Queensland Mental Health Commission Bill 2012

Explanatory Notes

Short title

The short title of the Bill is the Queensland Mental Health Commission Bill 2012

Policy objectives and the reasons for them

Queensland Mental Health Commission

The Bill establishes the Queensland Mental Health Commission (the QMHC) to drive ongoing reform towards a more integrated, evidence-based, recovery-oriented mental health and substance misuse system. It will be responsible for leading a cultural change in the way mental health, substance misuse (including misuse of alcohol and other drugs) and other human services provided to people with, vulnerable to, or at significant risk of, mental health or substance misuse issues are planned and delivered in Queensland.

It is estimated that one in five Queenslanders will experience mental illness (including substance use disorders) in any one year, and almost one in two people between the ages of 16 and 85 will experience mental illness at some point in their lives. Mental illness can have a devastating effect on people and their families. The prevalence of mental illness peaks in early adulthood, with about 26 percent of young Australians aged 16 to 24 years having experienced some form of mental illness in the past 12 months.

For many people, the disadvantage and social exclusion associated with these issues are more disabling than the illness itself. As well as discouraging help-seeking, stigma and discrimination can have multiple far-reaching impacts on the quality of life of people living with mental health and substance-related problems. These impacts may include interrupted education, employment and vocational opportunities, difficulty accessing secure housing, economic insecurity and reduced community involvement and social connectedness. People with mental health or substance misuse issues are over-represented among homeless and prison populations and among recipients of social services such as child protection and youth justice.

As in the rest of Australia, significant issues remain in Queensland in relation to the accessibility, delivery and integration of clinical and non-clinical mental health and substance misuse services. These issues particularly relate to the continuity of support, from early intervention through to continuing care if required, the difficulties consumers, carers, families and support persons experience in negotiating the network of clinical and non-clinical service providers and the delivery of integrated, evidence-based community support services.

In addition, significant issues arise in relation to the integration and impact of other human services provided to vulnerable populations and to people living with mental illness or who misuse substances. These services are often poorly connected to relevant clinical and support services, not geared to intervene early or prevent the emergence of mental illness or substance misuse and not reflective of a rigorous evidence base regarding how best to meet the recovery needs of people living with mental illness or who misuse substances.

Further, public funding for mental health and substance misuse services remains heavily focused towards the provision of clinical services. While these services are indispensable parts of a comprehensive system, their effectiveness is diminished where they are not delivered as part of a holistic approach to mental health and wellbeing and to the minimisation of harm from substance misuse. A growing body of evidence is demonstrating that early intervention initiatives, prevention strategies and actions to promote wellbeing, resilience and capacity at the individual and population levels are also essential components of a comprehensive and cost effective mental health and substance misuse system.

There is a clear need for continuation of a fundamental shift towards a more community-based, recovery-oriented mental health and substance misuse system based securely on evidence, experience and best practice.

The QMHC will be tasked with leading this fundamental shift. The Government's intention is to put in place a body which will:

- lead coordinated action by public sector and publicly funded non-government agencies providing mental health or substance misuse services or other human services to people with, or vulnerable to, mental health or substance misuse issues;
- drive best practice in the provision of services to this cohort, including by supporting knowledge sharing, research, innovation and evidence-based policy and practice; and
- promote the mental health and wellbeing of Queenslanders, including by supporting prevention and early intervention initiatives and enhancing community awareness of mental health and substance misuse issues.

Amendments to *Mental Health Act 2000*

Two recent incidents involving forensic patients who absconded from an authorised mental health service while on limited community treatment (approved leave in the community) highlighted a lack within the *Mental Health Act 2000* of sufficient power for the Director of Mental Health to take immediate action to avoid further incidents of absconding and/or to take action before a patient absconds if there are indicators that suggest a high risk of it occurring.

In addition, while the Mental Health Act currently provides that an authorised doctor may place conditions on a patient's treatment plan when authorising limited community treatment, there are no specific measures articulated in the Act that can require the location (and therefore possible absence) of a patient to be monitored. Further, while there is a comprehensive scheme within the Act to return patients to an authorised mental health service, this scheme does not currently provide specific measures for locating a patient who has absconded. Currently, the primary mechanism to locate patients who have absconded is through communication and action by the authorised mental health service and the police (for

example, the patient's case manager or police may visit locations where the patient is known to frequent).

In relation to the incidents mentioned above, it took police a number of days to locate the patients who had absconded, one of whom made their way to Victoria before being located and returned to Queensland. The use of specific monitoring conditions in such circumstances may assist the prompt location and return of a patient who has absconded.

Achievement of policy objectives

Queensland Mental Health Commission

The Bill achieves its objective by establishing the QMHC as a statutory body to coordinate systemic reform and cooperative action across public sector, publicly funded and private sector agencies providing mental health or substance misuse services or other human services to people with, or vulnerable to, mental health or substance misuse issues.

Inclusion of substance misuse within the QMHC's scope

The QMHC's scope is not restricted to issues arising in relation to mental health and wellbeing, mental health clinical and non-clinical services and other human services delivered to people living with mental health issues. In addition, the QMHC's scope will also include issues arising in relation to substance misuse, detoxification and treatment services and other human services delivered to people living with substance misuse issues.

The Bill provides an inclusive definition of substance misuse as meaning the improper use of alcohol, tobacco, illegal drugs, pharmaceutical and other substances (such as petrol, inhalants or glue) that alter brain function, resulting in changes in perception, mood, consciousness, cognition and behaviour.

Substance misuse is common among people living with a mental illness. The rate of substance use disorders in people with a mental illness may be up to 45 per cent in community settings, and up to 65 per cent in in-patient settings. Strategic planning at the state and national levels has emphasised that building strong partnerships between mental health and substance misuse services and providing for the integration of care is essential to the delivery of effective treatment for people with co-occurring substance misuse issues and mental illness.

Governance

To achieve its wide-reaching reform goals, the QMHC will need to operate transparently, accountably and in close cooperation with a range of partner agencies and bodies. To this end, the Bill puts in place a range of rigorous and transparent governance measures. These include, for example, provisions relating to the appointment, responsibilities, powers and removal of the Commissioner, the statutory head of the QMHC appointed by the Governor-in-Council on the recommendation of the administering Minister (the Minister for Health).

Additionally, the Bill includes a number of measures to ensure the QMHC is able at all times to operate smoothly, efficiently and with a high degree of transparency, accountability and integrity. These provisions deal with, amongst other things, the delegation of the

Commissioner's powers, limitations on the protection of officials from liability for acts done under the Act and the means for publicising and periodically reviewing the QMHC's operation and performance.

The QMHC will be responsible for the control and expenditure of public funding and for the public discharge of statutory functions. To put beyond doubt that the QMHC is to be held to a high standard of public accountability in relation to these matters, the Bill explicitly provides that:

- the QMHC through the Commissioner is subject to the directions of the Minister;
- the QMHC is a statutory body for the purposes of the *Financial Accountability Act 2009* and *Statutory Bodies Financial Arrangements Act 1982*; and
- the QMHC is a unit of public administration under the *Crime and Misconduct Act 2001*.

The QMHC and its Advisory Council (discussed below) will also be public authorities under the *Right to Information Act 2009* and the *Public Records Act 2002*.

To maximise the QMHC's transparent operation, the Bill requires the following matters to be reported to Parliament through the agency's annual report prepared under the Financial Accountability Act:

- each direction given to the Commissioner by the Minister during the financial year to which the report relates, and action taken as a result of the direction;
- each formal recommendation issued to the QMHC by the Advisory Council during the financial year, and action taken by the QMHC in response; and
- each formal recommendation issued to a public sector agency by the QMHC during the financial year, and any action taken by the agency in response to the recommendation.

The primary mechanism through which stakeholders will be involved in the strategic work of the QMHC will be through the establishment under the legislation of a Mental Health and Drug Advisory Council (the Advisory Council). The Bill provides that the role of the Advisory Council is to advise the QMHC on any mental health or substance misuse issue within the QMHC's functions which it considers appropriate or which is referred to it by the QMHC, and to make recommendations to the QMHC in relation to its statutory functions.

The Advisory Council will operate as a high level, strategic body through which the sector can be involved in shaping the long term reform agenda and activities of the QMHC. To this end, the Bill includes a number of measures to ensure the QMHC is accountable to the Advisory Council for the performance of its statutory functions and that the Advisory Council is afforded appropriate opportunities to provide input into the performance of these functions.

<u>Systemic, whole-of-government mandate</u>

The QMHC is intended to foster coordinated, cooperative whole-of-Government and whole-of-system activity by in-scope agencies, enhancing service user outcomes and minimising the impact of mental health and substance misuse issues through the strategic orientation and integration of evidence-based services. It is intended to catalyse the development of a much larger web of integrated partnerships and cooperative effort across agencies providing

clinical, non-clinical and other human services to persons living with mental health or substance misuse issues.

The Bill therefore includes a number of measures which, taken together, provide the QMHC with sufficient capacity to build a network of robust partnerships and provide the required strategic leadership. These include:

- providing for the QMHC to develop a whole-of government strategic plan to provide high level guidance and direction to relevant government and non-government agencies;
- requiring the QMHC to monitor and report to the Minister on implementation of the whole-of-government strategic plan;
- requiring the QMHC to prepare a special report on any significant systemic issue, as directed by the Minister; and
- providing for the QMHC to prepare, in consultation with affected agencies, an ordinary report on systemic issues or on the funding of mental health and substance misuse services.

Research and knowledge sharing

The sharing of knowledge, experience and research is critical to the delivery of high quality, evidence-based services. Key to achievement of the fundamental reform objective of the QMHC is therefore the inclusion of provisions in the Bill that will enable the QMHC to inculcate a culture of evidence-based service delivery among government, non-government and private sector service providers and to facilitate the ready exchange of experience, knowledge and evidence.

Consumer, carer and family focus

Participation by consumers, carers, families and support persons is recognised nationally and internationally as an essential component of effective recovery-oriented mental health service delivery. The Bill includes a number of measures to more effectively recognise and support this participation.

Importantly, the Bill acknowledges that carers' unique role in a recovery-oriented system can mean that their needs and interests do not in all circumstances coincide with those of consumers and deserve independent recognition and support.

Social inclusion and recovery

A key principle underpinning a recovery-oriented mental health and substance misuse system is that having a mental illness or misusing substances does not necessarily mean life-long deterioration and exclusion. The Bill promotes the principle that people living with mental illness or substance misuse issues should be recognised as whole, equal and valuable members of our community, and should be supported to live independently and to participate meaningfully in the economic, cultural and social life of their communities. In addition to requiring it to work with service providers to support the recovery and social inclusion of people living with mental health or substance misuse issues, the Bill also equips the QMHC to address stigma and discrimination and otherwise raise community awareness about mental health and substance misuse issues.

Prevention and early intervention

The corollaries of supporting recovery and social inclusion—supporting the wellbeing of the community, preventing the emergence of mental illness or the misuse of substances and intervening early to minimise the duration and severity of incipient illness or to minimise the harm associated with substance misuse—are similarly essential parts of a comprehensive system. The Bill therefore includes measures to equip the QMHC to focus on mental health, wellbeing, resiliency and capacity at the individual and population levels and to support human service agencies across the government, non-government and private sectors to appropriately safeguard the mental health and wellbeing of their clienteles.

Aboriginal and Torres Strait Islander peoples

Mental health and substance misuse issues affecting Aboriginal and Torres Strait Islander communities can often pose different challenges to quality service provision than those affecting other Queensland communities. To be effective in promoting recovery, relevant services delivered to Aboriginal and Torres Strait Islander communities must be able to take account of issues associated with remoteness, access to health care, different understandings of health and wellbeing and varied social and cultural practices.

The QMHC, too, must be alive to the need to appropriately understand and engage with Aboriginal and Torres Strait Islander issues. To this end, the Bill provides the following:

- treatment, care and support should be provided to Aboriginal or Torres Strait Islander people in a way that recognises and is consistent with Aboriginal tradition or Island custom, and should be delivered in a culturally appropriate and respectful manner;
- in exercising its functions, the QMHC is to take into account the particular views and needs of Aboriginal and Torres Strait Islander communities; and
- in making appointments to the Advisory Council, the Minister may have regard to (amongst other things) the skills, knowledge or experience of the proposed members relating to mental health and substance misuse issues affecting Aboriginal and Torres Strait Islander persons.

Other vulnerable populations

Queensland's significant geographical, economic and cultural diversity, as well as being a source of great strength to the State, will be a considerable challenge to the QMHC's role in leading systemic reform. Different populations' experiences of mental health and substance misuse issues may vary according to such factors as remoteness, access to employment opportunities and cultural practices. In addition, people with mental health and substance misuse issues continue to be overrepresented in certain vulnerable groups, including homeless and prison populations and recipients of social services such as child protection and youth justice, and amongst suicide deaths.

The Bill therefore includes a number of provisions to ensure the QMHC is aware of the impact that mental health and substance misuse issues can have on vulnerable and diverse groups, and that it remains engaged with the particular views and needs of these groups.

Amendments to *Mental Health Act 2000*

While the primary purpose of the Mental Health Act is to provide for the involuntary assessment, treatment, and protection of persons with a mental illness in a way that safeguards the rights of these individuals, the Act also aims to balance the rights of the broader public with the rights of involuntary patients. In order to enhance those measures under the Act that are designed to protect the community, the amendments broadly create the following two new mechanisms:

- the creation of a power for the Director of Mental Health to initiate a number of actions including suspension of limited community treatment for a relevant patient or relevant patients; require the review of all treatment plans and the planned implementation of limited community treatment; and require Administrators of authorised mental health services to review procedures and protocols in relation to the authorisation of limited community treatment; and
- requiring that a relevant patient in certain circumstances, be subject to a monitoring condition while they are under taking limited community treatment.

The proposed new powers are only to apply to patients who are subject to a forensic order, are a classified patient or are subject to section 273(1)(b) order made by the Mental Health Court (each of whom is defined as a 'relevant patient').

Additionally, the amendments address an ambiguity that exists between the disclosure provisions under part 7 of the *Hospital and Health Boards Act 2011* and the publication provisions under chapter 14, part 5 of the Mental Health Act. This will enable the Director of Mental Health or delegate to authorise the publication of patient information if there is a serious risk of harm to the patient or the public, or it is in the public interest to publish the information.

Alternative ways of achieving policy objectives

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Two alternative options for achieving the policy objectives have been considered. These options—maintenance of the status quo and industry self-regulation—are discussed below.

<u>Maintenance of the status quo</u>

A significant proportion of the functions to be performed by the QMHC—particularly those relating to fostering a whole-of-government and cross-sectoral approach to mental health and substance misuse service planning and development and supporting and promoting prevention and early intervention strategies—have hitherto been performed by the Mental Health Alcohol and Other Drugs Branch (the MHAOD Branch) of Queensland Health. Consideration has therefore been given to continuing to invest the MHAOD Branch with responsibility for delivery of the functions allocated by the Bill to the QMHC.

However, it has been determined that, for the following reasons, this alternative does not deliver the same net benefit to the community as the selected legislative option:

- it would not provide the same capacity to influence and leverage reform, since it would involve this reform being driven from within a line department responsible for the funding and oversight of service delivery;

- it would involve Queensland Health operating inconsistently with its statutory role as the system manager under the Hospital and Health Boards Act, to which Queensland Health corporate office (including the MHAOD Branch) has transitioned from 1 July 2012;
- fundamental mental health and substance misuse reform requires a coordinated approach across a wide set of government, non-government and private sector service delivery areas, and cannot be satisfied by action in relation to the system manager's primary area of responsibility—the public health system—alone; and
- it does not provide the distance from operational service delivery required to drive fundamental reform.

Established at arm's length from operational services, meanwhile, the QMHC will not share the system manager's inherent agendas and will have greater scope for envisaging and working towards fundamental and wide-reaching reform.

Industry self-regulation

Consideration has also been given to adopting an industry self-regulation approach. Rather than a Government entity being established under legislation to exercise the functions allocated by the Bill to the QMHC, this approach would involve resources being provided administratively to a body organised and operated by the mental health and substance misuse sector to perform many of these functions.

However, the following factors mean that this option would not deliver the same net benefit to the community as the legislative option selected:

- industry self-regulation is best suited to those industries with high levels of homogeneity, internal consistency and organisation and some uniformity in terms of identity, types of services delivered, qualifications and quality standards. The mental health and substance misuse system is made up of a multitude of highly diverse service delivery bodies, including small not-for-profit community organisations, housing and employment services and clinical treatment services. Further, these services employ often quite disparate workforces with specialised quality standards, and operate often for very different purposes. It is therefore considered that this sector is too diverse for an industry self-regulation approach to be effective in bringing about widespread coordination and integrated reform;
- a body established and operated by the sector—and therefore without establishing and empowering legislation—would lack the authority which the QMHC will enjoy. The Bill compels in-scope agencies to develop cooperative, robust, consultative relationships with the QMHC, to share appropriate information with the QMHC and to have regard to its governing principles in exercising their function; and
- a body established outside Government would experience considerable difficulties in seeking to influence Government expenditure and policy settings.

Amendments to *Mental Health Act 2000*

There are no non-legislative alternatives to achieving the policy objective.

An alternative legislative approach has been considered. That alternative is to change the relationship of the Director of Mental Health with patients and treating doctors by providing a mechanism for the Director of Mental Health to have significantly more input into patients'

treatment plans. Specifically, this approach considered amendments to the Act to make the Director of Mental Health responsible for authorising limited community treatment and imposing conditions on access to the community rather than the treating authorised doctor (who is currently legislatively responsible for authorised limited community treatment).

This approach would require amendments to the way in which limited community treatment is authorised and the grounds for which limited community treatment could be suspended or cancelled to permit the Director of Mental Health to make decisions based on systemic or service wide reasons in order to achieve the objective of the proposed amendments.

This alternative approach places a greater emphasis on considering individual patients' circumstances but would also create risks inherent to the Director of Mental Health having a greater influence in treatment plans.

Further, this alternative approach does not provide an avenue for the Minister to formally raise concerns with the Director of Mental Health and direct the Director to review the issues that caused the concerns to be raised.

Estimated cost for government implementation

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Full implementation of the Bill is expected to result in the following costs accruing to Government recurrently:

- salaries, on-costs and accommodation for the Commissioner and a small corporate staff employed as public service employees under the terms and conditions of the Queensland Public Service Award State 2012; and
- corporate services to enable the QMHC to operate as a separate public service office and to comply with applicable whole-of-Government requirements. These services will include information and communications technology, human resources, finance, internal audit, legal, right to information, record keeping and conduct and integrity services.

Implementation of the Bill will also result in Government incurring travel, meeting and special assignment fees in relation to the operation of the Advisory Council. To ensure that these costs remain proportionate and within the QMHC's operating budget, the Bill provides that:

- the Commissioner is to be consulted by the Advisory Council in deciding the way it is to conduct its business;
- the terms of reference of any subcommittees established by the Advisory Council are to be decided in consultation with the Commissioner; and
- the Minister may direct the Advisory Council about the way it is to conduct its business.

All costs will be met from within the existing and future budget allocations of Queensland Health. The QMHC will control its own funds, administered to it under a grant agreement with Queensland Health.

Amendments to *Mental Health Act 2000*

It is anticipated that costs associated with implementing the amendments to the Mental Health Act will be minimal and will be met from within the existing and future budget allocations of Queensland Health.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. The following matters require comment in relation to fundamental legislative principles:

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Protection from liability

Under the Bill, the following persons are protected from personal liability for acts done, or omissions made, honestly and without negligence under the Act:

- the Minister;
- the Commissioner;
- a member of the QMHC staff; and
- members of the Advisory Council or subcommittees established by that body.

These protections raise the issue of whether the Bill has sufficient regard for the rights of individuals by conferring immunity from legal proceedings or prosecution.

The conferral of immunity in this instance is considered justified for the following reasons:

- immunity from prosecution may be appropriate when—as in this instance—it is conferred on persons carrying out statutory functions;
- the immunity is appropriately limited in scope. It does not attach to acts done or omissions made which are reckless, unreasonable or excessive, but rather attaches only to acts done or omissions made honestly and without negligence; and
- liability for the consequences of actions done, or omissions made, is not extinguished by the Bill, but rather attaches instead to the State. Where persons consider themselves to have been injured by the actions or omissions of an officer of the QMHC, legal redress remains open to them.

Suspension and removal from office

The Bill provides that the Minister may suspend or recommend the removal of the Commissioner from office if:

- for a suspension, a matter has arisen which is alleged misconduct by the Commissioner or could constitute grounds for removal from office; or
- for a recommendation to remove, the Commissioner has been guilty of misconduct, is incapable of performing their duties or has neglected or incompetently performed their duties.

These provisions raise the issue of whether the Bill has sufficient regard for the rights of individuals by making rights dependent on administrative power only if the power is sufficiently defined and subject to appropriate review. It is considered that the Minister's

powers in relation to the suspension and recommendation to remove the Commissioner are sufficiently clearly defined and subject to appropriate review, since:

- the statutory suspension power is exercisable by a nominated person only (that is, the Minister), and is only enlivened where certain defined matters are considered to exist;
- the suspension power is of limited duration only;
- the Minister must be satisfied that one of the nominated set of grounds for removal exists before the statutory removal power is enlivened;
- only the Governor-in-Council, not the Minister, may remove the Commissioner under the removal power; and
- the exercise of the suspension and removal powers is subject to a statutory order of review under the *Judicial Review Act 1991*.

The Bill also provides that the office of Commissioner becomes vacant if the Commissioner:

- has been, or is, convicted of an indictable offence; or
- is or becomes an insolvent under administration under section 9 of the *Corporations Act 2001* (Cwlth).

These grounds for removal raise the issue of whether the Bill has sufficient regard for the rights of individuals through their consistency with natural justice principles. It is considered that, having regard to the significance of the office of Commissioner and the responsibilities it entails, natural justice principles are not breached in this case. As the Bill explicitly provides that the Commissioner's main functions include managing the QMHC, the Commissioner bears primary responsibility for upholding the significant public trust invested in the body and should therefore be held to high standards of integrity and propriety.

The Bill provides that the Minister may suspend or remove a member of the Advisory Council from office if:

- for a suspension, a matter has arisen which is alleged misconduct by the member; or could constitute grounds for removal from office; or
- for a recommendation to remove, the member has been guilty of misconduct, is incapable of performing their duties, has neglected or incompetently performed their duties, or has been absent without permission of the chairperson from three consecutive meetings of which due notice was given.

Again, these provisions raise the issue of whether the Bill has sufficient regard for the rights of individuals by making rights dependent on administrative power only if the power is sufficiently defined and subject to appropriate review. It is considered that the Minister's administrative powers in relation to the suspension and removal of Advisory Council members are sufficiently clearly defined and subject to appropriate review, since:

- as in the case of the Commissioner, the statutory suspension power is only exercisable by a nominated person (that is, the Minister), and is only enlivened where certain defined matters are considered to exist;
- the suspension power is of limited duration only;
- the Minister must be satisfied that one of the nominated set of grounds for removal exists before the statutory removal power is enlivened; and
- the exercise of the suspension and removal powers is subject to a statutory order of review under the Judicial Review Act.

In relation to the last ground for removal from office of a member of the Advisory Council—that the member has been absent without permission of the chairperson from three

consecutive meetings of which due notice was given—a further level of complexity arises in determining whether the power is sufficiently defined. While several of the conditions which must precede the power being enlivened—namely, the identification of the officer with power to approve the absence (the chairperson), and the lack of that person's approval—are clearly defined by the terms of the provision, what constitutes due notice of the meeting is not.

However, the removal power should be read in conjunction with clause 43, which requires that the way the Advisory Council conducts its business—including the procedure for calling meetings—must be determined by the chairperson in consultation with the Commissioner. Due notice is therefore definable by reference to the procedures determined between the Commissioner and the chairperson, and subject under clause 43 to the Minister's ultimate oversight. It is considered that these statutory requirements around the calling of meetings will subject this process to a reasonable level of public scrutiny and review.

Amendments to *Mental Health Act 2000*

It is proposed that the Director of Mental Health be able to order the suspension of limited community treatment for patients who are subject to a forensic order, are a classified patient or are subject to section 273(1)(b) order made by the Mental Health Court (each of whom is defined as a 'relevant patient'). This suspension could apply to an individual relevant patient or a class of relevant patients (for example, all forensic patients detained as in-patient to a stated authorised mental health service). Limited community treatment provides in-patients with an opportunity to experience a staged reintegration into the community as their mental health improves and is a key component of treatment provided under the Mental Health Act.

If the Director of Mental Health considers that, because of a matter arising in relation to an involuntary patient, there is a serious risk to the life, health or safety of a person or a serious risk to public safety, the Director may order the suspension of limited community treatment and require a relevant patient or class of relevant patients to be detained as an in-patient or in-patients in their treating authorised mental health service or services. A suspension of limited community treatment could result in a patient who is on overnight leave in the community having to return early to their authorised mental health service.

If a suspension of limited community treatment is applied to an individual patient who has caused a serious risk (for example, they have committed an offence while on limited community treatment), the exercise of this power is clearly justified in relation to the individual patient. However, if the suspension applies more broadly (that is, to a class of relevant patients), it may be seen to unfairly disadvantage a patient who has been compliant with the conditions of their limited community treatment but whose limited community treatment is suspended on the basis that they belong to a particular category of patients (for example, because they are a forensic patient and the order relates to all forensic patients in their service).

While this may be considered to breach an individual's rights and liberties (section 4 of the *Legislative Standards Act 1992*), this power is consistent with the purpose of the Act. That is, the treatment needs of an individual who has a mental illness must be balanced appropriately with the need to protect that individual and the community. In this instance, the potential impact on a patient whose limited community treatment is suspended by virtue of being within the class of patients stated in an order is balanced with the need to protect that

individual and the community from a serious risk identified by the Director of Mental Health as requiring a systemic review and response.

It is intended that the ability to suspend limited community treatment will enable the Director of Mental Health to respond to an identified risk, including the resolution of any systemic problems that may be able to be addressed in order to minimise or prevent such risks from reoccurring. To ensure that the power is only sparingly and appropriately applied after due consideration, it may only be exercised if there is a significant risk to the life, health or safety of a person or a serious risk to public safety. When exercising this power, the Director of Mental Health will also be bound by the guiding principles for the Mental Health Act, in particular section 9. This section states that a power under the Act must be exercised so that the person's liberty and rights are adversely affected only if there is no less restrictive way to protect the person's health and safety or to protect others and any adverse effect on the person's liberty and rights is the minimum necessary in the circumstances.

In addition, before making an order to suspend limited community treatment, the Director of Mental Health will be required to:

- consult with the relevant Administrator/s on the likely impact on patients of an order to suspend to ensure that disruption to patient care is kept to the minimum necessary;
- consult with the relevant Administrator/s to enable consideration of the best interests of any child that may be captured by the order;
- notify the Attorney-General;
- consult with the Police Commissioner if the order is likely to impact on police resources (for example if it is anticipated that police support will be required to return patients); and
- notify the Director-General of the department responsible for the *Child Protection Act 1999* if a child on a forensic order who is also a child in the child protection will be affected by the order.

The order to suspend limited community treatment will need to clearly specify:

- details about to whom the order applies (for example, an individual relevant patient, or all forensic patients within a facility of an authorised mental health service, etc);
- the length of time the suspension is to apply; and
- the location patients must be returned to, and the time or date by which patients are to return, if the suspension will impact on a patient who is in the community at the time the suspension is ordered.

As an order to suspend limited community treatment may have significant natural justice implications for patients impacted by the order, the decision of the Director of Mental Health will be appealable to the Mental Health Review Tribunal. A patient to whom an order to suspend limited community treatment relates may appeal to the Tribunal on the grounds that the Director incorrectly decided that there was a serious risk to the life, health or safety of a person or a serious risk to public safety, or on the grounds that the Director was incorrect in including the patient the subject of the appeal in the order.

If the Tribunal decides the Director erred in deciding that there was serious risk to the life, health or safety of a person or a serious risk to public safety, the Tribunal must set aside the order. If the Tribunal decides that the Director erred in including the patient the subject of the appeal in the order, the Tribunal must order that the Director's order to suspend limited community treatment does not apply to the patient. Additionally, the Tribunal may amend

the order to more appropriately reflect the class of patient to which the suspension of limited community treatment should apply, or set aside the order.

The proposed amendments to the Mental Health Act could also be perceived as breaching an individual's rights and liberties in relation to the proposal that the location (and therefore possible absence) of relevant patients on limited community treatment be able to be monitored. Examples of the requirements that could be imposed on a relevant patient include that the patient call their authorised mental health service when they intend to leave a location, that the patient wear a device for monitoring their location or that the patient provide a detailed plan about where they intend to go and who they intend to meet or spend time with. These requirements, particularly that a patient be required to wear a device for monitoring their location, may be perceived as a breach of the patient's individual rights and liberties.

The Mental Health Act currently enables a treating authorised doctor to authorise limited community treatment on a conditional basis if considered necessary to 'protect the health or safety of the patient or the safety of others (section 131 of the Act). The proposed amendments provide an additional level of consideration with respect to protecting the health or safety of the patient or the safety of others in relation to forensic patients, classified patients or patients subject to an order of the Mental Health Court issued under section 273(1)(b) of the Act (relevant patients). That is, in addition to the conditions that may be imposed by a patient's treating authorised doctor, the Director of Mental Health or his/her delegate may order that limited community treatment be authorised with specified monitoring conditions such as those described above. For example, such conditions may be appropriate if a relevant patient is embarking on a period of unescorted limited community treatment for the first time.

The imposition of specified monitoring conditions offer the best mechanisms to quickly locate a patient who is in danger of failing to, or who has failed to, return from limited community treatment before they jeopardise their health, the progress made through their treatment plan or pose a risk to the public. As currently provided for by the Mental Health Act, action can be taken to ensure that the patient is returned to their treating authorised mental health service.

For most patients, the decision of the Director of Mental Health (or delegate) to require that specified monitoring requirements be imposed as a condition of limited community treatment will be able to be reviewed by the Mental Health Review Tribunal. The review processes will apply to all forensic patients, and those classified and section 273(1)(b) order patients who are also on an involuntary treatment order. The review process will not apply to classified or section 273(1)(b) patients who are not also on an involuntary treatment order, as the review by the Tribunal is a review of a patient's involuntary treatment. Patients who are detained solely under a classified patient agreement or a section 273(1)(b) order who are accessing mental health treatment in an authorised mental health service are doing so on a voluntary basis and therefore their treatment does not require the same level of independent review (that is, the patient is giving consent to the treatment, and can decide to refuse treatment).

It is unlikely that these patients will be disadvantaged by the lack of review process with respect to the suspension of limited community treatment for the following reasons:

- classified patients and section 273(1)(b) order patients are currently subject to additional non-reviewable safeguards in relation to limited community treatment (for example, under section 132 sentenced prisoners who are classified patients and section 273(1)(b) order patients must always be escorted while on limited community treatment); and
- classified patients may only access limited community treatment at the discretion of the Director of Mental Health, and this approval may be revoked if the Director is satisfied there is a risk to the safety of the patient or others.

For forensic patients, and classified and section 273(1)(b) order patients who are also on an involuntary treatment order, reviews by the Mental Health Review Tribunal may be conducted in response to an application by a patient, by a person on behalf of a patient, or as part of the scheduled reviews that must be conducted as a requirement of the Mental Health Act (see for example sections 200 and 201). With respect to a monitoring condition applied by the Director of Mental Health, at the conclusion of such a review, the Tribunal may order that the monitoring condition be amended or revoked. A restriction on the decision of the Tribunal is included in section 204 of the Mental Health Act for forensic patients whereby the Tribunal must not revoke a monitoring condition unless satisfied the patient does not represent an unacceptable risk to the safety of the patient or others. This restriction is consistent with the restrictions placed on the Tribunal in relation to deciding whether to revoke a forensic order or when ordering or approving limited community treatment.

The amendments to the Mental Health Act to enable limited community treatment to be suspended or subject to specified monitoring conditions are consistent with the stated object of the Act to ensure that the treatment needs of an individual who has a mental illness are balanced appropriately with the need to protect that individual and the community.

Consultation

Queensland Mental Health Commission

In accordance with the Government's election commitment, a further round of online consultation on the establishment of the QMHC has been undertaken to provide information regarding the Government's proposed model for the QMHC, and to allow stakeholder input into implementation of this model.

Amendments to *Mental Health Act 2000*

There has been limited government consultation on the amendments. There has been no community based consultation with stakeholders.

Consistency with legislation of other jurisdictions

Queensland Mental Health Commission

In so far as the Bill establishes the QMHC, it is specific to Queensland and is not part of a uniform national scheme or otherwise complementary to legislation of the Commonwealth or another state.

However, given its similar scope, purpose and functions, the model employed in establishing the NSW Commission has provided a foundational template for the establishment of the QMHC. With appropriate tailoring to reflect Queensland's specific context, service mix and policy environment, the legislation under which the NSW Commission is established—the *Mental Health Commission Act 2012* (NSW)—has been heavily drawn on in the development of the current Bill.

Consideration has also been given to the model employed in the establishment of the Mental Health Commission of Western Australia (the WA Commission), established administratively as a government department and holding the whole of that jurisdiction's mental health budget. While the WA Commission has a role in driving system-level reform, its primary focus as a funding body on clinical and non-clinical service delivery means this model is not considered well suited to achieving the fundamental reform objectives envisaged in Queensland.

Of note, the QMHC will be required under its legislation to perform its functions in relation to both mental health and substance misuse issues equally. Neither the NSW Commission nor the WA Commission has as broad a role in relation to substance misuse issues.

Amendments to *Mental Health Act 2000*

Forensic mental health legislation in New South Wales (NSW) and Victoria utilise security conditions for the management of forensic patients and patients with custodial sentences. In Victoria these conditions are at the discretion of the treating psychiatrist and are comparable to conditions applied by authorised doctors under Queensland's Mental Health Act.

In NSW, security conditions may be applied more broadly to the management of forensic patients and patients with a custodial sentence while they are in a mental health facility or during transfers between custody and a mental health facility.

Notes on provisions

Part 1

Division 1 Introduction

Clause 1 states that the short title of the Act is the Queensland Mental Health Commission Act 2012.

Clause 2 states that the Act, other than part 9, commences on a day to be fixed by proclamation. Part 9 concerns amendments to the Mental Health Act and is to commence on assent.

Clause 3 states that the Act binds all persons, including the State, the Commonwealth and the other States.

Division 2 Object of Act and guiding principles

Clause 4 provides that the object of the Act is to establish the QMHC to drive ongoing reform towards a more integrated, evidence-based, recovery-oriented mental health and substance misuse system. The object is broadly cast, adumbrating the vision intended to be realised in part through the QMHC's establishment and operation under the Act.

The Schedule (Dictionary) to the Act clarifies the object's scope by defining the mental health and substance misuse system as the network of policies, services and programs across government, funded non-government and private sector agencies that involve the provision of mental health, substance misuse or other human services that affect people living with, vulnerable to, or at significant risk of, mental health or substance misuse issues. The definition also includes the provision of support and respite services to carers and families. This definition is cast widely to ensure that the reform envisaged by the object of the Act catches up the broadest possible set of relevant activities by the broadest possible set of relevant agencies.

Clause 4 explicitly identifies the following as the main mechanisms through which the Act's object are to be achieved:

- developing a whole-of-government strategic plan that—
    - provides for coordinated action by public sector and publicly funded non-government agencies providing mental health or substance misuse services or other human services to people with, or vulnerable to, mental health or substance misuse issues; and
    - promotes the best interests of—
        - people with mental health or substance misuse issues and their families, carers and support persons; and
        - people who are vulnerable to, or otherwise at significant risk of, developing mental health or substance misuse issues;
    - drives innovation and best practice through knowledge sharing, research and evidence-based policy and practice;
    - encourages the integration of relevant services; and

- monitoring, reviewing and reporting on issues affecting people with, vulnerable to, or at significant risk of, mental health or substance misuse issues; and
- promoting prevention, early intervention and community awareness strategies.

The explicit recognition of consumers, carers, families and support persons in the Act's object seeks to reinforce that the mental health and substance misuse system should focus strongly on recovery, harm minimisation and the long term needs of service users and their significant others.

Clause 5 sets out the principles which guide the administration of the Act and underpin the functions of the QMHC. Any person performing a function or exercising a power under the Act must have regard to these principles.

To appropriately equip the QMHC to lead a fundamental shift towards a recovery-oriented mental health and substance misuse system and make explicit the policy environment in which service providers are expected to operate, the Bill gives legislative recognition to the following key principles:

- people with a mental illness or who misuse substances:
    - should have access to quality mental health or substance misuse services, care and support wherever they live;
    - should be treated with dignity and respect;
    - should be supported to participate fully in community life and lead meaningful lives; and
    - have the same right to privacy as other members of society;
- the role of carers, family members and support persons is integral to the wellbeing, treatment and recovery of consumers. Service users' significant others, such as carers, family members and support persons, should be respected, valued and supported, and their engagement in treatment and service planning should be maximised wherever possible; and
- an effective mental health and substance misuse system is a shared responsibility of the government and non-government sectors and requires, amongst other things:
    - a coordinated and integrated approach across those areas of service delivery which can have a significant impact on the mental health and wellbeing or substance use of their clienteles;
    - communication and collaboration across public sector and publicly funded agencies, consumers and community generally; and
    - strategies that foster inclusive, safer and healthier families, workplaces and communities.

Clause 5 also makes particular provision for Aboriginal and Torres Strait Islander peoples in the guiding principles of the Act. Mental health and substance misuse issues affecting Aboriginal and Torres Strait Islander communities can often pose different challenges for effective service provision than those affecting other Queensland communities. To make explicit that issues affecting Aboriginal and Torres Strait Islander peoples may require appropriately nuanced responses, the Act provides that treatment, care and support in relation to mental health and substance misuse issues should be provided to Aboriginal or Torres Strait Islander people in a way that recognises and is consistent with Aboriginal tradition or Island custom, and should be delivered in a culturally appropriate and respectful manner.

Clause 5 makes explicit the intended application of the guiding principles of the Act by providing that a person performing functions or exercising a power under the Act must, in doing so, have regard to the principles. Clause 34 supplements this application by providing that public sector and publicly funded non-government agencies providing mental health or substance misuse services or other human services to people with, vulnerable to, or at significant risk of, mental health or substance misuse issues must also have regard to the legislative principles in exercising their respective functions.

Division 3 Interpretation

Clause 6 provides that particular words that are used in the Act are defined in the dictionary in the Schedule. Key terms defined in the dictionary and used at various places throughout the Act include 'human service', 'human service agency', 'mental health and substance misuse system', 'mental health service', 'relevant agency', 'relevant persons', 'relevant service', 'service delivery agency', 'substance misuse' and 'substance misuse service'.

Clause 7 defines the term 'whole-of-government strategic plan' as a key term which is used throughout the Act. Developing and reviewing the whole-of-government strategic plan and monitoring and reporting on its implementation are intended to be the principal means through which the QMHC leads its collaborative and comprehensive reform agenda. It is for this reason that clause 7 provides a detailed definition of this term.

The QMHC's functions include developing and periodically reviewing a draft whole-of-government strategic plan for the improvement of mental health and the limiting of harms associated with substance misuse in Queensland. This plan is required to address not only clinical treatment, non-clinical support and other human services provided to people with mental health and substance misuse issues and their carers, families and support persons, but also relevant human services provided to people who are vulnerable to, or otherwise at significant risk of, developing mental health or substance misuse issues.

The whole-of-government strategic plan must be developed in consultation with:

- people with mental health and substance misuse issues and their carers, families and support persons;
- government and publicly funded non-government agencies providing mental health and substance misuse services; and
- government and publicly funded non-government agencies providing human services to people with mental health and substance misuse issues and their carers, families and support persons, or to people vulnerable to experiencing mental health or substance misuse issues.

Amongst other things, the plan must:

- provide strategic guidance and direction about the outcomes Government intends to achieve through its funding of, and its development and implementation of policy in relation to, the mental health and substance misuse system;
- establish benchmarks and performance measures for evaluating and reporting on the effectiveness of the mental health and substance misuse system;
- foster the development and strengthening of partnerships and the integration of services across relevant agencies within the mental health and substance misuse system;

- include a range of strategies aimed at promoting the wellbeing, recovery and social inclusion of people with mental health or substance misuse issues and their carers, families and support persons and at enhancing community health and wellbeing.

With to respect to strategies developed as part of the plan, these strategies should seek to:

- increase participation by this cohort in the development, delivery and evaluation of policies, programs and services to the greatest extent possible;
- support and promote the general health and wellbeing of this cohort;
- support and promote the mental health and wellbeing of the community; and
- support and promote the prevention of, and early intervention in relation to, mental illness and substance misuse; enhance community awareness and understanding about mental health and substance misuse issues, including for the purpose of reducing stigma and discrimination.

The whole-of-government strategic plan must also support the sharing of knowledge and research and seek to promote the uptake of innovation and evidence-based practice by human service and service delivery agencies involved in the mental health and substance misuse system.

Clause 7 additionally allows for the whole-of-government strategic plan to address other matters the QMHC considers necessary to exercise its functions under the Act.

Part 2 Queensland Mental Health Commission

Division 1 Establishment

Clause 8 provides that the QMHC is established.

Clause 9 states that the QMHC represents the State and has the status, privileges and immunities of the State.

Clause 10 provides that the QMHC is a statutory body subject to the Financial Accountability Act and Statutory Bodies Financial Arrangements Act. Clause 10 further provides that the QMHC is a unit of public administration under the Crime and Misconduct Act.

Division 2 Functions and powers

Clause 11 states the main functions of the QMHC.

The QMHC's functions include developing and periodically reviewing the whole-of-government strategic plan and monitoring and reporting to the Minister on its implementation.

To equip the QMHC to provide comprehensive advice and insight to Government on all relevant issues within its scope, the QMHC's functions also include reviewing, evaluating, reporting and advising on:

- the mental health and substance misuse system generally;
- other issues impacting on people with mental health or substance misuse issues and their carers, families and support persons; and

- other issues affecting community mental health and substance misuse.

Clause 11 provides that a function of the QMHC is to promote and facilitate the sharing of knowledge and ideas about mental health and substance misuse issues. To assist in achieving this, the functions of the QMHC also include undertaking and commissioning research in relation to mental health and substance misuse issues.

Clause 11 invests the QMHC with a number of functions consistent with its role as a champion for a comprehensive recovery-oriented mental health and substance misuse system and as a promoter of community health and wellbeing. These functions include:

- supporting and promoting strategies that:
    - prevent mental illness and substance misuse; and
    - facilitate early intervention for mental illness and substance abuse;
- supporting and promoting the general health and wellbeing of people with a mental illness and people who misuse substances, and their families, carers and support persons; and
- supporting and promoting the social inclusion and recovery of people with a mental illness or who misuse substances.

Importantly, clause 11 also provides for the QMHC to contribute directly to efforts to mitigate some of the adverse impacts experienced by people living with mental health and substance misuse issues. It achieves this by providing that promoting community awareness and understanding about mental health and substance misuse issues, including for the purpose of reducing stigma and discrimination against people who have a mental illness, is a function of the QMHC. Stigma and discrimination can significantly compound the impact of illness on the long term outcomes of people living with mental health issues, including by discouraging help-seeking and diminishing individuals' resilience, social connectedness and quality of life.

Clause 11 also provides for the QMHC to take other action it considers appropriate to address the needs of people with mental health or substance misuse issues and their carers, families and support persons. This head of power will enable the QMHC to respond to emergent needs in a way which is consistent with the intent of the legislation.

The functions of the QMHC in clause 11 will serve to focus the QMHC's attention on the need to have a broader scope than simply mental illness and substance misuse by requiring it to also consider the intersections between mental health and substance misuse issues and broader social and service delivery issues. Clause 11 requires the QMHC, in exercising its functions, to:

- take into account co-morbid issues associated with mental illness and substance misuse, such as disability, chronic disease and homelessness; and
- take into account issues related to the interaction between people with mental health or substance misuse issues and the criminal justice system.

Clause 11 further provides that in exercising its functions, the QMHC is to:

- focus on systemic mental health and substance misuse issues. This will prevent it duplicating or otherwise becoming too involved in the detailed operational functions of service delivery and human service agencies and, in cases such as the health system, the system manager, allowing it to maintain a broad strategic focus;

- engage and consult with consumers, carers and families, Hospital and Health Boards under the Hospital and Health Boards Act, the government, non-government and private sectors and the community. This will ensure the QMHC is continuously engaging those bodies responsible for the funding and delivery of mental health and substance misuse issues and is able to generate ongoing dialogue about the importance of mental health and substance misuse issues; and
- take into account contemporary evidence and relevant policy and strategic frameworks. This requirement seeks to ensure the QMHC's activities remain at all times consistent with the growing national body of evidence and best practice, and with relevant government policy settings.

The QMHC is also required, when exercising its functions, to take into account the particular views and needs of different sections of the Queensland community, including:

- Aboriginal and Torres Strait Islander communities;
- culturally and linguistically diverse communities;
- regional and remote communities; and
- other groups at risk of marginalisation and discrimination.

Requiring the QMHC to take into account the specific issues experienced by these population groups will ensure it remains at all times alive to the potential for disadvantage and vulnerability to be distributed unevenly across the Queensland community, and for mental health and substance misuse emerge to manifest differently amongst different groups.

Clause 12 states that, without limiting the powers of the QMHC given to it under this Act or another Act, the QMHC has all the powers of an individual and may, for example:

- enter into contracts;
- acquire, hold, deal with and dispose of property;
- appoint agents and attorneys;
- engage consultants or contractors; and
- do anything else necessary or convenient to be done in the performance of its functions.

Clause 13 provides that, in managing the QMHC, the Commissioner is subject to the directions of the Minister and must comply with any direction given by the Minister. To maximise the QMHC's transparent operation, the clause requires that directions given to the Commissioner by the Minister each financial year, and action taken by the Commissioner as a result of the direction, must be reported to Parliament through the QMHC's annual report prepared under the Financial Accountability Act.

Division 3 Membership of the commission

Clause 14 states that the QMHC consists of the Commissioner and staff of the QMHC.

Division 4 Staff of the commission

Subdivision 1 Commissioner

Clause 15 provides that the QMHC is headed by a Commissioner appointed by the Governor-in-Council on the recommendation of the administering Minister (the Minister for Health).

To ensure the QMHC is being led by a person with the drive and gravitas needed to realise its ambitious reform goals and to build robust partnerships, the Minister must be satisfied the proposed Commissioner has the necessary skills, knowledge, experience and public standing to perform the role effectively and efficiently before recommending their appointment.

Clause 16 clarifies that a member of the Advisory Council must not be appointed as the Commissioner. This makes explicit the intent of the legislation that the QMHC and the Advisory Council are able to operate autonomously in the discharge of their complementary but separate functions.

Clause 17 provides that the Commissioner is employed under this Act and not the *Public Service Act 2008*.

Clause 18 provides that the Commissioner holds office for a term of three years. Nothing in this clause is intended to prevent a Commissioner's reappointment at the expiration of a term of appointment.

Clause 19 provides that the Commissioner's main functions include managing the QMHC in a way which ensures it performs its functions effectively and efficiently, and that the Commissioner's functions include any other functions given to the Commissioner under this or another Act. To further clarify the scope of the Commissioner's role as the person responsible for the overall management of the QMHC, clause 19 also provides that the Commissioner may exercise the QMHC's powers under the Act and any other powers given to the Commissioner under this or another Act.

The relationship between the Commissioner and the Minister is made further transparent by clause 19 in outlining that the Commissioner, to assist the Minister in the proper administration of the Act, may make recommendations to the Minister about any matter within the QMHC's functions or powers.

Clause 20 clarifies that, where not provided by the Act, the conditions of appointment for the Commissioner are determined by the Governor-in-Council.

Clause 21 identifies that there is considered to be a vacancy in the office of the Commissioner if:

- the Commissioner resigns office;
- the Commissioner has been, or is, convicted of an indictable offence;
- the Commissioner is or becomes an insolvent under administration under section 9 of the *Corporations Act 2001* (Cwlth);
- the Governor-in-Council removes the Commissioner from office on the recommendation of the Minister where the Minister is satisfied the Commissioner:
    - is or has been guilty of misconduct;
    - is incapable of performing their duties; or
    - has neglected their duties or performed their duties incompetently; or
- the Minister exercises their statutory power to suspend the Commissioner for up to 60 days where:
    - there is an allegation of misconduct against the Commissioner; or
    - a matters has arisen which could result in the person's removal from office.

Clause 21 is not intended in any way to affect the Governor-in-Council's incidental powers under section 25 of the *Acts Interpretation Act 1954*.

Clause 22 provides that if a public service officer is appointed as the Commissioner, the person retains all accrued employment rights and entitlements. The person's service as Commissioner is to be regarded as service of a like nature in the public service for deciding the person's rights as a public service officer.

Clause 23 provides that the Minister may appoint a person to act as Commissioner during any periods that the office of Commissioner is vacant or the Commissioner is absent or unable to perform their duties. To maintain the intended separation between the QMHC and the Advisory Council, the Minister may not, however, appoint a member of the Advisory Council to act as Commissioner.

Subdivision 2 Staff

Clause 24 provides that the QMHC may employ staff under the Public Service Act.

Part 3 Strategic plan and reporting by commission

Clause 25 provides that the QMHC must prepare a whole-of-government strategic plan and must submit it to the Minister for approval. As outlined in clause 7, the whole-of-government strategic plan is aimed at improving the mental health outcomes and limiting the harms associated with substance misuse in Queensland.

In preparing the whole-of-government strategic plan, clause 25 requires the QMHC to consult with consumers, carers, families and support persons, and with human service and service delivery agencies.

Clause 26 states that the QMHC must facilitate implementation of the whole-of-government strategic plan and must monitor and report to the Minister on its implementation. This will allow the Minister to receive frank advice about progress across the government and non-government sectors towards realisation of the fundamental reform goals underpinning the plan, and to consider any strategic measures necessary to mitigate issues jeopardising the plan's successful delivery.

Clause 27 provides that the QMHC must review the whole-of-government strategic plan at least once every five years, or earlier if directed by the Minister, and must prepare amendments to the plan as required. In preparing any amendments, the QMHC must consult with similar sets of persons and agencies as must be consulted as part of the plan's initial development.

Clause 28 provides that the Minister may direct the QMHC to prepare a special report on any significant systemic issue, and the QMHC must comply with this direction. Where considered appropriate, it remains open to the Minister to publish a special report, including by tabling it in Parliament.

Special reports are intended to function as a strategic tool available to the Minister to glean frank, expert advice about issues of significant concern and to understand in detail the implications of any mitigation measures. Clause 28 emphasises the strategic intended

purpose of special reports by explicitly providing that they may contain recommendations about the systemic issue to which they relate.

Clause 29 provides for the QMHC, on its own initiative, to also prepare ordinary reports on any of the following matters:

- progress in the preparation or review of the whole-of-government strategic plan;
- the implementation of the whole-of-government strategic plan;
- a systemic issue relating to the mental health and substance misuse system or affecting people with mental health or substance misuse issues; or
- the funding of mental health and substance misuse services.

An ordinary report may contain a recommendation to one or more agencies about the issue the subject of the report.

It is recognised that the preparation of reports relating to systemic or funding issues—including recommendations to specific agencies—and their subsequent tabling in Parliament provides the QMHC with a significant head of power to potentially increase Government and community pressure on human service and service delivery agencies in relation to policies and practices which are impacting on the mental health and wellbeing or substance use of their clientele.

To ensure that this head of power is being exercised appropriately and that potential financial and other impacts on affected agencies are properly identified and taken into account, clause 29 provides the following safeguards around the QMHC's ordinary reporting function:

- the QMHC must notify the Minister before preparing a report on a systemic issue or on the funding of mental health and substance misuse services; and
- in the course of preparing a report on a systemic or funding issue, the QMHC must consult with any public, non-government and private sector agencies it considers are significantly affected by the issues contained in the report, and must consider any submissions on the issues by the agency.

Clause 30 provides that an ordinary report by the QMHC must be provided to the Minister. To maximise its effectiveness in contributing to public understanding of the issues raised and to meaningful action, a report given to the Minister under this clause must be tabled by the Minister in Parliament as soon as practicable.

Clause 31 provides that, where an ordinary report contains a recommendation that relates to a particular human service or service delivery agency, the Commission must provide a copy of the report to that agency as soon as practicable after providing it to the Minister.

Clause 32 requires that a public sector agency in receipt of a formal recommendation issued through an ordinary report must provide a response to the QMHC within a reasonable period detailing any steps it has taken or plans to take in relation to the issues raised in that recommendation.

As this provision is not intended to interfere in any way with affected agencies' autonomy in relation to the development of policy or the deployment of resources, clause 32 clarifies that an agency may decide to take no action in response to the recommendation. To promote transparency in such cases, the agency must advise the QMHC of the reasons for its decision.

It is anticipated that the safeguards included in clause 29 and the significant degree of consultation required prior to the completion of ordinary reports will ensure that potential financial and other impacts on affected agencies are properly identified and taken into account prior to a recommendation being made by the QMHC.

Clause 33 requires that recommendations in an ordinary report to human service and service delivery agencies by the QMHC each financial year, and action taken by the agency in response to the recommendation, must be reported to Parliament through the QMHC's annual report prepared under the Financial Accountability Act. This measure is one of the many intended to contribute to the high level of transparency which will surround the QMHC's operation.

Part 4 Cooperation between commission and public sector and publicly-funded agencies

Clause 34 provides that the QMHC and public sector and publicly funded non-government agencies providing mental health or substance misuse services or other human services to people with, vulnerable to, or at significant risk of, mental health or substance misuse issues must work cooperatively in the exercise of their respective functions. This provision is intended to ensure that agencies in the mental health and substance misuse system are not operating in isolation but are properly coordinated and integrated as part of a broader cooperative effort catalysed by the QMHC.

Clause 34 makes explicit the Act's intention to involve the widest possible set of agencies in cooperative and coordinated action by placing an obligation on all public sector and publicly-funded non-government agencies providing mental health or substance misuse services or other human services to people with, vulnerable to, or at significant risk of, mental health or substance misuse issues to:

- have regard to the whole-of-government strategic plan and the guiding principles of the Act in the exercising their functions; and
- consult with the QMHC on their activities, expenditure and initiatives at regular intervals as outlined in the whole-of-government strategic plan.

Clause 34 further provides that, while it is Parliament's intention that the clause be complied with, failure to comply does not create rights or legally enforceable obligations on any agency. This clarifies that the intention of the provision is not to compel agencies' cooperation through the creation of legally binding obligations, but rather to engender an environment which is conducive to cooperative effort by a disparate group of agencies.

Clause 35 provides that the chief executive of Queensland Health must have regard to the whole-of-government strategic plan when negotiating service agreements under the Hospital and Health Boards Act in so far as the agreements relate to the delivery of mental health and substance misuse services. This is an important means of ensuring that relevant clinical service delivery is planned and funded in a way which is cognisant of the relevant broad directions and intended outcomes established by the QMHC and partner agencies through the strategic plan.

Clause 36 outlines the circumstances under which a department or public sector unit must provide information to the QMHC. These include:

- where the QMHC considers a department or other public sector unit has information which it requires to perform its functions and it makes a request of the department or unit for the information, and where it is practicable for the department or unit to provide the information within the requested timeframe; or
- where the QMHC and the relevant department or unit have entered into an agreement for the provision of required information.

Importantly, this clause does not overrule existing or future statutory provisions governing the release of certain categories of information, such as confidential information (however defined).

Part 5 Queensland Mental Health and Drug Advisory Council

Division 1 Establishment and functions

Clause 37 provides that the Queensland Mental Health and Drug Advisory Council (the Advisory Council) is established. This body is intended as the primary mechanism through which stakeholders will be involved in the strategic work of the QMHC.

Clause 38 provides that the functions of the Advisory Council are to advise the QMHC on any mental health or substance misuse issue within the QMHC's functions which it considers appropriate or which is referred to it by the QMHC, and to make recommendations to the QMHC about the QMHC's functions.

Division 2 Membership

Clause 39 provides that the Advisory Council consists of the number of persons appointed by the Minister that the Minister considers appropriate.

To maximise the strategic capacity and representativeness of the Advisory Council, the Minister, in making appointments, is to ensure the diversity of the Queensland community is reflected in the Advisory Council's membership and that appointed members have appropriate skills, knowledge or experience to discharge the role effectively. These could include skills knowledge or experience in relation to mental health and substance misuse issues affecting:

- service users and their carers, families and support persons;
- service providers;
- people living in remote and regional communities;
- members of culturally and linguistically diverse communities; and
- Aboriginal and Torres Strait Islander persons.

Providing for the Minister to select members in part for their representativeness and their understanding of different mental health and substance misuse issues will equip the Advisory Council to ensure the QMHC's activities are well informed by the significant spread of consumer, carer and family experiences across Queensland's highly diverse geographical regions and cultural groups. The inclusion of members familiar with issues impacting on service providers is also an important means of ensuring the Advisory Council is cognisant of the practical effects of its reforms on operational service delivery.

However, the set of skills, knowledge or experience which may qualify a person for membership of the Advisory Council is left deliberately open to allow the Minister a reasonable degree of flexibility in constituting a body which possesses an appropriate mix of complementary capabilities. For example, it remains open to the Minister to determine that the inclusion of a member with a professional background in business—but without any formal or direct experience of mental health or substance misuse issues—may complement other members' skill sets and best equip the Advisory Council to function effectively as a corporate entity.

Clause 39 also clarifies that members of the Advisory Council are to be appointed for up to three years and are to be paid the fees and allowances decided by the Governor-in-Council. Nothing in this clause is intended to prevent a person's reappointment at the expiration of a three year term.

Clause 40 provides that a member of the Advisory Council may be appointed as chairperson, and another member as deputy chairperson. The deputy chairperson is to act as chairperson during any periods that the office of chairperson is vacant or the chairperson is absent or unable to perform their duties. These arrangements will ensure that a single officeholder is at all times able to coordinate the activities of the Advisory Council, maintain its strategic focus and represent it in its ad hoc interactions with the Commissioner.

To put its intended operation beyond doubt, clause 41 further identifies the circumstances in which there is considered to be a vacancy in the office of chairperson or deputy.

Clause 41 outlines the circumstances in which there is considered to be a vacancy in the office of a member of the Advisory Council generally.

As with the QMHC, the Advisory Council will occupy a position of significant public trust, discharging statutory functions and having privileged access to a government entity. It is therefore considered appropriate that the legislation ensure the Advisory Council is to be held to a high standard of public accountability. Clause 42 is intended to contribute to this accountability by providing that a vacancy in the office of a member of the Advisory Council arises if:

- the member resigns;
- the member is removed from office by the Minister because the Minister is satisfied the member:
    - is or has been guilty of misconduct;
    - is incapable of performing their duties;
    - has neglected their duties or performed their duties incompetently; or
    - has been absent without the permission of the chairperson from three consecutive Advisory Council meetings; or
- the Minister suspends the member for up to 60 days because a matter has arisen which amounts to alleged misconduct or which could result in the person's removal from office.

Clause 41 is not intended to in any way affect the Minister's incidental powers under section 25 of the Acts Interpretation Act.

Division 3 Conduct of business by council

Clause 42 provides that the Advisory Council may conduct its business in the way the chairperson considers appropriate. However, the chairperson must consult with the Commissioner before deciding the way in which Advisory Council meetings are to be conducted. This consultation—which is intended to take in such matters as the frequency of Advisory Council meetings and the size and scope of the body's annual workload—will ensure that the activities of the Advisory Council have full regard for the financial and operational context in which they take place.

Where the chairperson and Commissioner are unable to agree on the way meetings are to be conducted, clause 42 provides for the Minister to direct the Advisory Council. Again, this will ensure the Advisory Council is conducting its business in a way which has due regard for Government's expectations and for the resources which have been made available to support it.

In addition, the Commissioner must attend all meetings of the Advisory Council, unless excused by the chairperson. This requirement is intended to ensure the Commissioner remains reasonably accessible and accountable to the Advisory Council, and through it to the sector and its stakeholders generally.

Clause 43 states that a quorum for a meeting of Advisory Council members is half of its members, or the next highest whole number where half is not a whole number.

Clause 44 provides that the chairperson is to preside at all meetings of the Advisory Council. However, if the chairperson is not present (due to an absence or vacancy of office), the deputy chairperson is to act as chairperson. These arrangements will ensure that a single officeholder is at all times able to coordinate the activities of the Advisory Council, maintain its strategic focus and represent it in it ad hoc interactions with the Commissioner.

Clause 45 provides for the conduct of Advisory Council meetings, including the resolution of matters and questions raised at meetings by a majority of members. In recognition that the Advisory Council will include members from remote and regional locations who may experience obstacles to attending regular face-to-face meetings, clause 46 explicitly acknowledges that a member may attend and participate fully in a meeting using any appropriate technology.

Clause 45 further provides for the resolution of matters outside formal meetings.

Clause 46 states that the Advisory Council must keep minutes of their meetings, including in relation to resolutions about matters and questions raised during Advisory Council meetings.

Clause 47 provides that the Advisory Council may establish time-limited subcommittees to consider and report back to it on specific issues, allowing it to engage in detail in efforts to respond to issues of particular concern. In providing for the sub-committees to include persons who are not members of the Advisory Council, clause 47 is intended to provide a means for the Advisory Council to solicit expert advice or services not available from within its existing membership.

The terms of reference of subcommittees are to be determined in consultation between the Advisory Council chairperson and the Commissioner. Similar to the conduct of meetings by the Advisory Council, this is intended to ensure the formation of subcommittees has full regard for the prevailing financial and operational context. Further, the general Ministerial power to direct the Advisory Council in the conduct of its business created in clause 43 provides a further means of appropriately managing the creation and use of subcommittees by the Advisory Council.

Part 6 Cooperation between commission and council

Clause 48 establishes an accountability and reporting relationship between the QMHC and the Advisory Council by requiring the QMHC to regularly update the Advisory Council on the performance of its statutory functions, including but not limited to the development and implementation of the whole-of-government strategic plan.

This reporting relationship is considered necessary to support the Advisory Council in its statutory functions of advising the QMHC on any mental health or substance misuse issue within the QMHC's functions and making recommendations to the QMHC about the QMHC's functions. In conjunction with the requirement created under clause 43 that the Commissioner attend all meetings of the Advisory Council, this requirement is intended to ensure the QMHC remains reasonably accessible and accountable to the Advisory Council.

Clause 49 provides that the QMHC must consult with the Advisory Council on the whole-of-government strategic plan and any special or ordinary reports on mental health or substance misuse issues before they are provided to the Minister for approval. This requirement to consult on these key documents is considered appropriate to the Advisory Council's role as a high level body through which stakeholders can be involved in shaping the long term reform agenda and activities of the QMHC.

Clause 50 requires the QMHC, where it is in receipt of a formal recommendation from the Advisory Council, to provide a response to Advisory Council within a reasonable period detailing any steps it has taken or plans to take in relation to the issues raised in that recommendation. As this is intended as an accountability mechanism rather than as a means of subverting the autonomous operation of the QMHC, clause 50 further clarifies that the QMHC may decide to take no action in response to the recommendation. To promote transparency in such cases, the QMHC must advise the Advisory Council of the reasons for its decision.

In any case, it is anticipated that the collaborative relationship and degree of consultation between the QMHC and the Advisory Council will allow for potentially deleterious impacts on the QMHC to be properly identified and taken into account prior to a recommendation being made by the Advisory Council.

Clause 51 requires that recommendations to the QMHC by the Advisory Council each financial year, and any action taken in response to the recommendation, must be reported to Parliament through the QMHC's annual report prepared under the Financial Accountability Act. This is intended to maximise transparency around the QMHC's operation by making public its formal interaction with its sectoral advisory body.

Clause 51 further provides for the Advisory Council to elect to prepare a statement about the conduct of its business for inclusion in the QMHC's annual report, and for any such statement to be included in the report.

Part 7 Miscellaneous

Clause 52 provides that all statutory functions or powers of the Commissioner may be delegated to an appropriately qualified member of the QMHC's staff.

Clause 53 provides that an official (including the Minister, Commissioner, staff of the QMHC or member of the Advisory Council or Advisory Council committee) is not civilly liable for any act done, or omission made, honestly and without negligence under the Act. Civil liability in these cases attaches to the State (for a discussion of fundamental legislative principles arising in relation to this protection from liability, see Consistency with Fundamental Legislative Principles in these Explanatory Notes).

Clause 54 provides that the QMHC may make operational guidelines about matters under this Act, and that these guidelines must be published and made available on request. These guidelines are intended to function as a means of making the QMHC's operation transparent and accessible to its stakeholders. They may not in any way alter the Act's effect or application, and, as statutory instruments for the purposes of the *Statutory Instruments Act 1992*, must comply with the relevant provisions of that Act.

Clause 55 requires the Minister to arrange an independent review of the performance of the QMHC within three years after the commencement of the clause. It is considered that three years is an appropriate period for the QMHC to manifest its capacity to achieve its statutory objectives and to commence implementation of its reform agenda.

Clause 56 requires that the Minister must review the effectiveness of this Act as soon as practicable after three years from the Act's commencement. The review of the Act must be tabled in Parliament by the Minister.

Clause 57 provides the Governor-in-Council with a regulation making head of power under this Act.

Part 8 Amendment of this Act

Clause 58 provides that this part amends the Act.

Clause 59 amends the long title of the Act to remove ', and to amend this Act, the *Mental Health Act 2000* and the *Public Service Act 2008* for particular purposes'.

This amendment ensures that once the Act has commenced and the amendments to the Mental Health Act and Public Service Act have taken effect, the remaining Act deals exclusively with the establishment, functions and powers of the QMHC.

Part 9 Amendment of Mental Health Act 2000

Clause 60 states that this part amends the Mental Health Act.

Clause 61 amends section 131, which sets out requirements for what a treatment plan must state where limited community treatment is authorised for an involuntary patient.

This section is to be amended to require that if a patient is authorised to have limited community treatment, the treatment plan must include in specific terms any monitoring conditions required by the Director of Mental Health. A monitoring condition can only be applied to limited community treatment for forensic patients, classified patients and patients detained under an order made under section 273(1)(b).

Under the Mental Health Act, a two stage authorisation process applies for authorising limited community treatment for forensic, classified and section 273(1)(b) order patients. That is, an approval or order must be granted by the Director of Mental Health, the Mental Health Court or the Mental Health Review Tribunal before an authorised doctor may authorise limited community treatment under the patient's treatment plan.

When ordering or approving limited community treatment, the Director of Mental Health, the Mental Health Court or the Mental Health Review Tribunal may also order or approve any conditions considered appropriate. In authorising limited community treatment, the authorised doctor is responsible for ensuring that the authorisation occurs within the parameters established by the Director of Mental Health, the Mental Health Court or the Mental Health Review Tribunal.

In addition to conditions set by the Director of Mental Health, the Mental Health Court or the Mental Health Review Tribunal, the authorised doctor may, under section 131(1)(b), include specific conditions about the patient's limited community treatment that the doctor considers necessary for the clinical management of the patient while he or she is on limited community treatment and to protect the health or safety of the patient or the safety of others.

While conditions applied by the Director of Mental Health, the Mental Health Court, the Mental Health Review Tribunal or the authorised doctor provide a range of protections for both the patient and the community, a monitoring condition ordered by the Director of Mental Health will strengthen the ability for authorised mental health services to minimise potential risks and provides a mechanism for early action to be taken in response to any adverse incident.

Clause 62 inserts new sections 131A and 131B to provide for the Director of Mental Health to make a monitoring condition for a relevant patient.

New section 131A (Director may require monitoring condition for patient undertaking limited community treatment) enables the Director of Mental Health to require that a monitoring condition be included in a treatment plan for a forensic patient, classified patient or patient detained under an order made under section 273(1)(b) while they are undertaking limited community treatment. The section explicitly excludes the application of a monitoring condition to a young patient (for example, an involuntary patient under 17 years of age).

A monitoring condition is a mechanism that enables the patient's location to be monitored by their treating health service while they are accessing limited community treatment. A monitoring condition may include, for example, a requirement that a patient call their treating mental health service when they intend to leave a location, that a patient provide a detailed

plan of where they intend to go and who they intend to meet, or that the patient wear a device for monitoring their location at all times while they are on limited community treatment.

Examples are provided for when the Director of Mental Health may consider that a monitoring condition should be applied to a patient to enable additional monitoring to be undertaken by the authorised mental health service. Examples provided include applying a monitoring condition when a patient is transitioning from limited community treatment where the patient is accompanied by a health service employee (escorted limited community treatment), to limited community treatment where the patient is in the community without the supervision of a health service employee (unescorted limited community treatment).

In requiring a monitoring condition to be applied, the Director of Mental Health must provide written notice to the Administrator of the patient's treating health service of the requirement for the condition to be included in the patient's treatment plan.

New section 131B (Confidentiality of information gained as a result of monitoring conditions) provides that information obtained as a result of a monitoring condition being applied to a patient is confidential information under the Hospital and Health Boards Act.

Notwithstanding the provisions of the Hospital and Health Boards Act, section 131B provides that information obtained by virtue of a monitoring condition may be given by a designated person under part 7 of the Hospital and Health Boards Act to the Queensland Police Service if it is required to investigate or prosecute an offence. Additionally, information obtained in relation to a monitoring condition may be given by a designated person to the Mental Health Court or the Mental Health Review Tribunal.

Clause 63 makes a consequential amendment to section 191 which sets out the decisions the Mental Health Review Tribunal may make when reviewing a patient for whom an involuntary treatment order is in force. For classified and section 273(1)(b) order patients who are also on an involuntary treatment order, a monitoring condition applied by the Director of Mental Health under new section 131A will be reviewed by the Tribunal as part of the patient's review of their involuntary treatment order.

The amendment to section 191 clarifies that, when reviewing a monitoring condition for a classified or section 273(1)(b) order patient who is on an involuntary treatment order, the Tribunal may amend or revoke the monitoring condition.

Clause 64 makes a consequential amendment to section 203 which sets out the decisions the Mental Health Review Tribunal may make when reviewing the mental condition of a forensic patient. Under this section, a monitoring condition applied by the Director of Mental Health under new section 131A may be reviewed by the Tribunal. The amendment to section 203 clarifies that when reviewing a monitoring condition for a forensic patient, the Tribunal may amend or revoke the monitoring condition.

With respect to a decision of the Tribunal to revoke a monitoring condition, section 203 must be read in conjunction with section 204, which requires the Tribunal to be satisfied the patient does not represent an unacceptable risk to the safety of the patient or others before a decision may be made to revoke a monitoring condition.

Clause 65 amends section 204 which imposes restrictions on the decisions the Mental Health Review Tribunal may make on a review of a forensic patient's mental condition. As outlined above (see section 203), a monitoring condition applied by the Director of Mental Health under new section 131A may be amended or revoked by the Tribunal on a review of a forensic patient's mental condition. The amendment to section 204 requires the Tribunal to be satisfied the patient does not represent an unacceptable risk to the safety of the patient or others before a decision may be made to revoke a monitoring condition.

This restriction is consistent with the restrictions placed on the Tribunal in relation to deciding whether to revoke a forensic order or when ordering or approving limited community treatment.

Clause 66 expands the jurisdiction of the Mental Health Review Tribunal under section 437 to enable the Tribunal to decide appeals about an order of the Director of Mental Health in relation to suspending limited community treatment. Under section 493AH, a patient may appeal to the Tribunal about an order of the Director of Mental Health to suspend limited community treatment on the grounds that the Director incorrectly decided that there is a serious risk to the life, health or safety of a person or a serious risk to public safety, or on the grounds that the Director was incorrect in including the patient the subject of the appeal in the order.

Clause 67 amends section 447 which sets out how the Mental Health Review Tribunal is to be constituted for hearing particular matters. An amendment to this section is required as a consequence of the amendment to section 437 to expand the jurisdiction of the Tribunal to decide appeals about an order of the Director of Mental Health in relation to suspending limited community treatment. For hearing appeals about an order to suspend limited community treatment, section 447 provides that the Tribunal must be constituted by at least three, but not more than five, members, of whom at least one must be a lawyer, at least one must be a psychiatrist—or, if a psychiatrist is not readily available but another doctor is available, the doctor—and at least one of whom is not a lawyer or doctor.

Clause 68 amends section 448 which sets when the President of the Mental Health Review Tribunal may determine that a Tribunal of less than three members be constituted to hear a matter. With respect to an appeal about an order to suspend limited community treatment, section 448 is being amended to reflect that these matters may be heard by less than three members if the President is satisfied it is appropriate and expedient to do so. Providing for appeals against an order to suspend limited community treatment to be heard by the less than three members will assist with the matter being dealt with as judiciously as possible, while ensuring that a patient to whom an order applies has an appropriate and expeditious avenue for the order to be reviewed.

Clause 69 inserts new section 454A (Right of appearance – appeal against director's order to suspend limited community treatment) to reflect the expansion of the jurisdiction of the Mental Health Review Tribunal to enable the Tribunal to decide appeals about an order of the Director of Mental Health in relation to suspending limited community treatment. Under this section, the patient and the Director of Mental Health have a right of appearance. Consistent with other hearings of the Tribunal, both the patient and the Director may be represented at the hearing by a lawyer or, with the leave of the Tribunal, an agent. Additionally, if a patient is not represented, the Tribunal may appoint a person to represent the patient's views, wishes and interests.

Clause 70 amends section 489 which sets outs the functions of the Director of Mental Health under the Act.

A primary function of the Director of Mental Health is to ensure the rights of involuntary patients are protected to the extent that it is reasonably practicable. The amendment to section 489 clarifies that in carrying out this function, the Director of Mental Health must balance the rights of involuntary patients with the rights of other persons in the community.

The amendment to this function aligns the functions of the Director of Mental Health with the overarching purpose of the Mental Health Act, which is to provide for the involuntary assessment, treatment and protection of persons who have a mental illness while at the same time safeguarding their rights and freedoms and balancing their rights and freedoms with the rights and freedoms of other persons.

Clause 71 amends section 491 which provides that, in exercising a power under the Mental Health Act, the Director of Mental Health is independent from the Minister responsible for administering that Act (that is, the Minister for Health).

New section 493AC provides that the Minister may direct the Director of Mental Health to investigate a matter in relation to an involuntary patient under the Mental Health Act if the Minister considers there is a serious risk to the life, health or safety of a person or a serious risk to public safety because of the matter.

The ability for the Minister to direct the Director of Mental Health to investigate a matter results in a change in the relationship between the Minister and Director of Mental Health that must be reflected in section 491. Clause 71 therefore amends section 491 to provide that the while the Director of Mental Health is not under the control of the Minister when exercising a power under the Mental Health Act, the Minister can direct the Director of Mental Health to investigate a matter under section 493AC.

It should be noted however, that, while the Minister may direct the Director of Mental Health to review and investigate a matter, the amendments make explicit that the Director remains independent from the Minister with respect to decisions about any action that may be taken as a result of the investigation.

Clause 72 amends section 492 which provides for the circumstances in which the Director of Mental Health may delegate a power under the Mental Health Act.

As with other powers of the Director of Mental Health under the Mental Health Act, the power to take action under chapter 13, part 1, division 1A in response to a serious risk may be delegated. However the amendment to section 492 makes explicit that these powers may only be delegated to a health executive or a senior executive within the Department of Health (for example the Chief Health Officer or the Chief Executive of Queensland Health respectively). Limiting the delegation of these powers to executives within the Department of Health will ensure that the power is used sparingly and is appropriately applied after consideration of the matter and risk. Unlike other powers within the Mental Health Act, the Director of Mental Health will not be able to delegate the power to take action in response to a serious risk to a person working within an authorised mental health service (for example, an Administrator).

Clause 73 inserts a new division 1A (Action by director where serious risk to person or public safety) in chapter 13, part 1 of the Mental Health Act.

Division 1A (comprising sections 493AC to 493AJ) provides mechanisms for the Director of Mental Health to initiate a number of actions in response to a serious risk to the life, health or safety of a person or a serious risk to public safety.

Section 493AC (Minister may direct director to investigate matter and consider taking appropriate action) establishes a power for the Minister to direct the Director of Mental Health to review and investigate a matter where the Minister considers that there is a serious risk to the life, health or safety of a person or a serious risk to public safety. In reviewing the matter, the Director of Mental Health must decide whether to take action in relation to the risk, and consider whether there are systemic issues that need to be addressed (for example if similar risks issues are occurring at a number of authorised mental health services).

If directed by the Minister to review and investigate a matter, the Director of Mental Health must report back to the Minister on the outcome of the review and on any action that was taken as a result of the review.

While the Minister may direct the Director of Mental Health to review, investigate and report back on a matter, the Director is independent from the Minister with respect to deciding what action, if any, is required as a result of the review of the matter. That is, section 493AC explicitly provides that the Minister does not have the power to direct the Director of Mental Health to take specific action in relation to a matter.

Section 493AD (Director must consult before ordering suspension of limited community treatment) outlines requirements for the Director of Mental Health in relation to consulting and notifying relevant persons if the Director is considering suspending limited community treatment in response to a serious risk to the life, health or safety of a person or a serious risk to public safety.

Consistent with the purpose of the Mental Health Act, and to ensure decisions are made with the highest regard to a person's rights and liberties, section 493AD establishes consultation requirements to ensure the Director of Mental Health is appropriately informed of potential impacts on the treatment and care of affected patients before an order may be given to suspend limited community treatment. Section 493AD provides for the Director of Mental Health to undertake the following:

- consultation with relevant Administrator/s of authorised mental health services on the likely impact of an order to suspend limited community treatment to ensure any potential disruption to the treatment and care of patients or the operation of the service is the minimum necessary in the circumstances;
- consultation with the Police Commissioner if the order to suspend limited community treatment is likely to impact police resources (for example if police assistance is required to return patients to an authorised mental health service); and
- notification to the Attorney-General.

Additional consultation and notification requirements must be undertaken if an order to suspend limited community treatment affects a young person (under 17 years of age). That is, the Director of Mental Health must:

- notify the Chief Executive of the department responsible for the *Child Protection Act 1999* if a forensic patient is also a child in the child protection system; and
- advise the Attorney-General with regard to the Attorney-General's responsibilities under the *Youth Justice Act 1992*.

Further, when consulting with relevant Administrators, if the order to suspend limited community treatment may impact a young person, the Director of Mental Health must consider the best interests of any young person that may be impacted upon.

Section 493AE (Action director may take for a significant matter and related risk) outlines the action the Director of Mental Health may take if the Director independently forms the view that there is a serious risk to the life, health or safety of a person or a serious risk to public safety.

The action that may be taken by the Director of Mental Health in response to a serious risk includes:

- ordering the suspension of limited community treatment for relevant patients, or a class of relevant patients;
- ordering an Administrator of an authorised mental health service to provide a report on the circumstances that led to the serious risk arising;
- reviewing, or requiring an Administrator of an authorised mental health service to review and report back on, any treatment plans relevant to the serious risk;
- reviewing any guidelines, policies, protocols about the use of limited community treatment; and
- taking any other action necessary to prevent a similar serious risk from arising again.

The Director of Mental Health's power to suspend limited community treatment only extends to forensic patients, classified patients or patients on an order under section 273(1)(b) of the Mental Health Act (each of whom is defined as a 'relevant patient').

The Mental Health Review Tribunal and Mental Health Court may, under sections 203 and 289 respectively, approve or order limited community treatment. Section 493AE clarifies that an order by the Director of Mental Health to suspend limited community treatment will apply to all patients specified in the order, regardless of whether their limited community treatment is ordered or approved.

It is intended that the Director of Mental Health's power to suspend limited community treatment will facilitate a more rapid response to an identified risk, including the resolution of any systemic problems that may be able to be addressed in order to minimise or prevent such risks from reoccurring.

When exercising this power, the Director of Mental Health will also be bound by the guiding principles for the Mental Health Act, in particular section 9. This section states that a power under the Act must be exercised so that the person's liberty and rights are adversely affected only if there is no less restrictive way to protect the person's health and safety or to protect others and any adverse effect on the person's liberty and rights is the minimum necessary in the circumstances.

Section 493AF (What director's order must contain) outlines the details that must be contained in an order by the Director of Mental Health to suspend limited community treatment.

To ensure that it is clear and unambiguous as to which patients an order of the Director of Mental Health to suspend limited community treatment is to apply to and for how long, section 493AF prescribes that an order to suspend limited community treatment must contain:

- if the order relates to one particular patient, the name of the patient;
- if the order relates to a class of patients, sufficient detail to identify the patients to which the order applies;
- the time period for the suspension; and
- the name of the authorised mental health service and the time and date by which patients who are in the community must return to the service.

If an order applies to a class of patients, sufficient detail to identify those patients is required in the order. Examples are provided in section 493AF in relation to the types of patient classes that may be provided for in an order, such as all forensic patients who are in a particular in-patient facility (for example, a medium secure facility) of a particular authorised mental health service. This would mean that only those forensic patients who are in that facility would have their limited community treatment suspended under the order. Forensic patients detained to a different authorised mental health service or in a different facility of the particular authorised mental health service (for example, a community care unit) would not be affected by the order.

Providing for specific detail in an order to suspend limited community treatment will ensure that the order is applied to the minimum number of patients required for the serious risk that triggered the action to be addressed.

Forensic patients are detained under their forensic order to a stated authorised mental health service. While this service is primarily responsible for the patient's treatment and care under the order, if the patient is approved limited community treatment they may, at times, be in a location that is some distance from their responsible authorised mental health service (for example, a forensic patient detained to a service in Brisbane may travel to Cairns to visit family members). Section 493AF therefore also clarifies that if a patient is in the community and an order to suspend limited community treatment results in the patient having to return to an authorised mental health service, the patient may be returned to a service that is not the service to which they are primarily detained.

Section 493AG (Director may vary period of order or end the order) clarifies that if the Director of Mental Health makes an order to suspend limited community treatment for a patient or class of patients in response to a serious risk to the life, health or safety of a person or a serious risk to public safety, the Director may extend the time period specified in the order. However, the Director of Mental Health may only extend the order if the Director reasonably believes the extension is necessary minimise the serious risk to the life, health or safety of a person or to public safety. The ability for the Director of Mental Health to end the suspension earlier than the time period specified in the order ensures that a suspension of limited community treatment will only apply for the minimum time period necessary to address the risk.

While not explicitly stated in the Act, if the Director of Mental Health wants to alter the order in any way, other that extending or ending a time period, the Director is required to end the original order and make a new order. For example, if the Director of Mental Health's original order suspends limited community treatment for all forensic patients, and following an initial review the Director identifies that the serious risk only relates to a particular authorised mental health service, the Director is not able to alter the original order to restate which patients the order applies to. The Director of Mental Health will be required to end the original order and make a new order that is specific to forensic patients within the particular authorised mental health service. The requirement for the Director of Mental Health to make a new order if the application of the suspension of limited community treatment is to be altered ensures that, as far as possible, the minimum number of patients will be affected by the suspension while the serious risk is being addressed.

Section 493AH (Appeal director's order to suspend limited community treatment) establishes a right of appeal to the Mental Health Review Tribunal for patients to whom a Director of Mental Health's order to suspend limited community treatment applies. A patient may appeal to the Tribunal about an order of the Director of Mental Health to suspend limited community treatment on the grounds that the Director incorrectly decided that there was a serious risk to the life, health or safety of a person or a serious risk to public safety, or on the grounds that the Director was incorrect in including the patient the subject of the appeal in the order.

If the Tribunal decides the Director of Mental Health erred in deciding that there was serious risk to the life, health or safety of a person or a serious risk to public safety, the Tribunal must set aside the order. If the Tribunal decides that the Director of Mental Health erred in including the patient the subject of the appeal in the order, the Tribunal must order that the Director's order to suspend limited community treatment does not apply to the patient. Additionally, the Tribunal may amend the order to more appropriately reflect the class of patient to which the suspension of limited community treatment should apply, or set aside the order.

Section 493AI (Persons to whom tribunal must give a copy of its decision) provides that the Mental Health Review Tribunal must give a copy of its decision in relation to an appeal about an order to suspend limited community treatment to the parties to the appeal (for example, the patient and the Director of Mental Health), the patient's allied person and the Administrator of the patient's treating health service. Further, section 493AI provides that, if the hearing relates to a child on a forensic order who is also a child in the child protection system, the Tribunal must notify the Director-General of the department responsible for the Child Protection Act of its decision.

Section 493AJ (Decision to be given effect) requires the Director of Mental Health and the Administrator of the patient's treating health service to give effect to a decision of the Mental Health Review Tribunal with respect to an appeal about an order to suspend limited community treatment.

Clause 74 expands the application of section 508 to provide that a health practitioner or police officer may return a patient to an authorised mental health service if they are in the community and a Director of Mental Health's order to suspend limited community treatment applies to the patient. The expansion of this provision to include patients who have their limited community treatment suspended is consistent with the current application of this

section which applies, for example, to patients who are granted a temporary leave approval that is then revoked.

Clause 75 amends the Mental Health Act to provide that a person does not commit an offence against section 526 of that Act by publishing information which identifies, or is likely to identify, a person who is or has been subject to proceedings under that Act where publication is authorised in writing by the Director of Mental Health. In authorising a publication, the Director of Mental Health must believe, on reasonable grounds, that the publication is necessary for lessening or preventing a serious risk to the life, health or safety of an individual or to public safety, or otherwise is in the public interest.

This amendment is considered necessary and proportionate to address an ambiguity between the disclosure provisions under part 7 of the Hospital and Health Boards Act and the publication provisions under chapter 14, part 5 of the Mental Health Act.

Whereas section 147 of the Hospital and Health Boards Act permits the disclosure of confidential information under that Act where the relevant chief executive believes the disclosure is necessary on reasonable grounds to lessen or prevent a serious risk to an individual's life, health or safety or to the public's safety, section 526 of the Mental Health Act currently prohibits publication of information which identifies a person subject to certain proceedings under that Act. As these two sets of provisions can from time to time apply to the same information, clarification is required of the circumstances in which a disclosure permitted under the Hospital and Health Boards Act may be made without simultaneously breaching the prohibition on publication under the Mental Health Act.

Read together, the Hospital and Health Boards Act and the amended Mental Health Act will permit the disclosure and publication of confidential information which identifies a person who is or has been subject to proceedings under the Mental Health Act where both the relevant chief executive and the Director of Mental Health (or delegate) authorise the disclosure or publication in writing, having formed the belief that the disclosure or publication is either:

- necessary to lessen or prevent a serious risk to an individual's life, health or safety or to the public's safety; or
- in the public interest.

Clause 76 expands section 536 to include the Minister as an official for the purposes of protection from civil liability for an act done, or omission made, honestly and without negligence under the Mental Health Act. Civil liability in these cases attaches to the State. This is in relation to the new authority for the Minister to be able to direct the Director of Mental Health under the new section 493AC.

Clause 77 amends the Dictionary in the schedule to the Mental Health Act. A key term to be included in the Dictionary is 'relevant patient' which refers to a forensic patient, classified patient or a patient on a section 273(1)(b) order.

Part 10 Amendment of Public Service Act 2008

Clause 78 states that this part amends the Public Service Act.

Clause 79 amends the Public Service Act to provide that the QMHC is a public service office and that the Commissioner is its head. Under section 22 of the Public Service Act, this has the effect of applying that Act to the QMHC as if it were a department and the Commissioner its chief executive.

Schedule 1 Dictionary

Schedule 1 defines the terms used in the Act.