs for regulation, safety and compliance purposes, the Bill adds these entities to the s 221 MPA list of entities.

---

29 Public briefing transcript, Brisbane, 16 December 2022, p 3.

30 Queensland Health, correspondence, 12 December 2022, p 2.

31 Queensland Health, correspondence, 12 December 2022, p 2.

32 Explanatory notes, p 5.

- This reform will allow QH to disclose confidential medicines and poisons information arising in the performance of functions or powers under the Act to VSBQ and HHS for regulation, safety and compliance purposes.[33]
- The Bill also removes any ambiguity around the parameters of a 'law enforcement agency' for the purposes of s 221 of the MPA and clarifies that confidential information gathered under the MPA may be appropriately disclosed/shared under the authority of s 221(d) of the MPA to *all* relevant law enforcement agencies of Queensland or another jurisdiction (for the purposes of detecting, investigating, preventing or prosecuting an offence in relation to a MPA regulated substance).
- As advised by QH, the disclosure of information to the VSBQ, HHSs and law enforcement agencies will only be permitted under existing s 221(2) where 'the disclosure is reasonably necessary for the entity to exercise its functions, and the confidential information will be collected, stored and used by the entity in a way that protects the privacy of the persons to whom the information relates from unjustified intrusion'.[34]

2.2.5 Definitions – 'fumigation activity' and 'pest control activity'

- The endorsements, competencies and approvals required by pest management technicians (technicians) under the MPA differ depending on whether they are using a fumigant or pesticide, with it unclear as to whether 'mist' or 'fog' substances are fumigants or pesticides. This creates confusion as to whether a fumigation or pest control licence is required.[35]
- The Bill amends the definition of 'fumigation activity' so it refers to preparation or use of a substance to conduct existing types of fumigation activities, specifically in relation to when the substance becomes gaseous. It clarifies that use of gaseous substances, or those that start in another state but become gaseous at the time of use, that are used for the purposes below, are fumigation activities (not pest control).
- Existing types of fumigation activities are killing a pest, sterilising grain or seed to prevent germination, treating soil in which pests might be living or another prescribed activity.
- The definition of 'pest control activity' is also amended by the Bill to clarify that 'pest control activities' are activities that are not fumigation activities.[36]
- These amendments will clarify for technicians whether they should comply with the licence/other requirements for 'fumigation activities' or 'pest control activities' under the Medicines and Poisons (Pest Management Activities) Regulation 2021.[37]

2.2.6 Definition – 'primary producer'

- The MPA currently defines a 'primary producer' as a person producing or storing agricultural or horticultural products. The MPA exempts primary producers (farmers and growers) from needing QH authorisation to use non-household fumigants or pesticides on their own land.
- The current definition of a 'primary producer' could also be interpreted to capture persons who are storing (but not producing) products on their own land, such as storage along the supply chain, landscape gardening, maintenance of ovals, retail garden work, or non-commercial hobby farmers, although 'these activities are not intended to be exempted from requiring authorisation to use non-household fumigants and pesticides'.[38]

33 Explanatory notes, p 12.

34 Queensland Health, correspondence, 20 January 2023, p 3.

35 Explanatory notes, p 5.

36 Bill, cl 10.

37 Explanatory notes, p 12.

38 Explanatory notes, p 5.

2.2.7 Proposed definition – 'primary producer'

- The Bill amends the definition of 'primary producer' to clarify that the primary producer exemption (that permits use of non-household pesticides and fumigants on their land, without needing QH authorisation) only applies to persons who are producing, or both producing and storing, agricultural or horticultural products for commercial purposes.[39]
- Under the new definition, smaller producers (e.g. bee-keepers, market gardens and hobby farms) will still be covered by the exemption, if they sell products for a profit.[40]
- Persons who only store, but do not produce, agricultural products, will still need to seek QH authorisation to use non-household fumigants or pesticides.[41]

2.3 *Recording of Evidence Act 1962* and *Mental Health Act 2016*

2.3.1 *Recording of Evidence Act 1962*

- Section 5(1) of the *Recording of Evidence Act 1962* (REA) currently requires the recording of all evidence, rulings, directions, addresses, summings-up, and other relevant matters in any legal proceedings heard in or before a court (including in/before a tribunal), and any proceeding before a justice or person in which evidence is or may be given, but does not prescribe the mechanism by which these things must be recorded.
- In the courts and at the Queensland Civil and Administrative Tribunal (QCAT), proceedings are electronically recorded, with the audio record the official record of the proceeding under REA.
- The REA framework is considered to not readily adapt to smaller tribunals, such as the Mental Health Review Tribunal (MHRT) that often do not sit in a regular, controlled premises like a court room.
- To meet the needs of smaller tribunals, the Bill establishes a statutory framework (for recording proceedings of tribunals (as prescribed by regulation) and providing access to copies of records and transcriptions of proceedings) that better suits the operational requirements of smaller tribunals. It is intended that the MHRT will be a prescribed tribunal under the new framework.[42]
- The requirement that all relevant material be recorded will continue to apply to prescribed tribunals under the new framework, and, consistent with the existing REA framework, the new framework does not prescribe the mechanism by which proceedings must be recorded.[43]
- Under the proposed framework, a tribunal's (prescribed) judicial person (e.g. tribunal president) may arrange for the recording of relevant matter in a legal proceeding and/or transcription of a record. The recording or transcription may be carried out by a member or staff of the tribunal, or by someone such as an external service provider who provides recording and transcription services for the courts.
- This approach does not change the existing requirement that all relevant matters in proceedings before prescribed tribunals must be recorded, but it does allow greater flexibility in who may make the recording and whether or not a transcript of it is produced.[44]
- Arrangements must be put in place to provide copies of records and/or transcriptions to judicial persons at no cost and to others in accordance with any fee prescribed by regulation. Fee

[39] Explanatory notes, p 5.

[40] Explanatory notes, p 12.

[41] Explanatory notes, p 12.

[42] Queensland Health, correspondence, 12 December 2022, p 6.

[43] Queensland Health, correspondence, 12 December 2022, p 6.

[44] Queensland Health, correspondence, 12 December 2022, p 7.

arrangements are in the Recording of Evidence Regulation 2018, which also provides for fee exemptions for certain persons, fee reductions and financial hardship arrangements.

- To protect the privacy and wellbeing of persons named in records/transcripts, access to copies of records and transcripts of legal proceedings may be restricted under the REA or another Act, or by order of a court/tribunal or judicial person. (See also information below on the MHA amendments covering access to MHRT records and transcriptions.)

2.3.2 *Mental Health Act 2016*

- One objective of the Bill's amendments to the MHA is to ensure that there are no operational barriers (e.g. restrictions on disclosing information) that impede the MHRT's ability to record proceedings (including electronically) and share records of hearings appropriately (e.g. with persons who are the subject of the proceedings, their mental health service, or a court).[45]
- The amendments support the MHRT's transition to implementing electronic recording of its proceedings in line with contemporary recording practices of courts and other tribunals.
- The explanatory notes acknowledge that exceptional circumstances and/or compelling reasons may render electronic recording inappropriate (e.g. where it would cause significant distress to a particular individual appearing before the MHRT).[46]

2.3.2.1 Confidentiality of MHRT proceedings

- Given the sensitive nature of MHRT proceedings they are typically closed to the public. The MHRT is composed of a legal member, a psychiatrist (or if unavailable in particular circumstances, another medical practitioner) and a person who is not a lawyer or doctor. Proceedings explore individuals' mental health experiences in detail, and consider evidence that may involve personal information of third parties or that has potential to cause harm if it were to be disclosed.
- Strict confidentiality requirements are imposed by the MHA so that only specified persons may request reasons for decisions and it is an offence to improperly use or disclose MHRT information.
- The Bill limits the categories of person able to access MHRT records (although it will enable the MHRT to provide records to third parties for recording or transcription purposes) and clarifies that, if complying with the REA, the MHRT will not be in breach of overarching MHA confidentiality obligations. New s 793A of the MHA[47] clarifies and restricts who may access copies of records or transcripts of MHRT proceedings under the REA to ensure that recording of evidence is appropriately tailored to MHRT proceedings.

2.3.2.2 Requests for access to MHRT records

- Limits on who may access/receive a MHRT record means that the MHRT, in recognition of the sensitive nature of MHRT proceedings, is able to refuse to provide records requested by persons who are not closely connected to the proceedings, and to redact records as needed.
- New s 793A of the MHA (read with the REA) limits the parties the MHRT president can provide with copies of records (written/audio/electronic) or transcripts. They are judicial persons, the registrar of the Mental Health Court, the Chief Psychiatrist performing a MHA function/exercising a MHA power (or an inspector appointed by the Chief Psychiatrist performing a MHA function/exercising a MHA power) and any person entitled to written notice of the decision in the proceeding.

---

45 Explanatory notes, pp 1, 6.

46 Explanatory notes, p 15.

47 Bill, cl 17.

- Persons allowed access to records based on their entitlement to receive written notice of the decision will vary depending on the nature of the proceeding. For example, s 755 of the MHA entitles persons to written notice of a decision if they were entitled to notice of the hearing.
- The MHA lists the persons entitled to notice of a hearing relating to various applications, see:
  - s 418 – *Review of a treatment authority*
  - s 460 – *Making a forensic order after a forensic order is made under the Criminal Code*
  - s 503 – *Application for an examination authority*.[48]
- Family, carers and support persons will be able to receive records or transcripts in some circumstances (as s 287 of the MHA permits them to receive written notice of a hearing if a patient may not understand the notice, or where giving notice to another person appears to be in the patient's best interests, and provided that the patient has not communicated their objection to the other person receiving such communications).
- Formal representatives and support persons (e.g. lawyers, personal guardians or attorneys, and patient-nominated support persons such as case managers) of persons who are the subject of MHA proceedings, can, and will remain able to, access copies of records or transcripts for those persons, as ss 287 and 785 of the MHA entitle them to notice of a hearing.

2.3.2.3 Redactions, publication bans, and inappropriate disclosures

- In respect of redactions, s 793A only enables an entitled person to be given a copy of a record or transcript to the extent that a confidentiality order or restriction on victim impact statement disclosures are not contravened; and some restrictions apply to releasing the contact, health or healthcare information of the person who is the subject of an application.
- The Bill only places limits on the provision of copies of recordings or transcripts requested under the REA. Existing entitlements to MHRT records under other legislation (e.g. the entitlement of statutory bodies such as the Office of the Public Guardian) are unaffected by the Bill amendments. Requests made outside of the REA will be considered with regard to the powers and permissions in that other legislation and the MHA confidentiality provisions.
- Currently disclosure of personal information (except for in limited circumstances) is an offence under s 778 of the MHA, attracting a maximum penalty of 100 penalty units. The current exemption for use or disclosure permitted under the MHA only applies to part 3 of the Act.
- The Bill amends s 778(3)(b) of the MHA to clarify that it is not an offence for relevant persons to use or disclose personal information where the use or disclosure is permitted under any part of the MHA or is required or permitted by law. This amendment is to ensure that the 'disclosing confidential information' offence is not triggered when the MHRT appropriately uses or discloses information in accordance with the REA framework and new s 793A of the MHA.[49]
- An existing 'publication' offence under s 790 will also continue to apply. Under s 790 a person must not publish to the public/publicly disseminate, a report of a MHRT proceeding, without leave of the MHRT. The MHRT may only grant leave if it is satisfied that publication of the report is in the public interest, and the report does not contain information that identifies, or is likely to identify, the person who is the subject of the proceeding, a witness in the proceeding, or a person mentioned or involved in the proceeding. The offence will also apply to publication of records made through electronic recording (whether electronic, audio or written records).

2.3.2.4 Waiving the right to representation – current

- Section 740 of the MHA mandates that the MHRT must appoint a lawyer or another representative to represent a person at a MHRT hearing when:

[48] Explanatory notes, p 14.

[49] Explanatory notes, p 15.

- the person is a minor
- the hearing is for a review of the person's fitness for trial
- the hearing is for an application to perform electroconvulsive therapy
- the hearing is prescribed by regulation
- the Attorney-General is to appear or be represented at the hearing.

- Section 740 also enables an adult person with capacity to waive their right to be represented by the appointed person. If the MHRT assesses that a person lacks capacity to waive their right to representation, the right cannot be waived. 'Capacity' means they have the ability to understand the nature and effect of the decision to waive the right, the ability to freely and voluntarily make the waiver decision, and ability to communicate the decision.[50]
- The waiver must be given in writing. As noted by an officer of the Public Advocate, if a patient is participating over the phone or through a video link then there is no practical means by which to hand them a piece of paper containing a waiver for signing.[51]
- Where a written waiver is not provided the MHRT is unable to dismiss a legal representative, even when the person has capacity and has chosen to waive their right to representation. The MHRT's inability to dismiss the representative can delay proceedings, because, being undesirable to continue with the hearing against the patient's wishes, the MHRT adjourns proceedings until a written waiver can be completed.
- While so adjourned, a person's involuntary treatment can continue without independent review, or, for electroconvulsive therapy applications, access to treatment may be delayed.

2.3.2.5 Waiving the right to representation – proposed

- The Bill amends s 740(4) of the MHA to allow adults with capacity to communicate their waiver of the right to representation by any means, including verbally.
- The Bill also retains existing safeguards for waiving the right to representation (e.g. if the MHRT assesses that a person lacks capacity to waive the right, the right will not be able to be waived). Also, the MHRT will still be able to require a written waiver if they consider it necessary.
- The Bill inserts safeguards for the giving of a non-written waiver. For example, a non-written waiver can only be provided if the MHRT is satisfied it would not cause injustice to the person.
- Various factors will have to be taken into account by the MHRT in determining whether accepting a non-written waiver would cause injustice to the person. For example, it may be satisfied that accepting a non-written waiver would not cause injustice because the proceeding is being electronically recorded. Another example is where a person has requested that electronic recording not occur and has refused to sign a written waiver. As advised by QH:

  > It is intended that electronic recording will be the MHRT's default position. The MHRT will only record proceedings in another way where there is a compelling reason, for example, if a patient is experiencing significant distress in relation to recording devices and requests that electronic recording not occur. Providing exceptions in the Bill may unintentionally limit the MHRT's discretion to consider the diverse and complex circumstances of individual patients.
  >
  > It is anticipated that few hearings will not be electronically recorded.[52]

- Where the MHRT is authorised to accept a verbal waiver, without it being electronically recorded, the waiver must be recorded in another way to meet the MHRT's obligations under the REA.

---

50 Queensland Health, correspondence, 20 January 2023, p 5.

51 Public hearing transcript, Brisbane, 31 January 2023, p 16.

52 Queensland Health, correspondence, 20 January 2023, p 4.

2.3.2.6 Submissions

- Submitters[53] concurred that relevant parties having access to complete and accurate transcripts/records of proceedings across all Queensland courts and tribunals is a fundamentally necessary element of the contemporary administration of justice.
- The changes to the REA proposed by the Bill to facilitate the electronic recording of evidence before the MHRT were supported by a number of submitters.[54]
- The Public Advocate noted the unique requirements of MHRT proceedings, submitting:

  > Complete, accurate and accessible records of proceedings are fundamental in any legal proceeding, especially among a cohort of people who may be experiencing impaired decision-making capacity that could affect their recollection and perception of the proceedings. Further, it is vitally important that an advocate for an adult with impaired decision-making capacity can access such records of proceedings in order to fully appreciate, for instance, the circumstances of a person's involuntary treatment.

- The Public Advocate also contended that, where there is a verbal waiver of the right to representation, it should only be done in circumstances where there is a recording and transcription of such a waiver.[55] The Queensland Law Society (QLS) submitted the same concern.[56]
- The utility of electronic recording was noted by an officer of the Public Advocate at the public hearing, who recounted common practices during proceedings:

  > Everyone is taking their own notes. I have certainly heard from individual advocates about inconsistencies between people's recollections as to what occurred. Without an electronic recording, there has been some dispute as to what witnesses have said, what has been said by their clients and what has been said by the tribunal. Those issues do certainly crop up.[57]

- The submission from the Queensland Human Rights Commission (QHRC) noted that the MHRT 'intends to, but does not currently, electronically record their proceedings. In the Mental Health Review Tribunal's view, their current practice of taking notes by one of the sitting tribunal members is sufficient to meet the requirements of the *Recording of Evidence Act'.*[58] The QHRC submitted that, in its view, this practice of the MHRT does not meet the current REA requirements, nor the HRA obligations in respect of fair hearing and equality,[59] particularly in respect of allowing access to an accurate record of proceedings. The QHRC contended that further legislative amendment may be needed to require the MHRT to accurately record hearings by 'electronic audio recording, professional short hand recording, or similar practice'.[60]
- The QLS[61] submitted that it would be desirable for the REA to be further amended to reflect the use of modern technologies, given that the *Notes* to s 5(1) of the REA guide that electronic recording could be, for example, by 'recording equipment' or 'in shorthand'.[62] The response

53 Queensland Law Society, submission 3; Queenslanders with Disability Network, submission 5; The Public Advocate, submission 2; Queensland Human Rights Commission, submission 7.

54 Queensland Law Society, submission 3; The Public Advocate, submission 2; Queensland Human Rights Commission, submission 7.

55 Submission 2, p 2.

56 Submission 3, p 2.

57 Public hearing transcript, Brisbane, 31 January 2023, p 14.

58 Submission 7, p 2.

59 Submission 7, p 2; see also *Human Rights Act 2019*, ss 30 and 15.

60 Submission 7, p 3.

61 Submission 3, p 2.

62 REA, s 5(1) and s 5(1) *Notes*.

from the Department of Justice and Attorney-General (DJAG) noted that this proposal is outside the scope of the Bill.[63]

- At the public hearing, QLS also noted some of the practical difficulties experienced by members of the MHRT when conducting proceedings compared to other tribunals, explaining:

  > The Queensland Civil and Administrative Tribunal also conduct some of their hearings in hospital settings and they record all of their proceedings. It is my understanding that they have people specifically employed to do more of that administrative work, whereas I do not think the tribunal [MHRT] has a lot of administrative assistance so it does fall often to the tribunal members to make sure that everybody has dialled into the hearing, that people are on video link and that the recording device works. That was something raised in the report of that short trial of recording—that it does fall to the members to have to deal with to make sure the equipment actually works. When you only have 30 minutes for a hearing, you are the legal member, you have to take notes, you have to give reasons and you have to deal with the treating team, it becomes a lot to do.[64]

- Also at the public hearing, both the QHRC and QLS commented on the utility of transcripts, noting:

  > At any hearing, as the person subject of an order you can be given specific conditions attached to your order and it can be obviously very helpful for a person or their legal representative or a support person to have a copy of the transcript so you can actually be very clear on what was said and what you were directed to do or not do. ….We think that having a transcript available would not only assist the person appearing but also the tribunal members in knowing what has been done previously. (QLS)[65]

  > Certainly if you are going to appeal a decision from the Mental Health Review Tribunal to the Mental Health Court, both having a statement of reasons as well as a transcript could be useful to the parties. (QHRC)[66]

- DJAG responded to the issue of electronic recording, advising:

  > The Recording of Evidence Act does not currently prescribe the way in which evidence and other relevant matters must be recorded and it is not considered necessary to specifically require that prescribed tribunals must electronically record proceedings. It is also important to note that while it is intended that the MHRT will be a prescribed tribunal under the framework proposed by the Bill, the new framework is not limited to the MHRT and may apply to other tribunals prescribed by regulation. Consequently, any amendments to the new framework may apply more broadly than the MHRT.[67]

Committee comment

We note that the amendments to the MHA are intended to ensure that there are no operational barriers to the MHRT's ability to record its proceedings and share records of hearings with appropriate persons. To support the implementation of these provisions, the committee recommends that resources for technical and/or administrative support be provided to the MHRT to make recordings and/or transcriptions of proceedings.

63 Queensland Health, correspondence, 20 January 2023, p 4.

64 Public hearing transcript, Brisbane, 31 January 2023, p 19.

65 Public hearing transcript, Brisbane, 31 January 2023, p 19.

66 Public hearing transcript, Brisbane, 31 January 2023, p 21.

67 Queensland Health, correspondence, 20 January 2023, p 4.

Recommendation 4

The committee recommends that resources for technical and/or administrative support be provided to the Mental Health Review Tribunal to make recordings and/or transcriptions of proceedings.

2.4 *Public Health Act 2005*

2.4.1 The Queensland Cancer Register

- The PHA establishes the Queensland Cancer Register (QCR) and requires mandatory reporting/notification to the QCR of a broad range of information from public and private hospitals, pathology labs (labs) and residential care facilities, to give a comprehensive picture of cancer in Queensland. It is one of Australia's largest population-based cancer registers.[68]
- Information in the register is used for public health purposes (e.g. planning and resourcing cancer care, monitoring and evaluating treatment outcomes, and community education about key ways to prevent cancer or how, when, and where, to seek treatment).
- Although the PHA[69] currently requires labs, hospitals and residential care facilities to make some notifications to the QCR other important information from labs (e.g. diagnostic, staging, follow-up and monitoring examinations they perform) as well as information from diagnostic imaging practices are not currently required to be notified.
- Similarly, currently required hospital notifications to QCR of relevant cancer-related treatment are also limited, being only for 'persons who separate from the hospital' (i.e. an inpatient with cancer who stops treatment or passes away) and 'the first time in a calendar year that a person attends hospital for outpatient cancer treatment'.
- As advised by QH the 'notification requirements in the Act no longer reflect contemporary diagnostic techniques and cancer management'.[70]

2.4.1.1 Amendments to expand required notifications to QCR and to collect additional data

- An objective of the Bill is to modernise and increase the data available to the QCR regarding information on the incidence of cancer and details regarding cancer-related treatments, to better inform the understanding of cancer, to analyse treatment usage and to enable development of strategies and education programs regarding cancer.
- Including diagnostic imaging (DI) practices (e.g. radiology clinics/health facilities that do scans such as MRIs, CT scans, ultrasounds and mammograms) under the notification requirements is intended to provide QCR with data on 'the full spectrum of cancer screening' to also enable better health service planning.[71]
- The new notification requirements are intended to give comprehensive coverage of cancer incidence and will also allow QCR to monitor the progress of a disease after diagnosis, evaluate treatment effectiveness, and monitor remission periods.[72]

68 Explanatory notes, p 8.

69 PHA, chapter 6, part 2, division 2.

70 Public briefing transcript, Brisbane, 16 December 2022, p 2.

71 Public briefing transcript, Brisbane, 16 December 2022, p 6.

72 Explanatory notes, p 16.

2.4.1.2 Current and proposed notification requirements for various provider types

Public and Private Hospitals

- Now – hospitals must notify QCR of (inpatients with cancer) 'separations from the hospital', and of 'the first time in a calendar year a person attends hospital as an outpatient for cancer treatment'.
- Proposed – the Bill will secure additional data for the QCR, as hospitals will be required to notify QCR if an individual attends a hospital for any reason, and they are diagnosed with cancer at the hospital and/or given cancer-related treatment, regardless of how many times they have previously attended for treatment. 'Cancer-related treatment' is defined as an investigation, procedure or treatment provided to a person who has, or has had cancer, that is related to treating the cancer or an issue arising from previous treatment of cancer. It includes surgery, radiotherapy, all types of systemic therapy (e.g. chemotherapy or immunotherapy) whether to eliminate or shrink the cancer, or to provide symptom relief.

Pathology laboratories (labs)

- Now – the PHA requires labs to notify QCR if an examination shows the person providing the specimen is or was suffering from cancer.
- Proposed – the Bill changes will require labs to notify all cancer-related pathology results for examinations following a primary cancer diagnosis, even if the result does not show cancer.

Diagnostic imaging practices

- Now – there are no notification requirements imposed on DI practices.
- Proposed – the Bill requires DI providers to notify QCR where a DI procedure (e.g. a scan) indicates an individual has, has had, may have, or may have had, cancer, and the DI practice director reasonably suspects (based on the reason for the procedure noted in the referral) the procedure was carried out to identify the presence of cancer, or to support/inform treatment.

Residential care facilities

- As the proposed new notification requirements will capture data that was formerly provided by residential care facilities, the Bill removes residential care facilities as notifiers.

2.4.1.3 The notification process

- Under the Bill reforms, notifiers would continue to be able to submit the approved notification form electronically, and, as first time notifiers, interested DI practices are being supported by QH to access technology to largely automate their reporting process.
- Both public and private hospitals now regularly submit relevant data extracts from patient management systems and a shared hospital database (Queensland Hospital Admitted Patient Data Collection) (QHAPDC) to QCR. This notification procedure would not change under the Bill.
- Timeframes for notifications will be set under the Public Health Regulation 2018, with the current 30-day timeframe for all notifiers to be maintained, except for the data on treatment episodes from hospitals which will have a timeframe of 120 days to align it with hospitals' existing obligations for reporting QHAPDC data under the Private Health Facilities Regulation 2016.

2.4.1.4 Failure to comply

- Failure to comply with the notification requirements will continue to attract the existing offence maximum penalty of 20 penalty units.
- Whilst supportive of the amendments in principle, the AMA Queensland submitted that the additional notification requirements impose 'a significant, extra burden on pathologies,

diagnostic imaging practices and hospitals'.[73] AMA Queensland noted that health professionals may act in good faith but still fail to comply with administrative data notification requirements, cautioning that health professionals should be 'supported to provide this valuable information with adequate practical assistance and funding, not punitive measures'.[74] This position was reiterated at the public hearing.[75]

2.4.1.5 Submissions

- Cancer Council Queensland welcomed the Bill and its goal of improving the completeness and quality of cancer data in Queensland, recommending *inter alia* that future amendments to the Public Health Regulation 2018 expand the definition of notifiable cancers to include all BCCs and SCCs (basal cell carcinomas and squamous cell carcinomas).[76]
- In respect of this suggestion, QH advised:

> It is not proposed to extend notification requirements to all BCCs and secs at this time. Subject to the passage of the Bill, it is proposed to amend the Public Health Regulation to require notification of sec with perineural invasion, and BCC with perineural invasion and/or nodal metastases, as these cancers have increased risk for locoregional recurrence and reduced survival rate. Queensland Health will continue to monitor the operation of the QCR and identify opportunities for data improvement over time.[77]

Committee comment

Given Queensland has the highest incidence of skin cancer in the world, the committee appreciates the need to continue to gather data regarding cancer in Queensland and notes the suggestion by Cancer Council Queensland for the definition of notifiable cancers in the Public Health Regulation 2018 to be expanded to include all BCCs and SCCs.

Recommendation 5

The committee recommends that Queensland Health consider, as a priority, the inclusion of all basal cell carcinomas (BCCs) and squamous cell carcinomas (SCCs) as notifiable cancers in future amendments of the Public Health Regulation 2018.

2.4.2 School vision screening program

- The Bill amends the PHA to authorise disclosure of student information from schools to QH's vision screening health service to maximise resources to screen children for preventable vision loss.

2.4.2.1 Current school health screening programs

- Chapter 5, part 4 of the PHA allows student information to be shared between schools and public (QH) dental and immunisation programs, to support positive health outcomes for Queensland children.
- The QH (Children's Health Queensland) Primary School Nurse Health Readiness Program (vision screening program) is an existing free public health program that screens prep students annually (subject to parental/guardian consent) for the presence of amblyopia (lazy eye) and amblyopic risk factors. Amblyopia is the leading cause of preventable vision loss in children

[73] Submission 6, p 2 (attachment).

[74] Submission 6, p 2 (attachment).

[75] Public hearing transcript, Brisbane, 31 January 2023, p 2.

[76] Submission 8, pp 1-2.

[77] Queensland Health, correspondence, 20 January 2023, p 6.

under 8. Identifying young students affected by amblyopia, and referring them for follow-up, can improve their engagement, concentration and behaviour at school and, accordingly, their long-term educational outcomes.[78]

- As the PHA does not cover that vision screening program, schools are not authorised to provide the program with information about families who have not returned a form giving or refusing consent for their child to be screened, unless the family has consented to the sharing of that information. This hinders vision screening nurses from communicating with families of eligible students.[79]
- In 2021 around 26 per cent of Queensland prep students missed out on being screened because they did not have a consent form returned. Based on average screening rates this means that up to 1,400 prep students might have been undiagnosed with a visual abnormality.[80]

2.4.2.2 Proposed school health screening program reforms

- The Bill applies chapter 5, part 4 of the PHA to the vision screening program.
- This will allow schools to disclose student information to the vision screening program in the same way as applies for dental and immunisation programs engaged by a HHS.
- It will also allow the vision screening program to request information from schools about families who have not returned a consent form for their child, giving vision screening nurses an opportunity to directly follow up with families of children who have not returned a consent form, address any questions or concerns the family may have about the program, and identify any support that may be required to complete forms.
- Having access to the student information is also intended to maximise the number of children who are screened and allow vision screening nurses to oversee the consent process for the screening without burdening school administrative staff with chasing up consent forms.[81]
- The PHA and Public Health Regulation 2018 specify the information that is able to be disclosed/shared, being the name, date of birth and sex of the student, their group or class at school, information about whether the student identifies as a First Nations person, the language spoken at home and their parent/guardian's name, contact details and information on the best way to communicate with them (e.g. their preferred language). The Public Health Regulation 2018 already lists this information and allows it to be given to the school dental and immunisation programs.[82]
- QH will update the consent material and information resources for the program to advise parents and guardians how their children's information may be used. The Bill maintains existing privacy protections for information sharing. Information sharing under chapter 5, part 4 of the PHA is also subject to the safeguards under the *Information Privacy Act 2009*.[83]
- QH advised that schools currently provide a privacy collection notice on their enrolment forms stating that student information may be shared when required by law. If a parent does not consent to their child's information being shared with the vision screening program, they can alert the school principal. QH advises that the Bill will not change this position.[84]

78 Explanatory notes, p 7.

79 Explanatory notes, p 8.

80 Public briefing transcript, Brisbane, 16 December 2022, p 8.

81 Explanatory notes, p 16.

82 Public briefing transcript, Brisbane, 16 December 2022, p 8.

83 Explanatory notes, p 16.

84 Public briefing transcript, Brisbane, 16 December 2022, p 7.

- Families will also have the option of returning consent forms that advise that they do not want their child to participate in the program and the family does not wish to be contacted by the program. The vision screening program will retain a record of the consent form, but will destroy any other information about that student that it has received.[85]
- The QH vision screening program is the only vision screening program that can request and receive student information under the PHA. Any non-government vision screening program providers will only be authorised to request/obtain student information under the new provisions when they are engaged by a HHS. Per s 213AE of the PHA, contracted services are also subject to the *Information Privacy Act 2009*.
- School principals will still be able to refuse to provide a student's information where they consider that disclosure is not in the student's best interests (e.g. if there are safety issues, parenting disputes, or legal proceedings with implications for the student's welfare or compliance with legal orders if the vision screening program contacts the family).[86]
- QNMU's submission was supportive of the vision screening amendments.[87] The other submission addressing these amendments[88] was outside the scope of the Bill.

2.5 *Radiation Safety Act 1999*

- The RSA regulates the risk of radiation exposure by specifying requirements (and exemptions from those requirements) for dealing with radiation.
- The RSA allows prescribed radiation sources to be exempted from its requirements where the exemption could not reasonably be expected to pose any, or more than negligible, health risks to any person or adverse effects on the environment. It does not however currently allow 'radioactive material that is not a radioactive substance' to be exempted, even though such material poses a lower radiation risk than radiation sources do.

2.5.1 Exempting low risk radioactive material from RSA requirements

- To address this, the Bill empowers the Radiation Safety Regulation 2021 to exempt low risk radioactive material from RSA requirements, especially disposal requirements. For example, bodily waste containing radioactive material following a diagnostic or therapeutic procedure (e.g. radiotherapy) will now be exempt from the RSA's usual disposal requirements.

2.5.2 Offence – failure to ensure person does not receive greater than specified dose of ionising radiation

- The amendment moves to the RSA the offence of failing to ensure another person does not receive more than a specific radiation dose from radioactive materials that are not radioactive substances, and sets a new maximum penalty of 100 penalty units. Currently this offence is in s 60 of the Radiation Safety Regulation 2021, which sets a maximum penalty of 20 penalty units for failing to ensure a person does not receive greater than specified doses of ionising radiation from a mineral substance.
- The increase in penalty units is 'to better align with other similar offences in the Act that have penalties ranging from 200 to 500 penalty units' and to reflect 'the seriousness of the risk to human health from being exposed to radiation'.[89] At the public briefing QH noted (in respect of the 100 penalty unit maximum attached to this offence) that there is a lower risk associated

85 Queensland Health, correspondence, 20 January 2023, p 5.

86 Explanatory notes, p 16.

87 Submission 12, p 11.

88 West Moreton Hospital and Health Service, submission 10.

89 Public briefing transcript, Brisbane, 16 December 2022, p 10.

with exposure to radioactive material that is not a radioactive substance, compared with (other) offence provisions in the Act that apply to materials that emit higher levels of radiation, being the offences that have maximum penalties of 200-500 penalty units.[90]

- QNMU was the only submitter to comment on the above RSA amendments and it was supportive of both amendments.[91]

2.6 *Transplantation and Anatomy Act 1979*

- The Bill amends the TAA to:
  - ensure efficiencies in the supply of human tissue products for essential health purposes by removing the requirement that Queensland doctors seeking to purchase Therapeutic Goods Administration 'Special Access Scheme' approved products must apply for a Ministerial permit
  - ensure that consent processes for donation of human tissue (e.g. organ donation) are consistent between public and private hospitals.[92]
- QNMU was the only submitter to comment on these amendments and they were supportive, noting the 'amendment will assist in ensuring that there is greater consistency between private and public hospitals on this issue'.[93]

2.7 *Water Fluoridation Act 2008*

- The WFA requires local governments publish notification of their decisions to add fluoride to/remove fluoride from, a water supply, via a 'water fluoridation decision and implementation notice' (WFN) in a newspaper circulating in the area. Public potable water suppliers are similarly required to provide advance notice if they intend adding or removing fluoride from a water supply, also through a newspaper circulating in the relevant area.
- To modernise the legislation, the Bill removes the requirement to publish WFNs in a print newspaper (with newspaper notifications still acceptable where appropriate).
- It only requires a WFN be published in a 'publicly accessible way' (e.g. by publishing on the local government's website or via a community communication channel).
- Requirements apply to local governments and to public potable water suppliers.
- QNMU supported the change provided that information is widely publicly accessible, and argued for state (not local) management of fluoridation as a public health issue, 'to ensure consistency and equity in the distribution of fluoride across Queensland so that people's dental health is equal and it is the same, at a very basic level, for everyone'.[94]
- QH's response noted that QNMU's proposal is outside the scope of the Bill and clarified that, while QH administers and enforces the water fluoridation legislative framework, the WFA has, since 2012, empowered local governments to opt to fluoridate the local water supply if it is in the public interest. QH observed:

  > The legislative framework recognises that local governments are best placed to make fluoridation decisions that are in the best interests of their community and to identify the best way to communicate these decisions.[95]

---

90 Public briefing transcript, Brisbane, 16 December 2022, p 10.

91 Submission 12, pp 11-12.

92 Explanatory notes, p 2.

93 Submission 12, p 13.

94 Public hearing transcript, Brisbane, 31 January 2023, p 7.

95 Queensland Health, correspondence, 20 January 2023, p 7.

2.8 Compliance with the *Legislative Standards Act 1992*

The LSA defines FLPs as 'the principles relating to legislation that underlie a parliamentary democracy based on the rule of law'.[96] The principles include requiring that legislation has sufficient regard to:

- rights and liberties of individuals
- the institution of Parliament.

The committee has examined the application of FLPs to the Bill and brings the following FLP issues, outlined in relation to the Acts amended by the Bill, to the attention of the Legislative Assembly.

2.8.1 *Medicines and Poisons Act 2019*

As outlined in section 2.2.3 above, the Bill (cl 12) amends the MPA to expand the list of entities to whom an administrator may disclose confidential information, to include a HHS, the VSBQ, and an entity of the state or another jurisdiction responsible for law enforcement.[97] Disclosure to the law enforcement entity is restricted to information for the purposes of detecting, investigating, preventing or prosecuting an offence in relation to a regulated substance.[98]

The recipients of the disclosed information will remain subject to privacy obligations derived from the MPA. For example, under the MPA an administrator may only disclose the confidential information to an entity if satisfied the disclosure is reasonably necessary for the entity to exercise its functions and the confidential information will be collected, stored and used by the entity in a way that protects the privacy of the persons to whom the information relates from unjustified intrusion.[99]

The Bill (cl 13) also amends the MPA to provide that the chief executive may, if satisfied it is in the public interest to do so:

- publish the 'substance authority register'[100] (or part of it) on the department's website
- give information, including confidential information, from the 'administrative action register'[101] or the 'substance authority register' to a person seeking the information.[102]

While these registers are intended to protect the public from harm, there may be information on a register that an individual would prefer be kept private. The explanatory notes describe the contents of the registers:

- administrative action register – contains details of administrative action taken against persons who have dealt with medicines and poisons in an inappropriate way, such as a change to the condition of the person's authorisation to deal with medicines and poisons, temporary or permanent suspension of an authority, or cancellation of a licence or approval under the Act
- substance authority register – contains information about licences and authorities that have been granted to persons or businesses that deal with medicines and poisons.[103]

---

96 LSA, s 4.

97 Bill, cl 12 (MPA, amended s 221).

98 Bill, cl 12 (MPA, amended s 221).

99 MPA, s 221(2).

100 MPA, s 230 requires that certain information be contained on the substance authority register about each substance authority, including its identification number, details of the holder, its type (or the regulated activity it authorises) and its term.

101 MPA, s 229 provides that where administrative action is taken in relation to a person, the administrative action register must contain the name of the person and a brief description of the administrative action taken.

102 Bill, cl 13 (MPA, amended s 231)

103 Explanatory notes, p 3.

Clause 13 would remove the chief executive's current ability to publish the administrative action register on the department's website and enables the chief executive to publish the substance authority register or give information from either of the registers only if satisfied it is in the public interest to do so.

2.8.1.1 Right to privacy and confidentiality

The right to privacy and the disclosure of private or confidential information are relevant to the consideration of whether legislation has sufficient regard to individuals' rights and liberties.[104]

The explanatory notes acknowledge that the amendments in cl 12, to enable the disclosure of confidential information to VSBQ, a HHS, and law enforcement agencies, may impact the right to privacy of individuals whose information is shared but state that the amendments are justified to facilitate information sharing between appropriate entities that will 'mitigate and address inappropriate use of medicines and poisons'.[105]

In relation to the amendments in cl 13, to enable the disclosure of confidential information contained on the registers, the explanatory notes observe that the requirement for the chief executive to consider whether the information is reasonably necessary to avoid a health risk, and whether the disclosure of the confidential information will place a person at risk of harm, will be replaced by the public interest test:

> In order to determine whether disclosure is in the public interest, the chief executive will consider a range of factors, including factors relating to harm. To support the chief executive and delegates to consider the rights and liberties of individuals, Queensland Health intends to issue internal guidance on how to assess what is in the public interest and how to assess any requests for disclosure received.
>
> *Public interest* is a well-established term that is used in health portfolio and other legislation, often without definition. It embeds regard to the rights and liberties of individuals.[106]

The explanatory notes conclude that 'any departures from the right to privacy associated with the amendments regarding the registers are therefore justified'.[107]

Committee comment

The proposed amendments to the MPA will result in the disclosure of confidential information to third parties – a breach of an individual's right to privacy. However, the committee is satisfied that the breach of FLP is justified as the amendments would authorise the disclosure of confidential information to appropriate recipients and for justifiable reasons. In the case of the disclosure of information from the registers, the provisions require that the chief executive may authorise the disclosure only if satisfied it is in the public interest to do so. The committee considers therefore that the proposed amendments to the MPA have sufficient regard to the rights and liberties of individuals, balancing the privacy rights of individuals and the community's concern for public safety.

2.8.2 *Recording of Evidence Act 1962* and *Mental Health Act 2016*

As outlined in section 2.3.2 above, the objective of the amendments to the MHA is to ensure there are no operational barriers to recording the proceedings of prescribed tribunals, including the MHRT, and providing access to records and transcripts.

---

104 Office of Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 113.

105 Explanatory notes, p 20.

106 Explanatory notes, pp 20-21.

107 Explanatory notes, pp 20-21.

Clause 17 of the Bill sets out the requirements to be met before a person who requests a copy of a record or transcription of MHRT proceedings can be given a copy.[108] For example, the person requesting a copy must be a judicial person, the registrar, the chief psychiatrist or an inspector (as specified) or a person entitled to be given written notice of the decision in the proceeding.

Where the person requesting the copy of the record or transcription is an entitled person who applied for an examination authority,[109] and the copy relates to a MHRT decision in a proceeding about the examination authority, the president must ensure that the copy made available to the entitled person does not disclose the contact details and information about the health or health care of the person who is the subject of the application.[110]

As noted in section 2.3.1 above, the REA requires the recording of 'all evidence, rulings, directions, addresses, summings-up, and other matters in legal proceedings heard in a court (including a tribunal)'.[111]

The explanatory notes state that the framework for recording legal proceedings and providing access to copies of records and transcriptions of proceedings under the REA is not readily adaptable to smaller tribunals, such as the MHRT, because they have particular requirements and often do not sit in a regular, controlled premises such as a court room.[112] Clause 35 of the Bill inserts a new s 6 in the REA to provide for a record or transcript of the proceedings of a prescribed tribunal to be made, and for a copy to be available on request, where applicable.[113]

2.8.2.1 Privacy and confidentiality

The right to privacy, and the disclosure of private or confidential information, are relevant to the consideration of whether legislation has sufficient regard to individuals' rights and liberties.[114]

The MHA contains strict confidentiality requirements, ranging from general obligations, requirements to comply with confidentiality orders, and restrictions on disclosing victim impact statements.[115]

The proposed amendments to the MHA would allow the MHRT to disclose a copy of a record or a transcription in accordance with the REA. According to the explanatory notes, however, the Bill recognises the sensitivity of MHRT proceedings by:

> … ensuring that there are reasonable limits to the categories of persons able to access records, sensitive information can be removed from copies of records, the giving of copies of a record or a transcription is subject to requirements in the Mental Health Act regarding confidentiality orders and victim impact statements and offences for improper use or disclosure of information continue to apply.[116]

Although the explanatory notes concede that the proposed amendments to the MHA enable the disclosure of confidential information, they state that any departure from FLPs is justifiable as the amendments 'achieve a balance between facilitating transparency of proceedings in line with contemporary practice and ensuring that persons who are not sufficiently connected to the recorded proceedings are not provided with records'.[117]

---

108 Bill, cl 17 inserts new 'Part 5 Availability of copies of tribunal records and transcripts' into the MHA, s 793A.

109 As a person mentioned in the MHA, s 502(1)(c).

110 Bill, cl 17 (MHA, new s 793A(3) and (4)).

111 Explanatory notes, p 5; see REA, s 5.

112 Explanatory notes, p 6.

113 Bill, cl 35.

114 OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 113.

115 Explanatory notes, p 6.

116 Explanatory notes, p 6.

117 Explanatory notes, p 26.

The explanatory notes acknowledge that the proposed amendments to the REA may be a departure from FLPs in relation to privacy and confidentiality because the new framework preserves the existing requirement for copies of records and transcripts to be made available to any person.[118] However the explanatory notes state:

> Any departure is justified as it is necessary to balance the right to privacy against the right to a fair trial by facilitating the making of complete and accurate records of all proceedings and allowing appropriate persons to access copies of records or transcriptions to ensure accountability and transparency in proceedings.
>
> The effects of the departure are also mitigated by the ability to restrict who may access copies of records or transcriptions of proceedings under the Recording of Evidence Act or another Act, or by an order of a court (including a tribunal), or judicial person.[119]

Committee comment

The committee considers the proposed amendments to the MHA and the REA have sufficient regard to the rights and liberties of individuals. We are satisfied that the proposed amendments strike an appropriate balance by facilitating the accurate recording of proceedings and allowing appropriate persons to access copies of those records or transcriptions, while ensuring that persons who are not sufficiently connected to the proceedings are not provided with records.

2.8.2.2 Delegation of legislative power

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.[120]

The proposed amendments to the REA raise the issue of whether the legislation has sufficient regard to the institution of Parliament because they would allow a regulation to prescribe:

- tribunals in which a legal proceeding may be recorded or transcribed[121]
- a judicial person who may arrange for recording or transcribing of legal proceedings and make available copies of the records or transcriptions[122]
- the cost to persons other than judicial officers of copies of records or transcriptions.[123]

At present the REA contains regulation-making powers that encompass a range of matters, such as:

- the keeping and destruction of records and transcriptions
- the type and class of recording equipment
- the making and issuing of transcriptions or copies of records under the REA and prescribing the persons to whom the same may be issued
- fees to be paid in respect of the recording of legal proceedings and copies of transcriptions.[124]

The Recording of Evidence Regulation 2018 currently contains sections about the provision of copies of records and transcriptions and the related fees. The inclusion of these matters in regulation allows some flexibility in the practical functioning of the existing framework. The Bill similarly seeks to rely on such flexibility with the proposed delegation of legislative power in allowing the particular

118 Explanatory notes, p 25.

119 Explanatory notes, p 25.

120 LSA, s 4(4)(a).

121 Bill, cl 35 (REA, new s 6(1)).

122 Bill, cl 35 (REA, new s 6(2)).

123 Bill, cl 35 (REA, new s 6(5)).

124 REA, s 13.

tribunals, the judicial officers who may arrange for recording and transcribing, and the fees to be charged, to be prescribed by regulation.

According to the explanatory notes, 'any departure [from FLPs] is justified as it is necessary to ensure the legislation is sufficiently flexible to apply the new framework' and 'the effects of the departure are also mitigated by limiting the delegation only to subordinate legislation within the meaning of the *Statutory Instruments Act 1992'* which ensures that any regulation must be tabled before, and may be disallowed by, the Legislative Assembly.[125]

Committee comment

It is common for fees and other matters to be prescribed by regulation, and the committee considers that it is reasonable for the relevant tribunals and judicial officers to also be prescribed by regulation in this case. We further note that the delegated subordinate legislation encompassing these matters will be subject to the disallowance procedures of the Parliament. The committee is satisfied therefore that the proposed amendments to the REA have sufficient regard to the institution of Parliament.

2.8.3 *Public Health Act 2005*

As outlined in section 2.4.2 above, the Bill proposes to amend the PHA to expand the existing meaning of 'school health program' to include a vision screening health service[126] so that a HHS (or an entity engaged by it) that carries out a vision screening program, can require school principals to disclose specified student information to them.[127]

The Bill also amends the notifications provisions in the PHA in relation to the information maintained on the QCR, as described in section 2.4.1 of this report.[128]

2.8.3.1 Privacy and confidentiality

The right to privacy, and the disclosure of private or confidential information, are relevant to the consideration of whether legislation has sufficient regard to individuals' rights and liberties.[129]

Vision screening health services

The explanatory notes state that the vision screening program enables visual abnormalities in children to be detected and treated early, and minimises the impact of vision issues on a child's learning.[130]

The proposed amendments would enable the vision screening program staff to contact families who have not returned consent forms and talk to those families to determine whether they would like their child to be screened for preventable vision loss. The explanatory notes advise that once information is collected it would:

> … be maintained in accordance with strict privacy and confidentiality obligations under the Information Privacy Act and Hospital and Health Boards Act. Information that the vision screening program receives will be stored securely on Children's Health Queensland's QVision database. Registered nurses in each

125 Explanatory notes, p 26.

126 Bill, cl 19 (PHA, amended s 213AA).

127 Explanatory notes, p 37. The specified information is provided for in existing s 213AD of the PHA and includes the name and date of birth of a student, the name, telephone number, email address and postal address of a parent or guardian of a student, and any other information prescribed by regulation about a student.

128 Bill, cl 21.

129 OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 113.

130 Explanatory notes, p 23.

> Hospital and Health Service that are contracted by Children's Health Queensland will only be able to access information about children located within their catchment area.[131]

The explanatory notes observe that parents and families are currently provided detailed information about the vision screening program, and if the Bill is passed this material will be updated to explain the disclosure of information that is authorised by the PHA.[132]

In relation to information about consent for screening, the explanatory notes state:

> Parents and families will continue to have to provide consent for their children to be screened. The vision screening program will only follow up families that have not returned a consent form at all. If the vision screening program receives a consent form that declines consent for screening, the program will not follow up the family. Personal information of students who do not participate in the program will also be destroyed by Children's Health Queensland once program nurses are aware that the child is not participating. In addition, if families wish to opt-out of their children's information being disclosed to the program in the first place, they can raise concerns with the school principal, as school principals are entitled to withhold student information if it is not in the best interests of the particular student.[133]

The PHA provides that a school principal can refuse to disclose any information about a student if the school principal considers the disclosure is not in the best interests of the student.[134] This safeguard would be exercised at the discretion of the school principal. Parents or guardians would be free to advise the principal they prefer the student's information is not passed on to the program.

Committee comment

The committee is satisfied that the amendments to the PHA regarding the vision screening program have sufficient regard to the rights and liberties of individuals.

Queensland Cancer Register notifications

The PHA provides that the purpose of the QCR is to collect data to help with monitoring and analysing the outcomes and patterns of cancer, monitoring cancer mortality and increasing public awareness of cancer, and to assist in the planning of services and strategies for the prevention and management of cancer.[135] The proposed amendments are intended to support the collection of a wider range of data about cancer, to enable the register to analyse more accurate information about (and inform strategies against) cancer, to benefit the community.[136]

The explanatory notes describe the privacy safeguards for the information collected, which include:

- private information collected must be maintained in accordance with strict privacy and confidentiality obligations under the *Information Privacy Act 2009*
- Cancer Alliance Queensland, which manages the operation of the Register, abides by QH security policies and follows industry best practice regarding data security
- all QCR data is stored on QH servers which have strict access controls to ensure the QCR can only be accessed by current Cancer Alliance Queensland staff from limited locations
- there are clear processes in place to ensure that the release of de-identified data from the QCR complies with privacy principles, the *Information Privacy Act 2009*, the HHBA and ethical standards

131 Explanatory notes, p 23.

132 Explanatory notes, p 23.

133 Explanatory notes, p 23.

134 PHA, s 213AD(3).

135 PHA, s 231.

136 Explanatory notes, p 22.

- Cancer Alliance Queensland makes information about the operation of the QCR, notifications under the PHA, and privacy safeguards, available to health consumers (including people whose data may be notifiable) online and through a brochure.[137]

Committee comment

Given the justifications presented in the explanatory notes for the infringements on individuals' privacy, and the safeguards to assist in mitigating the impacts, we are satisfied that the proposed amendments to the PHA in relation to QCR notifications have sufficient regard to an individual's right to privacy and confidentiality.

2.8.3.2 Delegation of administrative power

Legislation should allow the delegation of administrative power only in appropriate cases and to appropriate persons.[138]

The Bill's amendments to the PHA related to QCR notifications (including new and amended offences) require that the notifications be made in the approved form,[139] meaning that the approved form (rather than the PHA or regulation) will contain the required particulars. The explanatory notes describe the information intended to be required on the form, which will be approved by the chief executive, published online and provided to notifiers.[140]

According to the explanatory notes, this delegation of administrative power exists in current notification requirements and is appropriate because approved forms are subject to legislative requirements:

> The Public Health Act requires approved forms to be approved by the chief executive, and section 48 of the *Acts Interpretation Act 1954* require[s] approved forms, including any changes to forms, to be notified in the gazette or on a relevant website. Queensland Health intends to meet this requirement by publishing approved forms on the Queensland Cancer Register website. The particulars that are intended to be included in the approved form are detailed in these explanatory notes and have been consulted on with notifiers. Any changes to the particulars in the future would be based on the utility of that data in increasing knowledge and treatment of cancer, and would be considered in collaboration with stakeholders, for example, if notifications would create any additional impost for notifiers.[141]

Committee comment

With respect to the Bill's amendments relating to prescribing forms for the PHA notifications, the committee notes that the approved forms would need to be approved by the chief executive and that QH intends to publish them on the QCR website. Given this approval process, and that the particulars to be included in the forms were included in the explanatory notes and appear to be reasonable, the committee is satisfied that the provisions have sufficient regard to the rights and liberties of individuals.

2.8.3.1 Penalties should be reasonable and proportionate

Consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences relate.[142]

137 Explanatory notes, pp 22-23.

138 LSA, s 4(3)(c).

139 Explanatory notes, p 17.

140 Explanatory notes, p 17.

141 Explanatory notes, p 24.

142 OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

The Bill (cl 21) proposes to amend the PHA to make it an offence if the director of a pathology laboratory does not, within the prescribed time and in the approved form, notify the chief executive about a pathological examination of a specimen of human origin carried out in the laboratory, where:

- the examination indicates the person from whom the specimen was taken has (or has had) cancer, or
- the director reasonably suspects the examination is a cancer-related follow-up examination.[143]

The first of these requirements exists currently, however the Bill proposes to insert the second as an alternative.

Clause 21 would also create a similar offence where the director of a DI practice fails to notify the chief executive, within the prescribed time and in the approved form, about a DI procedure carried out on a person at the practice.[144] This is a new offence.

Additionally, cl 21 provides for a range of offences where the director of a hospital does not, within the prescribed time and in the approved form, notify the chief executive about:

- a diagnosis, where a person attends the hospital for treatment or care and is diagnosed with cancer by a doctor at the hospital[145]
- each cancer-related treatment provided to the person, where a person attends the hospital for treatment or care and is provided cancer-related treatment as a patient of the hospital[146]
- the death of a person, where the person attends the hospital for treatment or care, the director reasonably suspects the person has (or has had) cancer and the person dies while at the hospital.[147]

The second of these is a new offence proposed by the Bill, whereas the first and third of these are existing offences which are to be amended by the Bill. The notification requirements for the amended offences remain unchanged.

All of these offences attract a maximum penalty of 20 penalty units.[148]

In relation to the new offence for DI practices that fail to make notifications, the explanatory notes state that:

> The maximum penalty for failing to notify is 20 penalty units. This is a relevant and proportionate penalty. It assists to maintain the value of Queensland Cancer Register as a population-based cancer register that must record all cancer cases in the Queensland population. The penalty is consistent with existing offences which apply to hospitals and pathology laboratories.[149]

The explanatory notes state that it is intended that the Bill's offences and penalties would 'maintain the value of QCR as a population-based cancer register that must record all cancer cases in the Queensland population'.[150]

---

143 Bill, cl 21 (PHA, new s 234).

144 Bill, cl 21 (PHA, new s 234A).

145 Bill, cl 21 (PHA, new s 234B).

146 Even if the treatment is not at the hospital; Bill, cl 21 (PHA, new s 234C).

147 Bill, cl 21 (PHA, new s 234D).

148 The value of a penalty unit is $143.75: Penalties and Sentences Regulation 2015, s 3; *Penalties and Sentences Act 1992*, ss 5, 5A.

149 Explanatory notes, p 23.

150 Explanatory notes, p 23.

The explanatory notes do not address the reasonableness and proportionality of the existing offences applying to hospitals and pathology laboratories that have been amended by the Bill. This is likely because the existing penalties have remained the same.

Similarly, the explanatory notes do not address that aspect of the new offence relating to notification about cancer-related treatment of a hospital patient. However, this new offence is similar to the existing offence for notifications about cancer diagnosis and has the same maximum penalty.

Committee comment

The committee notes that 3 of the 5 offences in cl 21 currently exist in a similar form in the PHA and the same maximum penalty is proposed. The 2 new offences relate to the notifications about diagnostic imaging procedures and cancer-related treatment of a hospital patient, and have penalties consistent with the penalties for the existing offences. We are satisfied, therefore, that the proposed penalties are reasonable and proportionate, having sufficient regard to the rights and liberties of individuals.

2.8.3.2 Delegation of legislative power

Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons.[151]

The time within which a cancer notification must be given to the QCR by hospitals and pathology laboratories is currently prescribed[152] as 30 days after the person separates from hospital, or after a pathological examination.[153]

According to the explanatory notes, it is intended that the timeframe for hospitals making cancer notifications to the QCR (which is to be prescribed by regulation) will be 120 days.[154]

Committee comment

The committee notes the advice in the explanatory notes of the intended increased timeframes for the making of cancer notifications to the QCR (to be prescribed by regulation) and is satisfied that the delegation of legislative power under the PHA has sufficient regard to the institution of Parliament.

2.8.4 *Radiation Safety Act 1999*

As noted in section 2.5 above, the Bill amends the RSA (cl 28) to insert a new offence for failure to ensure a person does not receive greater than a prescribed dose limit of ionising radiation.[155]

The explanatory notes state that if the Bill is passed, the Radiation Safety Regulation 2021 will be amended to remove the equivalent offence in s 60 of the Regulation. Prescribed dose limits will remain in the Regulation.[156]

The Bill proposes that a penalty of 100 penalty units for the offence be inserted in the RSA, compared to 20 penalty units for the offence currently in the Radiation Safety Regulation 2021.[157]

151 LSA, s 4(4)(a).

152 Public Health Regulation 2018, s 47.

153 Explanatory notes, p 24.

154 Explanatory notes, pp 18, 24.

155 Bill, cl 28 (RSA, new s 42A).

156 Explanatory notes, p 18.

157 Explanatory notes, pp 40-41.

2.8.4.1 Penalties should be reasonable and proportionate

Consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences relate.[158]

According to the explanatory notes, moving the offence to the Act is necessary to 'provide a clear head of power for the regulation to prescribe the relevant radiation doses'[159] and provide for a penalty which is similar to other offences in the RSA:

> The offence will also enable other dose limits to be prescribed by regulation that are designed to protect the health of people who are exposed to certain radioactive material.
>
> The penalty attached to the new offence head of power in the Act and existing section 60 of the Regulation will be increased from 20 to 100 penalty units to better align with similar offences in sections 41, 42 and 47A of the Radiation Safety Act, which have penalties ranging from 200 to 500 penalty units. 100 penalty units is considered proportionate as it reflects the seriousness of the risk to human health from being exposed to radiation. However, it is also balanced with the lower risk associated with exposure to radioactive material that is not a radioactive substance compared with offence provisions in the Act outlined above.[160]

Committee comment

Given the reason for increasing the maximum penalty for the ionising radiation offence is to protect the health of people who are exposed to certain radioactive material, and that the penalty is consistent with other penalties in the RSA, we consider that the proposed increased penalty is reasonable and proportionate in the circumstances and has sufficient regard to the rights and liberties of individuals.

2.8.4.2 Delegation of legislative power

Although acknowledging that allowing appropriate dose limits for radioactive material to be prescribed by regulation may infringe the FLP of whether the Bill has sufficient regard to the institution of Parliament, the explanatory notes state that it is:

> … appropriate for dose limits to be outlined in regulations as they contain highly technical information that is more appropriately dealt with in subordinate legislation.
>
> The amendments will also insert a head of power into the Radiation Safety Act for the Radiation Safety Regulation to exempt radioactive material from a requirement of the Act. This will allow, for example, radioactive material disposed of naturally through bodily waste to be exempt from the disposal requirements of the Act where persons have undergone nuclear medicine procedures.
>
> These heads of power will be scrutinised by the Legislative Assembly, and the Regulation changes will be tabled in the Assembly and subject to disallowance.[161]

Committee comment

The committee is satisfied that it is appropriate for the technical information relevant to dose limits to be outlined in regulation, in line with existing practice, and that the proposed amendments to the RSA have sufficient regard to the institution of Parliament.

158 OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

159 Explanatory notes, p 9.

160 Explanatory notes, p 27.

161 Explanatory notes, pp 27-28.

2.8.5 Explanatory notes

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.[162]

Explanatory notes were tabled with the introduction of the Bill.

Committee comment

We consider that the explanatory notes contain the information required by Part 4 of the LSA and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

2.9 Compatibility with the *Human Rights Act 2019*

The HRA protects fundamental human rights drawn from international human rights law.[163] Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The human rights potentially affected by the Bill are:

- the right to life (HRA, s16) – HHBA
- the right to own property (HRA, s 24) – MPA, RSA
- the right to privacy (HRA, s 25) – REA, MHA, MPA, PHA
- the right to a fair hearing (HRA, s 31) – MHA
- the right to access health services (HRA, s 37) – HHBA.

Potential human rights issues in relation to each Act amended by the Bill are outlined below.

2.9.1 *Hospital and Health Boards Act 2011*

The amendments to the HHBA (cls 4 – 6 of the Bill) provide for positive measures (albeit unspecified) to protect the life and wellbeing of hospital and medical staff and by their nature and intent are not a breach of HRA.

Clause 7 of the Bill, however, allows for the prevention of access to a health facility for a person who poses a security threat or who is creating a nuisance. This power of exclusion will not apply in cases where a person requires emergency medical treatment necessary to save life or prevent serious impairment to that person. The power to exclude is thus contained within reasonable and justifiable limits in accordance with s 13 of the HRA, provided that in practice no other motivations for the exclusion are present (e.g. racial discrimination).

2.9.2 *Medicines and Poisons Act 2019*

The amendments to the MPA in cls 10 and 11 of the Bill allow for controls of pest management activities. While s 24 of the HRA is expressed as the right to *own* property, similar provisions in other states have been interpreted to extend to the right to *use* property.[164] However, such a provision is justifiable under s 13 of the HRA as it is a justifiable measure in the public health interest.

---

162 LSA, s 23.

163 The human rights protected by the HRA are set out in sections 15 to 37 of the Act. A right or freedom not included in the Act that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in this Act or is only partly included; HRA, s 12.

164 *Swanson Pty Ltd v Yarra CC* [2009] VCAT 923.

Clauses 12-13 of the Bill would allow information regarding the use of medicines/poisons to be made known, but only to entities performing relevant functions or to persons having a legitimate need to know, and is similarly justifiable.

2.9.3 *Recording of Evidence Act 1962*

The amendments to the *Recording of Evidence Act 1962* establish a framework for recording tribunal proceedings and for providing access to copies of records and transcripts of tribunal proceedings. While this might be a breach of a person's privacy, it also ensures accountability and transparency of the proceedings. This is a justifiable balance of competing public interests in accordance with s 13(2)(g) of the HRA.

2.9.4 *Mental Health Act 2016*

The Bill amends the MHA to allow electronic recording of proceedings of the MHRT. The Bill restricts the availability of copies of records and transcripts of proceedings before a tribunal to specified officers or to a person otherwise entitled to them. This is to protect the privacy of the individual concerned and is thus congruent with the HRA.

The QHRC submission contended that if an individual was particularly distressed by the electronic recording of their proceedings, continuing with that recording could amount to cruel, inhuman or degrading treatment of that individual, in breach of s 17[165] of the HRA. The circumstance of their distress would therefore possibly amount to a justifiable limitation[166] on the rights to a fair hearing and to equality of treatment, both of which would typically require that an electronic record of proceedings be made.[167]

The amendments regarding records and transcripts of proceedings of the MHRT do not relate to *access* to mental health and other facilities by persons representing entities to which, under Australia's international treaty obligations, such access might otherwise be regarded as obligatory. This omission means that this potential conflict does not arise under this Bill, but may raise issues under other areas of law.

The Bill also amends the MHA to change the ways an adult with capacity may waive the right to be represented by an appointed representative at a MHRT hearing. The amendment is reasonably justifiable under s 13 of the HRA.

2.9.5 *Public Health Act 2005*

The amendments to the PHA allow information about school students and about patients undergoing cancer screening or treatment to be made available for relevant epidemiological notifications. This breach of privacy is reasonably justifiable under s 13 of the HRA.

2.9.6 *Radiation Safety Act 1999*

The amendments to the RSA promote community safety by penalising overdoses of radiation but limiting liability for radiation that does not emanate from radioactive material. This is justifiable under s 13 of the HRA provided that the processes by which these determinations are made are lawful and the fines are proportionate and reasonable.

2.9.7 *Transplantation and Anatomy Act 1979*

The amendments to the TAA support consistent processes between public and private hospitals for human tissue donations, and remove the requirement for seeking a ministerial permit to enable doctors to purchase products that are already approved under a Special Access Scheme. As this

[165] HRA, s 17 is the prohibition against torture, cruel, inhuman or degrading treatment of an individual.

[166] See HRA, s 13.

[167] Submission 7, p 3.

streamlines processes and makes practice consistent between the public and private hospital sectors, this does not contravene any right under the HRA.

2.9.8 *Water Fluoridation Act 2008*

The amendments to the WFA allow for notifications to be made other than in print media. This is not a breach of any human right under HRA.

Committee comment

We consider that the Bill is compatible with the HRA as we are satisfied that the human rights limitations identified are reasonable and are demonstrably justified, having regard to s 13 of the HRA.

The statement of compatibility which was tabled with the introduction of the Bill, as required by s 38 of the HRA, contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

2.10 Consultation

- The AWUEQ submitted their concerns about not being in the explanatory note's list of stakeholders that were invited to give feedback on the draft Bill in September – October 2022, and that the *Consultation* section of the explanatory notes advised that stakeholders were generally supportive of/raised no concerns with the Bill.[168]
- AWUEQ considers the claim of general support for the Bill to be misleading, submitting to the current inquiry their October 2022 feedback to QH on the draft Bill that detailed AWUEQ's 'significant concerns that the proposed amendments in the Bill [specifically the Health and Hospital Boards Act amendments related to employees] do not go far enough'.[169] They also submitted QH's response to their feedback.
- In respect of the omission of AWUEQ from the stakeholder list, QH noted that the list was not intended to be exhaustive, with over 200 stakeholders being contacted about the Bill.[170] QH advised that 'while various stakeholders provided feedback on the draft Bill, the majority of stakeholders consulted were generally supportive of the Bill'[171] and that 'the union's and all of our stakeholders' contributions during our development of the bill and the committee process are sincerely appreciated'.[172]
- At the public hearing, AMA Queensland acknowledged QH's 'legislative policy unit for their genuine engagement and sensible proposal to resolve our concerns'.[173]

168 Submission 13, pp 2-3; public hearing transcript, Brisbane, 31 January 2023, p 9.

169 Submission 13, p 2.

170 Public briefing transcript, Brisbane, 31 January 2023, p 3.

171 Queensland Health, correspondence, 20 January 2023, p 2.

172 Public briefing transcript, Brisbane, 31 January 2023, p 3.

173 Public hearing transcript, Brisbane, 31 January 2023, p 2.

Appendix A – Submitters

Sub #	Submitter
1	Office of the Health Ombudsman
2	The Public Advocate
3	Queensland Law Society
4	Australian Diagnostic Imaging Association
5	Queenslanders with Disability Network
6	Australian Medical Association Queensland
7	Queensland Human Rights Commission
8	Cancer Council Queensland
9	submission withdrawn
10	West Moreton Health
11	Dorothy Long
12	Queensland Nurses and Midwives' Union
13	Australian Workers' Union of Employees, Queensland

Appendix B – Officials at public departmental briefings

Brisbane – 16 December 2022

Queensland Health

- Jasmina Joldic PSM, Associate Director-General, Strategy, Policy and Reform Division
- David Harmer, Senior Director, System Policy Branch
- Hannah Baldry, Acting Director, Legislative Policy Unit
- Dr John Reilly, Chief Psychiatrist and Chief Mental Health Alcohol and Other Drugs Officer, Mental Health, Alcohol and Other Drugs Branch
- Elizabeth Edmiston, Acting Director, Legislative Projects, Mental Health, Alcohol and Other Drugs Branch

Brisbane – 31 January 2023

Queensland Health

- Jasmina Joldic PSM, Associate Director-General, Strategy, Policy and Reform Division
- David Harmer, Senior Director, System Policy Branch
- Hannah Baldry, Manager, Legislative Policy Unit
- Dr John Reilly, Chief Psychiatrist and Chief Mental Health Alcohol and Other Drugs Officer, Mental Health, Alcohol and Other Drugs Branch
- Emily Mahoney, Acting Director, Legislative Projects, Mental Health, Alcohol and Other Drugs Branch

Department of Justice and Attorney General

- Trudy Struber, Principal Legal Officer, Strategic Policy and Legal Services

Appendix C – Witnesses at public hearing

Brisbane – 31 January 2023

Australian Medical Association Queensland

- Dr Brett Dale, CEO

Queensland Nurses and Midwives' Union

- Jamie Shepherd, Professional Officer – Team Leader
- Kellie Dwyer, Professional Officer
- Dr Helen Klieve, Research and Policy Officer

Australian Workers' Union of Employees, Queensland

- Barry Watson, Senior Advocate

The Public Advocate

- Dr John Chesterman, Public Advocate
- Yuu Matsuyama, Senior Legal Officer

Queensland Law Society

- Chloe Kopilovic, President
- Karen Williams, Deputy Chair of the Health and Disability Law Committee
- Dr Brooke Thompson, Senior Policy Solicitor

Queensland Human Rights Commission

- Neroli Holmes, Deputy Commissioner
- Rebekah Leong, Principal Lawyer