Parliamentary Committees



Health and Wellbeing Queensland Bill 2019

Report No. 16, 56th Parliament
Education, Employment and Small Business Committee
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Education, Employment and Small Business Committee

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Acknowledgements

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Abbreviations

ANPHA	Australian National Preventative Health Agency
HWQ	Health and Wellbeing Queensland
INHPF	International Network of Health Promotion Foundations
IUHPE	International Union for Health Promotion and Education
PHAA	Public Health Association of Australia
VicHealth	Victorian Health Promotion Foundation
WHO	World Health Organization

Chair's foreword

This report presents a summary of the Education, Employment and Small Business Committee's examination of the Health and Wellbeing Queensland Bill 2019.

The Bill delivers on the Palaszczuk Government's election commitment to establish a health promotion agency, to be known as Health and Wellbeing Queensland (HWQ), to contribute to improving the health and wellbeing of Queenslanders and reducing the risk factors associated with chronic disease, and health inequality.

This Bill inquiry follows previous committee consideration into the establishment of a Queensland Health Promotion Commission, Report No. 21 of the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee (HCDSDFVPC), 55th Parliament – *Inquiry into the establishment of a Queensland Health Promotion Commission,* tabled in June 2016. In addition the HCDSDFVPC inquired into an earlier Bill in Report No. 40, 55th Parliament – *Healthy Futures Commission Queensland Bill 2017,* tabled in June 2017.

I have had the pleasure of chairing each of these inquiries.

The consistent theme throughout each inquiry has been the strong support amongst health, medical and sporting bodies, non-government organisations, and tertiary research institutes for the establishment of a Health Promotion agency in Queensland.

Such an agency provides an exciting opportunity to provide long-term strategic leadership and direction on whole-of-government initiatives and partnerships to address the social determinants of health. To act as an independent champion, engage with the diverse sectors engaged in health promotion, add to the empirical base underlying health promotion policy in Queensland, and foster the innovative thinking required to reduce health inequity.

But it will take shared political will to do so. The Heart Foundation Queensland in their submission to the inquiry said: …*What we want to see most of all is a strong agency with bipartisan support that can withstand any change in government and the political environment over time. HWQ needs to be protected through government cycles, and be evolutionary in nature, allowing for future growth and development in the budget, role, resources, capacity, scope and strategic direction.*

With a long term sustained commitment, long term outcomes can be achieved for the benefit of all Queenslanders.

On behalf of the Committee, I would like to thank those individuals and organisations who provided written submissions and appeared as witnesses, many to all three inquiries, for their valuable contributions. Thank you also to the Queensland Health for their assistance and information provided, and the Committee Secretariat and Hansard.

I commend this report to the House.

Ms Leanne Linard MP
Chair

Recommendations

The committee recommends the Health and Wellbeing Queensland Bill 2019 be passed.

1 Introduction

1.1 Role of the committee

The Education, Employment and Small Business Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The committee's primary areas of responsibility include:

- education
- industrial relations
- employment and small business
- training and skills development.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles, and
- for subordinate legislation – its lawfulness.

1.2 Inquiry process

This Bill was preceded by an inquiry by the former Health and Ambulance Services Committee (the parliamentary health committee) in 2015-16 on the potential role, scope and strategic directions of a Queensland health promotion commission.

The parliamentary health committee also examined the Healthy Futures Commission Queensland Bill 2017, reporting to the Legislative Assembly in July 2017. The Healthy Futures Commission Queensland Bill, like the current Bill, proposed to establish a Queensland health promotion body. The Bill lapsed when the Legislative Assembly was dissolved for a general election in late 2017.

The Health and Wellbeing Queensland Bill 2019 (Bill) was introduced into the Legislative Assembly and referred to the committee on 28 February 2019. The committee was required to report to the Legislative Assembly by 18 April 2019.

On 6 March 2019, the committee invited stakeholders and subscribers to make written submissions on the Bill. Thirty-three submissions were received.

The committee received a public briefing about the Bill from Queensland Health on 13 March 2019. A transcript is published on the committee's web page; see Appendix B for a list of officials who briefed the committee.

The committee received written advice from Queensland Health in response to issues raised in submissions, and from the Minister for Health and Minister for Ambulance Services in relation to issues of fundamental legislative principle.

The committee held a public hearing on 1 April 2019 (see Appendix C for a list of witnesses).

The submissions, correspondence from the department and transcripts of the briefing and hearing are available on the committee's webpage.

[1] *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

1.3 Policy objectives of the Bill

The objective of the Bill is to establish a health promotion agency, to be known as Health and Wellbeing Queensland (HWQ), as a statutory body. The explanatory notes state that HWQ will contribute to:

- improving the health and wellbeing of Queenslanders
- reducing the risk factors associated with chronic disease, and
- reducing health inequities.[2]

1.4 Government consultation on the Bill

The explanatory notes summarise the consultation undertaken by parliamentary committees (see section 2.1 below) and consultation undertaken in June 2018 and note that submissions and the former committee's reports were used to develop the model for HWQ.

The explanatory notes state that the government further consulted with key experts and opinion leaders on how to improve the health and wellbeing of Queenslanders, to identify opportunities for cross sectoral collaboration, and the role a health promotion agency could play to facilitate health prevention and health promotion. Ongoing consultation with key stakeholders is planned during the establishment of HWQ.[3]

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

After examination of the Bill, including consideration of the policy objectives to be implemented, stakeholders' views and information provided by Queensland Health, the committee recommends that the Bill be passed.

Recommendation 1

The committee recommends the Health and Wellbeing Queensland Bill 2019 be passed.

[2] Explanatory notes, p 1.

[3] Explanatory notes, p 12.

2 Background to the Bill

2.1 Health promotion

2.1.1 A role for more than the health sector

As early as 1986 the World Health Organization (WHO), through the *Ottawa Charter* (the Charter), identified that the health sector alone cannot ensure the prerequisites and prospects for health. It recognised that health promotion requires coordinated action by governments, health and other social and economic sectors, non-government and voluntary organisations, local authorities, industry and the media. The Charter noted that health promotion strategies and programs need to be adapted to local needs and take account of differing social, cultural and economic systems.[4]

More recently the WHO described three key elements of health promotion:

- ***Good governance for health***

Health promotion requires policy makers across all government departments to make health a central line of government policy. This means they must factor health implications into all the decisions they take, and prioritise policies that prevent people from becoming ill and protect them from injuries.

These policies must be supported by regulations that match private sector incentives with public health goals. Examples include taxation policies on harmful products such as tobacco, and planning laws that support creation of walkable cities.

- ***Health literacy***

People need to acquire the knowledge, skills and information to make healthy choices, for example about the food they eat and healthcare services they need.

- ***Healthy cities***

Cities have a key role in promoting good health. Strong leadership is essential to healthy urban planning and to build preventive measures in communities and primary health care.[5]

2.1.2 Social determinants of health

Research and best practice in health prevention and promotion has increasingly focused on the social determinants of health. The WHO describes social determinants of health as '…the circumstances in which people grow, live, work, and age, and the systems put in place to deal with illness. The conditions in which people live and die are, in turn, shaped by political, social, and economic forces.'[6] The Australian Institute of Health and Welfare said:

> *Determinants can affect health positively or negatively—they are attributes, characteristics or exposures that increase or decrease the likelihood that a person develops a disease or health disorder. Many risk factors can be changed or controlled to improve health outcomes or to reduce the chance of ill health. In turn, a person's health status influences social and socioeconomic factors; for example, their ability to work, earn an income or participate in their community.*[7]

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4 World Health Organisation, *Ottawa Charter for Health Promotion,* November 1986, reproduced at Appendix 4, http://www.who.int/healthpromotion/conferences/previous/ottawa/en

5 WHO, *What is health promotion?* 2016, https://www.who.int/features/qa/health-promotion/en/

6 Commission on Social Determinants of Health, World Health Organization, C*losing the gap in a generation: health equity through action on the social determinants of health,* Final report, Geneva, 2008. https://apps.who.int/iris/bitstream/handle/10665/43943/9789241563703_eng.pdf;jsessionid=C7D3A296DAE23ABAD59A2E55012541F2?sequence=1 Accessed 3 April 2019.

7 Australian Institute of Health and Welfare, *Australia's Health 2018,* Australian Government, June 2018, p 164

The WHO Commission on Social Determinants of Health has suggested that countries adopt a 'whole-of-government' approach to deal with the social determinants of health, with policies and interventions from all sectors and levels of society.[8]

2.1.3 Health promotion bodies in Australian jurisdictions

Victoria, Western Australia and South Australia all have statutory bodies with a health promotion role.

2.1.3.1 *Victoria*

The Victorian Health Promotion Foundation (VicHealth) was established in 1987. Its initial focus was on reducing rates of smoking by replacing tobacco sponsorship of sport and arts organisations with health sponsorships and promotion of health messages, however its functions relate to promotion of good health.

During 2017-18 VicHealth activity included an ongoing campaign in collaboration with the Heart Foundation and The George Institute for Global Health aimed at reducing dietary salt. It has included analysis of salt levels in food and engagement with food manufacturers about increased salt levels.

Grants to local governments aimed to make 'water the drink of choice' by making drinking water more accessible in council-owned sport and recreation facilities. A range of grant programs was aimed at encouraging physical activity, through sport, walking and programs targeted at Aboriginal communities and girls. Research grants aimed to improve smoking cessation and relapse rates in marginalised groups including people in lower socioeconomic areas and people leaving prison. Other recent initiatives are aimed at preventing harm from alcohol, and building community resilience and social connection, particularly among young people and women.

VicHealth undertakes a four yearly survey to measure the health and wellbeing of citizens; its reports are widely used by local governments for policy and planning.[9]

2.1.3.2 *Western Australia*

Healthway in Western Australia also funds health promotion programs and campaigns and health promotion research. Recent activities include funding research scholarships in collaboration with the Australian Health Promotion Association, continued support of the Cancer Council's program to reduce smoking, and a grant to help identify effective and sustainable ways to assist disadvantaged smokers to become smoke-free. Sponsorship of major sports and state sporting associations promoted smoking reduction messages.

Other initiatives include an ongoing partnership with sports associations aimed to prevent misuse of alcohol and other drugs and promote a healthy club culture. Initiatives aimed at preventing overweight and obesity included sport, arts and community event sponsorships, collaboration with the school tuckshop association to increase the availability of healthy food and drink options, nutrition education designed for Aboriginal communities, and other nutrition campaigns aimed at children.[10]

2.1.3.3 *South Australia*

The *South Australian Public Health Act 2001* established a statutory body, the South Australian Public Health Council. Its role is to advise the Chief Public Health Officer in relation to protection and promotion of public health. The Council's functions are related to: the protection and promotion of

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8 WHO, *Closing the gap: policy into practice on social determinants of health: discussion paper,* Geneva, 2011.

9 Victorian Health Promotion Foundation, *Report of Operations 2017-18,* www.vichealth.vic.gov.au, accessed 29 March 2019.

10 Healthway, *Annual Report 2017-18,* www.healthway.wa.gov.au/about/publications, accessed 29 March 2019.

public health; the development of public health plans; the promotion of public health research, and strategies to ensure a sufficiently trained and skilled workforce are in place.[11]

The Council's members include people with expertise in public health, environment protection, the community sector relevant to public health and local government. Unlike the Victorian and Western Australian bodies, the Public Health Council does not allocate grants or sponsorships.

2.1.3.4 *Former Australian National Health Preventive Health Agency*

It is worth also noting, that formerly an Australian National Preventive Health Agency (ANPHA) existed to coordinate health prevention efforts at a federal level. ANPHA was established as a statutory agency in the Commonwealth health portfolio in January 2011, under the *Australian National Preventive Health Agency Act 2010* (Cwlth). The ANPHA was abolished in June 2014 and its essential functions were transferred to the Commonwealth Department of Health.[12]

The ANPHA was established, for the purpose of providing national capacity to drive preventive health policy and programs. It was intended to provide policy leadership and establish partnerships with Commonwealth, state and territory governments, community health promotion organisations, industry and primary health care providers.

The ANPHA was Council of Australian Governments initiative which agreed in 2008 to a Health Prevention National Partnership. This agreement provided funding to support the following:

- increased access to services for children to increase physical activity and improved nutrition;
- provision of incentives for workplaces and local communities to provide physical activity and other risk modification and healthy living programs;
- increased public awareness of the risks associated with lifestyle behaviour and its links to chronic disease;
- a national social marketing campaign; and
- enabling infrastructure, including a national preventative health agency, surveillance program, workforce audit, eating disorders collaboration, partnerships with industry and a preventative health research fund, leading to better oversight and research into prevention, leading to improved outcomes.

The ANPHA Act provided for the Minister to appoint an advisory council of up to 11 members comprising individuals with a breath of experience and expertise, including members representing the States and Territories and the Commonwealth. The Act also allowed for the appointment of Expert Committees to assist and provide advice to the CEO on preventative health research, healthy lifestyle and tobacco related issues.

ANHPA's role included responsibility for providing evidence-based advice to governments on the development of preventive health policy and, in particular, managing the Preventive Health Research Fund to gather the information needed to develop new preventive health policies and programs, with a focus on translating research into practice. It also funded grants for research programs for other initiatives. The ANPHA was also required under the Act to publish a report on the state of preventative health in Australia every two years. Its first report was published in July 2013.

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[11] *South Australian Public Health Act 2011* (SA); South Australian Public Health Council webpage, https://www.sahealth.sa.gov.au/wps/wcm/connect/Public+Content/SA+Health+Internet/Protecting+public+health/SA+Public+Health+Council/ accessed 29 March 2019.

[12] Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, *Inquiry into the establishment of a Queensland Health Promotion Commission,* June 2016, Queensland Parliament, https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2016/5516T1026.pdf

On 15 May 2014, the then Minister for Health and Minister for Sport, introduced the Australian National Preventive Health Agency (Abolition) Bill 2014. The purpose of this bill was to abolish the ANPHA. The Minister stated that this abolition would '…streamline and better coordinate public health efforts that are currently spread across two agencies and remove duplication and unnecessary costs.'[13]

The Senate referred the Bill to the Community Affairs Legislation Committee. That Committee called for submissions and reported in July 2014.

A number of commentators were critical of the decision to abolish the ANPHA. Professor Stephen Leeder, Emeritus Professor of Public Health and Community Medicine at the University of Sydney noted that:

> *Australia faces major problems with potentially preventable disorders such as obesity, diabetes, and heart disease due to problems such as smoking and alcohol abuse. These are national problems demanding national solutions.*
>
> *ANPHA was a move in that direction. It was not manufacturing iron lungs for polio victims. It was up to the minute. So abolishing it was a pretty dumb thing to do.*
>
> *The functions of the ANPHA were to act as a clearinghouse for information about preventive programs that work, to foster research and the trial of new ideas, to promote the use of social marketing and social media as ways of communicating preventive messages to the community (modern-day Grim Reapers for example) and advocating nationally for changes that need to be made nationally, say to food, and that cannot be done at state level.*
>
> *Although a creature of government, it was meant to have independence. It raised hopes that, for once, we might have an institution to support prevention, rather as universities have lecture halls, research workers have laboratories and clinicians have hospitals.*[14]

2.2 Proposal for a Queensland health promotion body

Establishment of a Queensland health promotion body had its genesis in a 2015 state election commitment by the now Palaszczuk Labor Government. This followed significant cuts to the funding and staff of the Health Prevention Unit in Queensland Health under the former Government.

Following the election, in 2015 the then Minister for Health said the government would be 'reinvesting in preventative health programs, health promotion and research and innovation' to improve health outcomes, ease pressure on the health system and improve the quality of life of Queenslanders.[15]

The 2015-16 Budget allocated funding of $7.5 million over four years to establish a state-wide Health Promotion Commission. The Commission was proposed to:

> *… provide strategic leadership for whole-of-government initiatives aimed at maintaining and improving health and wellbeing of Queenslanders by preventing and slowing the increase of chronic illnesses such as diabetes, heart disease and cancer.*[16]

2.2.1 Parliamentary committee inquiry into establishment of a health promotion commission

The Legislative Assembly referred an inquiry into the establishment of a Queensland health promotion commission to the then Health and Ambulance Services Committee (the health committee) in September 2015. The terms of reference required the committee to inquiry and report on:

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13 House of Representatives, Hon P Dutton MP, Minister for Health and Minister for Sport, Parliamentary Debates (Hansard), 15 May 2014, p 3833.

14 Leeder, Prof s, Centre for Obesity management & Prevention Research Excellence in Primary Health Care, Seminar, *Whither Preventive Health – the Legacy of ANPHA,* August 2014.

15 Queensland Parliament, *Record of proceedings,* 25 March 2015, p 59.

16 Queensland Government, *Budget 2015-16 – Service Delivery Statements – Queensland Health,* June 2015, p 7.

- the potential role, scope and strategic directions of a Queensland Health Promotion Commission
- the effectiveness of collaborative, whole-of-government, and systems approaches for improving and sustaining health and wellbeing, including: models used in other jurisdictions (including specific agencies or whole-of-government policy frameworks), and population-based strategies, other than personal interventions delivered by telephone or ICT.

In undertaking the inquiry, the committee was required to consider:

- approaches to addressing the social determinants of health
- population groups disproportionately affected by chronic disease
- economic and social benefits of strategies to improve health and wellbeing
- emerging approaches and strategies that show significant potential' ways of partnering across government and with industry and community including collaborative funding, evaluation and research, and
- ways of reducing fragmentation in health promotion efforts and increasing shared responsibility across sectors.

The former health committee considered evidence about the incidence of chronic disease, and its disproportionate impact on people who experience socioeconomic disadvantage, those in regional and remote areas, and people from Aboriginal and Torres Strait Islander backgrounds.

The approaches of health promotion bodies in Victoria, Western Australia and South Australia were considered. The committee also considered the social determinants of health and recent research and health promotion activities to address the factors which contribute to illness and poor health.

The former health committee reported to the Legislative Assembly in June 2016. The committee found there was strong support from stakeholders for the establishment of a Queensland health promotion commission, and recommended that a health promotion body should be established. It did not recommend a particular model for a health promotion commission.[17]

2.2.2 Healthy Futures Commission Queensland Bill 2017

The Healthy Futures Commission Queensland Bill 2017 was introduced into the Legislative Assembly in May 2017, and was considered by the parliamentary health committee. The committee considered 37 submissions from stakeholders and held a public hearing in Brisbane.

The Bill proposed to establish an independent commission with functions to [children and families]. The commission was proposed to engage sectors outside the health system, build capacity to create healthier environments and reduce health inequity by responding to the needs of those groups whose health is poorest and who are most likely to have limited opportunities to be healthy. It was intended that the new Commission would 'foster the new thinking required to support individual, family and community changes needed to help reduce health inequity'.[18]

Some stakeholders supported the proposed functions for the Commission. They considered it was realistic to target obesity and physical activity, noted there is strong evidence for intervention in early life to support health and wellbeing, and supported the mandate for the proposed Commission to work collaboratively with non-government organisations and industry, and to address the social determinants of health. Other submitters considered the proposed functions and scope were too narrow and proposed amendments to include:

- whole of government and inter-sectoral collaboration

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17 Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, title of report, link to tabled papers

18 Healthy Futures Commission Queensland Bill 2017, explanatory notes

- a broader range of risk factors than obesity and physical activity
- reference to the cultural determinants of health as they relate to the wellbeing of Aboriginal and Torres Strait Islander people
- a focus on population-wide health promotion, rather than only children and families
- addressing the social determinants of health as a core function, and
- explicit reference to a role of stewarding an approach to health promotion that empowers and connects people with all levels of government, community and not-for-profit organisations.[19]

The health committee reported to the Legislative Assembly in July 2017, and was unable to reach a majority decision as to whether the Bill should be passed. The Bill lapsed when the Legislative Assembly was dissolved for a general election in late 2017.

[19] Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, *Healthy Futures Commission Queensland Bill 2017,*

3 Examination of the Bill

3.1 Overview of the Bill

The Bill proposes to create a health promotion agency, Health and Wellbeing Queensland (HWQ), with the objective of improving the health and wellbeing of the Queensland population.[20]

Like the Healthy Futures Commission Bill 2017, which lapsed when the Legislative Assembly was dissolved in 2017 for an election, the Bill creates an independent statutory body. The explanatory notes for the Bill state that the model for HWQ in the current Bill was developed using the parliamentary health committees' reports on establishment of a health promotion agency and on the Healthy Futures Commission Bill, and the submissions to those inquiries[21].

The new health promotion agency would be an independent statutory body. It would work in partnership with other government and non-government organisations to promote health and wellbeing. The work of HWQ would include commissioning activities to prevent illness and promote health, allocation of grants, policy development and advice to the Minister. It would fund and support evidence-based and locally supported initiatives to contribute to improved health, and will be able to promote a cross-sectoral approach to health promotion.[22]

The Bill provides for HWQ's objectives, functions, governance and staff arrangements, and also makes minor amendments to the *Hospital Foundations Act 2018* and the *Public Service Act 2008*. The Bill is proposed to commence on a day to be fixed on proclamation. Subject to Parliament's consideration of the Bill, it is envisaged that HWQ would commence as soon as possible in 2019.[23]

3.2 Establishment, objective and functions of Health and Wellbeing Queensland

All submitters supported the establishment of Health and Wellbeing Queensland. Stakeholders made suggestions about the composition of the board of HWQ, expressed strong interest in collaborating with HWQ, and contributed a variety of ideas about the ways that HWQ could implement its functions.

3.2.1 Independent statutory body

The Bill proposes to establish HWQ as a statutory body. It would be subject to the *Public Service Act 2008*, the *Crime and Corruption Act* 2001, the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangement Act 1982,* which include established financial and reporting requirements. Clause 12 provides that HWQ would have the powers of an individual. This means, for example, it may enter into contracts, appoint consultants, and manage its funds.[24]

3.2.1.1 *Stakeholders' views*

All submitters supported the establishment of HWQ. At the committee's public hearing Professor David Whiteman from QIMR Berghofer Research Institute said:

> *It seems to me there is a great commonality of purpose in the public health community that there is support for this agency but a hope that the establishment of it is grounded in reality.*[25]

The submission from QUT noted that establishment of an independent statutory authority for health promotion, prevention of chronic disease and reducing inequity across Queensland communities is

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20 Explanatory notes, p 1.

21 Explanatory notes, p 12.

22 Hon Stephen Miles MP, Minister for Health and Ambulance Services, Queensland Parliament, Record of Proceedings, 28 February 2019, p 239.

23 Michael Walsh, Queensland Health, public briefing transcript, Brisbane, 13 March 2019, p 6.

24 Explanatory notes, p 15.

25 Public hearing transcript, p 4

consistent with international recommendations from the International Network of Health Promotion Foundations (INHPF).[26]

Stakeholders supported the independence of the proposed body. The Heart Foundation noted improvements to the agency's independence (since the earlier Bill) and said the 'independence of the agency is essential so that it can be truly separate from political processes and continue to have bipartisan support.'[27] Independence to enable HWQ 'to make decisions based on the evidence of what needs to be done.'[28]

Submitters viewed health promotion and prevention as an essential response to increasing health expenditure. For example, the Mr Steven Vines of the Heart Foundation said:

> *… prevention must be given a greater priority and funding, and we believe Health and Wellbeing Queensland will be well placed to do this. With 30 per cent of the total state budget consumed by health expenditure, we cannot continue on this trajectory. We need to do more than treat disease: we need to prevent it.*[29]

3.2.1.2 *Ministerial directions*

Clause 13 provides that the Minister may give HWQ a direction about the performance of its functions, the exercise of its powers or to prepare a special report on matters relevant to its function or powers. However the Minister may not give a written direction about employment matters relating to a particular person or the contents of a special report. Clause 13 also provides that HWQ must comply with a ministerial direction.

Clause 43 provides that HWQ's annual reports must include details of how efficiently and effectively HWQ performed its functions, details of each direction given by the Minister and the corresponding action taken by the HWQ.

3.2.2 Objective and functions

3.2.2.1 *Objective*

The Bill provides the objective of HWQ is to improve the health and wellbeing of the Queensland population, including:

- reducing the burden of chronic diseases through targeting risk factors for those diseases, and
- reducing health inequity.

Notes in the Bill give examples of risk factors for chronic diseases - poor nutrition, low physical activity and overweight or obesity. An example of health inequity is higher rates of chronic disease in population groups with low socio-economic status than in groups with high socio-economic status.[30] Other risk factors include smoking, risky alcohol consumption, poor dental and oral health, high blood pressure and cholesterol and sun exposure.[31]

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26 Submission 14, covering letter.

27 Public hearing transcript, Brisbane, 1 April 2019, p 20.

28 Public hearing transcript, Brisbane, 1 April 2019, p 22.

29 Public hearing transcript, 1 April 2019, p20.

30 Clause 10, notes.

31 Queensland Health, *The health of Queenslanders 2018: Report of the Chief Health Officer Queensland,* November 2018

Stakeholders supported the focus on risk factors and on reducing health inequity. Professor Young highlighted the importance of looking at the interface between chronic disease prevention and social inequity across Queensland communities.[32]

The Cancer Council noted that there are 14 cancer types associated with overweight and obesity, and around a quarter of cases of cancer can be prevented through eating a healthy diet and being physically active.[33] The Public Health Association of Australia (PHAA) suggested that the nutrition and physical activity of Queenslanders would be a good focus initially.[34]

3.2.2.2 *Functions of Health and Wellbeing Queensland*

The proposed functions of HWQ set out in clause 13 are to:

- facilitate and commission activities (activities are defined to include projects, programs, services and research), to prevent illness and promote health and wellbeing
- develop partnerships and collaborate with other entities to further its objective or carry out its functions under the Act
- give grants for activities to further its objective or carry out its functions under the Act
- monitor and evaluate activities to prevent illness and promote health and wellbeing
- develop policy and advise the Minister and government entities about preventing illness and promoting health and wellbeing
- coordinate the exchange of information about activities to prevent illness and promote health and wellbeing.

The Director-General of Queensland Health advised the committee that HWQ would:

> *… perform its functions in a way that adds value and does not duplicate existing initiatives. The government has designed the model to be action oriented. It wants an organisation that works across public and private sectors with community groups, schools, local businesses, governments and universities to solve problems and remove barriers that prevent individuals and communities from making healthy choices.*[35]

3.2.2.3 *Stakeholders' views*

Stakeholders supported the objective and functions proposed for HWQ. For example, Dr Linjawi considered the HWQ 'could actually influence things across the whole of society in a way that would be inspirational.'[36]

At the public hearing Ms McMillan said:

> *All three of our organisations [Heart Foundation Queensland, Diabetes Queensland and Cancer Council Queensland] have expressed support for this within our submissions. In our view, this is a sensible model that should deliver real, positive impacts for the Queensland community. It has clear objectives and a commitment to reducing obesity and overweight.*[37]

The QUT submission suggested the objective in clause 10 could be expanded to include the use of evidence-informed strategies, and program evaluation of commissioned activities as part of the objective of improving Queenslanders' health. In addition QUT recommended the HWQ functions in

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32 Public hearing transcript, 1 April 2019, p 9.

33 Submission 2, p 4.

34 Public hearing transcript, Brisbane, 1 April 2019, p 7.

35 Queensland Health, public briefing transcript, Brisbane, 13 March 2019, p 6.

36 Public hearing transcript, Brisbane, 1 April 2019, p 15.

37 Public hearing transcript, Brisbane, 1 April 2019, p 20

clause 11(a) and (d) be amended to give greater emphasis to research and to focus monitoring and evaluation on the implementation and sustainability of activities to prevent illness and promote health and wellbeing.[38] The committee thought the suggestions raised in QUT's submission were worthy of consideration by the Minister.

3.3 Implementation of Health and Wellbeing Queensland's functions

3.3.1 Sustainability of health promotion

A number of stakeholders emphasised the importance of a long term view of health promotion, bipartisan political support, independence and adequate funding to ensure the success of health promotion and prevention of ill-health. For example the Heart Foundation said:

> *It is essential that HWQ be truly independent from political processes. What we want to see most of all is a strong agency with bipartisan support that can withstand any change in government and the political environment over time. HWQ needs to be protected through government cycles, and be evolutionary in nature, allowing for future growth and development in the budget, role, resources, capacity, scope and strategic direction*.[39]

Those suggestions are consistent with the International Union for Health Promotion and Education (IUHPE) system requirements for health promotion and prevention, which include political commitment to health promotion, health equity and chronic disease prevention.[40]

Professor Whiteman noted that internationally, the programs run by health promotion agencies can take years to deliver and sometimes decades for the benefits to manifest.[41]

Also relevant to a long-term approach is consideration of funding for HWQ at a fixed proportion of the annual health budget.[42] In response to questions at the public hearing Professor Whiteman advised the research literature suggests differing proportions of the health budget. Some advocate that one per cent of the health budget should be spent on prevention, which Professor Whiteman considered to be modest. He suggested the important issue is commitment to a long-term investment in prevention.[43] The Heart Foundation indicated that the proportion of the total health budget invested in prevention in New Zealand was approximately seven per cent, and in Canada, five per cent.

To support a long term perspective for health promotion, QUT submitted that a state-based overarching plan be developed for chronic disease prevention, with a span of potentially more than ten years.[44]

3.3.1.1 *System requirements for health promotion and prevention*

Stakeholders' views are consistent with some of the system requirements for health promotion and prevention identified by the IUHPE. It identifies ten system requirements to support health promotion and prevention of non-communicable diseases (such as cardiovascular disease, cancer and diabetes) which are summarised below:

- high-level political commitment to health promotion, health equity and disease prevention and control
- transparent and robust actions plans for prevention, including objectives to address health inequity

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38 Submission 14.

39 Heart Foundation, submission 27, p 3.

40 International Union for Health Promotion and Education, *Beating NCDs equitably - ten system requirements for health promotion and the primary prevention of NCDs*, May 2018, www.iuhpe.org

41 Public hearing transcript, Brisbane, 1 April 2019, p 4.

42 QIMR, Submission 16.

43 Professor Whiteman, public hearing transcript, Brisbane, 1 April 2019, p 3.

44 Submission 14, p 3.

- sustainable financing for program implementation, research and evaluation for prevention and health promotion
- dedicated health promotion institutions at national and sub-national levels
- mechanisms for cross-sector collaboration
- high level health promotion leaders in the public service
- build and strengthen health promotion workforce competency
- implementation of comprehensive health promotion plans with emphasis on robust policies and environment changes that address social, environmental and commercial determinants of health
- partnerships with non-state actors and communities
- evidence generation, guidelines, evaluation and monitoring.[45]

The Bill provides for most of the system requirements identified by the IUHPE. Other system requirements are implementation issues that the HWQ could achieve in collaboration with government agencies, industry, academia, the non-government sector and communities. The remaining requirements for political commitment and sustainable financing are matters for governments over time.

3.3.2 Partnerships and collaboration with other entities

A function of HWQ is to develop partnerships and collaborate with other entities to further its objective or carry out its functions (clause 11(b)). Queensland Health described how collaboration could work:

> *… [HWQ] will have links back in through government agencies as well as through the local government, community groups and non-government organisations that are actually working there locally. We see that it is set up as a collaborative model from the board down.*[46]

3.3.2.1 *Stakeholder views*

Many stakeholders indicated enthusiasm about collaboration and partnerships with HWQ. It was evident there is a depth of expertise in research, health promotion and disease prevention in Queensland organisations that can contribute to the HWQ's work. The Heart Foundation said 'we want to see the preventative health agency established now so that we can all work together to get on with implementing excellent health promotion interventions for all Queenslanders.'[47]

Stakeholders highlighted the advantages of HWQ engagement with government and non-government entities. The Cancer Council said there is a critical need to support greater collaboration across government departments and agencies, as well as build strong relationships with external bodies, including non-government organisations.[48]

The benefits of collaboration were highlighted by Ms Hamill of Diabetes Queensland:

> *We have seen already, even with the alliance within My Health for Life, the multiplier impact you can get by having parties who have not necessarily exactly the same interest but a very strong common interest that is core. When each contributes the basis of the rest of their organisation to the communications and to the resources that are available, you can get a significant multiplier.*[49]

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45 IUHPE, *Beating NCDs equitably - ten system requirements for health promotion and the primary prevention of NCDs*, May 2018, www.iuhpe.org

46 Queensland Health, public briefing transcript, Brisbane, 13 March 2019, p 3.

47 Public hearing transcript, Brisbane, 1 April 2019, p 20.

48 Submission 2, p 3.

49 Public hearing transcript, Brisbane, 1 April 2019, p 23.

'My Health for Life' is a healthy lifestyle program developed by Our Health Alliance, which:

> *…is made up of several organisations whose shared goal is to help Queenslanders achieve and enjoy the benefits of a healthy lifestyle.*
>
> *We are Diabetes Queensland, the Heart Foundation, the Stroke Foundation, the Queensland Primary Health Networks, the Ethnic Communities Council of Queensland, the Queensland Aboriginal and Islander Health Council and we're supported by the Queensland University of Technology and Ernst and Young.*
>
> *My health for life is a lifestyle program we have developed with State Government funding and are delivering across Queensland. Collectively, we have a wealth of expertise and experience delivering successful health programs. We offer a new perspective that could help you achieve some of your health goals – be they big or small.*[50]

The QIMR Berghofer Research Institute and the Health Faculty at QUT focused on the expertise in research, and in translating research findings to local conditions that they could offer in collaboration with HWQ. Occupational Therapy Australia noted its members have expertise in health promotion, and include researchers examining physical activity and healthy eating for people with diabetes, and children's active travel to school.[51]

Also, QUT noted the need for a skilled health promotion workforce, and said it is prepared to assist through its graduate and professional programs.[52] In response to a committee question about GPs language to encourage a healthier lifestyle, Professor Young said:

> *.. health workforce capability around these issues is an area we are deeply committed to, and there are bodies of work that look at communication and primary care and how that can tip people over into making healthier choices.*[53]

Sport and recreation peak bodies also want to collaborate and partner with HWQ. The Queensland Outdoor Recreation Federation said it had made submissions to the development of a Queensland Sport and Active Recreation Strategy 2019-2029, and the Queensland Walking Strategy 2019-2029, and suggested those strategies were relevant to HWQ.[54]

3.3.2.2 *Committee comment*

The committee notes the high level of support for, and willingness to collaborate with, the proposed HWQ. Successful partnerships and collaboration with researchers, non-government organisations, health professional bodies and industry will make an important contribution to reducing the burden of disease and reducing health inequity.

3.3.3 Grants for projects, programs, services and research

Submitters were positive about the proposed HWQ function of making grants for activities such as projects, programs and research.

Professor Whiteman from QIMR Berghofer Research Institute argued the process of distributing grant funding should be open, transparent and competitive to ensure funds are invested in the most transparent way possible.[55]

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50 My health for life, 'About us', https://www.myhealthforlife.com.au/, accessed 4 April 2019.

51 Submission 1

52 Submission 14, p 3.

53 Public hearing transcript, Brisbane, 1 April 2019, p 13.

54 Public hearing transcript, Brisbane, 1 April 2019, p 30.

55 Public hearing transcript, Brisbane, 1 April 2019, p 1.

Consistent with the sustainability issues discussed above, the Heart Foundation emphasised that grants should be for periods sufficient to achieve outcomes:

> *… the grant allocations should fund programs and projects that can be sustained long enough to be evaluated and achieve outcomes in communities. We do not support one-off short-term grants, and we need to minimise the perpetual cycle of pilot programs.*

3.3.3.1 *Grants as a proportion of HWQ budget*

The PHAA submission suggested a minimum proportion of HWQ funding is committed to grants, and clarified at the public hearing that it was seeking transparency about the allocation of funds to new activities.[56] The Heart Foundation proposed a minimum of approximately 80 per cent of the HWQ budget is spent on grants, current initiatives (currently funded by Queensland Health), sponsorships and evidence generation.[57]

3.3.3.2 *Committee comment*

The committee noted the differing views put forward by stakeholders about the proportion of the proposed budget of HWQ that is allocated to grants.

3.3.3.3 *Potential initiatives*

A range of potential HWQ projects and programs were suggested during the committee's inquiry, most of which were reforms to make a healthy choice the easy choice, and to build environments that contribute to health and wellbeing.

Professor Young said ecological perspectives beyond campaigns or individual approaches should be examined to provide:

> *… a more sophisticated approach that makes the healthy choice the easy choice for Queenslanders wherever they live, work, play and learn. We know, too, that this is complex. It would be wrong … to suggest there are straightforward, linear answers to these problems. There are intersecting issues that we need to …grapple with. Based on evidence, we see that this involves the environment, policy, the community, individual and collective action, personal skills, health literacy and reorienting the health and other systems towards prevention.*[58]

Examples of potential activities canvassed during the committee's inquiry include:

- building connected walking and cycling pathways with adequate shade and lighting
- a HWQ 'passport' or voucher system for a GP to refer a person to coordinated physical activity in their local area
- improved access to healthy food options
- regulation or bans on junk food advertising around schools, sports groups and public transport hubs
- reduced road speed limits to improve safety for pedestrians and bike riders
- improving access to public transport
- reform of planning laws to support healthier living
- providing shaded outdoor recreation areas
- limiting the size of food portions
- pricing of healthy food
- a 'get active' charter, inspired by the Victorian Health Promotion Foundation model

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56 Submission 18, p 7.

57 Submission 27, p 3.

58 Public hearing transcript, Brisbane, 1 April 2019, p 9.

- continued use of sport to reduce the risk factors for disease
- apps and ready access to health promotion information.

3.3.4 Research and evidence-based health promotion activity

Several issues related to research and evidence-based health promotion were considered during the inquiry. First, researchers emphasised that HWQ should draw on evidence of successful health promotion in its work. Professor Young commented that we have robust research that helps to inform how the work of HWQ might progress, and suggested how we effectively deploy and implement those research findings is crucial, as is more effective use of what we know from research.[59]

Secondly, collaboration with Queensland researchers was promoted, and researchers suggested HWQ, as a priority, work with existing research networks. Professor Whiteman highlighted that Queensland has many excellent and outstanding institutions that conduct world-class health research.[60]

Also, one of the activities that the HWQ functions in clause 11 enable it facilitate, commission or make grants for, is research relevant to HWQs objectives. Stakeholders argued for a grant process that is open, transparent and competitive to ensure that the money is invested in the most effective way possible.[61]

Professor Whiteman emphasised the importance of systematic measurement of the effectiveness and sustainability of health promotion interventions, and modelling the potential impact of behaviour changes. Professor Young and Ms Baldwin described research, with Wesley Medical Research Institute, which shows significant benefits in adopting a healthy cities approach, adapted for rural and regional Queensland towns and communities.[62]

3.3.5 Monitoring and evaluation of prevention and health promotion and reporting on Health and Wellbeing Queensland's performance

The Bill provides for the HWQ to monitor and evaluate prevention and health promotion activities (clause 11(1)(d)) and for its annual reports to include details of how efficiently and effectively the organisation has performed its functions (clause 43).

A number of stakeholders highlighted the 'long game' of health promotion, and that agencies like HWQ take time to deliver health changes, and evaluation should take account of the time required for outcome changes.[63] QIMR expressed the hope that monitoring and evaluation of outcomes of the HWQ would be 'done in a way that reflects the long time lines that are involved in changing population exposure for chronic diseases,' to ensure that evaluation and monitoring is fit for the purpose of the agency. Professor Whiteman said:

> *Our concern was that over many cycles of government people might look at this and say, 'Heart disease rates are still very high,' but having done the research we know that it takes sometimes decades for the primary prevention to bear fruit in terms of lower incidence of disease down the track. It is about building in performance measures that are relevant for the time scales that we are looking at. That is, in the short term they have to be process measures. Is the agency delivering meaningful activities to the right populations in those time frames?* [64]

Professor Young concurred that process measures are relevant in the short term, including the level of engagement and activities, and how the benefits that may accrue from activities might be measured

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59 Public hearing transcript, Brisbane, 1 April 2019, p 9.

60 Public hearing transcript, Brisbane, 1 April 2019, p 1.

61 Public hearing transcript, Brisbane, 1 April 2019, p 1.

62 Public hearing transcript, Brisbane, 1 April 2019, pp 3 and 9 - 10.

63 For example, Heart Foundation and QIMR, public hearing transcript, 1 April 2019, pp 2 and 22.

64 Public hearing transcript, Brisbane, 1 April 2019, pp 3-4.

and shared. Professor Young said that open, transparent, connected measurement was also an important principle, so that lessons are shared.[65]

3.3.6 Policy advice to Minister and government agencies

Development of policy and advice to the Minister and government entities about preventing illness and promoting health and wellbeing is one of HWQ's functions (clause 11(1)(e)), and was supported by stakeholders.

Proposals for policy change will be integral to health promotion to improve Queenslanders health and wellbeing, and HWQ will be able to draw on a wide range of stakeholders to develop policy and advice. Policy development could include academics, organisations involved in health, sport, recreation, planning, environment, safety, culture and Aboriginal and Torres Strait Islander communities, local government and others.

The Director-General of Queensland Health described the potential advantages of HWQ policy advice direct to the Minister:

> *… the Minister can receive that information directly, unfiltered through the department. The Minister can choose to, or choose not to, seek views from the department but the information goes directly from the statutory body to the Minister and therefore to the government.*[66]

3.3.7 Coordination and information exchange

A function of HWQ is 'to coordinate the exchange of information about activities to prevent illness and promote health and wellbeing.' (clause 11(1)(f)).

Stakeholders supported this coordination role. For example, Professor Young of QUT said: 'one of the greatest things about an agency is coordination of this activity in a more streamlined and well-articulated manner.' He also commented that local governments are unsung heroes who are often doing work that is well intentioned but not as well coordinated as it might be.[67]

Dr Linjawi supported the capacity of HWQ to work across boundaries to promote health and wellbeing by funding and coordinated efforts.[68] Diabetes Queensland said with coordination and alignment of strategies, health promotion can make a big change to the community on many levels.[69]

3.4 Governance arrangements

3.4.1 Board of Health and Wellbeing Queensland

The Bill proposes to establish a board as the governing body of HWQ. The board's functions include ensuring the proper, efficient and effective performance of HWQ's functions, and deciding the objectives, strategies and policies to be followed by HWQ (clause 16).

The board would have the powers, under clause 17, to do anything necessary or convenient to perform its functions. It could, for example, give a written direction to the chief executive officer about the performance of their responsibilities, but the board may not give a direction about employment relating to a particular person.

3.4.2 Board members

Clause 18 sets out board membership. The board is to consist of up to ten members appointed for up to four years by the Governor in Council. At least one, and a maximum of four members are to be chief

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65 Public hearing transcript, Brisbane, 1 April 2019, pp 11-12.

66 Queensland Health, public briefing transcript, Brisbane, 13 March 2019, p 3.

67 Public hearing transcript, Brisbane, 1 April 2019, pp 9 and 12.

68 Public hearing transcript, Brisbane, 1 April 2019, p 14.

69 Public hearing transcript, Brisbane, 1 April 2019, p 21.

executives of government departments, and at least one and up to six members must have qualifications or experience in at least one of the following: law; business or financial management; public health; academia; community service organisations; the not-for-profit sector; or another area the Minister considers relevant or necessary to support the board in performing its functions. Clause 18 also provides that at least one board member must be an Aboriginal person or a Torres Strait Islander.

Clause 28(3) provides that there is no quorum for a board meeting if a majority of the board members present are chief executive officers. The Director-General of Queensland Health stated:

> *An important element is that a quorum only occurs when there are more non-chief executive members present than chief executives. In other words, it is important that it is a community represented board.*[70]

3.4.2.1 *Stakeholder comments*

The governance arrangements in the Bill were supported by stakeholders. For example, Ms McMillan from Cancer Council Queensland said:

> *Its governance model is well designed to lead the organisation, including representation from across Queensland government departments, which will de-silo some of the preventative health efforts and allow a majority of board members to be drawn [from] across the community, including Aboriginal and Torres Strait Islander communities. This will facilitate a skills based group to set the strategic direction of the agency.*[71]

Submitters supported the board including up to four chief executive officers of government departments. This representation 'will promote interagency and interdisciplinary collaboration.'[72] Portfolios which stakeholders suggested could be included on the board were: Health, Education, Housing, Employment, Communities, Aboriginal and Torres Strait Islander Partnerships, State Development and Planning, Treasury, Corrective Services and Transport.[73] Given the number of government agencies and interests proposed by stakeholders, Ms Durham of the Heart Foundation's response to a committee question included:

> *Not everyone can be on the board, as long as there are cross-sectoral discussions and you have leadership, regional people, NGOs and people representing Queenslanders to get that change.*[74]

In addition, submitters suggested the board include: at least one member with experience in research/academia, and public health respectively;[75] consumer representation;[76] ensure female representation;[77] expertise in primary health care;[78] health promotion expertise;[79] a health

70 Queensland Health, public briefing transcript, Brisbane, 13 March 2019, p 3.

71 Public hearing transcript, 1 April 2019, p 20.

72 QIMR Berghofer, public hearing transcript, Brisbane, 1 April 2019, p 2

73 Public hearing transcript, 1 April 2019.

74 Public hearing transcript, 1 April 2019, p 24.

75 QIMR Berghofer, submission 16.

76 QIMR Berghofer, submission 16; PHAA, submission 18, p 6.

77 PHAA, submission 18, p 7.

78 QPHN, submission 19.

79 USC, submission 22, p 1; USC, submission 24, AHPA, submission 22, p 1.

practitioner;[80] consultation with the Minister for Sport about appointment of representatives of physical activity;[81] and regional, remote and rural representation.[82]

Professor Young said that 'from the governance down … we need to get rural and regional representation within this organisation and … make a strong claim about the need for investment in rural and regional areas to advance health promotion more effectively.'[83]

3.4.2.2 *Disqualification*

Clause 20 of the Bill provides the grounds on which a person is disqualified from becoming, or continuing as a board member. A person is disqualified if they are convicted of an indictable offence, insolvent, disqualified from managing corporations because of part 2D.6 of the Corporations Act, or is a staff member or contractor of HWQ. The Bill also provides that a person is disqualified if they contravene proposed section 31(3) and fail to disclose material personal interest in a matter before the board.

3.4.3 Chief executive officer and staff

Clause 32 provides for appointment of a chief executive officer by the Governor in Council, on the recommendation of the Minister with the approval of the board. The chief executive officer is to be appointed for a term of up to four years under the proposed Act and not the *Public Service Act 2008*. The appointment may be renewed.

The chief executive officer is accountable to the board and must comply with the policies and directions of the board (clause 33). The Bill provides (at clause 34) the grounds on which a person is disqualified from becoming, or continuing, as the chief executive officer, which are similar to those set out for HWQ board members and include failure to disclose a conflict of interest.

Other staff employed by HWQ will be appointed under the *Public Service Act 2008*. Queensland Health advised that the number of staff transferring across from Queensland Health, including the number of other staff that will be employed, will be approximately 20.[84]

3.5 Funding arrangements and amendment of Hospital Foundations Act 2018

3.5.1 Funding allocation

The explanatory notes state that HWQ will have an initial operating budget of $32.955 million in 2019-20.[85] The Director-General of Queensland Health advised that relevant prevention activities currently delivered by Queensland Health, and the funding for those activities, will transition to HWQ. He also said it 'is expected funding will scale up as other partnerships – including government, business and community – are formed, new revenue streams are identified, and the range of grants and program activities delivered is expanded.'[86] In response to questions the Director-General Health advised the vast majority of HWQ funds would be in grants.[87]

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80 Queensland Nurses and Midwives Union, submission 9, pp 3-4.

81 Queensland Fitness, Sport and Recreation Skills Alliance, submission 12, p 7.

82 USC, submission 24; QUT, submission 14, p 4.

83 Public hearing transcript, 1 April 2019, p 11.

84 Queensland Health, public briefing transcript, Brisbane, p 6.

85 Explanatory notes, p 7.

86 Queensland Health, public briefing transcript, Brisbane, 13 March 2019, p 2.

87 Queensland Health, public briefing transcript, Brisbane, 13 March 2019, p 6.

Queensland Health also advised that funding will `scale up' as partnerships are formed, new revenue streams identified and grants and program activities expanded.[88] The Heart Foundation said the budget commitment of $33 million for 2019-20 needs to be sustained and grow in future years.[89]

3.5.2 Amendment of Hospital Foundations Act

The Bill amends the *Hospital Foundations Act 2018* to enable a foundation to be established to support HWQ to achieve its objectives. In his introductory speech, the Minister for Health and Ambulance Services Health explained that the chief executive officer of HWQ will be responsible for investigating whether a foundation would be viable and a good source of attracting new revenue.[90] If the chief executive officer decided to establish a foundation an application would be made to the Minister in accordance with the requirements of the *Hospital Foundations Act 2018*.[91]

3.5.2.1 *Stakeholder views*

Professor Whiteman, QIMR Berghofer Research Institute, cautioned that the activities associated with raising funds can consume energy and resources in an organisation. He 'would like to think that this agency has the full support of government and that its activities are supported by government.'[92] He commented that the investment of time may not bear fruit for a long time. In response to a committee question Professor Whiteman said QIMR's view is:

> *… while the agency is being established, having the full support of government where it is fully funded to carry out its tasks … we would advocate that in the short to medium term ... it is a better use of the funds that would be directed towards it [rather] than trying to establish a new brand in a crowded marketplace of other philanthropic agencies. … it is getting harder and harder and we spend more money trying to bring in a little bit of money. It was really just to be cautionary about how realist that might be.*[93]

The Public Health Association also cautioned about the potential for conflicts of interest that can arise with partnerships with industry and commercial organisations in health.[94]

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88 Queensland Health, public briefing transcript, Brisbane, 13 March 2019, p 2.

89 Public hearing transcript, Brisbane, 1 April 2019, p 20.

90 Hon Steven Miles MP, Minister for Health and Ambulance Services, Queensland Parliament, Record of Proceedings, 28 February 2019, p 540.

91 Queensland Health, correspondence dated 11 March 2019, p 8.

92 Public hearing transcript, Brisbane, 1 April 2019, p 2.

93 Public hearing transcript, Brisbane, 1 April 2019, p 3.

94 Public hearing transcript, Brisbane, 1 April 2019, p 6.

4 Compliance with the *Legislative Standards Act 1992*

4.1 Fundamental legislative principles – rights and liberties of individuals

Section 4 of the *Legislative Standards Act 1992* states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

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

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following to the attention of the Legislative Assembly.

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals.

Clauses 20, 34, 44, 45 and 49 raise potential issues of fundamental legislative principle regarding whether the legislation has sufficient regard to the rights and liberties of individuals.

4.1.1 Summary of clauses

Clause 20 provides that a person is disqualified from becoming or continuing as a board member if the person has a conviction (other than a spent conviction) for an indictable offence. Similarly, *clause 34* provides that a person is disqualified from becoming or continuing as the chief executive officer of HWQ if the person has a conviction (other than a spent conviction) for an indictable offence. In each case the relevant position or office automatically becomes vacant under clauses 23 and 37 respectively.

Clause 44 allows the Minister to ask the police commissioner for a written report (including a brief description of the circumstances of a conviction) about the criminal history of a person, to determine if a person is disqualified from becoming or continuing as a board member or chief executive officer. The person must have given their prior written consent before the minister can seek a report. Any report must be destroyed as soon as practicable after it is no longer needed for the purpose for which it was given.

Clause 45 provides that if a board member or the chief executive officer is charged with or convicted of an indictable offence they must (absent reasonable excuse) immediately give notice of the charge or conviction to the Minister. The notice must include information about when the offence was committed, details adequate to identify the offence, and the sentence imposed. A failure to notify attracts a maximum penalty of 100 penalty units.

Clause 49 provides that the Minister and any board member does not incur civil liability for an act done, or omission made, honestly and without negligence under the Act. It also provides that where this prevents a civil liability attaching to the minister or board member, the liability instead attaches to the State.

4.1.2 Right to privacy regarding personal information

Clauses 44 and 45 raise the issue of rights and liberties of an individual relating to their right to privacy of their personal information. That right is potentially breached by provision of criminal history of a potential or serving board member or chief executive officer to the Minister. Similarly the requirement for a serving member or chief executive officer to disclose indictable offence convictions and charges is a potential breach of fundamental legislative principles.

The committee asked the Minister to address the potential breach of fundamental legislative principles in relation to the disclosure of personal information. The Minister's response included:

> *The board and the CEO of Health and Wellbeing Queensland (HWQ) will have important fiduciary obligations. They will be responsible for allocating significant amounts of government money by*

providing grants and entering into other funding arrangements. Also, as office holders they will be remunerated from public funds.

As significant government appointees, the public and Parliament should be able to place the highest level of confidence and trust in the board and the CEO to act honestly and uphold the highest standards of ethical behaviour and integrity.

Section 181 of the Public Service Act 2008 requires all public service employees, including chief executives, to immediately give notice if the person is charged with an indictable offence. The chief executive of a department must give the notice to the Minister (see section 104 and section 118(2)(a) of the Public Service Act).

The staff of HWQ will be appointed under the Public Service Act and will be required to notify the chief executive of charges for indictable offences.

The board of HWQ will comprise of up to four chief executives of departments. As chief executives they are held to high standards of behaviour and accountability under the Public Service Act and are required to provide notice to their Minister of charges for an indictable offence.

However, board members and the CEO of HWQ will not be appointed under the Public Service Act. They will be appointed by the Governor-in-Council under the proposed Health and Wellbeing Queensland Act which requires all board members and the CEO to report charges to the Minister. This is considered justified as board members and the CEO will be held to the same standards and requirements as the staff of HWQ.

….

The requirement for a board member or the CEO to immediately give notice to the Minister of a charge for an indictable offence enables the Minister to act promptly to advise the Governor-in-Council of the alleged misconduct. Pending further investigation, this allows the Governor-in-Council to consider whether suspension or removal is warranted.

For these reasons, it is considered justified that a person is required to disclose the existence of a charge. The Bill includes safeguards to protect personal information by requiring the Minister, and others who may have access to the information, to keep the information confidential. Unauthorised use or disclosure of the information is an offence with a maximum penalty of 100 penalty units.

The potential breach of fundamental legislative principles is further mitigated as the provision allows for the person to have a reasonable excuse for non-compliance.[95]

4.1.2.1 *Committee comment*

The committee notes the Minister's response, including the fiduciary duty of the board and chief executive officer of HWQ, existing requirements for public servants and chief executive officers of departments to disclose personal information about a conviction or charge for an indictable offence, and the safeguards in the Bill to protect personal information. On balance, the committee considers that, in the circumstances, this departure from the fundamental legislative principle of a right to privacy of personal information is justified.

4.1.3 Appropriate protection from incrimination

The obligation to disclose a conviction or a charge for an indictable offence in clause 45 also raises the issue of whether the provision provides appropriate protection against self-incrimination.

Clause 45(3) as drafted, requires a person, unless they have a reasonable excuse, to disclose:

(a) the existence of the charge or conviction

[95] Correspondence, Minister for Health and Ambulance Services, 27 March 2019

(b) details adequate to identify the offence

(c) when the offence was committed

(d) for a conviction - the sentence imposed on the person.

This is a penal provision, with a maximum penalty of 100 penalty units.

It could be argued clause 45(3) involves an assumption or admission that because a person has been charged, the offence was committed, and that the provision requires a person to implicate themselves.

The explanatory notes for the Bill state:

> *This provision is justified because it reinforces the expectation that board members and the chief executive officer are to observe ethical and legal behaviour in carrying out their functions. The rights and liberties of the person are protected because the provision allows for the person to have a reasonable excuse for non-compliance. The information in the notice is also required to be kept confidential by a person who may have access to the information, including the Minister or a member of the Minister's staff, an employee or contractor of the department, or a board member, chief executive officer, staff member or contractor of HWQ.*[96]

The explanatory notes record that there are similar offences in other legislation:

> *Similar offences are included across the Queensland statute book, such as the Hospital Foundations Act 2018, Jobs Queensland Act 2015 and Cross River Rail Delivery Authority Act 2016, which all impose penalties where a person fails to disclose a conviction relating to an indictable offence.* [97]

However, those similar provisions require disclosure only of a *conviction* for an indictable offence. None of them extend to requiring disclosure of a *charge* for such an offence.

Similar provisions in other Acts which require the disclosure of a *charge* for an indictable offence, are drafted differently to clause 45(3). For example, in relation to a *charge* for an indictable offence, section 181 the *Public Service Act 2008* requires an employee to notify that they have been charged and 'the details of the *alleged* offence'.

4.1.3.1 *Minister's advice*

The committee sought advice from the Minister for Health on the justification for this departure from fundamental legislative principles. The response included:

> *The provision requiring disclosure of a charge is considered necessary to maintain public confidence that Health and Wellbeing Queensland is able to perform its role and to make decisions in the public interest.*
>
> *The policy intent is to require disclosure of the existence of a charge and information about the charge for the Governor-in-Council to consider whether to suspend or remove a person from office.*
>
> *It is not intended that the person provides information to the Minister that may incriminate them. The disclosure is about the fact of the existence of the charge and information about the charge. It is not intended to require the board member or the CEO to respond to the Minister about the charge. Nor it is intended to affect the board member's or chief executive officer's right to present their case in response to the charge before the appropriate court.*
>
> *For this reason, it is not considered necessary for the Bill to state that the privilege against self-incrimination is a reasonable excuse for a person to refrain from giving notice of a charge.*

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96 Explanatory notes, p 10.

97 Explanatory notes, p 10. The relevant provisions are section 37 of the *Hospital Foundations Act 2018*, section 20 of the *Jobs Queensland Act* 2015, section 63 of the *Cross River Rail Delivery Authority Act 2016*.

The Office of Queensland Parliamentary Counsel will be consulted further about the drafting of clause 45(3) of the Bill relating to the content of the notice, to ensure that the right to protection against self-incrimination is protected and the clause does not have any unintended consequences.[98]

4.1.3.2 *Committee comment*

The committee notes the Minister's advice, in particular that the policy intent is not to require a person to provide information that may incriminate them, and that the Office of the Queensland Parliamentary Counsel will be consulted further about the drafting of clause 45(3) to ensure that the right to protection against self-incrimination is protected.

The committee brings this issue to the attention of the Legislative Assembly.

4.1.4 Immunity from proceedings or prosecution

Section 4(3)(h) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to the rights and liberties of the individual depends on whether, for example, it confers immunity from proceeding or prosecution without adequate justification.

Clause 49 provides that the Minister and board members do not incur civil liability for an act done, or omission made, honestly and without negligence under the Act. It also provides that where this prevents a civil liability attaching to the minister or board member, the liability instead attaches to the State.

One of the fundamental principles of law is that everyone is equal before the law, and each person should therefore be fully liable for their acts or omissions. Notwithstanding, conferral of immunity is appropriate in certain situations.[99] A provision conferring immunity might be more acceptable if it does not extinguish liability entirely, but instead shifts liability to the state. The latter is the case here.

The explanatory notes state that the immunity in clause 49 is justified as:

- *immunity from prosecution is appropriate if it is conferred on persons carrying out statutory functions, as is the case in this instance;*
- *the immunity is appropriately limited in scope, as it does not attach to acts done or omissions made which are reckless, unreasonable or excessive, but attaches only to acts done or omissions made honestly and without negligence; and*
- *liability for the consequences of actions done, or omissions made, is not extinguished by the Bill, but the liability attaches to the State instead. Therefore, where persons consider themselves to have been injured by the actions or omissions of the Minister or a board member of HWQ, legal redress remains open to them.*[100]

4.1.4.1 *Committee comment*

The committee notes the justification provided in the explanatory notes and is satisfied that the protection from immunity in clause 49 is justified.

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98 Correspondence, Minister for Health and Minister for Ambulance Services, 27 March 2019

99 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 64; Scrutiny of legislation Committee, *Alert Digest* 1 of 1998, p 5.

100 Explanatory notes, p 11.

4.2 Explanatory notes

Part 4 of the *Legislative Standards Act 1992* 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.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

Appendix A – Submitters

Sub #	Submitter
001	Occupational Therapy Australia
002	Cancer Council Queensland
003	CQ University Australia
004	The Royal Australian and New Zealand College of Psychiatrists
005	Nutrition Australia
006	Dr Sultan Linjawi
007	The Australian Prevention Partnership Centre
008	Exercise and Sports Science Australia
009	Queensland Nurses and Midwives Union
010	Stroke Foundation
011	Queensland Council of Social Service
012	Queensland Fitness, Sport and Recreation Skills Alliance
013	Aged and Community Services Australia
014	Professor Ross Young, Queensland University of Technology, Faculty of Health
015	Professor Mary-Louise Fleming
016	QIMR Berghofer Medical Research Institute
017	Diabetes Queensland
018	Public Health Association of Australia
019	Queensland Primary Health Networks
020	Clubs Australia
021	Australian Longitudinal Study on Women's Health
022	Australian Health Promotion Association
023	Sports Federation of Queensland Inc. (QSport)
024	University of the Sunshine Coast
025	Queensland Association of School Tuckshops
026	Queensland Outdoor Recreation Federation Incorporated

027	Heart Foundation Queensland
028	Health Consumers Queensland
029	Institute for Urban Indigenous Health
030	Australasian Society of Lifestyle Medicine Limited
031	Western Queensland Primary Health Network
032	AMA Queensland
033	Life Education Queensland

Appendix B – Officials at public departmental briefing

Queensland Health

- Mr Michael Walsh, Director-General
- Dr Jeanette Young, Chief Health Officer and Deputy Director-General, Prevention Division
- Ms Jessica Wellard, A/Director, Legislative Policy Unit, Strategy, Policy and Planning Division

Appendix C – Witnesses at public hearing

QIMR Berghofer Medical Research Institute

- Professor David Whiteman AM, Deputy Director

Public Health Association

- Ms Letitia Del Fabbro, Queensland Branch President

Queensland University of Technology

- Professor Ross Young, Executive Dean, Faculty of Health
- Ms Louise Baldwin, Senior Research Fellow, Faculty of Health

Queensland University of Technology

- Dr Sultan Linjawi

Heart Foundation Queensland

- Mr Steven Vines, Chief Executive Officer
- Ms Alison Durham, Advocacy Manager

Diabetes Queensland

- Ms Lyn Hamill, Program Director

Cancer Council Queensland

- Ms Chris McMillan, Chief Executive Officer

Health Consumers Queensland

- Ms Melissa Fox, Chief Executive Officer

Sports Federation of Queensland (QSport)

- Mr Peter Cummiskey OAM, Chief Executive Officer

Queensland Outdoor Recreation Federation

- Mr Dom Courtney, Executive Officer

Queensland Fitness, Sport and Recreation Skills Alliance

- Mr Phil Reeves, Executive Chairman