



Queensland

# **Health and Other Legislation Amendment Act 2007**

**Act No. 28 of 2007**





Queensland

# Health and Other Legislation Amendment Act 2007

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
1	Short title . . . . .	8
2	Commencement . . . . .	8
<b>Part 2</b>	<b>Amendment of Health Services Act 1991</b>	
3	Act amended in pt 2 . . . . .	8
4	Amendment of s 2 (Definitions) . . . . .	8
5	Insertion of new pt 4B. . . . .	9
	Part 4B            Root cause analyses	
	Division 1        Preliminary	
	38G        Definitions for pt 4B . . . . .	9
	38H        Meaning of root cause analysis . . . . .	10
	38I        Purpose of pt 4B . . . . .	11
	38J        Guiding principles for conduct of RCA of reportable event . . . . .	11
	Division 2        RCA teams	
	38K        Appointment of RCA team . . . . .	12
	38L        Requirements for appointment . . . . .	12
	Division 3        Reporting	
	38M        RCA team's report and chain of events document . . . . .	13
	38N        Reporting to commissioning authority . . . . .	14
	Division 4        Stopping conduct of RCA of reportable event	
	38O        Definition for div 4. . . . .	14
	38P        Stopping conduct of RCA of reportable event—RCA team . . . . .	14
	38Q        Stopping conduct of RCA of reportable event—commissioning authority . . . . .	15
	Division 5        Disclosure or release of information	

	38R	Definition for div 5. . . . .	16
	38S	Disclosure of information—RCA team member or relevant person. . . . .	17
	38T	Disclosure of information—commissioning authority or relevant person. . . . .	18
	38U	Release of information to Health Quality and Complaints Commission. . . . .	19
	38V	Release of information to chief health officer . . . . .	20
	38W	Release of information by chief health officer to Health Quality and Complaints Commission . . . . .	20
	38X	Giving of copy of RCA report or chain of events document—patient safety entity . . . . .	21
	38Y	Giving of copy of RCA report etc.—investigation under the Coroners Act 2003 . . . . .	22
	38Z	Giving of information to Minister or chief executive . . . . .	24
	38ZA	Giving of copy of, or information contained in, RCA report—person who has sufficient personal or professional interest . . . . .	25
	38ZB	Information not to be given in evidence . . . . .	25
	38ZC	Information-provider can not be compelled to give particular information in evidence. . . . .	26
	Division 6	Protections	
	38ZD	Protection from liability . . . . .	27
	38ZE	Giving of information protected . . . . .	27
	38ZF	Reprisal and grounds for reprisals . . . . .	28
	38ZG	Offence for taking reprisal . . . . .	29
	38ZH	Damages entitlement for reprisal . . . . .	29
	Division 7	Miscellaneous	
	38ZI	Delegation by chief executive . . . . .	29
	38ZJ	Application of provisions of this part. . . . .	30
	38ZK	RCA report not admissible in evidence . . . . .	30
	38ZL	Review of pt 4B . . . . .	30
6		Amendment of s 63 (Functions) . . . . .	31
7		Amendment of ss 63K, 63R, 63S, 63ZB, 63ZC, 63ZD and 63ZF. . . . .	31
8		Insertion of new pt 7B. . . . .	31
	Part 7B	Proceedings	
	63ZK	Summary offences . . . . .	31
	63ZL	Limitation on time for starting proceedings for summary offence . . . . .	32
	63ZM	Proceedings for indictable offences . . . . .	32

	63ZN	Limitation on who may summarily hear indictable offence . . . . .	33
9		Amendment of s 68 (Regulations) . . . . .	33
<b>Part 3</b>		<b>Amendment of Mental Health Act 2000—Mental Health Court</b>	
10		Act amended in pt 3 . . . . .	34
11		Amendment of s 381 (Mental Health Court established) . . . . .	34
12		Amendment of s 382 (Constitution) . . . . .	34
13		Replacement of ch 11, pt 2 . . . . .	34
	385	Appointment of a member of Mental Health Court . . . . .	35
	386	Appointment does not affect judge's tenure of office etc. . . . .	35
	387	When judge's office ends etc. . . . .	35
	388	President of Mental Health Court . . . . .	36
	388A	Arrangement of business . . . . .	36
	388B	President of Mental Health Court holds office while a member of court . . . . .	36
	388C	Resignation of office . . . . .	36
	388D	Appointment of acting president of Mental Health Court . . . . .	37
14		Amendment of s 398 (Registrar's powers—general) . . . . .	37
15		Insertion of new s 415A . . . . .	37
	415A	What happens if a member of Mental Health Court dies or is incapacitated. . . . .	37
16		Amendment of s 416 (Contempt of court) . . . . .	38
17		Amendment of s 418 (Protection and immunities for constituting judge of Mental Health Court) . . . . .	38
18		Amendment of s 419 (Rule-making power) . . . . .	39
19		Amendment of s 420 (Directions about practice) . . . . .	39
20		Amendment of s 421 (Approved forms—constituting judge) . . . . .	39
21		Amendment of s 435 (Annual report) . . . . .	39
22		Amendment of s 493 (Approved forms) . . . . .	40
23		Amendment of ch 16, pt 2, hdg (Transitional provisions) . . . . .	40
24		Amendment of s 583 (Appeals against Patient Review Tribunal decisions) . . . . .	40
25		Insertion of new ch 11, pt 3 . . . . .	40
	589	Definitions for pt 3. . . . .	40
	590	Constituting judge taken to be a member of Mental Health Court etc. . . . .	41
	591	Rules relating to Mental Health Court . . . . .	41

	592	Directions about practice and procedure of Mental Health Court . . . . .	41
	593	Approved forms . . . . .	41
26		Amendment of sch 2 (Dictionary) . . . . .	42
<b>Part 4</b>		<b>Amendment of Mental Health Act 2000—other amendments</b>	
27		Act amended in pt 4 . . . . .	42
28		Amendment of s 4 (Purpose of Act) . . . . .	42
29		Amendment of s 5 (How purpose of Act is to be achieved) . . . . .	42
30		Amendment of s 223 (Restriction on making notification order) . . . . .	43
31		Amendment of s 228B (Tribunal may make non-contact order) . . . . .	43
32		Amendment of s 228C (Restrictions on making non-contact order) . . . . .	44
33		Amendment of ch 7, pt 6, div 6, hdg (Material submitted by non-parties) . . . . .	44
34		Amendment of s 284 (Submission and consideration of relevant material by non-party) . . . . .	44
35		Replacement of s 285 (Reasons for decision about non-party material) . . . . .	46
	285	Reasons for decision about material submitted by victim or concerned person . . . . .	46
36		Insertion of new s 286A . . . . .	46
	286A	Notice about material submitted by victim or concerned person. . . . .	46
37		Amendment of s 313B (Mental Health Court may make non-contact order) . . . . .	47
38		Amendment of s 313C (Restrictions on making non-contact order) . . . . .	47
39		Amendment of s 426 (Confidentiality orders) . . . . .	48
40		Amendment of s 450 (Right of appearance—reviews) . . . . .	48
41		Amendment of s 464 (Submission and consideration of relevant material by non-party) . . . . .	49
42		Amendment of s 465 (Reasons for decision about non-party material) . . . . .	50
43		Amendment of sch 2 (Dictionary) . . . . .	50
<b>Part 5</b>		<b>Amendment of Tobacco and Other Smoking Products Act 1998</b>	
44		Act amended in pt 5 . . . . .	51
45		Amendment of s 26W (Meaning of outdoor eating or drinking place) . . . . .	51
46		Insertion of new s 26ZPA . . . . .	51
	26ZPA	Sale, supply and display of ice pipes . . . . .	51

47	Replacement of s 26ZQ (Production, sale or public display of cannabis utensils) . . . . .	52
	26ZQ Sale, supply and display of bongos . . . . .	53
	26ZQA Display of hookahs . . . . .	54
48	Amendment of schedule (Dictionary) . . . . .	54
<b>Part 6</b>	<b>Amendment of Ambulance Service Act 1991</b>	
49	Act amended in pt 6 . . . . .	56
50	Insertion of new pt 4A. . . . .	56
	Part 4A Root cause analyses	
	Division 1 Preliminary	
	36A Definitions for pt 4A . . . . .	56
	36B Meaning of root cause analysis . . . . .	57
	36C Purpose of pt 4A . . . . .	58
	36D Guiding principles for conduct of RCA of reportable event . . . . .	58
	Division 2 RCA teams	
	36E Appointment of RCA team . . . . .	59
	36F Requirements for appointment . . . . .	59
	Division 3 Reporting	
	36G RCA team's report and chain of events document . . . . .	60
	36H Reporting to commissioning authority . . . . .	60
	Division 4 Stopping conduct of RCA of reportable event	
	36I Definition for div 4. . . . .	61
	36J Stopping conduct of RCA of reportable event—RCA team . . . . .	61
	36K Stopping conduct of RCA of reportable event—commissioning authority . . . . .	62
	Division 5 Disclosure or release of information	
	36L Definitions for div 5 . . . . .	63
	36M Disclosure of information—RCA team member or relevant person . . . . .	63
	36N Disclosure of information—commissioning authority or relevant person. . . . .	64
	36O Release of information to Health Quality and Complaints Commission. . . . .	66
	36P Giving of copy of RCA report or chain of events document—medical director. . . . .	66
	36Q Giving of copy of RCA report etc.—investigation under the Coroners Act 2003 . . . . .	68
	36R Giving of information to Minister or chief executive . . . . .	69

	36S	Giving of copy of, or information contained in, RCA report—person who has sufficient personal or professional interest . . . . .	70
	36T	Information not to be given in evidence . . . . .	70
	36U	Information-provider can not be compelled to give particular information in evidence. . . . .	71
	Division 6	Protections	
	36V	Protection from liability . . . . .	72
	36W	Giving of information protected . . . . .	72
	36X	Reprisal and grounds for reprisals . . . . .	73
	36Y	Offence for taking reprisal . . . . .	73
	36Z	Damages entitlement for reprisal . . . . .	74
	Division 7	Miscellaneous	
	36ZA	Application of provisions of this part. . . . .	74
	36ZB	RCA report not admissible in evidence . . . . .	74
	36ZC	Review of pt 4A . . . . .	75
51		Amendment of s 50 (Proceedings for offences) . . . . .	75
52		Insertion of new ss 50A and 50B . . . . .	75
	50A	Proceedings for indictable offences . . . . .	75
	50B	Limitation on who may summarily hear indictable offence . . . . .	76
53		Amendment of s 54 (Regulation-making power) . . . . .	77
54		Amendment of schedule (Dictionary) . . . . .	77
	<b>Part 7</b>	<b>Amendment of Freedom of Information Act 1992</b>	
55		Act amended in pt 7 . . . . .	78
56		Insertion of new s 11CA . . . . .	78
	11CA	Application of Act to particular documents under the Ambulance Service Act 1991 or the Health Services Act 1991 . . . . .	78





Queensland

# Health and Other Legislation Amendment Act 2007

## Act No. 28 of 2007

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**An Act to amend Acts administered by the Minister for Health  
and the *Ambulance Service Act 1991*, and for other purposes**

**[Assented to 28 May 2007]**

## The Parliament of Queensland enacts—

### Part 1 Preliminary

#### 1 Short title

This Act may be cited as the *Health and Other Legislation Amendment Act 2007*.

#### 2 Commencement

This Act commences on a day to be fixed by proclamation.

### Part 2 Amendment of Health Services Act 1991

#### 3 Act amended in pt 2

This part amends the *Health Services Act 1991*.

#### 4 Amendment of s 2 (Definitions)

Section 2—

*insert—*

*‘applicable provisions*, for part 7A, see section 63.

*blameworthy act*, for part 4B, division 4, see section 38O.

*chain of events document*, for part 4B, see section 38G.

*commissioning authority*, for part 4B, see section 38G.

*coroner*, for part 4B, see section 38G.

*health service facility*, for part 4B, see section 38G.

*information*, for part 4B, division 5, see section 38R.

*notice*, for part 4B, see section 38G.

*private health facility*, for part 4B, see section 38G.

*RCA report*, for part 4B, see section 38G.

*RCA team* see section 38G.

*relevant person*, for part 4B, see section 38G.

*reportable event* see section 38G.

*reprisal* means a reprisal as mentioned in section 38ZF(3).

*root cause analysis* or *RCA* see section 38H.

*takes a reprisal* means the taking of a reprisal as mentioned in section 38ZF(3).’.

## 5 Insertion of new pt 4B

Before part 5—

*insert—*

### ‘Part 4B Root cause analyses

#### ‘Division 1 Preliminary

#### ‘38G Definitions for pt 4B

‘In this part—

*chain of events document* see section 38M(2).

*commissioning authority* see section 38K.

*coroner* see the *Coroners Act 2003*, schedule 2.

*health service facility* means—

- (a) a public sector health service facility; or
- (b) a private health facility; or
- (c) the Mater Misericordiae Public Hospitals.

*notice* means written notice.

*private health facility* see the *Private Health Facilities Act 1999*, section 8.

**RCA report** see section 38M(1).

**RCA team** means a group of persons appointed under section 38K.

**relevant person**—

- (a) for a commissioning authority, means a person who provides administrative or secretarial services to the commissioning authority to help it exercise its powers under this part; or
- (b) for an RCA team, means a person—
  - (i) who provides administrative or secretarial services to the RCA team; or
  - (ii) who advises the RCA team about—
    - (A) conducting an RCA of a reportable event; or
    - (B) preparing an RCA report or chain of events document for a reportable event.

**reportable event**—

- (a) generally—means an event prescribed under a regulation that happens while a health service is being provided at a health service facility; or
- (b) in relation to an RCA report or chain of events document, means the reportable event to which the report or document relates.

### **‘38H Meaning of *root cause analysis***

- ‘(1) ***Root cause analysis*** or ***RCA***, of a reportable event, means a systematic process of analysis under which—
  - (a) factors that contributed to the happening of the event may be identified; and
  - (b) remedial measures that could be implemented to prevent a recurrence of a similar event may be identified.
- ‘(2) However, a ***root cause analysis*** or ***RCA*** of a reportable event does not include—
  - (a) investigating the professional competence of a person in relation to the event; or

- (b) finding out who is to blame for the happening of the event.

### **‘38I Purpose of pt 4B**

‘The purpose of this part is to facilitate the use of root cause analyses by health service facilities as a quality improvement technique to assess and respond to reportable events that happen while health services are being provided at the facilities.

### **‘38J Guiding principles for conduct of RCA of reportable event**

‘The principles intended to guide the conduct of an RCA of a reportable event are the following—

- (a) reporting and acknowledging errors happening while a health service is being provided at a health service facility is encouraged if people do not fear blame or reprisal;
- (b) people involved in providing health services should be accountable for their actions;
- (c) the focus of the RCA should be on identifying and improving the policies, procedures or practices relating to the provision of the health service that contributed to the happening of the event, rather than on the conduct of individuals;
- (d) participation in the RCA should be voluntary;
- (e) the benefits of conducting the RCA will be maximised—
  - (i) in an environment oriented towards learning from analysing the event; and
  - (ii) if the RCA is conducted in a timely way;
- (f) teamwork, good communication and sharing of information by people involved in providing health services should be fostered.

## **‘Division 2            RCA teams**

### **‘38K    Appointment of RCA team**

‘Each of the following persons (a *commissioning authority*) may appoint persons to be members of an RCA team to conduct an RCA of a reportable event—

- (a) if the event happens while a public sector health service is being provided—the chief executive;
- (b) if the event happens while a health service is being provided at a private health facility—the individual who has the day-to-day management of the facility or the individual who has overall management responsibility for the facility;
- (c) if the event happens while a health service is being provided at the Mater Misericordiae Public Hospitals—the individual who has the day-to-day management of the Mater Misericordiae Public Hospitals or the chief executive of Mater Misericordiae Health Services Brisbane Limited ACN 096 708 922.

### **‘38L    Requirements for appointment**

- ‘(1) Before appointing persons to be members of an RCA team to conduct an RCA of a reportable event, the commissioning authority proposing to make the appointment must be satisfied that—
  - (a) the persons—
    - (i) have the appropriate skills, knowledge and experience to conduct an RCA of the event, having regard to the nature of the event; and
    - (ii) were not directly involved in providing the health service at a health service facility during the provision of which the event happened; and
  - (b) the conduct of an RCA of the event would be helped by the provision of immunities and protections provided to persons under divisions 5 and 6; and

- (c) the potential benefit in disclosing relevant information is outweighed by the potential benefit of restricting disclosure of the information under division 5.

‘(2) In this section—

*relevant information* means information that will be compiled by the proposed RCA team in the conduct of an RCA of the reportable event.

## ‘Division 3 Reporting

### ‘38M RCA team’s report and chain of events document

- ‘(1) An RCA team must, as soon as practicable after conducting an RCA of a reportable event, prepare a report (the *RCA report*) stating the following—
  - (a) a description of the event;
  - (b) a statement of the factors the RCA team considers contributed to the happening of the event;
  - (c) any recommendations about changes or improvements in a policy, procedure or practice relating to the provision of health services, to reduce the likelihood of, or prevent, the same type of event happening again during the provision of health services.
- ‘(2) In addition to the RCA report, the RCA team may prepare a document (the *chain of events document*) that details, or pictorially represents, the chain of events identified by the RCA team as having led to the happening of the reportable event.
- ‘(3) The RCA report or chain of events document must not contain the name or address of—
  - (a) a person involved in providing the relevant health service; or
  - (b) the person who received the relevant health service; or
  - (c) a member of the RCA team.
- ‘(4) In this section—

*relevant health service* means the health service during the provision of which the reportable event happened.

**‘38N Reporting to commissioning authority**

- ‘(1) The RCA team must, as soon as practicable after preparing the RCA report, give the report to the commissioning authority that appointed the RCA team members.
- ‘(2) If the RCA team prepares a chain of events document for the reportable event, it must at the time of giving the RCA report under subsection (1) also give the document to the commissioning authority.

**‘Division 4 Stopping conduct of RCA of reportable event**

**‘38O Definition for div 4**

‘In this division—

*blameworthy act* means any of the following—

- (a) an intentionally unsafe act;
- (b) deliberate patient abuse;
- (c) conduct that constitutes a criminal offence.

**‘38P Stopping conduct of RCA of reportable event—RCA team**

- ‘(1) This section applies if, while conducting an RCA of a reportable event, the RCA team conducting the RCA reasonably believes—
  - (a) the event involves a blameworthy act; or
  - (b) the capacity of a person who was directly involved in providing the relevant health service to safely and effectively provide the service was impaired by alcohol consumed, or a drug taken, by the person.
- ‘(2) The RCA team must—



- (a) stop conducting the RCA; and
  - (b) give notice to the commissioning authority that appointed the RCA team members that the RCA team has stopped conducting the RCA.
- ‘(3) For subsection (2)(b), the notice—
- (a) must be in the form approved by the chief executive; and
  - (b) must not contain any information about why the RCA team stopped conducting the RCA.
- ‘(4) In this section—
- relevant health service* means the health service during the provision of which the reportable event happened.

**‘38Q Stopping conduct of RCA of reportable event—commissioning authority**

- ‘(1) This section applies if—
- (a) persons have been appointed to be members of an RCA team to conduct an RCA of a reportable event; and
  - (b) the commissioning authority that appointed the RCA team members—
    - (i) receives information that leads the commissioning authority to reasonably believe—
      - (A) the event involves a blameworthy act; or
      - (B) the capacity of a person who was directly involved in providing the relevant health service to safely and effectively provide the service was impaired by alcohol consumed, or a drug taken, by the person; or
    - (ii) becomes aware that a relevant entity has started an investigation or assessment of, or enquiry into, the event; or
    - (iii) later comes to the view that the event the basis of the appointment is not a reportable event.

- ‘(2) If subsection (1)(b)(i) or (iii) applies, the commissioning authority must, by notice given to the RCA team, direct it to stop conducting the RCA.
- ‘(3) If subsection (1)(b)(ii) applies, the commissioning authority may, by notice given to the RCA team, direct it to stop conducting the RCA.
- ‘(4) For subsection (2) or (3), the notice given to the RCA team must be in the form approved by the chief executive.
- ‘(5) Before acting under subsection (3), the commissioning authority may consult with any relevant entity.
- ‘(6) In this section—

*relevant entity* means—

- (a) the Health Quality and Complaints Commission; or
- (b) a coroner; or
- (c) a board under the *Health Practitioner (Professional Standards) Act 1999*; or
- (d) the Queensland Nursing Council; or
- (e) the commissioner of the police service; or
- (f) another entity that has the power under an Act of the State, the Commonwealth or another State to deal with the event.

*relevant health service* means the health service during the provision of which the reportable event happened.

## ‘Division 5                      Disclosure or release of information

### ‘38R    Definition for div 5

‘In this division—

*information* includes a document.

**‘38S Disclosure of information—RCA team member or relevant person**

- ‘(1) A person who is or was a member of an RCA team must not disclose to someone else information acquired by the person as a member of the RCA team, other than for the purpose (an *authorised purpose*) of—
- (a) the RCA team conducting an RCA of a reportable event; or
  - (b) the RCA team preparing an RCA report or chain of events document; or
  - (c) the RCA team giving the commissioning authority that appointed the RCA team members—
    - (i) an RCA report or chain of events document under section 38N; or
    - (ii) a notice under section 38P; or
  - (d) the RCA team complying with a requirement of an inspector made of the RCA team in the performance of the inspector’s functions under section 63.

Maximum penalty—50 penalty units.

- ‘(2) Also, a person who is or was a relevant person for an RCA team must not disclose to someone else information acquired by the person as a relevant person for the RCA team, other than for an authorised purpose.

Maximum penalty—50 penalty units.

- ‘(3) If information that may be disclosed under subsection (1) or (2) for an authorised purpose is information to which section 62A(1)<sup>1</sup> applies, the information is for the purposes of section 62B<sup>2</sup> information that is expressly required or permitted to be given under this Act.

- ‘(4) In this section—

*information* includes—

- (a) the identity of a member of the RCA team; and

<sup>1</sup> Section 62A (Confidentiality)

<sup>2</sup> Section 62B (Disclosure required or permitted by law)

- (b) information from which a member of the RCA team could be identified.

**‘38T Disclosure of information—commissioning authority or relevant person**

- ‘(1) A person who is or was a commissioning authority must not disclose to someone else information contained in an RCA report or chain of events document, or give someone else a copy of an RCA report or chain of events document, received by the person under section 38N, other than—

- (a) as required or permitted under sections 38U to 38ZA; or
- (b) as permitted under subsection (2).

Maximum penalty—50 penalty units.

- ‘(2) A commissioning authority may give a safety and quality report prepared by the commissioning authority to—

- (a) an individual involved in providing a health service at the health service facility to which the report relates; or
- (b) an entity with responsibilities for the management of patient safety initiatives and programs for the health service facility.

- ‘(3) Also, a person who is or was a commissioning authority must not disclose to someone else—

- (a) the identity of a member of an RCA team appointed by the commissioning authority; or
- (b) information from which a member of the RCA team could be identified.

Maximum penalty—50 penalty units.

- ‘(4) Subsections (1) and (3) do not apply to—

- (a) the disclosure of information by a commissioning authority that is necessary or incidental to the exercise by the commissioning authority of its powers under this part; or
- (b) the disclosure of information by a person in compliance with a requirement of an inspector made of the person in

the performance of the inspector's functions under section 63.

- '(5) Also, a person who is or was a relevant person for a commissioning authority must not disclose to someone else information acquired by the person as a relevant person for the commissioning authority.

Maximum penalty—50 penalty units.

- '(6) Subsection (5) does not apply to—
- (a) the disclosure of information by a relevant person for a commissioning authority for the purpose of helping the commissioning authority exercise its powers under this part; or
  - (b) the disclosure of information by a person in compliance with a requirement of an inspector made of the person in the performance of the inspector's functions under section 63.
- '(7) If information that may be disclosed under this section is information to which section 62A(1)<sup>3</sup> applies, the information is for the purposes of section 62B<sup>4</sup> information that is expressly required or permitted to be given under this Act.
- '(8) This section does not authorise the attachment of a copy of an RCA report or chain of events document to a safety and quality report.
- '(9) In this section—
- safety and quality report* means a report about the safety and quality of the health service to which an RCA report relates that is based on information contained in the RCA report.

### **'38U Release of information to Health Quality and Complaints Commission**

- '(1) A commissioning authority must, as soon as practicable after receiving an RCA report under section 38N, give the Health Quality and Complaints Commission—

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3 Section 62A (Confidentiality)

4 Section 62B (Disclosure required or permitted by law)

- (a) a copy of the report; and
  - (b) details of the name and address of the health service facility at which the reportable event happened.
- ‘(2) The commissioning authority need not comply with subsection (1) if there is an agreement in force under section 38W relating to the report and details.

**‘38V Release of information to chief health officer**

- ‘(1) This section applies if a commissioning authority receives an RCA report under section 38N and the reportable event happened at a private health facility.
- ‘(2) The commissioning authority must, as soon as practicable after receiving the report, give the following to the chief health officer—
- (a) a copy of the report;
  - (b) details of the name and address of the private health facility.

**‘38W Release of information by chief health officer to Health Quality and Complaints Commission**

- ‘(1) This section applies if—
- (a) a commissioning authority complies with section 38V(2); and
  - (b) the authority has a written agreement with the chief health officer under which the chief health officer is authorised to give a copy of the RCA report and details mentioned in the subsection to the Health Quality and Complaints Commission.
- ‘(2) The chief health officer must as soon as practicable give a copy of the RCA report and details to the Health Quality and Complaints Commission.

**‘38X Giving of copy of RCA report or chain of events document—patient safety entity**

- ‘(1) If authorised by the chief executive to do so, a commissioning authority must give a copy of each RCA report or chain of events document received by the commissioning authority under section 38N to a prescribed patient safety entity for an authorised purpose for the entity.

*Example for subsection (1)—*

If an authorisation is given under subsection (1) to a commissioning authority, and an authorised purpose for a prescribed patient safety entity is the use of information contained in RCA reports to prepare an annual report containing aggregated data about reportable events that happened at health service facilities, the authority must give a copy of each RCA report received by the authority under section 38N to the entity for the authorised purpose.

- ‘(2) The chief executive, acting in the capacity of a commissioning authority, may give a copy of each RCA report or chain of events document received by the chief executive under section 38N to a prescribed patient safety entity for an authorised purpose for the entity.
- ‘(3) At the time of giving a copy of an RCA report or chain of events document to an entity under subsection (1) or (2), the commissioning authority must also give the entity—
- (a) details of the reportable event; and
  - (b) details of the name and address of the health service facility at which the event happened.
- ‘(4) A person who performs functions for the entity—
- (a) must not give a copy of the report or document to anyone else; and
  - (b) must not disclose any information contained in the copy of the report or document, or information mentioned in subsection (3), to anyone else other than for the authorised purpose for which the copy of the report or document was given; and
  - (c) must not use the copy of the report or document, and the information mentioned in subsection (3), other than for the authorised purpose for which the copy of the report or document was given.

Maximum penalty—50 penalty units.

- ‘(5) An authorised purpose mentioned in subsection (4)(b) or (c) does not include the disclosure of information contained in the copy of the RCA report or chain of events document, or information mentioned in subsection (3), that may lead to the identification of—
- (a) a person involved in providing the relevant health service; or
  - (b) the person who received the relevant health service.

- ‘(6) In this section—

*authorised purpose*, for a prescribed patient safety entity, means a purpose prescribed under a regulation for the entity that relates to the entity’s responsibilities.

*patient safety entity* means an entity whose responsibilities include the planning, implementation, management and evaluation of patient safety initiatives and programs for a health service facility.

*prescribed patient safety entity* means a patient safety entity prescribed under a regulation for the health service facility at which the reportable event happened.

*relevant health service* means the health service during the provision of which the reportable event happened.

### ‘38Y Giving of copy of RCA report etc.—investigation under the Coroners Act 2003

- ‘(1) This section applies if—
- (a) a coroner is investigating the death of a person; and
  - (b) the death is a reportable event that happened while a health service was being provided at a health service facility.
- ‘(2) This section also applies if—
- (a) a coroner is investigating the death of a person; and
  - (b) the coroner considers that a reportable event that happened while a health service was being provided to



the person at a health service facility may be relevant to the investigation; and

(c) the event is not the death.

‘(3) If the coroner, or a police officer helping the coroner to investigate the death, asks a commissioning authority for the health service facility whether an RCA team has conducted or is conducting an RCA of the reportable event, the commissioning authority must respond to the query as soon as practicable.

Maximum penalty—50 penalty units.

‘(4) Subsection (5) applies if—

(a) an RCA of the reportable event has been conducted by an RCA team; and

(b) an RCA report relating to the event has been given, under section 38N, to the commissioning authority that appointed the RCA team members; and

(c) the commissioning authority has under subsection (3) received a query from the coroner or a police officer helping the coroner to investigate the death.

‘(5) The commissioning authority must—

(a) if the commissioning authority received the report before receiving the query under subsection (3)—give a copy of the report to the coroner or police officer as soon as practicable after receiving the query; or

(b) if the commissioning authority had not received the report before receiving the query under subsection (3)—give a copy of the report to the coroner or police officer as soon as practicable after receiving the report.

Maximum penalty—50 penalty units.

‘(6) Subsection (7) applies if—

(a) an RCA has been started by an RCA team in relation to the reportable event; and

(b) the RCA team has, under section 38P(2) or 38Q(2) or (3), stopped conducting the RCA; and

- (c) the commissioning authority has under subsection (3) received a query from the coroner or a police officer helping the coroner to investigate the death.
- ‘(7) The commissioning authority must—
- (a) if the RCA team stopped conducting the RCA before the commissioning authority received the query under subsection (3)—give the coroner or police officer a stop notice as soon as practicable after receiving the query; or
- (b) otherwise—give the coroner or police officer a stop notice as soon as practicable.
- ‘(8) In this section—
- stop notice* means a notice stating—
- (a) if the RCA team stopped conducting the RCA under section 38P(2)—that fact; or
- (b) if the RCA team stopped conducting the RCA because of a direction given by the commissioning authority under section 38Q(2) or (3)—
- (i) that fact; and
- (ii) the reasons for giving the direction.

### ‘38Z Giving of information to Minister or chief executive

- ‘(1) The Minister or chief executive may, in relation to an RCA of a reportable event, ask a commissioning authority—
- (a) whether an RCA report has been received by the authority under section 38N; and
- (b) if an RCA report has been received by the authority under section 38N—for a copy of the report.
- ‘(2) The authority must comply with the request as soon as practicable.

Maximum penalty—50 penalty units.

**‘38ZA Giving of copy of, or information contained in, RCA report—person who has sufficient personal or professional interest**

‘A commissioning authority may give a copy of an RCA report received by the commissioning authority under section 38N, or information contained in the report, to a person who the commissioning authority reasonably believes has a sufficient personal or professional interest in the reportable event.

**‘38ZB Information not to be given in evidence**

- ‘(1) A stated person is neither competent nor compellable—
- (a) to produce in a proceeding, or in compliance with a requirement under an Act or legal process, any document in the person’s possession or under the person’s control created—
    - (i) by, or at the request of, a person under this part; or
    - (ii) solely for the conduct of an RCA of a reportable event; or
  - (b) to divulge or communicate in a proceeding, or in compliance with a requirement under an Act or legal process, information that came to the person’s notice as a stated person.

*Example—*

Under subsection (1), a stated person is neither competent nor compellable to produce a document or give information mentioned in paragraph (a) or (b) of the subsection to—

- (a) a panel of inquiry conducting an inquiry under the *Public Health Act 2005*, chapter 7; or
- (b) an authorised person under a notice given to the stated person under the *Health Quality and Complaints Commission Act 2006*, section 123.

- ‘(2) Subsection (1) does not apply to a requirement made in proceedings for an alleged offence against this part or part 7A<sup>5</sup> by the stated person.

‘(3) In this section—

*information* includes—

- (a) the identity of a member of an RCA team; and
- (b) information from which a member of an RCA team could be identified.

*stated person* means a person who is or was any of the following—

- (a) a member of an RCA team;
- (b) a commissioning authority;
- (c) a relevant person for an RCA team or commissioning authority;
- (d) a person who performs functions for an entity that received a copy of an RCA report or chain of events document under section 38X(1) or (2).

**‘38ZC Information-provider can not be compelled to give particular information in evidence**

‘A person can not be compelled to divulge or communicate in a proceeding, or in compliance with a requirement under an Act or legal process, any of the following—

- (a) whether or not the person gave information to an RCA team for its conduct of an RCA of a reportable event;
- (b) what information the person gave to an RCA team for its conduct of an RCA of a reportable event;
- (c) a document given by the person to an RCA team that was created by the person or another person solely for its conduct of an RCA of a reportable event;
- (c) information the person was given, or questions the person was asked, by an RCA team during its conduct of an RCA of a reportable event.

## **‘Division 6                    Protections**

### **‘38ZD Protection from liability**

- ‘(1) A person who is or was a member of an RCA team, or relevant person for an RCA team, is not civilly liable for an act done, or omission made, honestly and without negligence under this part.
- ‘(2) Without limiting subsection (1), if the act or omission involves giving information—
  - (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and
  - (b) if the person would otherwise be required to maintain confidentiality about the information given under an Act, oath, or rule of law or practice, the person—
    - (i) does not contravene the Act, oath, or rule of law or practice by giving the information; and
    - (ii) is not liable to disciplinary action for giving the information.
- ‘(3) If a person who is or was a member of an RCA team, or relevant person for an RCA team, incurs costs in defending proceedings relating to a liability against which the person is protected under this section, the person must be indemnified by—
  - (a) if the chief executive appointed the RCA team members—the State; or
  - (b) otherwise—the person who appointed the RCA team members.

### **‘38ZE Giving of information protected**

- ‘(1) This section applies to a person who honestly and on reasonable grounds gives information to an RCA team, or a relevant person for an RCA team, for the RCA team’s conduct of an RCA of a reportable event.

*Examples of persons who may give information under subsection (1)—*

- a commissioning authority
  - a relevant person for a commissioning authority
- ‘(2) The person is not subject to any liability for giving the information and no action, claim or demand may be taken or made of or against the person for giving the information.
- ‘(3) Also, merely because the person gives the information, the person can not be held to have—
- (a) breached any code of professional etiquette or ethics; or
  - (b) departed from accepted standards of professional conduct.
- ‘(4) Without limiting subsections (2) and (3)—
- (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and
  - (b) if the person would otherwise be required to maintain confidentiality about the information under an Act, oath, or rule of law or practice, the person—
    - (i) does not contravene the Act, oath, or rule of law or practice by giving the information; and
    - (ii) is not liable to disciplinary action for giving the information.

### **‘38ZF Reprisal and grounds for reprisals**

- ‘(1) A person must not cause, or attempt or conspire to cause, detriment to another person because, or in the belief that, anybody has provided, or may provide, assistance to an RCA team in its conduct of an RCA of a reportable event.
- ‘(2) An attempt to cause detriment includes an attempt to induce a person to cause detriment.
- ‘(3) A contravention of subsection (1) is a reprisal or the taking of a reprisal.
- ‘(4) A ground mentioned in subsection (1) as the ground for a reprisal is the unlawful ground for the reprisal.

- ‘(5) For the contravention to happen, it is sufficient if the unlawful ground is a substantial ground for the act or omission that is the reprisal, even if there is another ground for the act or omission.

### **‘38ZG Offence for taking reprisal**

- ‘(1) A person who takes a reprisal commits an offence.  
Maximum penalty—167 penalty units or 2 years imprisonment.
- ‘(2) The offence is a misdemeanour.

### **‘38ZH Damages entitlement for reprisal**

- ‘(1) A reprisal is a tort and a person who takes a reprisal is liable in damages to any person who suffers detriment as a result.
- ‘(2) Any appropriate remedy that may be granted by a court for a tort may be granted by a court for the taking of a reprisal.
- ‘(3) If the claim for damages goes to trial in the Supreme Court or the District Court, it must be decided by a judge sitting without a jury.

## **‘Division 7                      Miscellaneous**

### **‘38ZI Delegation by chief executive**

- ‘(1) The chief executive may delegate the chief executive’s power of appointment under section 38K(a),<sup>6</sup> or power to give an authorisation under section 38X(1),<sup>7</sup> to—
- (a) an appropriately qualified officer or employee of the department or health service employee; or
- (b) a health executive.
- ‘(2) In this section—

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<sup>6</sup> Section 38K (Appointment of RCA team)

<sup>7</sup> Section 38X (Giving of copy of RCA report or chain of events document—patient safety entity)

***appropriately qualified*** includes having qualifications, experience or standing appropriate to exercise the power.

*Example of standing—*

a person's classification level in the department

### **'38ZJ Application of provisions of this part**

'If a commissioning authority acts or purports to act under section 38K and it transpires the event the basis of the action is not a reportable event, the provisions of this part apply as if the event were a reportable event.

### **'38ZK RCA report not admissible in evidence**

'(1) An RCA report is not admissible in evidence in any proceedings, including, for example—

- (a) a civil proceeding; or
- (b) a criminal proceeding; or
- (c) a disciplinary proceeding under the *Health Practitioners (Professional Standards) Act 1999*.

'(2) However, a copy of an RCA report given to a coroner under section 38Y may be admitted in evidence by a coroner in an inquest under the *Coroners Act 2003* into the death of a person—

- (a) if section 38Y(1) applies—if the reportable event is the death; or
- (b) if section 38Y(2) applies—if the reportable event happened while a health service was being provided to the person at a health service facility.

'(3) Subsection (1) applies subject to section 38ZB(2).<sup>8</sup>

### **'38ZL Review of pt 4B**

'(1) The Minister must, before the second anniversary of the commencement of section 38K, start a review of this part to

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8 Section 38ZB (Information not to be given in evidence)



ensure it is adequately meeting community expectations and its provisions remain appropriate.

- ‘(2) The Minister must, as soon as practicable after the review is finished, cause a report of the outcome of the review to be laid before the Legislative Assembly.’.

## **6 Amendment of s 63 (Functions)**

Section 63, from ‘sections 33’—

*omit, insert—*

‘section 33, part 4B, division 5, sections 38ZG and 57, part 7 and this part (the *applicable provisions*).’.

## **7 Amendment of ss 63K, 63R, 63S, 63ZB, 63ZC, 63ZD and 63ZF**

Sections 63K, 63R, 63S, 63ZB, 63ZC, 63ZD and 63ZF, ‘section 62A(1) or this part’—

*omit, insert—*

‘an applicable provision’.

## **8 Insertion of new pt 7B**

After section 63ZJ—

*insert—*

# **‘Part 7B Proceedings**

## **‘63ZK Summary offences**

‘An offence against this Act, other than an offence against section 38ZG(1),<sup>9</sup> is a summary offence.

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<sup>9</sup> Section 38ZG (Offence for taking reprisal)

**‘63ZL Limitation on time for starting proceedings for summary offence**

‘A summary proceeding under the *Justices Act 1886* for a summary offence against this Act must start within whichever is the longer of the following—

- (a) 1 year after the commission of the offence;
- (b) 1 year after the offence comes to the knowledge of the complainant, but within 2 years after the commission of the offence.

**‘63ZM Proceedings for indictable offences**

‘(1) A proceeding for an indictable offence against this Act may be taken, at the election of the prosecution—

- (a) by way of summary proceeding under the *Justices Act 1886*; or
- (b) on indictment.

‘(2) A magistrate must not hear an indictable offence summarily if—

- (a) the defendant asks at the start of the hearing that the charge be prosecuted on indictment; or
- (b) the magistrate considers the charge should be prosecuted on indictment.

‘(3) If subsection (2) applies—

- (a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and
- (b) a plea of the person charged at the start of the proceeding must be disregarded; and
- (c) evidence brought in the proceeding before the magistrate decided to act under subsection (2) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and

- (d) before committing the person for trial or sentence, the magistrate must make a statement to the person as required by the *Justices Act 1886*, section 104(2)(b).<sup>10</sup>

**‘63ZN Limitation on who may summarily hear indictable offence**

- ‘(1) The proceeding must be before a magistrate if it is a proceeding—
- (a) for the summary conviction of a person on a charge for an indictable offence; or
- (b) for an examination of witnesses for a charge for an indictable offence.
- ‘(2) However, if the proceeding is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.’.

**9 Amendment of s 68 (Regulations)**

- (1) Section 68, heading—  
*omit, insert—*

**‘68 Regulation-making power’.**

- (2) Section 68(2)—  
*insert—*
- ‘(i) provide for the procedures to be followed by an RCA team in its conduct of an RCA of a reportable event.’.

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<sup>10</sup> *Justices Act 1886*, section 104 (Proceedings upon an examination of witnesses in relation to an indictable offence)

## Part 3 **Amendment of Mental Health Act 2000—Mental Health Court**

### 10 **Act amended in pt 3**

This part amends the *Mental Health Act 2000*.

### 11 **Amendment of s 381 (Mental Health Court established)**

Section 381—

*insert—*

‘(3) The court consists of the president of the court and other members of the court.’.

### 12 **Amendment of s 382 (Constitution)**

(1) Section 382(1), ‘Supreme Court judge’—

*omit, insert—*

‘member of the court’.

(2) Section 382(3), ‘constituting judge’—

*omit, insert—*

‘member of the court hearing the matter’.

(3) Section 382(4)—

*omit, insert—*

‘(4) The member of the court hearing a matter must decide the assisting psychiatrists who are to assist the court for the hearing.’.

### 13 **Replacement of ch 11, pt 2**

Chapter 11, part 2—

*omit, insert—*



- ‘(3) The person continued in office may exercise the jurisdiction and powers of the court necessary or convenient for the hearing to be completed.

## **‘Part 2A                      Provisions about president of Mental Health Court**

### **‘388    President of Mental Health Court**

- ‘(1) The Governor in Council is to appoint a member of the Mental Health Court to be the president of the court.
- ‘(2) A person may be appointed as the president of the court at the same time the person is appointed as a member of the court.

### **‘388A   Arrangement of business**

- ‘(1) The president of the Mental Health Court is responsible for the administration of the court and for ensuring the orderly and expeditious exercise of the jurisdiction and powers of the court.
- ‘(2) The president of the court has power to do things necessary or convenient to be done for the administration of the court and for ensuring the orderly and expeditious exercise of the jurisdiction and powers of the court.

### **‘388B   President of Mental Health Court holds office while a member of court**

‘The president of the Mental Health Court holds office as the president of the court while the person is a member of the court.

### **‘388C   Resignation of office**

- ‘(1) The president of the Mental Health Court may resign office by signed notice of resignation given to—

- (a) if the president of the court is the Chief Justice—the Governor; or
  - (b) otherwise—the Chief Justice.
- ‘(2) A notice of resignation under subsection (1) takes effect when the notice is given to the relevant person or, if a later time is stated in the notice, the later time.
- ‘(3) Resignation as the president of the court does not affect the person’s membership of the court.

### **‘388D Appointment of acting president of Mental Health Court**

‘The Governor in Council may appoint a member of the Mental Health Court to act as the president of the court—

- (a) for any period the office is vacant; or
- (b) for any period, or all periods, when the president of the court is absent from duty or Queensland or can not, for another reason, perform the duties of the office.’.

### **14 Amendment of s 398 (Registrar’s powers—general)**

Section 398(2), from ‘given by’—

*omit, insert—*

‘given by—

- (a) a member of the Mental Health Court for a proceeding being heard by the member of the court; or
- (b) the president of the court.’.

### **15 Insertion of new s 415A**

Before chapter 11, part 6—

*insert—*

### **‘415A What happens if a member of Mental Health Court dies or is incapacitated**

- ‘(1) This section applies if, after starting to hear a proceeding, the member of the Mental Health Court hearing the proceeding

dies or becomes incapable of continuing to hear the proceeding.

- ‘(2) A party to the proceeding may, after giving 7 days’ notice to the other party or parties, apply to the president of the court for an order directing the action to be taken in the proceeding.
- ‘(3) The president of the court, on the application or his or her initiative, may after consulting with the parties to the proceeding—
- (a) order the proceeding be reheard; or
  - (b) adjourn the proceeding to allow the incapacitated member of the court to continue when able; or
  - (c) with the consent of the parties, make an order the president of the court considers appropriate about—
    - (i) deciding the proceeding; or
    - (ii) completing the hearing and deciding the proceeding.
- ‘(4) If, under subsection (3)(a), a proceeding is reheard, the first hearing is taken not to have happened.
- ‘(5) An order mentioned in subsection (3)(c) is taken to be a decision of the Mental Health Court.’.

## **16 Amendment of s 416 (Contempt of court)**

Section 416(4), ‘constituting judge’s own initiative’—

*omit, insert—*

‘initiative of a member of the court’.

## **17 Amendment of s 418 (Protection and immunities for constituting judge of Mental Health Court )**

- (1) Section 418, heading, ‘constituting judge’—

*omit, insert—*

‘**member**’.

- (2) Section 418, ‘The constituting judge’—



*omit, insert—*

‘A member’.

**18 Amendment of s 419 (Rule-making power)**

Section 419(2), ‘constituting judge’—

*omit, insert—*

‘president’.

**19 Amendment of s 420 (Directions about practice)**

(1) Section 420(1), ‘constituting judge’—

*omit, insert—*

‘president’.

(2) Section 420(2), ‘judge’—

*omit, insert—*

‘president of the court’.

**20 Amendment of s 421 (Approved forms—constituting judge)**

(1) Section 421, heading, ‘constituting judge’—

*omit, insert—*

**‘president of Mental Health Court’.**

(2) Sections 421, ‘constituting judge of’—

*omit, insert—*

‘president of’.

**21 Amendment of s 435 (Annual report)**

Section 435(1), ‘constituting judge’—

*omit, insert—*

‘president of the Mental Health Court’.

**22 Amendment of s 493 (Approved forms)**

Section 493, ‘constituting judge’—

*omit, insert—*

‘president’.

**23 Amendment of ch 16, pt 2, hdg (Transitional provisions)**

Chapter 16, part 2, heading, after ‘provisions’—

*insert—*

**‘for Act No. 16 of 2000’.**

**24 Amendment of s 583 (Appeals against Patient Review Tribunal decisions)**

Section 583—

*insert—*

‘(5) In this section—

*constituting judge* has the meaning the term had on the commencement of this section.’.

**25 Insertion of new ch 11, pt 3**

After section 588—

*insert—*

**‘Part 3 Transitional provisions for Health and Other Legislation Amendment Act 2007****‘589 Definitions for pt 3**

‘In this part—

*commencement* means commencement of this section.

*post-amended Act* means this Act as in force immediately after the commencement.

*pre-amended Act* means this Act as in force before the commencement.

**‘590 Constituting judge taken to be a member of Mental Health Court etc.**

- ‘(1) The constituting judge is taken to be a member of the Mental Health Court under the post-amended Act, section 385.
- ‘(2) The constituting judge holds office as a member of the court until the earlier of the following days—
  - (a) the day the person’s appointment as constituting judge would have ended under the pre-amended Act;
  - (b) the day the person ceases to be a Supreme Court judge.
- ‘(3) In this section—

*constituting judge* means the constituting judge of the Mental Health Court immediately before the commencement.

**‘591 Rules relating to Mental Health Court**

‘The rules relating to the Mental Health Court in force immediately before the commencement under the pre-amended Act, section 419(1) are taken to have been made under the post-amended Act, section 419(1).

**‘592 Directions about practice and procedure of Mental Health Court**

‘The directions about the practice and procedure of the Mental Health Court in force immediately before the commencement under the pre-amended Act, section 420(1) are taken to have been given under the post-amended Act, section 420(1).

**‘593 Approved forms**

‘The forms approved under the pre-amended Act, section 421 are taken to have been approved under the post-amended Act, section 421.’.

**26 Amendment of sch 2 (Dictionary)**

- (1) Schedule 2, definition *constituting judge*—  
*omit.*
- (2) Schedule 2—  
*insert*—  
'*commencement*, for chapter 11, part 3, see section 589.  
*post-amended Act*, for chapter 11, part 3, see section 589.  
*pre-amended Act*, for chapter 11, part 3, see section 589.'

## **Part 4** **Amendment of Mental Health Act 2000—other amendments**

**27 Act amended in pt 4**

This part amends the *Mental Health Act 2000*.

**28 Amendment of s 4 (Purpose of Act)**

Section 4, from 'same time'—

*omit, insert*—

'same time—

- (a) safeguarding their rights and freedoms; and
- (b) balancing their rights and freedoms with the rights and freedoms of other persons.'

**29 Amendment of s 5 (How purpose of Act is to be achieved)**

Section 5—

*insert*—

- '(e) when making a decision under this Act about a forensic patient, taking into account—
- (i) the protection of the community; and

- (ii) the needs of a victim of the alleged offence to which the applicable forensic order relates.’.

**30 Amendment of s 223 (Restriction on making notification order)**

Section 223(2), examples 1 and 2—

*omit, insert—*

- ‘1 a direct victim of an alleged offence committed by the patient
- 1A if a direct victim of an alleged offence allegedly committed by the patient has died as a result of the alleged offence, a relative of the direct victim
- 2 a person who was with a direct victim of an alleged offence when it was allegedly committed by the patient’.

**31 Amendment of s 228B (Tribunal may make non-contact order)**

- (1) Section 228B(1)(a)—

*omit, insert—*

- ‘(a) if a direct victim of the alleged offence is alive—the person not contact the direct victim, for a stated time;
- (aa) if a direct victim of the alleged offence has died as a result of the alleged offence—the person not contact a relative of the direct victim, for a stated time;’.

- (2) Section 228B(1)(b), before ‘victim’—

*insert—*

‘direct’.

- (3) Section 228B(4)—

*omit, insert—*

- ‘(4) A non-contact order that relates to a direct victim of the alleged offence or relative or associate mentioned in subsection (1)(a), (aa) or (b) is made in favour of that person.’.

**32 Amendment of s 228C (Restrictions on making non-contact order)**

(1) Section 228C(3)(a)(i)—

*omit, insert—*

‘(i) if the tribunal is considering making the order in favour of a direct victim of the alleged offence—the direct victim;

(ia) if a direct victim of the alleged offence has died as a result of the alleged offence—a relative of the direct victim in whose favour the tribunal is considering making the order;’.

(2) Section 228C(3)(b) and (d), before ‘victim’—

*insert—*

‘direct’.

(3) Section 228C(3)(d), example, ‘*Domestic Violence (Family Protection) Act 1989*’—

*omit, insert—*

‘the *Domestic and Family Violence Protection Act 1989*’.

**33 Amendment of ch 7, pt 6, div 6, hdg (Material submitted by non-parties)**

Chapter 7, part 6, division 6, heading, ‘non-parties’—

*omit, insert—*

‘**victims or concerned persons etc.**’.

**34 Amendment of s 284 (Submission and consideration of relevant material by non-party)**

(1) Section 284, heading, ‘relevant material by non-party’—

*omit, insert—*

‘**material from victim or concerned person etc.**’.

(2) Section 284(1)—

*omit, insert—*

- ‘(1) In making a decision on a reference, the Mental Health Court may take into account material submitted by a victim of the alleged offence to which the reference relates or another person who is not a party to the hearing of the reference (*concerned person*) if the material is sworn.
- ‘(1A) The purpose of submitting the material is to help the court in making a decision on the reference, including, for example, deciding—
- (a) whether the person to whom the reference relates was of unsound mind when the alleged offence was allegedly committed; or
  - (b) whether the person to whom the reference relates is unfit for trial; or
  - (c) whether to make a forensic order; or
  - (d) whether to order, approve or revoke limited community treatment; or
  - (e) what conditions the court should impose on an order or approval for limited community treatment.
- ‘(1B) The material may include the views of the person submitting the material about—
- (a) the behaviour of the person to whom the reference relates and the impact of the behaviour on the person submitting the material; or
  - (b) the risk the person submitting the material believes the person to whom the reference relates represents to the person submitting the material or another person; or
  - (c) any other matter relevant to the decision of the court on the reference.
- ‘(1C) If the court takes the material into account, it may place the weight it considers appropriate on the material.’
- (3) Section 284(5), after ‘person’—  
*insert—*  
‘submitting the material under subsection (1)’.

**35 Replacement of s 285 (Reasons for decision about non-party material)**

Section 285—

*omit, insert—*

**‘285 Reasons for decision about material submitted by victim or concerned person**

- ‘(1) This section applies if, under section 284(1), a victim of the alleged offence to which the reference relates or a concerned person submits material to the Mental Health Court.
- ‘(2) The court must, as soon as practicable after making its decision on the reference, give the person who submitted the material and persons who were parties to the hearing of the reference—
- (a) reasons for—
    - (i) taking the material into account; or
    - (ii) refusing to take the material into account; and
  - (b) if the material was taken into account by the court—a statement about how it was taken into account.
- ‘(3) However, a confidentiality order of the court may displace the requirement to give the reasons or statement to the person to whom the reference relates.’.

**36 Insertion of new s 286A**

After section 286—

*insert—*

**‘286A Notice about material submitted by victim or concerned person**

- ‘(1) This section applies if, under section 284(1), a victim of an alleged offence to which a reference relates or a concerned person submits material to the Mental Health Court.
- ‘(2) Subject to subsection (3), the registrar may after the court makes its decision on the reference give a copy of the material to—



- (a) the administrator of the authorised mental health service responsible for the treatment and care of the person to whom the reference relates; or
  - (b) the tribunal.
- ‘(3) The court may order that a copy of the material not be given under subsection (2).
- ‘(4) If the court makes an order under subsection (3), the court must in its decision on the reference give reasons for making the order.’.

**37 Amendment of s 313B (Mental Health Court may make non-contact order)**

- (1) Section 313B(1)(a)—  
*omit, insert—*
  - ‘(a) if a direct victim of the alleged offence is alive—the person not contact the direct victim, for a stated time;
  - (aa) if a direct victim of the alleged offence has died as a result of the alleged offence—the person not contact a relative of the direct victim, for a stated time;’.
- (2) Section 313B(1)(b), before ‘victim’—  
*insert—*  
‘direct’.
- (3) Section 313B(4)—  
*omit, insert—*
- ‘(4) A non-contact order that relates to a direct victim of the alleged offence or relative or associate mentioned in subsection (1)(a), (aa) or (b) is made in favour of that person.’.

**38 Amendment of s 313C (Restrictions on making non-contact order)**

- (1) Section 313C(2)(a)(i)—  
*omit, insert—*

- ‘(i) if the court is considering making the order in favour of a direct victim of the alleged offence—the direct victim;
    - (ia) if a direct victim of the alleged offence has died as a result of the alleged offence—a relative of the direct victim in whose favour the court is considering making the order;’.
  - (2) Section 313C(2)(b) and (d), before ‘victim’—  
*insert—*  
‘direct’.
  - (3) Section 313C(2)(d), example, ‘*Domestic Violence (Family Protection) Act 1989*’—  
*omit, insert—*  
‘the *Domestic and Family Violence Protection Act 1989*’.

### **39 Amendment of s 426 (Confidentiality orders)**

Section 426(1)—

*insert—*

- ‘(d) the reasons for taking into account, or refusing to take into account, material submitted under section 284(1);  
or
- (e) if material submitted under section 284(1) was taken into account by the court—how the material was taken into account.’.

### **40 Amendment of s 450 (Right of appearance—reviews)**

Section 450—

*insert—*

- ‘(4) As a representative of the State, the Attorney-General’s role at the hearing for a review under chapter 6, part 3 or 4 is to represent the public interest.’.

**41 Amendment of s 464 (Submission and consideration of relevant material by non-party)**

(1) Section 464, heading, ‘relevant material by non-party’—

*omit, insert—*

**‘material submitted by victim or concerned person etc.’.**

(2) Section 464(1)—

*omit, insert—*

‘(1) In making a decision in a proceeding, the tribunal may take into account material submitted by a victim of the alleged offence to which the proceeding relates or another person who is not a party to the proceeding (*concerned person*).

‘(1A) The purpose of submitting the material is to help the tribunal in making a decision in the proceeding, including, for example, deciding—

(a) whether to revoke a forensic order; or

(b) whether to order, approve or revoke limited community treatment; or

(c) what conditions the tribunal should impose on an order or approval for limited community treatment.

‘(1B) The material may include the views of the person submitting the material about—

(a) the conduct of the person to whom the proceeding relates and the impact of the conduct on the person submitting the material; or

(b) the risk the person submitting the material believes the person to whom the proceeding relates represents to the person submitting the material or another person; or

(c) any other matter relevant to the decision of the tribunal in the proceeding.

‘(1C) If the tribunal takes the material into account, it may place the weight it considers appropriate on the material.’.

(3) Section 464(4), after ‘person’—

*insert—*

**‘submitting the material under subsection (1)’.**

#### 42 Amendment of s 465 (Reasons for decision about non-party material)

- (1) Section 465, heading, ‘non-party material’—  
*omit, insert—*  
**‘material submitted by victim or concerned person’.**
- (2) Section 465(1)—  
*omit, insert—*
- ‘(1) This section applies if, under section 464(1), a victim of the alleged offence to which a proceeding before the tribunal relates or a concerned person submits material to the tribunal.’.

#### 43 Amendment of sch 2 (Dictionary)

- (1) Schedule 2, definition *victim*—  
*omit.*
- (2) Schedule 2—  
*insert—*  
**‘concerned person—**
- (a) for chapter 7, part 6, divisions 6 and 7—see section 284(1); or
- (b) for chapter 12, part 6—see section 464(1).

***direct victim***, of an alleged offence, means a person against whom the alleged offence was allegedly committed.

***expert’s report***, for chapter 7, part 9, see section 314.

***immediate family member***, of a direct victim of an alleged offence, means the direct victim’s spouse, child, step-child, parent, step-parent, brother, sister, stepbrother, stepsister, grandparent, guardian or personal guardian.

***report***, for chapter 14, part 5, see section 523.

***victim***, of an alleged offence, means—

- (a) a direct victim of the alleged offence; or

- (b) an immediate family member of a direct victim of the alleged offence.’.

## **Part 5**                      **Amendment of Tobacco and Other Smoking Products Act 1998**

### **44      Act amended in pt 5**

This part amends the *Tobacco and Other Smoking Products Act 1998*.

### **45      Amendment of s 26W (Meaning of outdoor eating or drinking place)**

Section 26W(2)(a), after ‘provided’—

*insert*—

‘, or is available to be provided,’.

### **46      Insertion of new s 26ZPA**

Part 2D—

*insert*—

#### **‘26ZPA Sale, supply and display of ice pipes**

- ‘(1) A person must not—
  - (a) sell an ice pipe or a component of an ice pipe; or
  - (b) supply an ice pipe, or a component of an ice pipe, as part of a business activity; or
  - (c) display an ice pipe, or a component of an ice pipe—
    - (i) in a shop; or
    - (ii) near, and in connection with, a shop.

*Note—*

‘Sell’ in paragraph (a) includes expose for sale. See the schedule, definition *sell*.

Maximum penalty—140 penalty units.

- ‘(2) It is a defence for the person to prove that an ice pipe, or a component of an ice pipe, is designed primarily to be used for a purpose other than administering a dangerous drug.

*Examples of devices designed primarily to be used for another purpose—*  
aluminium foil, spoons, test tubes

- ‘(3) For subsection (2), evidence of a disclaimer does not, of itself, prove that the ice pipe or component of an ice pipe is designed primarily to be used for a purpose other than administering a dangerous drug.

- ‘(4) In this section—

***component***, of an ice pipe, means a device that—

- (a) is apparently intended to be part of an ice pipe; and  
(b) is not capable of being used for administering a dangerous drug in the way described in the definition *ice pipe* without an adjustment, modification or addition.

***disclaimer*** means a statement on, or made in relation to, the ice pipe or component of an ice pipe, at or before the time of the commission of the alleged offence, to the effect that the ice pipe or component is designed or intended to be used for a purpose that is not a purpose related to administering a dangerous drug.

***ice pipe*** means a device capable of being used for administering a dangerous drug by the drawing of smoke or fumes resulting from heating or burning the drug, in the device, in the drug’s crystal, powder, oil or base form.’.

#### 47 Replacement of s 26ZQ (Production, sale or public display of cannabis utensils)

Section 26ZQ—

*omit, insert—*

**‘26ZQ Sale, supply and display of bong**

- ‘(1) A person must not—
- (a) sell a bong or a component of a bong; or
  - (b) supply a bong, or a component of a bong, as part of a business activity; or
  - (c) display a bong, or a component of a bong—
    - (i) in a shop; or
    - (ii) near, and in connection with, a shop.

*Note—*

‘Sell’ in paragraph (a) includes expose for sale. See the schedule, definition *sell*.

Maximum penalty—140 penalty units.

- ‘(2) It is a defence for the person to prove that a bong, or a component of a bong, is designed primarily to be used for a purpose other than administering a dangerous drug.

*Examples of devices designed primarily to be used for another purpose—*

buckets, garden hoses, water bottles

- ‘(3) For subsection (2), evidence of a disclaimer does not, of itself, prove that the bong or component of a bong is designed primarily to be used for a purpose other than administering a dangerous drug.
- ‘(4) In this section—

***bong***—

- (a) means a device capable of being used for administering a dangerous drug by the drawing of smoke or fumes, resulting from heating or burning the drug in or on the device, through water or another liquid in the device; but
- (b) does not include a hookah.

***component***, of a bong, means a device that—

- (a) is apparently intended to be part of a bong; and
- (b) is not capable of being used for administering a dangerous drug in the way described in the definition *bong*, paragraph (a), without an adjustment, modification or addition.

*disclaimer* means a statement on, or made in relation to, the bong or component of a bong, at or before the time of the commission of the alleged offence, to the effect that the bong or component is designed or intended to be used for a purpose that is not a purpose related to administering a dangerous drug.

#### **‘26ZQADisplay of hookahs**

‘A person must not display in a shop more than the number of hookahs prescribed under a regulation.

Maximum penalty—140 penalty units.’.

#### **48 Amendment of schedule (Dictionary)**

Schedule—

*insert—*

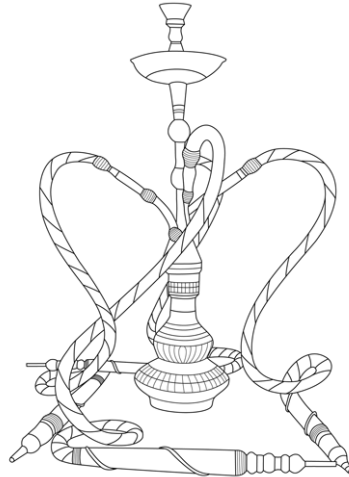
‘*dangerous drug* see the *Drugs Misuse Act 1986*, section 4.

*hookah* means a fully assembled device—

- (a) for smoking tobacco by the drawing of smoke or fumes, resulting from heating or burning the tobacco in the device, through water or another liquid in the device; and
- (b) that has—
  - (i) 1 or more openings; and
  - (ii) 1 or more flexible hoses, each with a mouthpiece, through which the smoke or fumes are drawn.



*Example of a hookah—*



***mouthpiece***, in relation to a flexible hose of a hookah, means a device or part of a device—

- (a) of a type usually attached to the end of the hose; and
- (b) designed particularly for the purpose of being held in the human mouth for inhaling smoke or fumes drawn through the hose.

***shop*** includes—

- (a) any part of a building or place that is used for the sale, or supply as part of a business activity, of goods; and
- (b) a stall or other structure used for the sale, or supply as part of a business activity, of goods at a market or elsewhere.’.

## Part 6 **Amendment of Ambulance Service Act 1991**

### 49 Act amended in pt 6

This part amends the *Ambulance Service Act 1991*.

### 50 Insertion of new pt 4A

After part 4—

*insert—*

## **‘Part 4A Root cause analyses**

### **‘Division 1 Preliminary**

#### **‘36A Definitions for pt 4A**

‘In this part—

*chain of events document* see section 36G(2).

*commissioning authority* see section 36E.

*coroner* see the *Coroners Act 2003*, schedule 2.

*notice* means written notice.

*RCA report* see section 36G(1).

*RCA team* means a group of persons appointed under section 36E.

*relevant person—*

- (a) for the commissioning authority, means a person who provides administrative or secretarial services to the authority to help it exercise its powers under this part; or
- (b) for an RCA team, means a person—
  - (i) who provides administrative or secretarial services to the RCA team; or
  - (ii) who advises the RCA team about—

- (A) conducting an RCA of a reportable event; or
- (B) preparing an RCA report or chain of events document for a reportable event.

***reportable event***—

- (a) generally, means any of the following events that happen while an ambulance service is being provided to a person—
  - (i) the death of the person, or permanent injury suffered by the person, while giving birth;
  - (ii) the death of the person caused by the incorrect management of the person’s medication;
  - (iii) the death of the person, or neurological damage suffered by the person, caused by an intravascular gas embolism;
  - (iv) the death of the person, or permanent loss of function suffered by the person, unrelated to the natural course of the person’s medical condition for which he or she was receiving the ambulance service;
  - (v) the death of the person, or permanent injury suffered by the person, contributed to by an unreasonable delay in the provision of the ambulance service or a failure to meet recognised standards for providing the ambulance service;
  - (vi) the wrong procedure being performed on the person or a procedure being performed on the wrong part of the person’s body; or
- (b) in relation to an RCA report or chain of events document, means the reportable event to which the report or document relates.

**‘36B Meaning of *root cause analysis***

- ‘(1) ***Root cause analysis*** or ***RCA***, of a reportable event, means a systematic process of analysis under which—
  - (a) factors that contributed to the happening of the event may be identified; and

- (b) remedial measures that could be implemented to prevent a recurrence of a similar event may be identified.
- ‘(2) However, a **root cause analysis** or **RCA** of a reportable event does not include—
- (a) investigating the professional competence of a person in relation to the event; or
  - (b) finding out who is to blame for the happening of the event.

### ‘36C Purpose of pt 4A

‘The purpose of this part is to facilitate the use of root cause analyses by the Queensland Ambulance Service as a quality improvement technique to assess and respond to reportable events that happen while ambulance services are being provided.

### ‘36D Guiding principles for conduct of RCA of reportable event

‘The principles intended to guide the conduct of an RCA of a reportable event are the following—

- (a) reporting and acknowledging errors happening while ambulance services are being provided are encouraged if people do not fear blame or reprisal;
- (b) people involved in providing ambulance services should be accountable for their actions;
- (c) the focus of the RCA should be on identifying and improving the policies, procedures or practices relating to the provision of the ambulance service that contributed to the happening of the event, rather than on the conduct of individuals;
- (d) participation in the RCA should be voluntary;
- (e) the benefits of conducting the RCA will be maximised—
  - (i) in an environment oriented towards learning from analysing the event; and

- (ii) if the RCA is conducted in a timely way;
- (f) teamwork, good communication and sharing of information by people involved in providing ambulance services should be fostered.

## **‘Division 2            RCA teams**

### **‘36E    Appointment of RCA team**

‘The commissioner (the *commissioning authority*) may appoint persons to be members of an RCA team to conduct an RCA of a reportable event.

### **‘36F    Requirements for appointment**

- ‘(1) Before appointing persons to be members of an RCA team to conduct an RCA of a reportable event, the commissioning authority must be satisfied that—
  - (a) the persons—
    - (i) have the appropriate skills, knowledge and experience to conduct an RCA of the event, having regard to the nature of the event; and
    - (ii) were not directly involved in providing the ambulance service during the provision of which the event happened; and
  - (b) the conduct by the proposed RCA team of an RCA of the event would be assisted by the provision of immunities and protections provided to persons under divisions 5 and 6; and
  - (c) the potential benefit in disclosing relevant information is outweighed by the potential benefit of restricting disclosure of the information under division 5.
- ‘(2) In this section—

*relevant information* means information that will be compiled by the proposed RCA team in the conduct of an RCA of the reportable event.

## **‘Division 3                    Reporting**

### **‘36G    RCA team’s report and chain of events document**

- ‘(1) An RCA team must, as soon as practicable after conducting an RCA of a reportable event, prepare a report (the ***RCA report***) stating the following—
- (a) a description of the event;
  - (b) a statement of the factors the RCA team considers contributed to the happening of the event;
  - (c) any recommendations about changes or improvements in a policy, procedure or practice relating to the provision of ambulance services, to reduce the likelihood of, or prevent, the same type of event happening again during the provision of ambulance services.
- ‘(2) In addition to the RCA report, the RCA team may prepare a document (the ***chain of events document***) that details, or pictorially represents, the chain of events identified by the RCA team as having led to the happening of the reportable event.
- ‘(3) The RCA report or chain of events document must not contain the name or address of—
- (a) a person involved in providing the relevant ambulance service; or
  - (b) the person who received the relevant ambulance service; or
  - (c) a member of the RCA team.
- ‘(4) In this section—
- relevant ambulance service*** means the ambulance service during the provision of which the reportable event happened.

### **‘36H    Reporting to commissioning authority**

- ‘(1) The RCA team must, as soon as practicable after preparing the RCA report, give the report to the commissioning authority.

- ‘(2) If the RCA team prepares a chain of events document for the reportable event, it must at the time of giving the RCA report under subsection (1) also give the document to the commissioning authority.

## ‘Division 4                      **Stopping conduct of RCA of reportable event**

### ‘36I      **Definition for div 4**

‘In this division—

*blameworthy act* means any of the following—

- (a) an intentionally unsafe act;
- (b) deliberate abuse of a person receiving an ambulance service;
- (c) conduct that constitutes a criminal offence.

### ‘36J      **Stopping conduct of RCA of reportable event—RCA team**

- ‘(1) This section applies if, while conducting an RCA of a reportable event, the RCA team conducting the RCA reasonably believes—
- (a) the event involves a blameworthy act; or
  - (b) the capacity of a person who was directly involved in providing the relevant ambulance service to safely and effectively provide the service was impaired by alcohol consumed, or a drug taken, by the person.
- ‘(2) The RCA team must—
- (a) stop conducting the RCA; and
  - (b) give notice to the commissioning authority that the RCA team has stopped conducting the RCA.
- ‘(3) For subsection (2)(b), the notice—
- (a) must be in the form approved by the chief executive; and

(b) must not contain any information about why the RCA team stopped conducting the RCA.

‘(4) In this section—

*relevant ambulance service* means the ambulance service during the provision of which the reportable event happened.

**‘36K Stopping conduct of RCA of reportable event—commissioning authority**

‘(1) This section applies if—

(a) the commissioning authority has appointed persons to be members of an RCA team to conduct an RCA of a reportable event; and

(b) the commissioning authority—

(i) receives information that leads the commissioning authority to reasonably believe—

(A) the event involves a blameworthy act; or

(B) the capacity of a person who was directly involved in providing the relevant ambulance service to safely and effectively provide the service was impaired by alcohol consumed, or a drug taken, by the person; or

(ii) becomes aware that a relevant entity has started an investigation or assessment of, or enquiry into, the event; or

(iii) later comes to the view that the event the basis of the appointment is not a reportable event.

‘(2) If subsection (1)(b)(i) or (iii) applies, the commissioning authority must, by notice given to the RCA team, direct it to stop conducting the RCA.

‘(3) If subsection (1)(b)(ii) applies, the commissioning authority may, by notice given to the RCA team, direct it to stop conducting the RCA.

‘(4) For subsection (2) or (3), the notice given to the RCA team must be in the form approved by the chief executive.



‘(5) Before acting under subsection (3), the commissioning authority may consult with any relevant entity.

‘(6) In this section—

*relevant ambulance service* means the ambulance service during the provision of which the reportable event happened.

*relevant entity* means—

- (a) the Health Quality and Complaints Commission; or
- (b) a coroner; or
- (c) a board under the *Health Practitioner (Professional Standards) Act 1999*; or
- (d) the Queensland Nursing Council; or
- (e) the commissioner of the police service; or
- (f) another entity that has the power under an Act of the State, the Commonwealth or another State to investigate the event.

## ‘Division 5 Disclosure or release of information

### ‘36L Definitions for div 5

‘In this division—

*information* includes a document.

*medical director* means the Queensland Ambulance Service officer with the title ‘medical director’ or, if from time to time the title is changed, the changed title.

### ‘36M Disclosure of information—RCA team member or relevant person

‘(1) A person who is or was a member of an RCA team must not disclose to someone else information acquired by the person as a member of the RCA team, other than for the purpose (an *authorised purpose*) of—

- (a) the RCA team conducting an RCA of a reportable event; or

- (b) the RCA team preparing an RCA report or chain of events document; or
- (c) the RCA team giving the commissioning authority—
  - (i) an RCA report or chain of events document under section 36H; or
  - (ii) a notice under section 36J.

Maximum penalty—50 penalty units.

- ‘(2) Also, a person who is or was a relevant person for an RCA team must not disclose to someone else information acquired by the person as a relevant person for the RCA team, other than for an authorised purpose.

Maximum penalty—50 penalty units.

- ‘(3) If information that may be disclosed under subsection (1) or (2) for an authorised purpose is information to which section 49(1)<sup>11</sup> applies, the information is for the purposes of section 49(2)(a) information that is expressly authorised or permitted to be given under this Act.
- ‘(4) In this section—
- information* includes—
- (a) the identity of a member of the RCA team; and
  - (b) information from which a member of the RCA team could be identified.

**‘36N Disclosure of information—commissioning authority or relevant person**

- ‘(1) A person who is or was the commissioning authority must not disclose to someone else information contained in an RCA report or chain of events document, or give someone else a copy of an RCA report or chain of events document, received by the person under section 36H, other than—
- (a) as required or permitted under sections 36O to 36S; or
  - (b) as permitted under subsection (2).

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11 Section 49 (Confidentiality)

Maximum penalty—50 penalty units.

- ‘(2) The commissioning authority may give a safety and quality report prepared by the commissioning authority to an entity with responsibilities for the management of safety initiatives and programs for the Queensland Ambulance Service.
- ‘(3) Also, a person who is or was the commissioning authority must not disclose to someone else—
  - (a) the identity of a member of an RCA team; or
  - (b) information from which a member of the RCA team could be identified.

Maximum penalty—50 penalty units.

- ‘(4) Subsections (1) and (3) do not apply to the disclosure of information by the commissioning authority that is necessary or incidental to the exercise by the authority of its powers under this part.
- ‘(5) Also, a person who is or was a relevant person for the commissioning authority must not disclose to someone else information acquired by the person as a relevant person for the authority.

Maximum penalty—50 penalty units.

- ‘(6) Subsection (5) does not apply to the disclosure of information by a relevant person for the commissioning authority for the purpose of helping the authority exercise its powers under this part.
- ‘(7) If information that may be disclosed under this section is information to which section 49(1)<sup>12</sup> applies, the information is for the purposes of section 49(2)(a) information that is expressly authorised or permitted to be given under this Act.
- ‘(8) This section does not authorise the attachment of a copy of an RCA report or chain of events document to a safety and quality report.
- ‘(9) In this section—
 

***safety and quality report*** means a report about the safety and quality of the ambulance service to which an RCA report

relates that is based on information contained in the RCA report.

**‘36O Release of information to Health Quality and Complaints Commission**

‘The commissioning authority must, as soon as practicable after receiving an RCA report under section 36H, give the Health Quality and Complaints Commission—

- (a) a copy of the report; and
- (b) details of the place where the reportable event happened.

**‘36P Giving of copy of RCA report or chain of events document—medical director**

‘(1) The commissioning authority may give a copy of each RCA report or chain of events document received by the authority under section 36H to the medical director for an authorised purpose.

‘(2) At the time of giving a copy of an RCA report or chain of events document to the medical director under section 36H, the commissioning authority must also give the medical director—

- (a) details of the reportable event; and
- (b) details of the place where the event happened.

‘(3) The medical director—

- (a) must not give a copy of the report or document to anyone else, other than a person who performs functions relating to the authorised purpose for the medical director; and
- (b) must not disclose any information contained in the copy of the report or document, or information mentioned in subsection (2), to anyone else other than for the authorised purpose for which the copy of the report or document was given; and
- (c) must not use the copy of the report or document, and the information mentioned in subsection (2), other than for

the authorised purpose for which the copy of the report or document was given.

Maximum penalty—50 penalty units.

- ‘(4) A person who performs functions relating to the authorised purpose for the medical director—
- (a) must not give a copy of the report or document to anyone else; and
  - (b) must not disclose any information contained in the copy of the report or document, or information mentioned in subsection (2), to anyone else other than for the authorised purpose for which the copy of the report or document was given; and
  - (c) must not use the copy of the report or document, and the information mentioned in subsection (2), other than for the authorised purpose for which the copy of the report or document was given.

Maximum penalty—50 penalty units.

- ‘(5) An authorised purpose mentioned in subsection (3)(b) or (c) or subsection (4)(b) or (c) does not include the disclosure of information contained in the copy of the RCA report or chain of events document, or information mentioned in subsection (2), that may lead to the identification of—
- (a) a person involved in providing the relevant ambulance service; or
  - (b) the person who received the relevant ambulance service.

- ‘(6) In this section—

***authorised purpose*** means a purpose relating to the planning, implementation, management and evaluation of safety initiatives and programs for the Queensland Ambulance Service.

***relevant ambulance service*** means the ambulance service during the provision of which the reportable event happened.

**‘36Q Giving of copy of RCA report etc.—investigation under the Coroners Act 2003**

- ‘(1) This section applies if—
- (a) a coroner is investigating the death of a person; and
  - (b) the death is a reportable event that happened while an ambulance service was being provided to the person.
- ‘(2) This section also applies if—
- (a) a coroner is investigating the death of a person; and
  - (b) the coroner considers that a reportable event that happened while an ambulance service was being provided to the person may be relevant to the investigation; and
  - (c) the event is not the death.
- ‘(3) If the coroner, or a police officer helping the coroner to investigate the death, asks the commissioning authority whether an RCA team has conducted or is conducting an RCA of the reportable event, the commissioning authority must respond to the query as soon as practicable.
- Maximum penalty—50 penalty units.
- ‘(4) Subsection (5) applies if—
- (a) an RCA of the reportable event has been conducted by an RCA team; and
  - (b) an RCA report relating to the event has been given under section 36H to the commissioning authority; and
  - (c) the commissioning authority has under subsection (3) received a query from the coroner or a police officer helping the coroner to investigate the death.
- ‘(5) The commissioning authority must—
- (a) if the commissioning authority received the report before receiving the query under subsection (3)—give a copy of the report to the coroner or police officer as soon as practicable after receiving the query; or
  - (b) if the commissioning authority had not received the report before receiving the query under subsection

(3)—give a copy of the report to the coroner or police officer as soon as practicable after receiving the report.

Maximum penalty—50 penalty units.

- ‘(6) Subsection (7) applies if—
- (a) an RCA has been started by an RCA team in relation to the reportable event; and
  - (b) the RCA team has, under section 36J(2) or 36K(2) or (3), stopped conducting the RCA; and
  - (c) the commissioning authority has under subsection (3) received a query from the coroner or a police officer helping the coroner to investigate the death.
- ‘(7) The commissioning authority must—
- (a) if the RCA team stopped conducting the RCA before the commissioning authority received the query under subsection (3)—give the coroner or police officer a stop notice as soon as practicable after receiving the query; or
  - (b) otherwise—give the coroner or police officer a stop notice as soon as practicable.
- ‘(8) In this section—
- stop notice** means a notice stating—
- (a) if the RCA team stopped conducting the RCA under section 36J(2)—that fact; or
  - (b) if the RCA team stopped conducting the RCA because of a direction given by the commissioning authority under section 36K(2) or (3)—
    - (i) that fact; and
    - (ii) the reasons for giving the direction.

### ‘36R Giving of information to Minister or chief executive

- ‘(1) The Minister or chief executive may, in relation to an RCA of a reportable event, ask the commissioning authority—
- (a) whether an RCA report has been received by the authority under section 36H; and

- (b) if an RCA report has been received by the authority under section 36H—for a copy of the report.
- ‘(2) The authority must comply with the request as soon as practicable.

**‘36S Giving of copy of, or information contained in, RCA report—person who has sufficient personal or professional interest**

‘The commissioning authority may give a copy of an RCA report received by the authority under section 36H, or information contained in the report, to a person who the authority reasonably believes has a sufficient personal or professional interest in the reportable event.

**‘36T Information not to be given in evidence**

- ‘(1) A stated person is neither competent nor compellable—
- (a) to produce in a proceeding, or in compliance with a requirement under an Act or legal process, any document in the person’s possession or under the person’s control created—
    - (i) by, or at the request of, a person under this part; or
    - (ii) solely for the conduct of an RCA of a reportable event; or
  - (b) to divulge or communicate in a proceeding, or in compliance with a requirement under an Act or legal process, information that came to the person’s notice as a stated person.

*Example—*

Under subsection (1), a stated person is neither competent nor compellable to produce a document or give information mentioned in paragraph (a) or (b) of the subsection to an authorised person under a notice given to the stated person under the *Health Quality and Complaints Commission Act 2006*, section 123.



‘(2) Subsection (1) does not apply to a requirement made in proceedings for an alleged offence against this part or section 49<sup>13</sup> by the stated person.

‘(3) In this section—

*information* includes—

- (a) the identity of a member of an RCA team; and
- (b) information from which a member of an RCA team could be identified.

*stated person* means a person who is or was any of the following—

- (a) a member of an RCA team;
- (b) the commissioning authority;
- (c) a relevant person for an RCA team or the commissioning authority;
- (d) a person who performs functions for the medical director.

### ‘36U Information-provider can not be compelled to give particular information in evidence

‘A person can not be compelled to divulge or communicate in a proceeding, or in compliance with a requirement under an Act or legal process, any of the following information—

- (a) whether or not the person gave information to an RCA team for its conduct of an RCA of a reportable event;
- (b) what information the person gave to an RCA team for its conduct of an RCA of a reportable event;
- (c) information given by the person to an RCA team that was created by the person or another person solely for its conduct of an RCA of a reportable event;
- (d) information the person was given, or questions the person was asked, by an RCA team during its conduct of an RCA of a reportable event.

## **‘Division 6                    Protections**

### **‘36V    Protection from liability**

- ‘(1) A person who is or was a member of an RCA team, or relevant person for an RCA team, is not civilly liable for an act done, or omission made, honestly and without negligence under this part.
- ‘(2) Without limiting subsection (1), if the act or omission involves giving information—
- (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and
  - (b) if the person would otherwise be required to maintain confidentiality about the information given under an Act, oath, or rule of law or practice, the person—
    - (i) does not contravene the Act, oath, or rule of law or practice by giving the information; and
    - (ii) is not liable to disciplinary action for giving the information.
- ‘(3) If a person who is or was a member of an RCA team, or relevant person for an RCA team, incurs costs in defending proceedings relating to a liability against which the person is protected under this section, the person must be indemnified by the State.

### **‘36W    Giving of information protected**

- ‘(1) This section applies to a person who honestly and on reasonable grounds gives information to an RCA team, or a relevant person for an RCA team, for the RCA team’s conduct of an RCA of a reportable event.

*Examples of persons who may give information under subsection (1)—*

- the commissioning authority
- a relevant person for the commissioning authority

- ‘(2) The person is not subject to any liability for giving the information and no action, claim or demand may be taken or made of or against the person for giving the information.

- ‘(3) Also, merely because the person gives the information, the person can not be held to have—
- (a) breached any code of professional etiquette or ethics; or
  - (b) departed from accepted standards of professional conduct.
- ‘(4) Without limiting subsections (2) and (3)—
- (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and
  - (b) if the person would otherwise be required to maintain confidentiality about the information under an Act, oath, or rule of law or practice, the person—
    - (i) does not contravene the Act, oath, or rule of law or practice by giving the information; and
    - (ii) is not liable to disciplinary action for giving the information.

### **‘36X Reprisal and grounds for reprisals**

- ‘(1) A person must not cause, or attempt or conspire to cause, detriment to another person because, or in the belief that, anybody has provided, or may provide, assistance to an RCA team in its conduct of an RCA of a reportable event.
- ‘(2) An attempt to cause detriment includes an attempt to induce a person to cause detriment.
- ‘(3) A contravention of subsection (1) is a reprisal or the taking of a reprisal.
- ‘(4) A ground mentioned in subsection (1) as the ground for a reprisal is the unlawful ground for the reprisal.
- ‘(5) For the contravention to happen, it is sufficient if the unlawful ground is a substantial ground for the act or omission that is the reprisal, even if there is another ground for the act or omission.

### **‘36Y Offence for taking reprisal**

- ‘(1) A person who takes a reprisal commits an offence.

Maximum penalty—167 penalty units or 2 years imprisonment.

- ‘(2) The offence is a misdemeanour.

### **‘36Z Damages entitlement for reprisal**

- ‘(1) A reprisal is a tort and a person who takes a reprisal is liable in damages to any person who suffers detriment as a result.
- ‘(2) Any appropriate remedy that may be granted by a court for a tort may be granted by a court for the taking of a reprisal.
- ‘(3) If the claim for damages goes to trial in the Supreme Court or the District Court, it must be decided by a judge sitting without a jury.

## **‘Division 7 Miscellaneous**

### **‘36ZA Application of provisions of this part**

‘If the commissioning authority acts or purports to act under section 36E<sup>14</sup> and it transpires the event the basis of the action is not a reportable event, the provisions of this part apply as if the event were a reportable event.

### **‘36ZB RCA report not admissible in evidence**

- ‘(1) An RCA report is not admissible in evidence in any proceedings, including, for example—
- (a) a civil proceeding; or
  - (b) a criminal proceeding; or
  - (c) a disciplinary proceeding under the *Health Practitioners (Professional Standards) Act 1999*.
- ‘(2) However, a copy of an RCA report given to a coroner under section 36Q may be admitted in evidence by a coroner in an inquest under the *Coroners Act 2003* into the death of a person—

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14 Section 36E (Appointment of RCA team)

- (a) if section 36Q(1) applies—if the reportable event is the death; or
  - (b) if section 36Q(2) applies—if the reportable event happened while an ambulance service was being provided to the person.
- ‘(3) Subsection (1) applies subject to section 36T(2).<sup>15</sup>

### ‘36ZC Review of pt 4A

- ‘(1) The Minister must, before the second anniversary of the commencement of section 36E, start a review of this part to ensure it is adequately meeting community expectations and its provisions remain appropriate.
- ‘(2) The Minister must, as soon as practicable after the review is finished, cause a report of the outcome of the review to be laid before the Legislative Assembly.’.

### 51 Amendment of s 50 (Proceedings for offences)

Section 50—

*insert—*

- ‘(3) The requirement to proceed in a summary way is subject to section 50B.’.

### 52 Insertion of new ss 50A and 50B

Part 6, after section 50—

*insert—*

#### ‘50A Proceedings for indictable offences

- ‘(1) A proceeding for an indictable offence against this Act may be taken, at the election of the prosecution—
  - (a) by way of summary proceeding under the *Justices Act 1886*; or
  - (b) on indictment.

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<sup>15</sup> Section 36T (Information not to be given in evidence)

- ‘(2) A magistrate must not hear an indictable offence summarily if—
- (a) the defendant asks at the start of the hearing that the charge be prosecuted on indictment; or
  - (b) the magistrate considers the charge should be prosecuted on indictment.
- ‘(3) If subsection (2) applies—
- (a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and
  - (b) a plea of the person charged at the start of the proceeding must be disregarded; and
  - (c) evidence brought in the proceeding before the magistrate decided to act under subsection (2) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and
  - (d) before committing the person for trial or sentence, the magistrate must make a statement to the person as required by the *Justices Act 1886*, section 104(2)(b).<sup>16</sup>

**‘50B Limitation on who may summarily hear indictable offence**

- ‘(1) The proceeding must be before a magistrate if it is a proceeding—
- (a) for the summary conviction of a person on a charge for an indictable offence; or
  - (b) for an examination of witnesses for a charge for an indictable offence.
- ‘(2) However, if the proceeding is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.’.

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<sup>16</sup> *Justices Act 1886*, section 104 (Proceedings upon an examination of witnesses in relation to an indictable offence)

**53 Amendment of s 54 (Regulation-making power)**

Section 54(2)—

*insert—*

‘(d) the procedures to be followed by an RCA team in its conduct of an RCA of a reportable event.’.

**54 Amendment of schedule (Dictionary)**

Schedule—

*insert—*

*‘blameworthy act*, for part 4A, division 4, see section 36I.

*chain of events document*, for part 4A, see section 36A.

*commissioning authority*, for part 4A, see section 36A.

*coroner*, for part 4A, see section 36A.

*information*, for part 4A, division 5, see section 36L.

*medical director*, for part 4A, division 5, see section 36L.

*notice*, for part 4A, see section 36A.

*RCA report* for part 4A, see section 36A.

*RCA team* see section 36A.

*relevant person*, for part 4A, see section 36A.

*reportable event* see section 36A.

*reprisal* means a reprisal mentioned in section 36X(3).

*root cause analysis* or *RCA* see section 36B.

*takes a reprisal* means the taking of a reprisal as mentioned in section 36X(3).’.

