

# Forensic Science Queensland Bill 2023

## Explanatory Notes

### Short title

The short title of the Bill is the Forensic Science Queensland Bill 2023 (Bill).

### Policy objectives and the reasons for them

The Bill will establish a statutory framework for forensic services to support the administration of criminal justice in Queensland, ensuring high quality, reliable, independent and impartial forensic services and related advice.

On 6 June 2022, the Queensland Government announced the Commission of Inquiry into Forensic DNA Testing in Queensland (Commission of Inquiry) to identify opportunities for service improvement and ensure public confidence in the collection and testing of DNA in Queensland. The Commission of Inquiry was conducted by former President of the Court of Appeal, Mr Walter Sofronoff KC. On 13 December 2022, the Commission of Inquiry released its final report containing 123 recommendations. On 15 December 2022, the Premier and Minister for the Olympic and Paralympic Games announced that the Queensland Government accepted all of the final report's recommendations.

The Commission of Inquiry's final report recommended the Queensland Government pass legislation to provide for (recommendation 121):

- a forensic science institute that is an independent office within the Department of Justice and Attorney-General and not a statutory agency, similar to the Office of the Director of Public Prosecutions;
- a Director to be appointed by the Governor in Council, on advice from the Attorney-General;
- the appointment of a Chief Operations Officer and key leadership roles of the institute's forensic DNA laboratory;
- a research and development unit within the institute;
- a non-executive advisory board, with specific members, that reports to the Attorney-General on the performance of the DNA laboratory; and
- the independence of the institute and its Director as a provider of expert forensic services to the criminal justice system.

Since the Commission of Inquiry's final report, Forensic Science Queensland has been established on an interim basis as a business unit of Queensland Health. Adjunct Professor Linzi Wilson-Wilde OAM, an experienced and internationally recognised forensic science leader was appointed as its interim Chief Executive Officer. An interim advisory board was also established to oversee implementation of the Commission of Inquiry's recommendations.

Mr Walter Sofronoff KC and retired District Court judge, Ms Julie Dick SC, were appointed to co-chair the interim advisory board.

## Achievement of policy objectives

The Bill implements recommendation 121 of the Commission of Inquiry's final report by establishing:

- a statutory position of the Director of Forensic Science Queensland (Director);
- a supporting Office of the Director of Forensic Science Queensland (Forensic Science Queensland); and
- the Forensic Science Queensland Advisory Council (Advisory Council).

Once the Bill is passed, it is intended the Attorney-General will be given portfolio responsibility for the legislation under administrative arrangements. References in the Bill to the Minister are therefore references to the Attorney-General. The Bill is modelled on similar legislation that establishes statutory appointments with supporting offices, such as the *Director of Public Prosecutions Act 1984*, *Public Guardian Act 2014*, *Guardianship and Administration Act 2000* and *Director of Child Protection Litigation Act 2016*.

The main purpose of the Bill is to ensure high quality, reliable, independent and impartial forensic services for the administration of criminal justice in Queensland (clause 3).

### *Director of Forensic Science Queensland (part 2 of Bill)*

The Bill establishes a statutory position of the Director of Forensic Science Queensland (clause 7). The Director's functions are to support the administration of criminal justice in Queensland (clause 13) by:

- leading the provision of forensic services and advice about forensic services to the Queensland Police Service, the Director of Public Prosecutions, coroners and other entities who perform functions related to the administration of criminal justice;
- ensuring forensic services and advice are reliable, independent and impartial and based on high quality processes and techniques that comply with relevant standards and accreditation requirements;
- ensuring research, development and innovation activities are undertaken to inform the provision of forensic services; and
- developing partnerships and collaborating with other entities to inform and support the provision of forensic services.

The Bill gives the Director discretion to require Forensic Science Queensland to provide scientific analysis in non-criminal matters in Queensland or other States and Territories (such as fee for service testing or analysis to identify victims of natural disasters) and to support the administration of criminal justice in other jurisdictions (including to support coronial investigations) (clause 14). The Bill also provides the Director the power to do all things necessary or convenient in performing the Director's functions (clause 14).

Clause 6 of the Bill provides that the *administration of criminal justice* includes a coroner investigating the death of a person under the *Coroners Act 2003*. This ensures the Bill

recognises the importance of providing forensic services to coroners throughout Queensland, for matters involving the administration of justice as well as public health and safety.

The Director is to be appointed by the Governor in Council on the recommendation of the Attorney-General (clause 7). A person is only eligible to be appointed as the Director if they have a tertiary qualification in a relevant scientific discipline and at least ten years of practical experience in forensic services. A person is ineligible for appointment, and a person appointed as Director cannot continue in office, if they have a conviction for an indictable offence, other than a spent conviction, or if they are an insolvent under administration.

The Director is appointed for a term of up to five years and may be reappointed (clause 8). The Director will be paid the remuneration and allowances decided by the Governor in Council on the recommendation of the Attorney-General (clause 9).

The Bill provides for resignation, termination and suspension of the Director (clause 10). It also allows the Attorney-General to appoint an Acting Director for not more than six months if the Director resigns, is terminated, is suspended or is absent from duty or otherwise unable to perform their functions (clause 12). The Governor in Council may also appoint an Acting Director under the Bill or the *Acts Interpretation Act 1954*.

The Bill allows the Director to delegate their functions and powers to an appropriately qualified staff member of Forensic Science Queensland (clause 18).

The Bill protects and promotes the independence of the Director by providing that the Director:

- is not subject to direction by the Attorney-General in exercising their functions or powers (clause 19);
- is prohibited from performing other paid work without the Attorney-General's consent (clause 20); and
- must disclose actual or potential conflicts of interest to the Attorney-General and must not act on a matter affected by the conflict without the Attorney-General's consent (clause 21).

The Bill enables the Attorney-General to request criminal history information from the Commissioner of the Queensland Police Service to enable the Attorney-General to consider whether a person is qualified to become, or continue as, Director (clause 15). The Director is also required to notify the Attorney-General if they are charged with, or convicted of, an indictable offence (clause 16) or if they become an insolvent under administration (clause 11). Non-compliance with these notification requirements attracts a maximum penalty of 100 penalty units.

#### *Forensic Science Queensland (part 3 of Bill)*

The Bill establishes a government office called the Office of the Director of Forensic Science Queensland, referred to as *Forensic Science Queensland* (clause 23). Its role is to help the Director perform the Director's functions (clause 24).

The Bill provides that Forensic Science Queensland staff are employed under the *Public Sector Act 2022* (clause 25).

*Advisory Council (part 4 of Bill)*

The Bill establishes the Forensic Science Queensland Advisory Council (clause 26). The Advisory Council's functions are to monitor and review the policies and procedures of Forensic Science Queensland that relate to the administration of criminal justice, and to give advice or make recommendations about those policies and procedures to the Attorney-General and Director (clause 27). These functions are broad and will allow the Advisory Council to consider written and unwritten policies, procedures and processes.

The Commission of Inquiry recommended the Advisory Council report to the Attorney-General (recommendation 121). The Bill provides that the Advisory Council may give advice or make recommendations (clause 27):

- to the Attorney-General on its own initiative, or on request of the Attorney-General; and
- to the Director on its own initiative.

The Advisory Council has flexibility as to how it conducts itself. It is therefore open for the Director to attend Advisory Council meetings, provide information to and engage with the Advisory Council in line with the Advisory Council's business rules and procedures.

The Bill provides the Advisory Council consists of up to 11 members appointed by the Attorney-General (clause 29). The Advisory Council must include at least one representative of the Queensland Police Service, Office of the Director of Public Prosecutions and Legal Aid Queensland. It must also include at least one person with qualifications or experience supporting victims of crime, at least one person with qualifications or experience in forensic services who is not employed by the State and at least one practising lawyer who is not employed by the State. The other members must have qualifications or experience in forensic services, policing, law, support for victims of crime or another relevant field.

The Attorney-General must appoint an Advisory Council member to be the chairperson of the Advisory Council (clause 30). The Advisory Council must appoint an Advisory Council member, other than the chairperson, to be the deputy chairperson (clause 31). Members of the Advisory Council are appointed for a term of up to three years and may be reappointed (clause 32). Council members will be paid the remuneration and allowances decided by the Attorney-General (clause 33). The Bill also provides for the resignation and termination of Advisory Council members (clause 34). As the Council has non-executive advisory functions, convictions for indictable offences and insolvency may be grounds for termination but will not result in automatic disqualification from office.

The Bill provides some procedural requirements for the Advisory Council, including the convening and presiding of meetings, minutes of meetings to be kept and records to be made of decisions and resolutions (clauses 36 to 38). Aside from these matters, the Bill allows the Advisory Council to decide how to conduct its business (clause 35). This enables it to establish processes and procedures, for example, regarding the Director's involvement in meetings and management of conflicts of interest. It also ensures flexibility for the Advisory Council to adjust its processes and procedures over time as Forensic Science Queensland matures.

To ensure the Advisory Council remains responsive to the criminal justice and forensic science landscape into the future, the Bill provides that the Council's functions also include any other function given to it by the Attorney-General (clause 27).

If the Advisory Council gives advice or makes recommendations and the Council's decision is not unanimous, the council must provide a fair summary of the views of the members who did not agree with the decision (clause 39).

*Confidentiality (parts 2 and 5 of Bill)*

The Bill makes it an offence to disclose or use confidential information obtained through involvement in the administration of the Act, except for certain approved purposes, with a maximum penalty of 200 penalty units (clause 40). Information may be disclosed or used in connection with functions under the Act, as required or permitted by the Act or another law, in accordance with an arrangement for providing forensic services, for a proceeding in a court or tribunal, if authorised by a court or tribunal in the interests of justice or if the person to whom the information relates consents to the disclosure or use.

The Bill also makes it an offence to disclose or use criminal history information relating to the Director's suitability for appointment except for similar approved purposes such as where required or permitted under the Act or another law or with consent (clause 17). In line with the general confidentiality offence, the maximum penalty for inappropriate disclosure of criminal history information is 200 penalty units. Criminal history information must also be destroyed when it is no longer required.

*Miscellaneous (part 6 of Bill)*

The Director and Advisory Council are not statutory bodies for the *Statutory Bodies Financial Arrangements Act 1982* or *Financial Accountability Act 2009* (clause 41).

The Bill provides that offences under the Act are to be heard and decided summarily (clause 42). It also provides protection from civil liability for the Attorney-General, Director or a member of the Advisory Council for acts done, or omissions made, honestly and without negligence, and provides that if this prevents liability attaching to a person the liability attaches to the State (clause 43). The Bill preserves existing civil liability protections under the Public Sector Act.

The Bill also includes a regulation-making power (clause 44).

*Transitional provisions (part 7 of Bill)*

The Bill includes transitional provisions to preserve the terms and conditions of employment of Forensic Science Queensland staff whose employment will transition to the Department of Justice and Attorney-General from Queensland Health. The transitional provisions will continue in effect until a new certified agreement is entered into covering these employees. Staff who are recruited and join Forensic Science Queensland during this transition period will be employed as health service employees.

### *Legislation amended (part 8 of Bill)*

The Bill makes consequential amendments to the:

- *Evidence Act 1977* to allow the Director to appoint DNA analysts under the Act and to preserve and transition appointment of existing Forensic Science Queensland staff as DNA analysts;
- *Medicines and Poisons Act 2019* to allow the Director to appoint State analysts under the Act and to preserve and transition appointment of existing Forensic Science Queensland staff as State analysts;
- *Police Powers and Responsibilities Act 2000* to allow the Police Commissioner to enter into an arrangement about DNA analysis with the Director and to update a reference to a laboratory accreditation standard.

### *Dictionary (schedule 1)*

The dictionary in schedule 1 defines terms for the Act.

The key definition is for the term *forensic services*. This is a central term used frequently throughout the Bill. *Forensic services* is defined as the application of scientific methods of testing and analysis, and scientific interpretation, for particular purposes. *Scientific interpretation* is defined in schedule 1 as the interpretation of results of a scientific method of testing and analysis.

The scope of services to be provided by Forensic Science Queensland will be determined administratively and may change over time to reflect preferred delivery models across government agencies. The definition of forensic services is intended to be broad enough to allow for the scope of services to change, including to allow for future advancements in technology. To allow for flexibility, and in case this is required to provide certainty in future, a provision has been included to allow a regulation to prescribe particular services as being included or excluded from the definition.

## **Alternative ways of achieving policy objectives**

There are no other ways of achieving the policy objectives.

## **Estimated cost for government implementation**

On 15 December 2022, the Queensland Government announced an initial funding investment of more than \$95 million towards the implementation of the Commission of Inquiry's findings. This included an additional \$10.2 million recurrent funding for Forensic Science Queensland to support the engagement of additional staff to deliver new capabilities such as research, innovation and quality management, implement a case management approach and expand overall forensic DNA processing capacity.

In September 2023, the Queensland Government approved an additional \$75.1 million investment over four years to continue progress in implementing the Commission of Inquiry's recommendations. This includes funding to support a range of initiatives, including forensic infrastructure and equipment upgrades, implementation of a 'case management' investigation approach and review of historical cases potentially affected by sub-optimal DNA analysis.

## Consistency with fundamental legislative principles

### Right to privacy

Section 4(2)(a) of the *Legislative Standards Act 1992* provides that legislation must have sufficient regard to the rights and liberties of individuals. The Scrutiny of Legislation Committee has noted that the right to privacy is relevant to whether legislation has sufficient regard to the rights and liberties of individuals.

The Bill:

- allows the Director, Advisory Council members, and staff of Forensic Science Queensland to disclose and use confidential information in limited circumstances (clause 40); and
- enables the Director to enter into arrangements for the provision of forensic services, which would include disclosure of the results of testing (clause 14).

The disclosure and use of confidential information and testing results is necessary for the Director and Forensic Science Queensland to provide forensic services and for the Advisory Council to provide advice and recommendations.

The Bill includes important safeguards to minimise privacy impacts. Confidential information can only be disclosed in limited circumstances, such as for performing functions under the Act, in accordance with an arrangement for providing forensic services, if required or permitted by law, for a proceeding in a court or tribunal, if authorised by a court or tribunal in the interests of justice or if the person to whom the information relates consents to the disclosure (clause 40). When performing functions under the Act or disclosing or using information under the Act or another law, the person may only disclose information to the extent necessary. The Bill also makes it an offence to disclose confidential information in other circumstances, with a maximum penalty of 200 penalty units.

These provisions are considered justified, as appropriate protections are in place to minimise the disclosure of confidential information and deter unauthorised disclosure. The provisions are necessary to ensure Forensic Science Queensland and the Advisory Council can perform their functions under the Bill.

The Bill also:

- requires the Director to disclose insolvency (clause 11) and charges and convictions for indictable offences (clause 16) to the Attorney-General;
- enables the Attorney-General to obtain criminal history information relating to the Director or a person seeking appointment as Director from the Commissioner of the Queensland Police Service (clause 15); and
- requires the Director to obtain approval to engage in paid work (clause 20) and disclose potential conflicts of interest (clause 21) to the Attorney-General.

These provisions ensure that there are protections for the integrity of Forensic Science Queensland, the impartiality and independence of its work, and transparency regarding how suitability for appointment is identified. They maintain confidence in forensic services led by the Director. This is an important contributor to ensuring the administration of criminal justice given the strategic and day-to-day oversight that the Director, as an individual, will have over forensic services in Queensland.

The requirement for the Director to disclose charges, convictions and insolvency ensures there is a clear mechanism for the Attorney-General to become aware of circumstances relevant to the Director's suitability for appointment and public perception of their suitability for appointment. Convictions for indictable offences and insolvency result in automatic vacancy of the office of Director (clause 10). Charges for indictable offences may be relevant to the Director's ability to perform their duties (clause 10), depending on the circumstances.

The ability for the Attorney-General to seek criminal history information relating to the Director or a prospective Director (clause 15) is important for similar reasons. It ensures that there is a transparent pathway for the Attorney-General to obtain information about whether the Director is eligible for appointment, eligible to continue in office and is able to perform their duties.

The Bill embeds privacy protections in its criminal history provisions. Criminal history information can only be sought with the person's consent (clause 15) and must be destroyed as soon as practicable after it is no longer needed for the purpose it was given (clause 17). Spent convictions are irrelevant to criminal history checks and disclosure requirements. In addition, there is an offence for the improper disclosure or use of criminal history information, with a maximum penalty of 200 penalty units (clause 17).

The requirements for the Director to disclose conflicts of interest and paid work help to ensure the Director provides high quality, reliable, independent and impartial forensic services. They ensure the Attorney-General is aware of matters that may create a risk of influence, bias or corruption and has an opportunity to consider whether the relevant activities should be authorised.

The impacts on the privacy of the Director, or candidates for the Director position, are considered justified as they help to ensure the person performing the role of Director is appropriate to hold the office and to maintain public confidence in Forensic Science Queensland. As the Director plays a key role in supporting the administration of criminal justice, it is considered the impacts on the Director's privacy are outweighed by the importance of ensuring the role of Director is held to high standards of transparency, integrity and accountability.

#### Delegation of power

To ensure legislation has sufficient regard to the rights and liberties of individuals, legislation should allow for the delegation of administrative power only in appropriate cases and to appropriate persons (section 4(3)(c) of the Legislative Standards Act).

The Bill allows the Director to delegate their functions and powers to an appropriately qualified staff member of Forensic Science Queensland (clause 18). This will ensure the Director can delegate appropriate tasks and functions to staff of the office.

The Director's functions and powers under the Bill relate to ensuring the effective operation of Forensic Science Queensland and its role in the criminal justice system. The Bill also amends the Medicines and Poisons Act to give the Director oversight of State analyst appointments of Forensic Science Queensland staff.



Any functions and powers they delegate are expected to be operational in nature. It is appropriate for the day-to-day operations of Forensic Science Queensland to be delegated to suitably qualified employees. In addition, this power will also ensure that the Director's functions are delivered by persons with the necessary expertise, and that there are suitable persons to make decisions if the Director is temporarily unavailable. It is common practice for delegation powers to be included in legislation for statutory appointments to ensure the appointee does not have to undertake all aspects of their role personally.

For these reasons, it is considered the delegation of power by the Director is consistent with fundamental legislative principles.

### Offences

Whether legislation has sufficient regard to the rights and liberties of individuals under section 4(2)(a) of the Legislative Standards Act requires penalties for offences to be proportionate and relevant to the offence. The Bill includes offences regarding confidentiality and offences for the Director failing to notify the Attorney-General of charges, convictions and insolvency.

The confidentiality offences relate to the inappropriate disclosure of confidential information obtained through involvement in administration of the Act (clause 40) and the inappropriate disclosure of criminal history information (clause 17). Both offences attract a maximum penalty of 200 penalty units. The general confidentiality offence applies to the Director, Advisory Council member, staff of Forensic Science Queensland, a person assisting the Advisory Council, a person assisting the Director under an arrangement, or a public sector employee or other person assisting the Director. The offence for the disclosure of criminal history information applies to the Attorney-General or a public sector employee performing functions under or relating to the Act.

The maximum penalty of 200 penalty units creates an important deterrence against unauthorised disclosure. It reinforces the sensitive nature of information resulting from forensic testing and analysis, and its importance in confidence in the criminal justice system. It also recognises the sensitivity of criminal history information of the Director or a person being considered for appointment as Director.

Similar offences are included in other legislation in the justice portfolio, as well as legislation applicable to staff of Queensland Health and Queensland Police Service. The maximum penalty of 200 penalty units is considered necessary and appropriate given the sensitive nature of forensic information and the possibility for it to reveal information about a crime, alleged crime and victims of crime. The amount is considered proportionate having regard to existing penalties for confidentiality offences in legislation about the administration of criminal justice, and offences that cover information such as DNA material, information about offending or alleged offending and information about victims. It is also considered appropriate for all confidentiality offences in the Bill to apply the same maximum penalty.

The offences regarding the Director's disclosure requirements are for failing to disclose charges and convictions for an indictable offence to the Attorney-General (clause 16) and for failing to disclose insolvency to the Attorney-General (clause 11). These offences reinforce the expectation that the Attorney-General be made aware of matters that may affect integrity, suitability for appointment and ability of the Director to perform their role or functions.

The offences for failing to disclose information attract a maximum penalty of 100 penalty units, which is consistent with equivalent offences in Queensland legislation, such as section 61 of the *Path to Treaty Act 2023*, section 91R of the Coroners Act and section 20 of the *Queensland Veterans' Council Act 2021*. The penalty is considered necessary to ensure the disclosure of relevant information.

Given the important purpose of the offences in the Bill, and the alignment with maximum penalties in similar offences, the offences are considered appropriate and consistent with fundamental legislative principles.

#### Reversing the onus of proof

Section 4(3)(d) of the Legislative Standards Act provides that whether legislation reverses the onus of proof in criminal proceedings without adequate justification is relevant to whether the legislation has sufficient regard to the rights and liberties of individuals.

As outlined above, the Bill requires the Director to give notice to the Attorney-General if they are charged with, or convicted of, an indictable offence, or if they become an insolvent under administration. This requirement applies unless there is a reasonable excuse. This places the evidential and legal onus on the Director, if they are charged with an offence, to prove the existence of a reasonable excuse for failing to comply with the obligation.

Reversing the onus of proof in these circumstances is appropriate because the Director will be best placed to provide the relevant information that would support the reasonable excuse defence. Reasonable excuse defences are common across Queensland legislation. In these circumstances and given the notifiable information is relevant to integrity, suitability for appointment and ability to perform the role, reversing the onus of proof is considered appropriate and reasonable.

The consequential amendments to the Medicines and Poisons Act in the Bill also require consideration of the reversal of the onus of proof. Clause 63 of the Bill amends section 208 of the Medicines and Poisons Act so that, for a Forensic Science Queensland staff member who is appointed as a State analyst, a certificate about the status of the appointment purporting to be signed by the Director of Forensic Science Queensland is evidence of that status. The certificate is evidence of the matter, but not conclusive evidence, which means a defendant can challenge the evidence or lead their own evidence on the matter. The use of evidentiary certificates in proceedings is common practice to streamline proving administrative matters that are unlikely to be disputed. This justification is consistent with the justification for the various evidentiary aids allowed by section 208 that is outlined in the explanatory notes for the Medicines and Poisons Act.

#### Natural justice

Section 4(3)(b) of the Legislative Standards Act states that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation is consistent with the principles of natural justice. The three key principles of natural justice are that: a person should have a right to be heard if they are to be deprived of some right, interest, or legitimate expectation of a benefit; a decision-maker must be unbiased; and procedural fairness should be afforded to the person.

The Bill provides for the appointments of the Director and Advisory Council members to be terminated in certain circumstances and for suspension of the Director (clauses 10 and 34).

The Director's position becomes vacant if they are convicted of an indictable offence, are an insolvent under administration or are removed from office by the Governor in Council on recommendation of the Attorney-General. The Attorney-General may recommend the Director's removal if the Attorney-General is satisfied the Director has engaged in misconduct, is incapable of performing their duties, has neglected their duties or performed them incompetently, is absent from duty without the Attorney-General's approval, has engaged in paid employment without the Attorney-General's consent or contravened conflict of interest requirements.

The Attorney-General may also suspend the Director for not more than six months if there is an allegation of misconduct against the Director or if the Attorney-General is satisfied there may be grounds for termination (clause 10).

The Attorney-General may terminate an Advisory Council member's appointment if the member is absent for three consecutive meetings without permission or reasonable excuse, is convicted of an indictable offence, if satisfied the member has engaged in misconduct, if the member is an insolvent under administration or if the Attorney-General is satisfied the member is incapable of satisfactorily performing their functions.

While the Bill does not expressly provide the Director or Advisory Council members the opportunity to make a submission in relation to suspension, removal or a decision about performance of their functions, the principles of natural justice would require this to occur in practice. The provisions support a high standard of integrity. This is important because the Director's functions include providing independent and impartial forensic services to support the administration of criminal justice in Queensland. Advisory Council members also play an important role in providing advice and recommendations to the Director and Attorney-General. The provisions are considered to be consistent with fundamental legislative principles.

The offence for the Director failing to disclose being charged with or convicted of an indictable offence (clause 16) also raises natural justice considerations. However, it is not considered to breach fundamental legislative principles because it requires notification of specific, limited matters and does not create any implications, findings or inferences of fact or guilt. As outlined above, the purpose of the offence is to support disclosures that enhance the integrity of the Forensic Science Queensland framework.

#### Regulation-making power

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

The Bill provides that regulations may be made under the Act (clause 44). It also provides that a regulation may prescribe another function for the Director (clause 13) and whether a matter is captured within or excluded from the definition of *forensic services* (schedule 1).

Forensic science is an evolving field, due to advances in underlying scientific knowledge, changes in service delivery models and the adoption of new technology. As new practices

emerge and technology changes, there could be changes in the forensic services provided by Forensic Science Queensland. Allowing a regulation to prescribe another function for the Director ensures that there is flexibility to add further functions to the Director's existing key functions. Similarly, the ability to prescribe matters as being within or outside the definition of forensic services will ensure flexibility for Forensic Science Queensland to adapt its practices over time. If a regulation is made for any of these matters, it will be tabled in Parliament and subject to disallowance, ensuring Parliament has appropriate oversight of the matters dealt with by regulation.

## Consultation

In August and September 2023, a draft Bill and consultation paper were sent to more than 70 stakeholders external to government to provide feedback and comments on the Bill. The stakeholders consulted included health, forensic science, criminal justice, legal, victim support, research, university and union stakeholders. The members of the interim Forensic Science Queensland advisory board were also consulted.

Feedback was received from 17 community stakeholders, including six criminal justice and victim support stakeholders and six representatives of forensic services in other jurisdictions. Feedback was also received from 11 members of the interim advisory board, including co-chairs Walter Sofronoff KC and Julie Dick SC.

All stakeholder feedback was carefully considered. Stakeholders were generally supportive of the Bill or raised no concerns. The main areas of feedback are outlined below.

### *Definition of forensic analysis*

The Bill has been updated to refer to *forensic services* instead of *forensic analysis* (schedule 1). This term better recognises there are a range of activities associated with forensic analysis that Forensic Science Queensland will perform. The definition has also been updated to clarify that *forensic services* includes interpretation of results of testing and analysis and not only investigating crime, but also involves a criminal intelligence function to prevent crime. The definition was also updated to allow a regulation to prescribe matters as being within or outside the definition of forensic services in case further clarity is required in the future.

### *Eligibility for appointment of Director*

The Bill has been updated to require at least 10 years of practical experience for appointment of the Director (clause 7). This is consistent with the experience required for appointment as the Director of Public Prosecutions. Some stakeholders sought other mandatory requirements to be included for appointment of the Director, such as postgraduate qualifications or leadership and management experience. However, the qualifications and experience in the Bill are intended to be the minimum qualifications that a person could have to be appointed to the role of Director. The recruitment and selection process will set expectations and consider the most suitable person for the role to ensure that a candidate with the appropriate level of skills and experience will be selected.

### *Membership of Advisory Council*

A number of stakeholders noted the Bill does not provide for the exact appointments to the Advisory Council recommended by the Commission of Inquiry, such as appointment of two to three eminent forensic scientists from other jurisdictions, representatives of the private legal profession and a representative of a victims' support organisation. Feedback was received from a number of organisations representing victims of crime that the Bill did not recognise the important impacts that forensic testing and the criminal justice system can have on victims of crime, especially victims of domestic and family violence or sexual assault. Other stakeholders submitted the Advisory Council should include other representatives such as for First Nations peoples, multicultural groups, rural and regional representatives or additional representation for victims groups. Other stakeholders highlighted the importance of ensuring gender balance.

The Bill strikes a balance between ensuring the Advisory Council has representatives from key stakeholder groups in the criminal justice system and allowing administrative flexibility to appoint a broad range of members whose experience and skills are complementary and ensure the Advisory Council operates effectively. The appointment process for the Advisory Council will carefully consider the balance of skills and experience needed to ensure well-rounded and effective membership. It is expected that an open expression of interest process will be conducted as part of the appointment process for the Advisory Council. The role of the Advisory Council is likely to change as Forensic Science Queensland develops and matures. The Bill is deliberately broad and flexible to ensure the Attorney-General can adapt the Advisory Council to suit the circumstances required at the relevant time.

The Bill has been updated to require the Attorney-General to appoint one person to the Advisory Council who holds qualifications or has experience supporting victims of crime (clause 29). It was considered this is a unique perspective which is essential to be represented on the Council. This person could be a representative of a victim support organisation, an advocate for victims or a person with lived experience. The Attorney-General also has discretion to appoint further representatives of victims support groups.

The Bill has also been updated to clarify that the Advisory Council composition must include at least one person with qualifications or experience relating to forensic services who is not employed by the State and a practising lawyer who is not employed by the State (clause 29). This will ensure there is external forensic science and legal expertise represented on the Council.

The importance of diversity and inclusion on government boards is acknowledged. The equity of appointments will be addressed through the appointment process. Factors such First Nations, multicultural, rural and regional and gender representation will be considered to ensure the Advisory Board composition has diversity in experience, skills and backgrounds.

### *Alignment with recommendation 121*

A number of stakeholders noted the Bill does not align directly with specific recommendations of the Commission of Inquiry about:

- a requirement for the chairperson of the Advisory Council to be an eminent person with relevant forensic science or criminal justice expertise;
- appointment of key leaders of the DNA laboratory in the legislation; and

- the establishment of a dedicated research and development unit for Forensic Science Queensland.

The Bill requires the Attorney-General to appoint one of the members of the Advisory Council as the chairperson (clause 30). The Attorney-General will consider the candidate best suited to chair the Council, based on the appointment process.

Legislation does not generally provide for the operational-level structure of an organisation or for specific roles within the organisation as it limits flexibility to respond to changes in operational requirements or priorities over time. Leadership roles for Forensic Science Queensland, other than the Director, will be established operationally. This is consistent with legislation for most similar bodies, which do not deal with appointment to roles within the organisation, with the exception that some legislation provides for deputy roles. Legislation does not generally provide for roles such as a chief operating officer or roles such as Technical Lead, Operations Manager or Quality Manager, as suggested by the final report of the Commission of Inquiry. Not specifying particular roles in the legislation allows the organisation to adapt to changes in operational needs over time.

It is not necessary for a separate research and development unit to be established through legislation. Research, innovation, policy and education activities are dealt with through functions given to organisations or positions in legislation. The Bill gives the Director functions relating to research, development, innovation, partnerships and collaboration (clause 13). It is intended that a research development unit will be established within Forensic Science Queensland operationally.

#### *Forensic services for coroners*

Feedback was received from some stakeholders that the Bill did not fully contemplate the forensic services provided to coroners, particularly in non-criminal matters related to public health and safety. To address this and ensure all aspects of the coronial system are covered by the Bill, the Bill confirms that the term *administration of criminal justice* includes a reference to a coroner investigating the death of a person under the *Coroners Act 2003*. The State Coroner was consulted and supports these changes.

## **Consistency with legislation of other jurisdictions**

The organisational structures of forensic science services in other Australian jurisdictions are not established by legislation. If the Bill is passed, Queensland will become the first Australian jurisdiction with overarching legislation establishing a statutory office, to reinforce the important role of high quality, reliable, independent and impartial forensic services.

# Notes on provisions

## Part 1 Preliminary

### Short title

*Clause 1* states that the short title of the Act will be the *Forensic Science Queensland Act 2023*.

### Commencement

*Clause 2* provides that the Act will commence on proclamation.

### Main purpose of Act

*Clause 3* provides that the main purpose of the Act is to ensure high quality, reliable, independent and impartial forensic services for the administration of criminal justice in Queensland.

*Clause 3(2)* provides that the main purpose of the Act is primarily achieved by:

- establishing the Director of Forensic Science Queensland to lead the provision of forensic services; and
- establishing the Forensic Science Queensland Advisory Council to advise on and make recommendations about particular matters.

### Act binds all persons

*Clause 4* provides that the Act binds all persons, including the State.

### Definitions

*Clause 5* provides that definitions for terms used in the Act are in the dictionary in schedule 1.

### References to administration of criminal justice

*Clause 6* provides that a reference in the Act to the administration of criminal justice includes a reference to the investigation by a coroner, under the *Coroners Act 2003*, of the death of a person.

## Part 2 Director of Forensic Science Queensland

### Division 1 Appointment, functions and powers

#### Appointment

*Clause 7* provides that Forensic Science Queensland must have a Director. The Director is appointed by Governor in Council upon recommendation of the Minister. The Minister may only recommend a person for appointment if they have a tertiary qualification in a scientific discipline relevant to forensic services and at least 10 years of practical experience in providing

forensic services. The Director's appointment is made under the Forensic Science Queensland Act and not under the *Public Sector Act 2022*.

Clause 7(4) provides that a person must not be appointed as the director if the person has a conviction, other than a spent conviction, for an indictable offence or is an insolvent under administration.

### **Term of appointment**

*Clause 8* provides that the Director is appointed for a term of no longer than five years, as stated in the Director's instrument of appointment. A person appointed as the Director may be reappointed.

### **Conditions of employment**

*Clause 9* specifies the Director is to be paid the remuneration and allowances decided by the Governor in Council, on the recommendation of the Minister. The Director holds office on the terms and conditions decided by the Governor in Council to the extent the terms and conditions are not provided for by the Act.

### **Vacancy in office**

*Clause 10* provides for when there is a vacancy in the office of the Director. The office becomes vacant when the Director:

- completes a term of office and is not reappointed;
- resigns from office by signed notice to the Minister at least 1 month before the resignation is to have effect;
- is convicted of an indictable offence;
- is an insolvent under administration; or
- is removed from office by the Governor in Council.

Governor in Council may, at any time, remove the Director from office on the recommendation of the Minister. The Minister may recommend the Director's removal if the Minister is satisfied that the Director:

- has engaged in misconduct;
- is incapable of performing the Director's duties;
- has neglected the Director's duties or performed duties incompetently;
- is absent from duty without leave granted by the Minister; or
- has contravened section 20 (Limitation on performing other work) or section 21 (Conflicts of interest) of the Act.

The Minister may suspend the Director for not more than six months by signed notice given to the Director if there is an allegation of misconduct against the Director, or the Minister is satisfied a matter has arisen in relation to the Director that may be grounds for removal. If the



Director is suspended by the Minister on these grounds, the Director's office is vacant for the period of the suspension.

Schedule 1 includes a definition of *misconduct*.

### **Director must disclose insolvency**

*Clause 11* provides that if a person is appointed as the Director and becomes an insolvent under administration during the person's term of appointment, the person must immediately give written notice of the insolvency to the Minister unless there is a reasonable excuse. A maximum penalty of 100 penalty units applies.

### **Acting director**

*Clause 12* provides that the Minister may appoint a person to act as the Director if the office is vacant, or the Director is absent from duty or otherwise unable to perform their functions. The Minister may appoint a person to act as the Director for a period not longer than six months. The Minister may extend the appointment for a further period if the appointment is continuous on one or more of the person's previous appointments as acting Director and the total period of the continuous appointment is not more than six months.

The Governor in Council may also reappoint a person to act as the Director for a further period. The Governor in Council's powers under the *Acts Interpretation Act 1954*, section 25(1)(b)(iv) or (v) are not limited by this clause.

A person cannot be appointed to act as the Director unless the Minister could recommend the person for appointment as the Director under section 7 of the Act (Appointment).

### **Functions of director**

*Clause 13* provides that the Director's functions are to support the administration of criminal justice in Queensland. This is achieved by:

- leading the provision of forensic services, and advice about forensic services, to the Queensland Police Service, Director of Public Prosecutions, coroners and other entities who perform functions related to the administration of criminal justice;
- ensuring forensic services and advice are reliable, independent and impartial and based on high quality processes and techniques that comply with relevant standards and accreditation requirements;
- ensuring research, development and innovation are undertaken to help inform the provision of forensic services; and
- developing partnerships and collaborating with other entities to inform and support the provision of forensic services.

The Director also has any other function given to the Director under the Act or another Act, or prescribed by regulation.

Clause 13(3) clarifies that the definition of *coroner* for the purpose of this section is the definition of coroner in schedule 2 of the *Coroners Act 2003*.

## **Powers of director**

*Clause 14* provides that the Director has the power to do all things necessary or convenient to be done in performing the Director's functions, including the power to enter into an arrangement with a person or other entity to assist in the performance of the Director's functions and the power to establish an advisory committee or subcommittee for the purpose of obtaining expert advice on the performance of the Director's functions.

Clause 14(2) states that the Director may direct Forensic Science Queensland to provide scientific analysis in non-criminal matters in Queensland and other jurisdictions and support the administration of justice in other jurisdictions.

Clause 14(3) clarifies that, in relation to supporting the administration of justice in other jurisdictions, the meaning of *administration of criminal justice* established at section 6 of the Act includes another jurisdiction's corresponding law for the *Coroners Act 2003*.

## **Division 2 Criminal history checking**

### **Criminal history report**

*Clause 15* provides that the section applies to enable the Minister to decide whether a person is qualified to become, or continue as, the Director. It allows the Minister to ask the police commissioner for a written report about the criminal history of the person and a brief description of the circumstances of a conviction mentioned in the criminal history. The police commissioner must comply with the request.

However, the Minister may make the request only if the person has given the Minister written consent to do so. Also, the police commissioner's duty to comply with the request applies only to information in the possession of the police commissioner or to which the police commissioner has access.

Clause 15(6) defines *criminal history*. Spent convictions are excluded from the definition.

### **Charges and convictions must be disclosed by director**

*Clause 16* provides that if a person who is appointed as the Director is charged with, or convicted of, an indictable offence during the person's term of appointment, the person must, unless the person has a reasonable excuse, immediately give written notice to the Minister about the charge or conviction. A maximum penalty of 100 penalty units applies to this offence.

Clause 16(3) requires the notice to state the existence of a charge or conviction, when the offence was committed or allegedly committed, details adequate to identify the offence or alleged offence and, for a conviction, the sentence imposed.

### **Confidentiality of criminal history information**

*Clause 17* provides that if a person is or has been the Minister or a public sector employee performing functions under, or relating to the administration of the Act, and in that capacity has acquired or has access to criminal history information, the person must not disclose the criminal history information to anyone else, or use the information, other than under the section. This offence carries a maximum penalty of 200 penalty units.

This clause allows the person to disclose or use the criminal history information:

- to the extent the disclosure or use is necessary to perform the person's functions under or relating to part 2 of the Act (Director of Forensic Science Queensland);
- to the extent the disclosure or use is required or permitted under the Act or another law; or
- with the consent of the person to whom the confidential information relates.

Clause 17(4) provides that a person who possesses a report given to the Minister under section 15 (Criminal history report) or section 16 (Charges and convictions must be disclosed by Director) must ensure the report or notice is destroyed as soon as practicable after it is no longer needed for the purpose for which it was given.

*Criminal history information* and *disclose* are defined in clause 17(5). *Criminal history information* means information contained in a report given to the Minister under section 15, or a notice given to the Minister under section 16.

*Disclose* includes *give access to*.

## **Division 3 Other provisions**

### **Delegation**

*Clause 18* provides that the Director may delegate their functions and powers under the Act or another Act to an appropriately qualified staff member of Forensic Science Queensland.

### **Independence of director**

*Clause 19* provides that the Director, in performing the Director's functions and exercising the Director's powers, is not subject to direction by the Minister.

### **Limitation on performing other work**

*Clause 20* provides that the Director must not perform paid work, other than under this Act, without the Minister's consent.

### **Conflicts of interest**

*Clause 21* provides that if the Director has an interest that conflicts, or may conflict, with the discharge of their functions, the Director must disclose the nature of the interest and conflict to the Minister as soon as practicable after the relevant facts come to the Director's knowledge. The Director must not take action or further action concerning a matter that is, or may be, affected by the conflict unless authorised by the Minister.

### **Preservation of rights**

*Clause 22* provides that if a public sector employee is appointed as the Director, the person keeps all rights accrued or accruing to the person as a public sector employee as if the service as the Director were a continuation of service as a public sector employee. At the end of the

person's term of office or on resignation as the Director, the person's service as the Director is taken to be service of a like nature for deciding the person's rights as a public sector employee.

## **Part 3 Office and staff**

### **Establishment**

*Clause 23* establishes the Office of the Director of Forensic Science Queensland (*Forensic Science Queensland*). Forensic Science Queensland consists of the Director and the staff of Forensic Science Queensland.

### **Function**

*Clause 24* provides that the function of Forensic Science Queensland is to help the Director to perform the Director's functions.

### **Staff**

*Clause 25* provides that the staff of Forensic Science Queensland are employed under the *Public Sector Act 2022*.

## **Part 4 Forensic Science Queensland Advisory Council**

### **Division 1 Establishment, functions and powers**

#### **Establishment**

*Clause 26* establishes the Forensic Science Queensland Advisory Council.

#### **Functions**

*Clause 27* provides that the council has the following functions:

- to monitor and review Forensic Science Queensland policies and procedures that relate to the administration of criminal justice;
- to give advice or make recommendations about these procedures and policies; and
- another function as directed by the Minister.

The council may give their advice or make recommendations to the Minister or the Director on its own initiative or in response to a request from the Minister.

#### **Powers**

*Clause 28* confers the council with the power to do anything necessary or convenient to be done in performing its functions.

## **Division 2 Membership**

### **Council members**

*Clause 29* provides that the council consists of up to 11 members appointed by the Minister. The council must consist of at least one representative of the Queensland Police Service, Office of the Director of Public Prosecutions and Legal Aid Queensland. It must also include at least one person who holds qualifications, or has experience, relating to supporting victims of crime, at least one person who holds qualifications or has experience relating to forensic services and is not employed by the State and at least one practising lawyer who is not employed by the State. Any other council member appointed by the Minister must hold qualifications, or have experience, in at least one of the following fields:

- forensic services;
- policing;
- law;
- support for victims of crime;
- another field the Minister is satisfied is necessary or relevant to support the council's functions.

This will ensure there is flexibility to enable the council to be made up of members who will bring a range of experience and background to the council. *Clause 29(4)* clarifies that the appointment of council members is done so under this Act and not the *Public Sector Act 2022*.

### **Chairperson**

*Clause 30* provides that the Minister must appoint a council member to be the chairperson of the council. The appointment can occur at the same time as the chairperson is appointed as a member of the council. A person holds office as chairperson for the term, ending not later than the person's term of appointment as a council member, stated in the person's appointment as chairperson. The chairperson's appointment will end if the chairperson stops being a council member or resigns as chairperson. Resignation as chairperson requires signed notice to the Minister.

### **Deputy chairperson**

*Clause 31* provides that the council members must appoint one of its members, other than the chairperson, to be the deputy chairperson. A person holds office as deputy chairperson for the term, ending not later than the person's term of appointment as a council member, decided by the council. The deputy chairperson's appointment will end if they stop being a council member or resign as deputy chairperson by signed notice given to the council.

### **Term of appointment**

*Clause 32* provides that a council member holds office for a term, no longer than three years, stated in the member's instrument of appointment. A council member may be reappointed.

## **Conditions of appointment**

*Clause 33* specifies that a council member is to be paid the remuneration and allowances decided by the Minister. The council member holds office on the terms and conditions decided by the Minister to the extent the terms and conditions are not provided for by the Act.

## **Vacancy in office**

*Clause 34* provides that the office of a council member becomes vacant if a council member completes the term of office and is not reappointed, resigns by way of notice to the Minister or is removed by the Minister. The Minister may terminate the council member's appointment by way of written notice if:

- the member is absent from three consecutive meetings of council members without the council's permission and without reasonable excuse;
- the member is convicted of an indictable offence;
- the Minister is satisfied the member has engaged in misconduct;
- the member becomes an insolvent under administration; or
- the Minister is satisfied the member is incapable of satisfactorily performing the member's duties.

## **Division 3 Meetings**

### **Conduct of business**

*Clause 35* provides that the council may conduct its business, including council meetings, in the way it considers appropriate.

### **Council meetings generally**

*Clause 36* provides that the chairperson may convene a meeting of council members as often as is necessary for the performance of the council's functions.

### **Minutes and other records**

*Clause 37* provides that the council must keep minutes of council meetings and a record of its decisions and resolutions.

### **Presiding at council meetings**

*Clause 38* provides that the chairperson is to preside at all council meetings at which the chairperson is present. If the chairperson is not present, the deputy chairperson is to preside. If both the chairperson and deputy chairperson are not present at the council meeting, the member chosen by the members present at the meeting is to preside.

## Division 4 Miscellaneous

### Advice and recommendations of council

*Clause 39* provides that if the council gives advice or makes a recommendation about a matter to the Minister or Director, and the council's decision on the matter is not unanimous, the council's advice or recommendation must include a fair summary of the views of each council member who did not agree with the decision.

## Part 5 Confidentiality

### Confidentiality of information

*Clause 40* provides that if a person gains confidential information through involvement in the administration of the Act, the person must not disclose or use the information other than under this section of the Act. This offence carries a maximum penalty of 200 penalty units.

A person gains confidential information through involvement in the administration of the Act, if the person gains information because of being, or an opportunity given by being:

- the Director;
- a council member;
- a staff member of Forensic Science Queensland;
- a person assisting the council in the performance of its functions;
- a person assisting the Director under an arrangement; or
- a public sector employee or other person assisting the Director.

Clause 40(3) provides that a person may disclose or use the information:

- to the extent the disclosure or use is necessary to perform the person's functions under or relating to the Act;
- to the extent the disclosure or use is required or permitted by the Act or another law;
- if the disclosure is made under an arrangement for the provision of forensic services to the person or other entity that has requested the forensic services under the arrangement;
- for a proceeding in a court or tribunal;
- if authorised by a court or tribunal in the interests of justice; or
- with the consent of the person to whom the confidential information relates.

For the purpose of clause 40, *arrangement* means an arrangement mentioned in section 14(1)(a) of the Act.

*Confidential information* includes information about a person's affairs but does not include statistical or other information that could not reasonably be expected to result in the identification of the person to whom the information relates.

*Disclose* includes give access to.

## **Part 6                      Miscellaneous**

### **Director and council not statutory bodies for particular Acts**

*Clause 41* provides that the Director and the council are not statutory bodies for the *Statutory Bodies Financial Arrangements Act 1982* or the *Financial Accountability Act 2009*.

### **Proceedings for offences**

*Clause 42* provides that a proceeding for an offence against the Act is to be heard and decided summarily and must start within whichever is the longer of the following:

- 1 year after the offence was committed; or
- 6 months after the offence came to the complainant's knowledge, but within 2 years after the offence was committed.

### **Protection from civil liability**

*Clause 43* provides protection against civil liability for the Minister, Director and council members for any act done, or omission made, honestly and without negligence under the Act. If this provision prevents civil liability attaching to a prescribed person, the liability attaches to the State.

Protection from civil liability does not apply under this clause to a person who is a prescribed person under section 267 of the *Public Sector Act 2022*. This is because a State employee acting in their official capacity is protected from civil liability under the Public Sector Act.

### **Regulation-making power**

*Clause 44* provides a general head of power for making regulations under the Act.

## **Part 7                      Transitional provisions**

### **Division 1   Preliminary**

#### **Definitions for part**

*Clause 45* provides definitions for terms used in part 7.

#### **Application of part**

*Clause 46* states that part 7 applies to an *initial FSQ employee*, which means a person who is employed by the department after the commencement as a staff member of Forensic Science Queensland, including a person who was a health service employee or public service employee immediately before being transferred to the department.

Clause 46(2) states that a person stops being an initial FSQ employee if a new certified agreement, covering the person as an employee of the department, takes effect.



## **Division 2 Employment terms and conditions of initial FSQ employees**

### **Application of existing instruments**

*Clause 47* deals with the employment terms and conditions of initial FSQ employees.

Clause 47(1) provides that subsection (2) applies to an initial FSQ employee who was a health service employee or public service employee immediately before being transferred to the department.

Clause 47(2) provides that the terms and conditions of initial FSQ employees are:

- for an employee who was a health service employee immediately before being transferred to the department – the terms and conditions that applied, immediately before the commencement, to health service employees under the existing instruments;
- for an employee who was a public service employee immediately before being transferred to the department – the terms and conditions that applied, immediately before the commencement, to public service employees employed by Queensland Health under the existing instruments, other than a health employment directive.

Clause 47(3) provides that the terms and conditions of an initial FSQ employee not covered by clause 47(2) are the terms and conditions that applied, immediately before the commencement, to health service employees under the existing instruments.

The term *existing instrument* is defined in clause 45 and includes certain Queensland Health certified agreements, awards, public sector directives and health employment directives.

Clause 47(4) provides that sections 51B and 51C of the *Hospital and Health Boards Act 2011* apply in relation to an existing instrument that is a health employment directive. In addition, sections 228 and 229 of the Public Sector Act apply in relation to an existing instrument that is a public sector directive applied by the clause. If an existing instrument applied to health service employees or public service employees employed by Queensland Health immediately before the commencement, these instruments are taken to apply to initial FSQ employees. If an existing instrument applied to Queensland Health in relation to the employment of health service employees or public service employees immediately before the commencement, these instruments are taken to apply to the department in the place of Queensland Health.

Clause 47(5) provides clause 47 applies despite any other Act but subject to sections 48 to 51.

### **Change to existing instrument other than health employment directive**

*Clause 48* provides that it applies to an existing instrument, other than a health employment directive. To the extent a change to the existing instrument takes effect after the commencement, the change applies to the instrument's application under clause 47.

### **Revocation of existing public sector directive**

*Clause 49* provides that if an existing instrument that is a public sector directive is revoked or otherwise stops having effect after the commencement, the directive stops applying under clause 47.

## **Application of public sector directive made after commencement**

*Clause 50* provides that the terms and conditions of employment of an initial FSQ employee are subject to a public sector directive made after the commencement if the directive states that it applies to initial FSQ employees.

Clause 50 also clarifies that sections 228 and 229 of the Public Sector Act apply to public sector directives mentioned in the clause.

## **Fixed term contracts not affected**

*Clause 51* applies if a fixed term contract was in effect for an initial FSQ employee to whom clause 47(2) applies immediately before the employee was transferred to the department.

Clause 51(2) provides that nothing in part 7 affects the operation of the fixed term contract.

## **Division 3 Miscellaneous**

### **Transfer of health service employee or public service employee**

Clause 52 provides that for initial FSQ employees to whom clause 47(2) applies, the transfer to the department does not:

- affect the employees' benefits, entitlements or remuneration;
- prejudice the employees' existing or accruing rights to superannuation or recreation, sick, long service or other leave;
- interrupt continuity of service, except that the employees are not entitled to claim the benefit of a right or entitlement more than once in relation to the same period of service; or
- entitle the employees to a payment or other benefit from the State because the employees are no longer employed at Queensland Health.

Clause 52(2) does not limit the operation of chapter 4, part 4 of the Public Sector Act in relation to the transfer of employees to the department as staff members of Forensic Science Queensland.

## **Part 8 Legislation amended**

### **Division 1 Amendment of this Act**

#### **Act amended**

*Clause 53* states that division 1 amends the Act.

#### **Amendment of long title**

*Clause 54* will, on commencement of the clause, remove from the long title ' , and to amend this Act, the *Evidence Act 1997*, the *Medicines and Poisons Act 2019* and the *Police Powers and Responsibilities Act 2000* for particular purposes'.

## **Division 2 Amendment of Evidence Act 1977**

### **Act amended**

*Clause 55* provides part 8, division 2 amends the *Evidence Act 1977*.

### **Amendment of s 133A (DNA analysts)**

*Clause 56* amends section 133A(1) of the Evidence Act by omitting existing subsection (1) and inserting new subsection (1). The new subsection provides that the Director of Forensic Science Queensland may appoint a staff member of Forensic Science Queensland as a DNA analyst, if satisfied the staff member has the necessary qualifications and experience to be a DNA analyst.

*Clause 56(2)* amends section 133A of the Evidence Act by inserting new subsection (6). The new subsection provides a definition for *Forensic Science Queensland*. *Forensic Science Queensland* which means the Office of the Director of Forensic Science Queensland established under the Forensic Science Queensland Act 2023, section 23.

### **Insertion of new pt 9, div 14**

*Clause 57* inserts new part 9, division 14 into the Evidence Act. Part 9, division 14 consists of new section 160.

New section 160 applies to a person who on the commencement, is a staff member of Forensic Science Queensland and, immediately before the commencement, held office as a DNA analyst under former section 133A(1). From commencement, the person is taken to hold office as a DNA analyst under the Evidence Act on the conditions, if any, stated in the person's instrument of appointment. The person's appointment is taken to be made under new section 133A(1), and is therefore taken to be made by the Director of Forensic Science Queensland.

## **Division 3 Amendment of Medicines and Poisons Act 2019**

### **Act amended**

*Clause 58* provides that part 8, division 3 amends the *Medicines and Poisons Act 2019*.

### **Amendment of s 49 (State officers and helpers)**

*Clause 59* amends section 49(1) of the Medicines and Poisons Act by providing that the Director of Forensic Science Queensland and a staff member of Forensic Science Queensland are State officers.

### **Amendment of s 189 (Appointment and qualifications of State analyst)**

*Clause 60* amends section 189 of the Medicines and Poisons Act by inserting subsection (3), which provides that the Director of Forensic Science Queensland may appoint a staff member of Forensic Science Queensland as a State analyst, if satisfied the staff member has the necessary qualifications and experience to be a State analyst.

**Amendment of s 190 (Appointment conditions of State analyst)**

*Clause 61* amends section 190(2) of the Medicines and Poisons Act by omitting the chief executive as the signatory of signed notices that provide conditions of appointment of State analysts and making the signatory dependent on how the analyst was appointed. Under this clause, the chief executive will sign notices for a State analyst appointed under section 189(1) of the Medicines and Poisons Act. The Director of Forensic Science Queensland will sign notices for a State analyst appointed under section 189(3), as inserted by clause 60.

Under new section 283 of the Medicines and Poisons Act (see clause 65), State analysts appointed by the chief executive who become staff members of Forensic Science Queensland are taken to be appointed under section 189(3).

**Amendment of s 192 (Resignation of State analyst)**

*Clause 62* amends section 192 of the Medicines and Poisons Act by omitting the chief executive as the person to whom State analysts may give notice of resignation and making the relevant person dependent on how the analyst was appointed. Under this clause, State analysts appointed under section 189(1) of the Medicines and Poisons Act will give notice to the chief executive. State analysts appointed under section 189(3) will give notice to the Director of Forensic Science Queensland.

Under new section 282 of the Medicines and Poisons Act (see clause 66), State analysts appointed by the chief executive who become staff members of Forensic Science Queensland are taken to be appointed under section 189(3).

**Amendment of s 208 (Evidentiary aids generally)**

*Clause 63* omits *or State analyst* from section 208(1)(f) of the Medicines and Poisons Act and inserts *or State analyst under section 189(1)* to clarify that this provision applies to State analysts appointed by the chief executive.

Clause 63(2) inserts new section 208(1A) of the Medicines and Poisons Act, which provides that a certificate purposing to be that of the Director of Forensic Science Queensland stating that, on a stated day, or for a stated period, an appointment as a State analyst under section 189(3) was or was not in force for a stated person is evidence of the matter.

**Amendment of ch 8, pt 2, hdg (Savings and transitional provisions)**

*Clause 64* amends the heading of chapter 8, part 2 of the Medicines and Poisons Act by adding 'for Act No. 26 of 2019'.

**Omission of ch 8, pt 2, div 7, hdg (Miscellaneous)**

*Clause 65* omits the heading of chapter 8, part 2, division 7.

**Insertion of new ch 8, pt 3**

*Clause 66* inserts new chapter 8, part 3 into the Medicines and Poisons Act to provide for the continuation of appointments. This consists of new section 282.

New section 282 provides that if a person is a staff member of Forensic Science Queensland on commencement of the Act and immediately before the commencement, the person held office as a State analyst under section 189(1) of the Medicines and Poisons Act, the person is taken to hold office as a State analyst appointed by the Director of Forensic Science Queensland under section 189(3) on the conditions, if any, stated in the person's instrument of appointment.

### **Amendment of sch 1 (Dictionary)**

*Clause 67* inserts new definitions into schedule 1 of the Medicines and Poisons Act, for the *Director of Forensic Science Queensland* and *Forensic Science Queensland*.

### **Division 4 Amendment of Police Powers and Responsibilities Act 2000**

#### **Act amended**

*Clause 68* provides that part 8, division 4 amends the *Police Powers and Responsibilities Act 2000*.

#### **Amendment of s 488B (Commissioner may enter into DNA arrangement)**

*Clause 69* omits section 488B(1)(a) of the Police Powers and Responsibilities Act and inserts new section 488B(1)(a) which allows the Commissioner to enter into a DNA arrangement with the Director of Forensic Science Queensland under the *Forensic Science Queensland Act 2023*.

*Clause 69(2)* amends section 488B(2) by omitting 'ISO/IEC 17025:2005' and replacing it with 'ISO/IEC 17025' without '2005' included.

*Clause 69(3)* omits the definition of 'ISO/IEC 17025:2005' and replaces it with a new definition which refers to 'ISO/IEC 17025' without '2005' included.

These amendments update the accreditation standards of the testing and calibration laboratory standards adopted by Forensic Science Queensland to facilitate cooperation between laboratories and other bodies by generating wider acceptance of results between countries and allowing for contemporary best practice.

### **Schedule 1 Dictionary**

*Schedule 1* provides a dictionary of terms used in the *Forensic Science Queensland Act 2023*.